

SP – 18 – 027

FRAMEWORK AGREEMENT

-between-

(1) THE SCOTTISH MINISTERS ACTING THROUGH SCOTTISH PROCUREMENT

-and-

(2) CONTRACTOR NAME UK Cloud Ltd

-relating to the supply of-

CLOUD SERVICES

-for the benefit of-

THE SCOTTISH MINISTERS AND OTHER PUBLIC BODIES

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PREAMBLE:

- ONE The Authority requires the supply of Services to the Framework Public Bodies
- TWO On 25th 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/s040-090688.
- THREE On 28th March 2019 the Contractor completed its ESPD;
- FOUR On 15th February 2019 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FIVE On 28th March 2019 the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Contractor amongst other Framework contractors to supply the Services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- a Specification setting out the Services that the Contractor has undertaken to provide including Service Levels setting out particular levels of service that the Contractor has undertaken to meet
 - a Pricing Schedule setting out details of the pricing of the Services;
 - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
 - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

SECTION A

1. Definitions and Interpretation

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

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

“Authority” means the Scottish Ministers

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

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

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

“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.

“Cloud computing” means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model is composed of four deployment models.

“Co-location” means In its most basic form, co-location is an easily understood outsourcing service. It can be defined as shared physical data centre facilities (power, cooling and space) that are owned (or leased) and operated by a specialist provider. The co-location provider connects the client to network providers available in the facility, and may offer its own network services too (usually in the form of internet connectivity and/or advanced connectivity services that help link the customer to service providers — for example, public cloud). The co-location provider usually provides on-site security services and remote hands (basic engineering

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

“Community cloud” means the cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organisations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organisations in the community, a third party, or some combination of them, and it may exist on or off premises

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

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

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

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

“ESPD” means the European Single Procurement Document completed by the Contractor and sent to the Authority on 27th March 2019

“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.

“The Framework Public Bodies” means the Authority 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 Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, Scottish Fire & Rescue Service, the Scottish Police Authority, Scottish health boards or special health boards, all NHS Scotland, The Integrated Joint Boards established further to the Public Bodies (Joint Working) Act 2014, bodies registered as social landlords under the Housing (Scotland) Act 2001, Student Loans Company Limited, the Forestry Commission, the Commissioner of Northern Lighthouse operating as the Northern Lighthouse Board, Equality and Human Rights Commission, Business Stream Ltd, the Business Gateway National Unit at the Convention of Scottish Local Authorities, further or higher education institutions being fundable bodies within the meaning of section 6 of the further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by one or more of the foregoing. In addition to the contracting authorities listed, the framework agreement will be available to charities entered on the Scottish Charity Register and voluntary organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

[Information about 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 Brightsolid, DataVita, CAE Technology Services, Insight Direct UK, Iomart, Nigsun, NVT Group, Proact IT UK, Pulsant, Six Degrees, Storm ID, Sungard, UK Cloud, Velocity

“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.

“Hybrid cloud” means the cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardised or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds).

“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 15th 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 Specification, the Services 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.

“Private cloud” means the cloud infrastructure is provisioned for exclusive use by a single organisation comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organisation, a third party, or some combination of them, and it may exist on or off premises.

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

“**Public cloud**” means the cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organisation, or some combination of them. It exists on the premises of the cloud provider

“**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 «F9: the Authority **or** Framework Public Bodies» as set out in the Specification.

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

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

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

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

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

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

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

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

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

“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 the Authority.
- 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 1st August 2019 (the "Commencement Date") to and including 1st August 2021, unless it is terminated earlier or extended under Clause 4.2.
- 4.2. The Authority may, by giving notice to the Contractor, extend the period of the Framework Agreement to a date falling no later than four years from the Commencement Date. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.
- 4.3. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

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

6. Specification and Service Levels

The Specification sets out the Services that the Contractor has undertaken to provide.

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

7. Price

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

7.2. The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule

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

8. Award Procedures

8.1. The Award Procedures may be invoked by any Framework 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 Framework Agreement has been terminated; or

8.2.3. the Contractor's appointment to provide Services to the Framework 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 Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement.
- 9.2. The Authority may by notice to the Contractor suspend the Contractor's appointment to provide Services to 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 Government
For the attention of: Stuart Brown
Tel: 0141 242 5626
E-mail: stuart.brown@gov.scot
 - 12.3.2. For the Contractor:
For the attention of: UK Cloud Ltd
Hartham Park
Corsham
Wiltshire
SN13 0RP
Tel: 01249 700006
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 Contractor will, in conjunction with the Authority and in its own right and in respect of the Services, ensure it will be compliant with the Data Protection Laws.
- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Framework Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Parties under Data Protection Laws and the Parties agree to comply with those obligations and duties.
- 14.3. The Parties acknowledge that the Contractor may Process Personal Data in delivery of Services under a Call-off Contract under this Framework Agreement. For the purposes of any such Processing, Parties agree that the Contractor acts as the Data Processor and the Authority acts as the Data Controller.
- 14.4. 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.
- 14.5. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Contractor should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in 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) 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 and Records Management

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

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

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

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

- 18.3 The Contractor must on request, and without any charge to the Authority, afford the Authority, or the Authority's representatives, such access to those records as may reasonably be requested by the Authority in connection with the Framework Agreement.
- 18.4 The Contractor shall, for the duration of the Framework Agreement, provide the Authority with all assistance requested by the Authority acting reasonably to assist the Authority in complying with its obligations under the Act and with the Authority's Records Management Plan where such compliance is in respect of records created or to be created by the Contractor on behalf of the Authority in terms of this Framework Agreement. This assistance will be at no cost to the Authority.
- 18.5 At the end of the Framework Agreement, the Contractor shall transfer the records in question to the Authority, such transfer to include full ownership of the records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the Authority. The Contractor shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Authority on the same terms.
- 18.6 If the Contractor shall become bankrupt (whether voluntarily or compulsorily), unable to pay its debts, insolvent or make arrangements with its creditors or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntarily or compulsorily), otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then immediately upon the occurrence of any of these events, the records which would, in terms of clause 18.5 fall to be offered to the Authority shall be deemed to be held on trust by the Contractor on behalf of the Authority. The Contractor shall thereafter, if and when so required by the Authority, transfer the records in question to the Authority, such transfer to be on the same terms as would apply to a transfer made in terms of clause 18.5.]

19. Publicity

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

SECTION C

20 Key Individuals

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

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

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

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

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

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

21 Offers of Employment

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

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

22. Staff transfer at commencement

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

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.

25A. Cyber Security

The Service Provider shall ensure that any system on which the Service Provider holds any Purchaser Data, including back-up data, is a secure system that complies with the Security Plan detailed in (Schedule 11). The service provider's systems, policies and procedures should comply with the National Cyber Security Centre's Cloud Security Principles and the cloud security requirements of the Specification & Service Levels (Schedule

1). The Service Provider must, where appropriate, review and update systems, policies and procedures regularly to ensure continued compliance with the NCSC Cloud Security Principles.

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 assignment takes effect on the Commencement Date or as an assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor must execute all documentation necessary to effect this assignment.

28. Licences of Intellectual Property Rights

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

28.2 The Contractor grants to the Authority a perpetual, royalty-free, irrevocable and exclusive licence to use any Intellectual Property Rights in the Deliverables.

28.3 The Contractor must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Framework Agreement grants to the Authority a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Authority an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

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 assignation, 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) 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

32.4.2 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, at least one newspaper circulating in Scotland, 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

32.3 Clause 7 (Price) makes special provision for the variation of the Pricing Schedule.

SECTION E

33. Warranties and Representations

The Contractor warrants and represents that:

33.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;

33.1.2 in entering the Framework Agreement it has not committed any offence under the Bribery Act 2010 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 £5,000,000 per instance, or any greater / other sum as may be agreed with the Framework Public Body in the Call Off Contract terms and conditions

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

35.4.1 death or personal injury caused by its negligence;

35.4.2 misrepresentation;

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 £5,000,000 per instance, or such greater /other sum as may be agreed with the Framework Public Body; and

36.1.2 professional indemnity insurance in the sum of not less than £5,000,000 per instance, or such greater or other sum as may be agreed with the Framework Public Body; and

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 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 Framework Agreement:

42.2.1 in accordance with any provision of the Schedules;

42.2.1 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 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 assignment 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;

42.1.5 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;

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

42.1.7 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;

42.1.8 a debt relief order is entered into; or

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

43.2 The Authority may terminate 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 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.
 - 44.3.7 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. Sustainability

49.1 The Contractor shall perform its obligations under the Call-off Contract in a manner so as to:

49.1.1 conserve energy and minimize carbon emissions, where practical;

49.1.2 conserve materials such as wood, paper and other natural resources;

49.1.3 minimise waste and maximise, recycling while supporting circular economy outcomes through extending the useful life, reuse and reconditioning of devices;

49.1.4 phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

49.1.5 make all reasonable efforts to minimise its use of packaging, reuse where practical and avoid the use of packaging which consumes a disproportionate amount of energy or resources during manufacture, use, or disposal or which contains materials derived from threatened species or threatened environments.

49.1.6 maintain security of supply through appropriate supply chain management of risks, which are reasonable within the control of the Contractor, and which may arise due to the availability of components, environmental of social factors and others as relevant.

- 49.2 If requested by the Purchaser the Contractor shall provide the Purchaser with a copy of its environmental policy as well as evidence as to how it reasonably meets the commitment made within the policy.
- 49.3 Contractors are expected to have appropriate standards for its organisation and its supply chain regarding legal, ethical and social issues. This should include for example: health and safety, waste disposal and recycling, security of employment rights and relevant labour standards, working conditions, equality, the use of conflict minerals within products and corruption.
- 49.4 The Contractor must take all reasonable steps to ensure that all Services supplied under this Framework Agreement are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin, in particular in relation to labour standards, working

conditions and the use of child labour.

49.5 The Contractor will be required to maintain a comprehensive labour standards system at all times and make management information available to the Purchaser every 12 months and on request.

50. Conflicts of interest

50.1 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.

50.2 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.

50.3 Breach of this clause by the Contractor is a material breach for the purposes of clause 42 (Termination Rights).

51. Consequences of Expiry or Termination

51.1 Where the Authority terminates 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.

51.2 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.

51.3 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.

51.4 The following provisions survive the expiry or termination of this Framework Agreement

51.4.1 clause 1 (Definitions and Interpretation);

51.4.2 clause 8 (Award Procedures);

51.4.3 clause 10 (Official Secrets Acts);

- 51.4.4 clause 13 (Recovery of Sums Due);
- 51.4.5 clause 14 (Data Protection);
- 51.4.6 clause 15 (Transparency and Freedom of Information);
- 51.4.7 clause 16 (Authority Protected Information);
- 51.4.8 clause 17 (Contractor Sensitive Information);
- 51.4.9 clause 18 (Audit [and Records Management]);
- 51.4.10 clause 19 (Publicity);
- 51.4.11 clause 21 (Offers of Employment);
- 51.4.12 clause 23 (Information about Contractor Employees);
- 51.4.13 clause 26 (Parties pre-existing Intellectual Property Rights);
- 51.4.14 clause 27 (Specially created Intellectual Property Rights);
- 51.4.15 clause 28 (Licences of Intellectual Property Rights);
- 51.4.16 Clause 29 (Claims relating to Intellectual Property Rights);
- 51.4.17 clause 33 (Warranties and Representations);
- 51.4.18 clause 34 (Indemnity);
- 51.4.19 clause 37 (Dispute Resolution Procedure);
- 51.4.20 clause 39 (Waiver and Cumulative Remedies);
- 51.4.21 clause 47 (Tax arrangements);
- 51.4.22 this clause 50 (Consequences of Termination); and

51.4.23 clause 52 (Governing Law and Jurisdiction).

51.5 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 [DN: *ref some sort of method of calculating the price*].

51.6 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.

52. Entire Agreement

52.1 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).

52.2 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:

52.2.1 the clauses of this Framework Agreement;

52.2.2 the Standard Terms of Supply;

52.2.3 the other Schedules; and

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

53. **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 34 preceding pages together with the 5 Schedules annexed hereto are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of UK Cloud Ltd

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 UK Cloud Ltd

SCHEDULE 1a – SPECIFICATION AND SERVICE LEVELS

SECTION A – INTRODUCTION

18. Introduction

- 18.1. The current National Framework for Hosting Services expires on 19 May 2019. The Scottish Ministers seek to establish a replacement multi-supplier Framework Agreement for the provisions of Cloud Services.
- 18.2. The key aims of the Framework Agreement are to:
- Deliver an efficient, first class, innovative Cloud Services framework to the Scottish public sector offering value for money.
 - To deliver Cloud Services in a safe, secure and environmentally friendly way.
 - Deliver quality services, in terms of Service Levels and Key Performance Indicators
 - Offer security of supply chain and sustainable selection of suppliers, promoting the use of Small to Medium size businesses where possible.
 - Embedding Sustainable Procurement and inclusion of Fair Work, Community Benefits e.g. use of apprentices, supporting charities, training opportunities, etc.
 - Provide the same level of services to all Framework Public Bodies, regardless of their size or geographical location.
- 18.3. The Cloud Services Framework will be available to Framework Public Bodies and designed to support the Digital Public Services Strategy '[Realising Scotland's full potential in a digital world: a digital strategy for Scotland](#)' and other associated strategies and policies such as the '[High-Level Operating Framework](#)'.
- 18.4. [The Data Hosting and Data Centre Strategy for the Scottish Public Sector](#) sets out how Scottish Government plan to deliver on that overall objective and in particular how the public sector will adopt the following approaches for achieving significant efficiency and energy savings in:
- Cloud computing;
 - Virtualisation;
 - Co-location.
- 18.5. This Framework also supports the wider use of the Scottish Wide Area Network (SWAN) Programme (<http://www.scotland.gov.uk/Topics/Economy/digital/digitalservices/strategy>) which is designed to deliver a single public services network available for use by any, and potentially all, public service organisations within Scotland; with aggregated demand delivering both cost and performance

advantages. The SWAN initiative aims to enable infrastructure and service sharing that will produce cost efficiencies and facilitate the creation of public services that are high quality, continually improving, efficient and responsive to local needs.

- 18.6. Framework Public Bodies who are not connected to SWAN, or have no future plans to connect to SWAN, are not precluded from utilising this framework. Moving data into a cloud based model may help realise greater benefits and could be seen as many organisations as a 'stepping stone' to future efficiencies and cost savings.
- 18.7. Framework Public Bodies will be strongly encouraged to use the Framework as part the Public Sector Procurement in Scotland Programme and Digital Public Services strategy.
- 18.8. In order to maximise the use of the Framework Agreement, at no additional cost, the Contractor will be required to support the Authority in promoting the Framework Agreement across the Scottish public sector. The Contractor will be required to actively promote and sell the benefits of the Framework Agreement, including cost, environmental, resource and operational efficiencies. This activity will be managed by the Contractor in conjunction with the Authority.
- 18.9. Contractors should be able to provide cloud services that meet the essential characteristics defined by NIST - <http://csrc.nist.gov/publications/nistpubs/800-145/SP800-145.pdf> - and which will support the wide ranging requirements across the Scottish public sector:
 - **On-demand self-service.** A Consumer [Framework Public Bodies] can unilaterally provision computing capabilities, such as server time and network storage, as needed automatically without requiring human interaction with each service's Provider [Contractor].
 - **Broad network access.** Capabilities are available over a network, or the internet, and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g., Desktops, mobile phones, laptops and other mobile devices).
 - **Resource pooling.** The Provider's computing resources are pooled to serve multiple Consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. There is a sense of location independence in that the Consumer generally has no control or knowledge over the exact location of the provided resources but may be able to specify location at a higher level of abstraction (e.g., country, state, or data centre). Examples of resources include storage, processing, memory, network bandwidth, and virtual machines.
 - **Rapid elasticity.** Capabilities can be rapidly and elastically provisioned, in some cases automatically, to quickly scale out and rapidly released to quickly scale in. To the Consumer, the capabilities available for provisioning often appear to be unlimited and can be purchased in any quantity at any time.
 - **Measured Service.** Cloud systems automatically control and optimize resource use by leveraging a metering capability at some level of abstraction appropriate to the type of service (e.g., storage, processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported providing transparency for both the Provider and Consumer of the utilized service.

19. Framework Award and Start Date

- 19.1. It is anticipated that the framework will be awarded in May 2019. Commencement of supply to Framework Public Bodies is required immediately following award.

20. Scope

- 20.1. The scope of the Framework Agreement is for the provision of Cloud Services, including Private Cloud, Public Cloud, Hybrid Cloud, Community Cloud, Co-location Services and Cloud Transition Services as defined in the Framework Agreement definitions.
- 20.2. For ease of reference and to ensure all round clarity, Scottish Procurement has provided definitions of [deployment models](#) based on The US National Institute of Standards and Technology (NIST) and Gartner's definition for Co-location services:
- **Public Cloud (including but not limited to access to 'Hyper-scale' Public Cloud):-** The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organisation, or some combination of them. It exists on the premises of the cloud provider. (*Gartner definition of Hyper-scale – 'access to cloud services and capabilities on an industrial sized scale'*)
 - **Private Cloud** The cloud infrastructure is provisioned for exclusive use by a single organisation comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organisation, a third party, or some combination of them, and it may exist on or off premises.
 - **Hybrid Cloud:-** The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardised or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds).
 - **Community Cloud:-** The cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organisations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organisations in the community, a third party, or some combination of them, and it may exist on or off premises.
 - **Co-location:-** In its most basic form, co-location is an easily understood outsourcing service. It can be defined as shared physical data centre facilities (power, cooling and space) that are owned (or leased) and operated by a specialist provider. The co-location provider connects the client to network providers available in the facility, and may offer its own network services too (usually in the form of internet connectivity and/or advanced connectivity services that help link the customer to service providers — for example, public cloud). The co-location provider usually provides on-site security services and remote hands (basic engineering)'. (**Gartner Definition**)
 - **Cloud Transition Services:-** [See section 7](#)
- 20.3. As part of the Framework, Contractors will also be expected to provide the following services requirements, some of which will be mandatory by some Framework Public Bodies, including but not limited to:

20.3.1. Core Requirements

- Private Cloud
- Public Cloud (including but not limited to access to 'Hyper-scale' Public Cloud via partnerships) *Gartner definition of Hyper-scale – 'access to cloud services and capabilities on an industrial sized scale'*
- Community Cloud
- Hybrid Cloud
- Co-location
- Cloud Transition Services

20.3.2. Key Requirements

- Data Centre Services (including computing, storage, firewalls, security, patching, etc.)
- Deliverables to be available at a government security level of "Official"
- 24/7 support services (including all Scottish Public Holidays)
- Availability (minimum 99.9%) (As defined in [KPI CS009](#))
- Compliance with Data Protection (including GDPR)
- Services to be delivered via Government Networks including but not limited to SWAN, JANET, N3, PSN and GSX/GSI
- ISO/IEC 27001:2013 'information technology – Security techniques-information security management systems – requirement' or equivalent
- Business continuity and disaster recovery of the services provided
- Maximum Power Usage Effectiveness (PUE**) Rating of 1.6 (as defined in [KPI CS008](#))
(*PUE = ratio that describes how efficiently a computer data centre uses energy)

20.4. For the avoidance of doubt, the following products / services are **NOT** in scope and cannot be offered to Framework Public Bodies under this Framework Agreement:

- Software as a Service (SaaS)
- Fully Managed IT Services
- Unified Communication (which covers customer user-interface)
- Creating applications
- Web development
- Web design
- Creating and Updating Content
- Video Streaming
- Procurement of Hardware

SECTION B - REQUIREMENTS

21. Service Delivery

- 21.1. The Contractor shall make available the full range of Services outlined in [Section 3.2](#) of this Specification.
- 21.2. The Contractor shall be required to provide services to organisations across the whole of Scotland. This could exceptionally also include Scottish based organisations with overseas locations (e.g. Universities with branch campuses) typically connected by a Virtual Private Network (VPN).
- 21.3. Services may be called off on either an organisation specific or collaborative basis (e.g. Framework Public Bodies grouped together in a local geographic region may decide to aggregate their requirements and request collaboratively delivered solutions via a Community Cloud model). Suggested solutions shall be provided in accordance with the requirements of the Framework Public Bodies.
- 21.4. Contractors must be able to deliver services using a “buy-as-you-consume” model (i.e. only paying for services as they are used) allowing Framework Public Bodies to leverage all of the essential characteristics of cloud services in the most cost effective way thus ensuring value for money.
- 21.5. Contractors may engage the services of sub-contractors or consortia members to achieve service provision across Scotland. If the intention is to do so, they must advise the Authority as part of their tender response. Any subcontractors or consortia member which the Contractor wishes to appoint after the start date of the Framework must be approved by the Authority.

22. Technical Support

- 22.1. Contractors will be required to provide support services for all services deployed across the geography of Scotland as per the Service Levels and Key Performance Indicators detailed within [section 17 Service Levels](#)
- 22.2. Cloud Services and support will be required **24 hours** a day, **365 days** a year by some Framework Public Bodies (including **all Scottish Public Holidays**). Contractors must be flexible to suit Framework Public Bodies specific requirements.
- 22.3. The Service must include a telephone based technical support helpdesk and should also include web and email based Services. The Contractor must be able to provide a technical support management system, including a ticketing and reporting system.
- 22.4. The helpdesk will be Single Point of Contact (SPoC) contactable on a local or Freephone phone number, or through an instant messaging service, staffed by employees familiar with this Agreement, the Authority and the Framework Public Bodies.

23. Mobilisation – Call Offs

- 23.1. Contractors may be required to provide project management, implementation and migration management for the Cloud Services required.
- 23.2. Framework Public Bodies using the framework will have differing levels of technical knowledge and differing levels of Cloud Service requirements. The Contactor must work with the Framework Public Bodies, if required, to transition them over to Cloud Service solutions provided under the Framework.
- 23.3. There may be a requirement for some Framework Public Bodies to transition their current data centre services from its present location to new Cloud Service arrangements. During this time there should be minimal disruption to Framework Public Bodies service. Contractors should provide full details of the process relating to the transition period to the Framework Public Bodies to ensure the necessary services are in place and no disruption to service.
- 23.4. If required by the Framework Public Bodies a site visit can be carried out. The Framework Public Bodies will give the Contractor a minimum of 2 hours' notice prior to the visit for Co-location and Private Cloud requirements and a minimum of 3 working days' notice for Public Cloud requirements.

24. Cloud Transition Services

- 24.1. Contractors may be required to act as independent technical advisors in the form of advice and guidance on how Framework Public Bodies can best migrate their existing data to the Cloud Services provided through this framework.
- 24.2. This service will include information including, but not limited to (this will be dependent on the needs of the Framework Public Bodies):
 - 24.2.1. identification of requirements;
 - 24.2.2. suggested approach to the market;
 - 24.2.3. information relating to services available;
 - 24.2.4. how transition to the services will work;
 - 24.2.5. recommendation of the type of service they should procure;
 - 24.2.6. advice on security matters relating to Cloud Services.

- 24.3. The Cloud Transition Services resources to provide these services can be procured through the catalogue via Direct Award or mini-competition.
- 24.4. The service should include a report at the end of the Cloud Transition Services exercise which will be provided to the Framework Public Bodies.
- 24.5. The service will exclude input to any documentation that will be used to form a future mini-competition via this Cloud Services Framework.

25. Framework and Account Management

- 25.1. Effective management is critical to the successful implementation and running of the Framework Agreement. Contractors are required to provide and maintain adequate management and staff resources, including a nominated Account Manager, to support the strategic and day to day operation and management of the Framework.
- 25.2. The Account Manager should act as the Single Point of Contact (SPoC) for the purposes of operating the Framework and will be responsible for ensuring the effective marketing, mobilisation, implementation, delivery and exit management of the Agreement.
- 25.3. The Account Manager will ensure that the agreed service levels are achieved and consistently high levels of service and best value are assured and maintained throughout the period of the Framework Agreement.
- 25.4. Framework Public Bodies using the Framework Agreement must be provided with a named Account Manager to act as a SPoC to support the management and delivery of any individual call-off contract established via the Framework Agreement.
- 25.5. Unless there are sound and reasonable operational or business reasons to the contrary, the Contractor shall actively participate in all mini-competitions initiated under the Framework Agreement. The Contractor will respond in a timely manner to all call-off requests and shall maintain a record of participation in all such activity.
- 25.6. The Contractor will actively participate in discovery days. Discovery days will be utilised by Framework Public Bodies to engage with Contractors for the purpose of defining, refining and developing service requirements prior to undertaking a mini-competition under the Framework Agreement.
- 25.7. All costs incurred by Contractors associated with participation and engagement in the discovery day process shall be the responsibility of the Contractors.
- 25.8. Further details of the framework management arrangements requirements can be found in Schedule 4 – Management Arrangements.

26. Maintenance and Improvement

- 26.1. The Contactor must advise the Framework Public Bodies no less than 7 working days before any planned maintenance is to be carried out within the Contractor's data centre which may affect the availability of the Cloud Services being provided. The Contactor will ensure a back-up Cloud Service is provided to ensure continuity of services
- 26.2. The Contractor must provide Business Continuity and Disaster Recovery services to ensure continuity of service as part of the Cloud Service provided. Varying levels of disaster recovery may be required and details will be set out and agreed with the Framework Public Bodies as part of any mini-competition process.
- 26.3. The Contractor may be required by the Framework Public Bodies to provide a backup of their data. The Contractor will work with the Framework Public Bodies to meet the requirements of this service.
- 26.4. The Contractor must ensure the Cloud Services provided are appropriately maintained and robust by ensuring up to date testing and patch management policies are followed.

27. Security

- 27.1. Whilst the majority of requirements for Cloud Services will be at an Official classification, some Framework Public Bodies may have requirements at a higher classification. Framework Public Bodies will only be able to procure Cloud Services at an Official classification via the catalogue. Mini-competition under the framework can be carried out for any classification. The Contractor must ensure that all data is hosted at the classification specified. Further details are provided in [Section 42 Information Assurance](#).
- 27.2. Framework Public Bodies security requirements may change during a Contract period, so Contractors must be able to scale up and down between security classifications and revise service levels and pricing accordingly to meet these requirements.
- 27.3. It is a requirement under this framework that the Contractor, Data Centre and Disaster Recover Sites are certified to ISO/IEC 27001:2013 or equivalent. The Contractor must keep the Authority and Framework Public Bodies updated of any changes in their ISO accreditation or equivalent in relation to Cloud Services for this framework and/or call-off contract. The Contractor will be required to provide evidence of ISO/IEC 27001:2013 or equivalent at contract award stage. The Authority reserve the right to request evidence of any accreditation throughout the duration of the framework.
- 27.4. Where any service is provided using Cloud instances, the contractor must meet the requirements details in the [HMG Cloud Security Principles](#). Security reporting and alerting thresholds must be agreed with the Authority and documented.
- 27.5. The Contractor will be required to document all Logging and Monitoring capabilities within component applications and infrastructure, even if these are not proposed to be implemented in the service delivered for the Authority.
- 27.6. The Contractor will be required to comply with all related information security legislation including the Data Protection Act 2018.

27.7. All Data Centres utilised to provide services under this framework must be located with the European Economic Area as defined in the Data Protection Act Principle 8 which states:-

'Personal data shall not be transferred to a country or territory outside the European Economic Area (EEA) unless that country or territory ensure an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.' Schedule 1 Part II (13) to (15)(2) <http://www.legislation.gov.uk/ukpga/1998/29/schedule/1>

- 27.8. Framework Public Bodies will require specific and often demanding access to a number of secure government networks as detailed in the section 20.3 above. Contractors must be able to provide or sub-contract resilient connectivity to meet these demands throughout the duration of any call-off contracts.
- 27.9. The Contractor must advise the Authority and the Framework Public Bodies immediately if they become aware of any system security, physical security, data protection security issues or breaches, regardless of how they may affect the Cloud Services being provided under the Framework.
- 27.10. The Contractor will undertake, as a minimum, an annual security check in the shape of a network penetration test against all Cloud Services and infrastructure. This test must be undertaken by a suitably qualified [National Cyber Security Centre](#) approved CHECK service provider with prior agreement from the Authority and Framework Public Body. A report outlining as minimum details of potential security weaknesses and evidence of any cross-site scripting violations should be submitted to the Authority within 10 working days upon completion of the test. However, if there are any high risk security issues the Contractor will be required to inform the Authority immediately. The Contractor will assess and advise the Authority of any security risks, together with their impact assessment and an action plan to address these risks. (As per [KPI CS007](#))

28. Business Continuity & Disaster Recovery

- 28.1. The Contractor shall have robust and tested Business Continuity and Disaster Recovery plans, policies and procedures in place in respect to services delivered under this Framework Agreement. These plans and procedures must be auditable and available upon request by the Authority and/or Framework Public Bodies.
- 28.2. Further details of the Business Continuity and Disaster Recovery requirements can be found within Schedule 12 – Business Continuity and Disaster Recovery of the Terms of Supply (Schedule 5 of the Framework Terms).

29. Exit Management

- 29.1. The Contractor will ensure an efficient migration of the Services to the Framework Public Bodies or other Contractors in accordance with the Exit Provisions of the Framework Terms and Conditions
- 29.2. The Contractor must also follow their own Exit Management policy as documented in Schedule 1b – Contractor Solution.

- 29.3. If Framework Public Bodies decide to terminate their contract, or part of their service, with the Contractor, the Contractor shall work with the Framework Public Bodies to determine a suitable exit plan which must include how data will be returned to the Framework Public Bodies and where appropriate destroyed from any other devices (e.g. storage, backups, etc.)
- 29.4. Should a new contractor be successful in being awarded a contract, during a call-off from this framework, the current contractor shall support the Framework Public Body to ensure a smooth transition to the successor of the call-off. This may involve enabling the services delivered via the current Call-off Contract to inter-operate with the successor services/contractor.

30. Environmental

30.1. The Climate Change Act 2008 places a high priority on climate change targets and environmental sustainability. Accepting that data centres consume significant amounts of power and equipment in order to provide resilience, redundancy and security, the overall efficiency can contribute massively in reducing a Framework Public Bodies carbon footprint.

30.2. We expect all Contractors Data Centre sites to be run in compliance with Power Utilisation Effectiveness ratings as follows:

- Less than 1 year old Data Centres: PUE of maximum of 1.4.
- 1-5 year old Data Centres: PUE maximum of 1.6.
- 5 years old or over Data Centres: PUE Maximum of 1.8 or under.

The Authority expect the Contractor to optimise PUE as much as is practicable - our aspiration is for PUE ratings of less than or equal to:-

- 1.3 for less than 1 year old;
- 1.45 for 1-5 years old;
- 1.6 for over 5 years old.

The Authority also expect the Contractor to remain up to date with and apply where practical industry latest developments and innovation regarding the data centre systems, IT equipment and associated network connections that carry out the primary function of the data centre, including the servers, storage and network equipment and the Mechanical & Electrical equipment used to regulate and condition the power supply and the mechanical systems to be used to regulate the environmental conditions in the white space. This includes keeping up to date with and meeting criteria within relevant existing and developing standards, such as the EU Code of Conduct for Energy Efficiency in Data Centres and the draft [EU CPP Criteria on Data Centre Efficiency or equivalent](#).

Servers shall meet, as a minimum, the energy efficiency requirements of the latest version of Energy Star, or equivalent, and optimise server utilisation.

- 30.3. The Contractor will support the transition to a Circular Economy. This will be reflected in design for server durability, design for disassembly and repair and re-use of servers, components and peripherals where relevant and recycling once servers have reached the end of their service life.
- 30.4. The Contractor will be required to demonstrate that waste generated within Data Centres is managed in accordance with the waste hierarchy, supporting the transition to a Circular Economy, while ensuring compliance with all relevant Waste Regulations.
- 30.5. Where the disposal or recycling of redundant components or equipment is undertaken by the Contractor or the Contractor's sub-contractor or agent it will be the Contractor's responsibility to ensure that the WEEE Regulations 2013 (Waste Electronic and Electrical Equipment) have been adhered to for which further guidance can be found at: <https://www.gov.uk/government/publications/weee-regulations-2013-government-guidance-notes>
- 30.6. The Contractors will work with the Authority to voluntarily go beyond contractual requirements and the minimum legal requirements in pursuit of environmental and social objectives in their daily business operations.

31. Community Benefits

- 31.1. The potential to take in to account social considerations (also referred to as Community Benefits) in public procurement is firmly established and set out in European Directive 2014/24/EU, the Public Contracts (Scotland) Regulations 2015 ("the Regulations") and European case law.
- 31.2. The Authority is interested in measures that the Contractor proposes to take to encourage:
 - The targeted recruitment and training of the long-term unemployed and those further from the job market (by way of apprenticeships, work placements etc.);
 - Educational benefits to communities, including working closely with educational establishments and community groups to maximise educational opportunities that arise through performance of the agreement, increase awareness, skills and digital accessibility;
 - Awareness of opportunities, either in a prime or a sub-contracting role, for small to medium (SME) sized businesses and social enterprises. This should include opportunities for organisations with expertise in:
 - Provision of the requirement
 - Service delivery
 - Hyper-Scale Public Cloud

32. Social & Ethical Responsibility

- 32.1. The Contractor is expected to have appropriate standards for its organisation and its supply chain regarding legal, ethical and social issues.

- 32.2. The Contractor will perform their obligations in accordance with the Authority's, and Framework Public Bodies' ethical sourcing policy, which is to promote appropriate standards regarding legal, ethical and social issues including, for example, health and safety, human rights including security of employment rights, equality, corruption and fair trade, in particular in developing or other countries with low production costs.
- 32.3. The Contractor must take all reasonable steps to ensure that all Products & Services utilised in relation to the services under this Framework Agreement are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin, in particular in relation to working conditions and the use of child labour.
- 32.4. The Contractor will be expected to have a comprehensive system which demonstrates an ongoing and systematic approach to identifying and managing risks relating to labour standards, working conditions and use of child labour in the supply chains relevant to the Framework Agreement. This should include policy, roles and responsibilities, objectives, targets and programmes, training and awareness, communications (including whistle blowing), documentation and procedures, supply chain management, emergency response, monitoring and reporting (including identification of all suppliers, changes made and audits undertaken in accordance with appropriate standards e.g. ETI Base Code, SEDEX, or equivalent), corrective action and review. The Contractor will be required to demonstrate continual improvement in working conditions and labour standards, while enhancing policies and systems and, where relevant, work with the Authority during the term of the Framework Agreement to ensure compliance with new and emerging legislation.

33. Fair Work Practices

- 33.1. The Scottish Government (SG) is persuaded by evidence which shows that the delivery of high quality public services is critically dependent on a workforce that is well-motivated, well led and has appropriate opportunities for training and skills development. SG also expect those who deliver public contracts to adopt fair employment practices for all workers engaged on delivering the contracts. These factors are also important for workforce recruitment and retention, and thus continuity of service. SG itself has adopted workforce policies to meet these requirements.
- 33.2. These policies include:
- a pay policy that includes a commitment to supporting the Living Wage for the duration of this Parliament;
 - fair employment practices;
 - clear managerial responsibility to nurture talent and help individuals fulfil their potential;
 - a strong commitment to Modern Apprenticeships and to the development of Scotland's young workforce;
 - support for learning and development;
 - no inappropriate use of zero hours contracts;
 - no inappropriate use of "umbrella" companies;
 - flexible working;
 - flexi-time; and
 - career breaks.

- 33.3. The SG also attaches importance to ensuring effective consultation and involvement of staff and SG management work in partnership with the Trade Union. While it is, of course, a personal decision whether or not to join a Trade Union, the SG encourages its staff to join an appropriate Union and to play an active part within it, making sure their views are represented.
- 33.4. Sub-contractor personnel responsible for delivering services on behalf of the Prime Contractor are unlikely to be solely dedicated to supporting the national framework. Scottish Procurement will monitor the situation throughout the term of this Framework Agreement and, in order to ensure the highest standards of service quality, we expect the Contractor and Sub-contractors whose workers work alongside those of Framework Public Bodies to take a similarly positive approach to workforce-related matters as part of a fair and equitable employment and reward package.

34. Service Levels

- 34.1. The Contractor will perform and deliver the Services in accordance with the minimum Service Levels detailed in this specification.
- 34.2. The objectives of the Service Levels are to ensure that the Services are of a consistently high quality and meet the requirements of the Framework Public Bodies.
- 34.3. The Services Levels and Key Performance Indicators (KPIs) stated below will be measured and reported through the quarterly management information process which is described in Schedule 4 – Management Arrangements.
- 34.4. The Framework Services Levels below are applicable to both the Framework and any call-off contracts awarded from the Framework.

Framework Service Levels

Reference	Service Level	Measurement	Target
CS001	Management Information submitted in the agreed format and within the agreed timescales	Management Information submitted within 10 Working Days following the end of each quarterly period	100%
CS002	Contractor actively participates in mini-competition process	Contractor provides evidence to demonstrate active participation, or justification for non-participation	100%

CS003	Effective management and reporting of Complaints	Complaints acknowledged within 2 Working Days supported by appropriate action plans to resolve	100%
CS004	Benchmarking of Framework Catalogue Pricing. Benchmarking must be undertaken no less frequent than 12 monthly intervals (Initial benchmarking must be undertaken within the first (6) months of the Framework Agreement.)	Evidence provided that Contractor has undertaken robust and appropriate benchmarking activity which demonstrates the competitiveness of catalogue prices.	100%
CS005	The Contractor applies effective and sufficient Account Management resources to support the effective delivery of the Framework Agreement and associated Call-Off Contracts.	The Contractor provides and maintains effective Account Management resources during the period of the Framework Agreement.	100%
CS006	Prompt payment of sub-contractors	100% payment within 30 calendar days for Sub-contractors or third party suppliers	100%
CS007	Network penetration test against all cloud services and infrastructure	Annual test to be undertaken by a suitably qualified NCSC approved CHECK provider. A report outlining, as a minimum should include details of potential security weaknesses and evidence of any cross-site scripting violations. This should be submitted to the Authority, and if requested the Framework Public Body within 10 working days upon completion of the test.	100%
CS008	Data Centre Sites to be operating, Effective Power Usage with a Power Utilisation Efficiency (PUE) rating provided	PUE is calculated as (total energy / Cloud Services energy) Less than 1 year old Data Centres: PUE	100%

	at least twice a year.	of maximum of 1.4; 1-5 year old Data Centres: PUE maximum of 1.6; Over 5 year old Data Centres 1.8 or under.	
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34.5. The Catalogue Key Performance Indicators below are applicable to all Services defined in the catalogue price list and available to Framework Public Bodies through a direct award process.

34.6. Unless specified otherwise, these KPIs would also apply to any call-off contract awarded through mini-competition, although Framework Public Bodies may specify enhanced or reduced KPIs during the mini-competition process.

Call-off - Key Performance Indicators (KPIs)

Ref.	Key Performance Indicator	Measurement	Target Level
CS009	Invoices are accurate and presented promptly for payment.	Total number of invoices / number of disputed invoices	95%
CS010	No physical (facility) security breaches resulting in access to the Cloud Services location.	There will be no physical security breaches to occur throughout the duration of the framework. This covers all types of physical security breaches that could occur.	100%
CS011	No system (online) security breaches resulting in unauthorised personnel accessing the cloud data services.	There will be no system security breaches to occur throughout the duration of the framework. This covers all types of system security breaches that could occur.	100%
CS012	Total availability must not fall below the target level.	Availability is calculated as (total time – down time / total time) excluding agreed downtime	99.9%
CS013	All reported incidents responded to within 1 hour (e.g. online security breach)	Total number of incidents responded to within the parameter / total number of incidents reported.	95%

CS014	All reported incidents resolved within 4 hours where no external maintenance is required. Resolved within 1 Working Day if external maintenance required.	Total number of incidents responded to within the agreed parameter / total number of incidents reported.	95%
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- 34.7. The Contractor, Authority and Framework Public Bodies can develop and agree further appropriate Service Levels and KPIs as the framework progresses.
- 34.8. Although Service Credits will not be applicable to the Catalogue KPIs, Framework Public Bodies reserve the right to include Service Credits within any mini-competitions that are tendered through this framework.

35. Escalation

- 35.1. The Contractor shall register and record all complaints received in connection with the operation of the Framework Agreement.
- 35.2. The Contractor must acknowledge all complaints within 2 Working Days and advise the Authority of all complaints received within 5 days of receipt. The Contractor shall within 2 Working Days of acknowledging receipt of a complaint provide a full response or action plan detailing how the complaint will be resolved and the expected resolution date.
- 35.3. First line management of operational issues will be undertaken between the Framework Public Body and their Account Manager. A clear issue management and escalation process will be established by the Contractor in consultation with the Authority. Any complaints and issues will be logged by the Contractor. An 'issue' is defined as a failure to meet the requirements outlined in this Statement of Requirements. A 'complaint' is defined as a formal escalation in writing to the Contractor.

36. Disputes

- 36.1. In the case of any dispute between a Framework Public Body and the Contractor, the Contractor must continue to provide the Cloud Services in accordance with the Service Levels and KPIs detailed in this Statement of Requirements to all Framework Public Bodies unless the Contractor's appointment to provide Services to Framework Public Bodies has been suspended or terminated by the Authority.

37. Communications

- 37.1. The Authority will be the primary route for the communication of changes to the framework. The Contractor will however be expected to maintain regular dialogue with Framework Public Bodies. **The Authority must authorise any publication relating to the framework prior to distribution.**
- 37.2. The Contractor shall allow all relevant information relating to the framework to be published and distributed to Framework Public Bodies via the Authority's secure website. All Framework Public Bodies will be strongly recommended to support the framework.

38. Management Information

- 38.1. The Contractor will be required to produce management information in relation to the overall performance of the framework, including transactional data. This information will be provided to the Authority every 3 months (unless otherwise stated), 10 Working Days after the previous quarter end. The reports will provide a sufficient level of detail so as to enable Scottish Procurement to understand how each Framework Public Body is using the Cloud Services Framework. The information will also be made available to the individual Framework Public Body as required. A template for submission will be provided by the Authority.

The list below will be required, as a minimum

- Framework Name
- Contract Ref
- Account Manager
- Scope
- Organisation
- Key Contact Name
- Key contact email
- Key contact phone numbers
- Contract term
- Contract start date
- Contract end date
- Total Contract Value
- Previous Contract Spend
- Estimated annual savings (%)
- Sub-contractor name
- Sub-contractor contract value
- Total spend per quarter by contractor by organisation

- Total spend per quarter by sub-contractor by organisation
- Customer engagement
- Community benefits
- Economic growth / benefits
- Sustainability
- Any additional information required at the request of the Authority throughout the duration of the framework.

38.2. 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 (MCS) will be provided within one Working Day, as and when required by the Authority or the Framework Public Body.

38.3. All information should be provided electronically and will be available in a commonly available format such as MS Excel format. There will be no costs for any management information requirements requested.

39. Payment

39.1. Standard terms and conditions of payment are 30 calendar days from receipt of invoice. It is anticipated that most payments will be made by BACS.

39.2. The Contractor will be expected to support the Scottish Government good practice with regards to payment of Contractors and sub-contractors. Where possible Framework Public Bodies will be encouraged to make prompt payment to Contractors, within 10 calendar days. There will be an expectation upon the Contractor to use this timescale to make payment to their supply base.

40. Service Innovation

40.1. The Contractor will work with the Authority, and/or Framework Public Bodies to map the full end-to-end supply chain and identify and prioritise supply chain initiatives throughout the life of the framework agreement.

40.2. Where applicable, the Contractor will inform the Authority and Framework Public Bodies when new and emerging technologies, that meet the same specific need, become available during the lifetime of the Framework Agreement.

40.3. The Contractor will inform the Framework Public Bodies of on-going improvement services, which is of benefit to the Framework Public Bodies and the Cloud Services being provided under the framework, as part of the Framework Public Bodies and Contractor review.

41. Project Management

- 41.1. When Framework Public Bodies purchase Cloud Services under the Framework, the Contractor may be required to project manage the transfer of the services from the Framework Public Bodies, or another Contractor's Data Centre to the new Cloud Services environment. This will include plans, timetables, team members, information on servers, etc.
- 41.2. The requirement for the provision of a Project Manager will be at the Framework Public Bodies sole discretion.
- 41.3. The Contractor will provide details of the skills and experience of the proposed Project Manager when required.

42. Information Assurance

- 42.1. In April 2014 the UK Government Cabinet Office introduced the Government Security Classifications - <https://www.gov.uk/government/publications/government-security-classifications> – which allows information assets to be classified into three types: Official, Secret and Top Secret. Additionally, in cases where there is a clear and justifiable requirement to reinforce the “need to know”, assets should be conspicuously marked as Official-Sensitive.
- 42.2. This replaced the previous Government Protective Marking Scheme and removed links to the Communications-Electronics Security Group Business Impact Level scale which had been widely used to differentiate security requirements across IT systems and services.
- 42.3. The Contractor must be able to provide all core requirements at the Official classification and should be capable of providing some of the requirements at a higher classification.

43. Benchmarking, Value for Money, and Commercial Innovation

- 43.1. The Contractor will be required to undertake benchmarking activity to demonstrate the competitiveness of prices and quality of service applied to the Framework Agreement and call-off contracts. The Contractor will be required to report to the Authority, details of the outcomes and findings of all benchmarking activities.
- 43.2. The Contractor will develop and implement commercial arrangements designed to deliver best value solutions and mitigate price risk for Framework Public Bodies.
- 43.3. The Contractor will be required to use an Open Book Accounting method to demonstrate that Value for Money is being offered to the Framework Public Bodies.

44. Risk Management

- 44.1. The Contractor must, at all times, have a current risk management strategy and a risk management plan for the delivery and support of Services under this Framework Agreement.
- 44.2. The Authority will create and maintain a Risk Register throughout the Framework period. The Contractor must inform the Authority of any risks or issues so these can be captured and effectively managed and mitigated.

45. Authority's point of contact

The Authority will nominate an individual to be the point of contact for the Contractor. The nominated contact will liaise with the Contractor on all operational and contractual issues, including complaints and dispute resolution.

This and the following 93 pages comprise Schedule 1b to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 1b – CONTRACTOR SOLUTION

Schedule 1b (Contractor Solution) - 93 pages removed as this information is commercially sensitive

This and the following 7 pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 2 - PRICING SCHEDULE

1. Framework Pricing

- 1.1. All prices are in pounds Sterling (£) exclusive of VAT.
- 1.2. The prices are inclusive of all the requirements in Framework Agreement and supporting Schedules.
- 1.3. Prices will not be increased during the first twenty four (24) months of the Framework Agreement, but may be reduced by the agreement of both Parties.
- 1.4. The Contractor may request a variation in the (maximum) Price with effect from end of the initial Framework period (two-years). Any request for a variation in Price must be submitted to the Authority for consideration three (3) months prior to the end of each Framework Agreement year.
- 1.5. The Contractor may request a variation in the Price by submitting to the Authority the Prices it wishes to review together with written evidence of the justification for any requested increase, including evidence that the Contractor has attempted to mitigate against the increase in the relevant cost components.
- 1.6. The Authority may at its discretion agree to a Price variation. Any increase in the Price agreed by the Authority shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index as may be specified) during the preceding 12 months or other agreed period.
- 1.7. Notwithstanding, the provisions of clause 1.6 above, the Authority may at its sole discretion decide that any Price variation may exceed any CPI increase where in the Authority's reasonable opinion such Price increase is justified in accordance with clause 1.5 above.

2. Benchmarking

- 2.1. The pricing offered throughout the initial twenty four (24) months of the Framework Agreement will not increase. The Contractor must undertake regular benchmarking exercises throughout the life of the Framework Agreement in order to demonstrate to the Authority the pricing offered within this Framework Agreement is competitive and represents value for money. The Authority expects each Contractor to conduct an initial benchmark within

the first six (6) months of the Framework Agreement and report their findings at the next scheduled Governance Meeting. Further benchmarking activity shall be undertaken no less frequently than at twelve (12) monthly intervals.

3. Catalogue Pricing

3.1. Annual prices assume a minimum contract period of 12 months

3.2. Monthly prices assume a minimum contract of 1 month.

3.3. The prices provided should be the maximum price any Framework Public Bodies using the Framework Agreement would expect to pay when making a call-off from this agreement. Framework Public Bodies conducting further mini competition could receive responses lower than those shown in the Catalogue Price List, but not higher than for the same material Service.

3.4. All catalogue pricing must meet the minimum service levels specified below:

- Services to be available at a government security level of “Official”
- Invoices are accurate and presented promptly for payment
- No physical security breaches resulting in access to the Cloud Services location.
- No system security breaches resulting in unauthorised personnel accessing the cloud data services.
- 24/7 support services (including all Scottish Public Holidays)
- Availability (minimum 99.9%)
- Compliance with Data Protection (including GDPR)
- All reported incidents responded to within 1 hour
- All reported incidents resolved within 4 hours where no external maintenance is required. Resolved within 1 Working Day if external maintenance required.
- Maximum Power Usage Effectiveness (PUE**) Rating of 1.6

3.5. Contractors must be able to provide flexibility in their pricing within a given contract period in order to meet rapid elasticity in demand, one of the essential characteristic of cloud services.

3.6. Services should be available on a “buy-as-you-consume” basis, and reflect actual usage for a specific contract period.

Pricing Schedule - 5 pages removed as this information is commercially sensitive

This and the following 6 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 3 – AWARD PROCEDURES

1. Award Procedures

- 1.1. Where Framework Public Bodies decides to source Services through this Framework Agreement then it will award those Services in accordance with the procedures described in this Schedule 3 - Award & Order Procedure and the requirements and guidance defined in the Buyers Guide (see section 4.1 below)
- 1.2. Framework Public Bodies should be able to access the Framework Agreement either by a direct award route or by conducting a further mini competition with the Framework Contractors on the Framework Agreement. The processes which will be followed under each route are detailed below in section 2 and 3.
- 1.3. All contracts awarded through the Framework Agreement will be drawn up using Schedule 5 - Standard Terms of Supply. This will be amended to reflect the individual Framework Public Bodies, Contractor, reference numbers, dates, etc. Specific requirements or variations will be recorded in the supporting Schedules, which may include details captured in the Requirements Template (see section 7 below).

2. Direct Award Route

- 2.1. Where Framework Public Bodies are able to determine which Framework Contractor offers best value for money after comparing the prices and service offering (as detailed in the Contractor Pricing Catalogue), the Framework Public Body may place a call-Off Contract on the Contractor as per the instructions outlined in the Ordering Procedures and Requirements Template (see section 5 & 7 below) and in line with Schedule 5 - Standard Terms of Supply.

3. Mini Competition

- 3.1. Framework Public Bodies reserve the right to hold a further competition with all of the Contractors to determine which Framework Contractor offers best value for money. This is as outlined in the Ordering Procedures and Requirements Template (see section 5 & 7 below) and in line with Schedule 5 - Standard Terms of Supply.
- 3.2. The Framework Public Bodies will develop a Specification providing the relevant details to enable Framework Contractors to respond.
- 3.3. The Framework Public Bodies will invite all Framework Contractors to tender for Services by issuing the Specification. This may be carried out using the Public Contracts Scotland – Tender system, or using other appropriate procurement processes.
- 3.4. The Framework Public Bodies will set a time limit for the receipt of the tenders.
- 3.5. The Framework Public Bodies will evaluate all compliant responses submitted by the Framework Contractors by applying the award criteria specified. The award criteria which can be applied to further competitions will cover both cost and quality of service and will be stipulated in the mini competition tender documentation. The weightings and specific criteria will be determined by the Framework Public Bodies and this may vary from the framework award criteria/weightings as it is dependent on the specific requirement.
- 3.6. The Framework Public Bodies will not be obliged to award any Call-off Contract.

4. Buyers Guide and Contractor Catalogue

4.1. Within two (2) weeks of Framework Agreement award, implementation meetings will take place between the Authority and the Contractors. During these meetings the successful Contractors will be expected to work together to support and ratify the production of a Buyer's Guide and develop the content of a Contractor's Catalogue. The Contractors Catalogue will include (but not be restricted to):

- details of the Contractor's organisation;
- details of the Ordering process and links to Contractor sites as appropriate;
- details of the fault reporting process;
- roles and responsibilities included within the Framework Management Team;
- high level implementation plan;
- customer service and support processes;
- contractor organisational chart;
- billing processes;
- standard Management Information;
- escalation process;

4.2. The output of 4.1 must be fully implemented within four (4) weeks of Framework Agreement award and at no additional cost to the Authority or Framework Public Bodies. The Contractor will ensure that the Account Manager or equivalent senior representative attends all implementation meetings. The Contractor's representative must be empowered to make decisions on behalf of the Contractor's organisation.

5. Ordering Procedures (Also refer to Section 7)

5.1. The Contractor must have an appropriate structure and process in place to manage orders and change requests from Framework Public Bodies.

5.2. The Contractor will be able to accept Order forms in electronic, paper formats or any other format as agreed between the Authority, Framework Public Body and Contractor.

5.3. The Framework Public Body will be required to provide an Order that refers to the Framework and details the Framework Public Body reference number. The Contractor will include the Framework Public Body reference number on all correspondence associated with that installation or activation and subsequent installation or activation invoices.

5.4. If the Framework Public Body has not clearly quoted the Framework Agreement reference number then the Contractor will clarify this with the Framework Public Body and may, as a last resort, reject any Orders which are not deemed appropriate or compliant.

5.5. No excess charges will be levied on the Framework Public Body where the Framework Public Body reference number has not been supplied or where the Framework Public Body reference number is not used throughout the provisioning process by the Contractor.

5.6. The Contractor will acknowledge the Orders received within 2 working days. The Contractor must be able to provide this in electronic format. The Contractor can follow up with the Framework Public Body if additional clarification is required regarding the Service(s) ordered.

5.7. It is the responsibility of the Contractor to ensure that all Services are supplied at the correct prices.

6. eCommerce

- 6.1. The effective use of technology is at the heart of procurement reform and the Authority is leading a number of core initiatives to ensure that public procurement delivers value for money and contributes to the Scottish economy.
- 6.2. Contractors will be able to make use of and support a range of eCommerce technologies, including but not limited to:
 - **Sourcing & Advertising** - The Public Contracts Scotland portal is used across the Scottish public sector and all Framework Public Bodies must use the portal as both a sourcing tool and as a repository where they advertise all contract opportunities.
 - **Tendering & Evaluation** - The Public Contracts Scotland – Tender system provides staff involved with the procurement of goods, services or works with a set of web-based collaborative procurement tools with which they can communicate securely with both Contractors and stakeholders. The system allows a buying organisation to conduct its tendering (and subsequent evaluations) electronically. This Framework Agreement is using the Public Contracts Scotland – Tender system and we envisage further mini competitions to also make use of the system.
 - **Content Management** - PECOS Catalogue Manager (PCM) facilitates the upload, approval, distribution and on-going management of electronic content to support both collaborative contract arrangements and local contracts (where appropriate). The system ensures that content is provided to end users from the Contractors in the most efficient manner possible, with the correct pricing & product descriptions displayed. The main advantage to Contractors is that they are able to manage and provide their content once in a standard format which is easily validated and then published onto the purchase-to-pay systems of many public sector buying organisations. Contractors should be able to provide electronic catalogues (eCatalogues) to be used in PCM or to provide a “punch-out” capability to their own eCatalogues.
 - **Ordering** - PECOS (Professional Electronic Commerce On-line System) is the eOrdering system of choice for the Scottish public sector. It enables the generation and submission of orders using fax, e-mail, and industry standard electronic protocols including EDI and cXML.
 - **Payment** - a number of finance systems are used across the Scottish public sector, and when interfaced with PECOS or through their own integrated eOrdering systems provide Framework Public Bodies with a full Purchase to Pay (P2P) solution. Many systems also include functionality to receive and match invoices electronically (i.e. eInvoicing), manage low-value/high-volume transactions through Purchasing Cards (e.g. VISA Government Procurement Card), consolidate multiple purchase orders into a single invoice and even remove the need for an invoice through self-billing on receipt of an approved purchase order.
- 6.3. Successful Contractors will be expected to provide an overview of their eCommerce capability within the Buyers Guide, and respond to further mini competition specifications with further details appropriate to the Framework Public Bodies requirements.

7. Requirements Template**

(**This template is provided as an option for Framework Public Bodies and its use is not mandatory)

- 7.1. The purpose of the Requirements Template is to provide Framework Public Bodies with a structured format for capturing and defining requirements for their Services.

- 7.2. The Requirements Template can be used for both Direct Award and mini competition, to ensure Framework Contractors are provided with the relevant information to process an order or respond to a mini competition request.

Framework Public Body (Contracting Authority) Details - for Standard Terms of Supply

Contracting Authority:	<Enter organisation name>
Contract Manager :	<Enter name of the Contract Manager>
Contract Manager address:	<Enter the address of the Contract Manager>
Contract Manager contact details:	<Enter the telephone/fax numbers and e-mail address of the Contract Manager>
Invoice address:	<Enter the address for invoices to be sent, if different from the above>
Contract Reference:	<Enter the reference number for the contract, if known>
Final tender response:	<Enter the date and time by which Contractor responses must be received>

Requirements - for Schedule 1 (Specification & Service Levels)

Service Delivery	<Enter details of the required services>
	Note: the requirements can be expressed precisely or generally in terms of required outputs.
	<Enter the premise location(s) where the services will be implemented or delivered to, including full address and postcodes where known>
	<Enter the required commencement date of the Contract>
Implementation, Mobilisation, and Delivery	<Enter details of any key milestones (e.g. completion), including implementation planning, project deliverables, duration, dates, responsibilities, etc. >
Key Performance Indicators	<Enter details of Key Performance Indicators>
Information Assurance	<Enter details of any Information Assurance (e.g. Business Impact Levels, Impact Levels, etc.) requirements, where applicable>
Business Continuity & Disaster Recovery Requirements	<Enter details of any Business Continuity & Disaster Recovery Requirements>
Exit Management	<Enter details of any Exit Management requirements>

Estimated Contract Value

Price:	<Enter details of the estimated price derived from the daily rate
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	schedule>
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Requirements - for additional Schedules and Standard Terms of Supply

Selection and Award Procedure	<Enter details of the procurement process to be followed (e.g. PCS-Tender) and whether an electronic system will be used and, if so, the information required by regulation 21 of the Public Contracts (Scotland) Regulations 2006>
	<Enter details of the award criteria (e.g. cost, quality or service) and the weightings applied in relation to price>
Management Arrangements	<Enter requirements for Key Resource to be specified by the Contractor where above those specified in the Framework>
	<Enter the requirements for any regular meetings, such as contract and/or performance reviews>
Standard Terms	<Enter details of any specific billing requirements, such as invoice frequency where this is different to clause 13.2, Standard Terms of Supply>
Data Protection	<Enter details of any specific Data Protection requirements above those specified in the Framework>

Contractor Response - for Standard Terms of Supply

Contractor:	<Enter Contractor name>
Contract Manager:	<Enter name of the Contract Manager>
Contract Manager address:	<Enter the address of the Contract Manager>
Contract Manager contact details:	<Enter the telephone/fax numbers and e-mail address of the Contract Manager>
Date of Response:	<Date of the Contractors response>

Contractor Response – to Specification & Service Levels Requirements (Schedule 1) and Price

<Services offered>
<Price>
<Key personnel (if requested by the Contracting Authority)>

<Sub-contractors (if applicable)>

This and the following 5 pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

1. Introduction

- 1.1. The successful delivery of this Framework Agreement will rely on the ability of the Contractor(s) and the Authority developing a strategic relationship immediately following framework award.
- 1.2. To achieve this, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information (MI) and the sharing of information between all Parties.
- 1.3. This Schedule outlines the general structures and management activities that should be followed during the Framework Period, both in terms of the Authority – Contractor relationship and the Contractor – Framework Public Bodies relationship.

2. Key Resource

- 2.1. The Contractor, Authority and Framework Public Bodies will agree a number of Key Roles and Key Personnel and the Contractor must ensure the continuity of Key Personnel throughout the Period of the Framework Agreement.
- 2.2. The Contractor shall identify and allocate named resource for the position of Account Manager. The role of the Account Manager will be to manage the overall Framework Agreement with the Authority and to ensure any contractual non-conformance is addressed.
- 2.3. The Account Manager will also be responsible for attending quarterly operational Governance Meetings with the Authority feedback on consolidated Management Information and discuss opportunities for continuous improvement.
- 2.4. The Contractor will be required to appoint an Account Manager(s) to manage the individual Call Offs and to provide a Single Point of Contact (SPoC) for the Framework Public Bodies using the Framework Agreement.
- 2.5. On a mutually agreed basis the Account Manager(s) will be required to meet with the Framework Public Bodies to ensure all their requirements are being met and to demonstrate the Contractor's ability to maintain, and improve delivery against Service Levels and Key Performance Indicators (KPIs) throughout the Contract. The activities of the Account Manager are fully inclusive within the costs provided in the Pricing Schedule.
- 2.6. The Authority or Framework Public Bodies has the right, at its sole discretion, and upon providing a written justification, to veto the appointment of any Account Manager under this Framework Agreement.
- 2.7. The Contractor shall produce and maintain an organisation chart for the Account Management structure for this Framework Agreement which details the escalation route for each of the areas. Clear escalation routes should be identified for each of the Services and KPIs provided within this Framework Agreement in line with the governance process.
- 2.8. At no additional cost, the Contractor will be required to provide cover for the Account Managers in the event of unplanned absences, annual leave, increased workload, etc. Any such cover shall be notified in advance to the Authority and Framework Public Bodies as applicable.

- 2.9. Any changes to the organisational structure must be notified to both the Authority and the Framework Public Bodies and agreed between the Parties at least four weeks in advance of any change to allow for an effective handover of duties to the incoming personnel.

3. Meetings

- 3.1. Quarterly and annual Governance Meetings will be established between the Authority and the Contractor and separately with the Framework Public Bodies as required.
- 3.2. Contractors shall meet with the Authority Framework Manager on a quarterly basis. Agenda items will include (but are not limited to) management information, framework awards, service level performance, marketing and promotion planned activity, sustainability opportunities, risks and issues and any remedies if required. Service level performance will be agreed between the Authority and the successful Contractor(s).
- 3.3. In addition to regular meetings with the Authority, the Contractor is expected to develop relationships and meet regularly with nominated individuals within each Framework Public Body to ensure that the level of service provided on a local basis is satisfactory.
- 3.4. Where specific problems are identified locally, the Contractor will attempt to resolve such problems directly with the nominated individual within that Framework Public Body.
- 3.5. Throughout the duration of the Framework Agreement (and any extension), the Authority will meet regularly with the Framework Public Bodies, and where common problems are identified, it will be the responsibility of the Contractor to liaise with the Authority to agree a satisfactory course of action.
- 3.6. 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 to discuss corrective action.
- 3.7. Contractors supporting the implementation stage shall be expected to meet on a more regular basis.

4. Management Information

- 4.1. The Contractor is required to create and/or maintain a database with up to date and accurate information at all times in order to provide the Authority and/or the Framework Public Bodies with Management Information (MI) as requested. As a minimum the Contractor will be required to hold and report on the information in section 4.6 below.
- 4.2. The Contractor shall be required to maintain records of all mini competitions and direct award requested under this Framework Agreement including details of the response, pricing and any awarded contracts. At the request of the Authority, the Contractor shall be required to report on the mini competition and subsequent awards as part of the any review meetings. The Contractor, upon request of the Authority, shall also make available a copy of individual mini competition responses.
- 4.3. The Contractor must provide a strategic view of the utilisation of the Framework Agreement and high level information on the Framework Public Bodies buying under the Framework. On a quarterly basis, this standard MI will be provided both to the Authority and Framework Public Bodies. Reports should be submitted to the Authority within ten working days of the end of each quarter. The Authority and the Contractor will look to develop and continuously improve the MI throughout the term of the Framework Agreement.
- 4.4. At no additional cost, the Contractor will be required to assist with this development and incorporate the requirements into the database and reports as requested.

4.5. All MI should be made available in electronic and paper formats as requested by the Authority and/or the Framework Public Bodies. The format of the required management information will be agreed between each Party and the Contractor at the implementation meeting, but will generally take the form of a Balanced Scorecard approach, a template will be provided by Scottish Procurement and include the following key areas:

- Cost
- Quality
- Service
- Delivery
- Environmental
- Community Benefits

4.6. The MI will include, as a minimum, the following:

- Framework Name
- Contract Ref
- Account Manager
- Scope
- Organisation
- Key Contact Name
- Key contact email
- Key contact phone numbers
- Contract term
- Contract start date
- Contract end date
- Total Contract Value
- Previous Contract Spend
- Estimated annual savings (%)
- Total spend per quarter
- Total spend per quarter by contractor by organisation
- Total spend per quarter by sub-contractor by organisation
- Sub-contractor name
- Sub-contractor spend – by each contractor
- Customer engagement
- Community benefits
- Fair Work Practices
- Economic growth / benefits
- Sustainability
- Any additional information required at the request of the Authority throughout the duration of the framework.

4.7. During the lifetime of the Framework Agreement (and any extension) the Authority will be allowed to add to this list of management information requirements, and individual Framework Public Bodies may specify additional requirements as part of the mini-competition processes.

4.8. The Contractor is also expected to work with the Framework Public Bodies, when required, to provide information relevant to Freedom of Information requests or to support the business requirements of the Authority and Framework Public Bodies.

5. Continuous Improvement

5.1. Throughout the lifetime of the Framework Agreement (or any extension), the Contractor shall liaise with the Authority and Framework Public Bodies to develop innovative solutions to current and future business challenges, demonstrating continuous improvement initiatives throughout the term of the Framework.

- 5.2. The Authority and Framework Public Bodies shall work with Contractors on continuous improvement throughout the duration of the Framework Agreement
- 5.3. Where the revision of a KPI or applicable service level is required by the Framework Public Bodies, it is the responsibility of the Framework Public Bodies, Authority and Contractor to negotiate the proposed changes and their impact prior to implementation. Where appropriate, changes will be managed through the Notices process as detailed in the Framework Agreement.
- 5.4. Continuous improvement will be discussed with the Authority at the designated Governance Meeting with the Contractor.
- 5.5. The Contractor will be required to demonstrate Authority and Framework Public Bodies satisfaction throughout the duration of the Framework Agreement.
- 5.6. Framework Public Bodies shall have the opportunity to provide feedback once the Cloud Services have been provided. The Contractor shall therefore have a process for monitoring and maintaining Framework Public Bodies satisfaction.
- 5.7. The Authority may carry out periodic Framework Public Bodies Satisfaction surveys to validate the results of the Contractor findings.
- 5.8. The results of the Framework Public Bodies Satisfaction surveys will be discussed at the quarterly Governance and annual Strategic Governance Meetings.
- 5.9. Based on the results, improvement plans (if required) will also be required to be produced by the Contractor and agreed with the Authority and Framework Public Bodies.

6. Implementation / Transition

- 6.1. The Contractor will be required to develop and maintain an Implementation Plan which defines how the Framework Agreement will be implemented, staffed, operated and managed to ensure the effective delivery of the Specification and Service Levels outlined in this Schedule and elsewhere in the Framework Agreement.
- 6.2. The Contractor will submit the Implementation Plan to the Authority within 10 Working Days following the award of the Framework Agreement.
- 6.3. The Contractor will agree with the Framework Public Bodies, prior to the commencement of service, a Transition Plan which should include details of the service required, start date, all information, location of Cloud or Co-location Service and access details where required for each Order raised.
- 6.4. The Contractor should ensure that all Services identified within the Framework Agreement are available within the agreed timelines as detailed within the specific Key Performance Indicators for the provision of service to the Framework Public Bodies. Where specific service levels have been defined and Service Credits agreed, service level non-conformances will be subject to the application of the agreed Service Credit. Service Credits and the application of service credits may be varied from time to time subject to the agreement of the Contractor and Authority.
- 6.5. The Contractor will provide a SPoC for the entire implementation / transition and the handling of any associated issues.
- 6.6. The Contractor will liaise with the Framework Public Bodies to agree a date, time, for the transition of the service for each Order raised. The Contractor will agree with the Framework Public Bodies the specific service levels and ensure that service is delivered within a

predefined timescale. The Contractor will provide reliable and realistic timescales for service delivery.

- 6.7. It is the responsibility of the Contractor to notify the Framework Public Bodies in advance of any service disruptions or delays to the provision of service. This may constitute a service level failure.
- 6.8. The Contractor will provide a defined escalation process specifically for the progression of the transition of the service to the Framework Public Bodies.
- 6.9. Upon activation, the Contractor will ensure that the Framework Public Bodies is satisfied with the service ordered.

7. Complaints

- 7.1. The Contractor shall register and record complaints received in connection with the operation of the Framework Agreement.
- 7.2. The Contractor must acknowledge and advise the Authority of all complaints received within 2 working days. The Contractor shall within 5 Days of receipt of a complaint provide a full response or action plan detailing how the complaint will be resolved and the expected resolution date.
- 7.3. The Contractor will provide details of all Complaints and their resolution in the quarterly MI report.
- 7.4. The Contractor shall operate a clear written protocol, as approved by the Authority, for handling Complaints timely and effectively.

This and the following 66 pages comprise Schedule 5 to the Framework Agreement between the Scottish Ministers and **UK Cloud Ltd**

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

SP- 18- 027

SERVICES CONTRACT

-between-

(1) THE PURCHASER ACTING THROUGH SCOTTISH PROCUREMENT

-and-

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

-relating to the supply of-

CLOUD SERVICES

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PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO On **Date contract notice published »** the Purchaser's contract notice relating to the Services was published in the Official Journal of the European Union with reference number **«: OJEU reference number»**;
- THREE On **«date ESPD completed»** the Service Provider completed its ESPD;
- FOUR On **«: date ITT issued»** the Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;
- FIVE On **«date Tender submitted»** the Service Provider submitted its Tender;
- SIX On the basis of the Tender, the Purchaser has selected the Service Provider to supply the Services under the Contract;
- SEVEN The Contract establishes standard terms of supply for the provision of services;
- EIGHT The Contract also includes:
- a Specification setting out the Services that the Service Provider has undertaken to provide 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;
 - details of Key Individuals involved in the provision of the Service;
 - details of approved sub-contractors as at Contract award;
 - details of the Services Provider's information which is deemed to be Server Provider Sensitive Information;
 - Ordering Procedures prescribing the procedures for ordering particular Services and;
 - Management Arrangements for the strategic management of the relationship between the Parties.

SUBSTANTIVE PROVISIONS:

SECTION A: INTRODUCTORY PROVISIONS

4. Definitions and Interpretation

4.1. 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 0 (Assignment).

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

“**Commencement Date**” has the meaning given in clause 4.1 (Period).

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

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

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

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

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

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

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

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

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

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

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

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

“Exit Management Date” means each of the following:

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

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

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

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

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

“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.»

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

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

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

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

“**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 2.

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

“**Purchaser**” means the Contracting Organisation

“**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 Levels**” means the Service Levels identified as such in the Specification. »

“**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-contractors of the Service Provider (whether approved under clause 0 (Sub-contracting) or otherwise).

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

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

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

“**Specification**” means the Purchaser’s general requirements for the provision of services including Service Levels set out in Schedule 1.

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

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

“**Third Party Cyber Security Accreditation**” means the certificate awarded on the basis of independent assessment and verification by an independent certification body, such as ISO 27001:2013 , the IASME Governance standard, or Cyber Essentials/ Cyber Essentials Plus.

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

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

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

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

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

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

- 4.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
- 4.2.2. words importing the masculine include the feminine and neuter;
- 4.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;

- 4.2.4. 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;
- 4.2.5. 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;
- 4.2.6. reference to “expiry or termination” of the Contract includes the making of a Judicial Order;
- 4.2.7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 4.2.8. headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

5. Condition Precedent: Requirement for a Parent Company Guarantee

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

6. Nature of the Contract

- 6.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 6.2. 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.

7. Period

- 7.1. 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.
- 7.2. 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.

8. Break

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

9. Specification and Service Levels

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

10. Pricing Schedule

10.1. The Pricing Schedule sets out details of the pricing of the Services.

10.2. The prices in the Pricing Schedule are not to be increased for the period of the Contract.

10.3. 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.

11. Ordering Procedures and Management Arrangements

11.1. The Ordering Procedures (Schedule 3) may be invoked by the Purchaser at any time during the period of the Contract.

11.2. The Parties must comply with the Ordering Procedures.

11.3. The Service Provider must maintain the capacity to supply the Services throughout the period of the Contract.

11.4. The Parties must comply with the Management Arrangements (Schedule 4).

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

12. 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.

13. Notices

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

13.1.1. given in writing;

13.1.2. addressed in accordance with clause 12.3; and

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

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

13.2.1. 2 Working Days after the day on which the letter was posted; or

13.2.2. 4 Working Hours after the communication was sent, in the case of fax or email.

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

13.3.1. 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»

13.3.2. For the Service Provider:

«F43: Service Provider address for notices»

For the attention of: «F44: Service Provider individual contact for notices»

Tel: «F45: Service Provider phone number»

Fax: «F46: Service Provider fax number for notices»

E-mail: «F47: Service Provider e-mail address for notices»

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

13.5. Notices under clause 58.1 (Termination on Insolvency or Change of Control) may be sent to the Purchaser's trustee, receiver, liquidator or administrator, as appropriate.

14. Price

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

15. Payment and Invoicing.

- 15.1. The Purchaser must pay all sums due to the Service Provider within 30 days of receipt of a valid invoice.
- 15.2. The Service Provider must render invoices : insert invoicing frequency».
- 15.3. 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.
- 15.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 15.5. 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.

Billing

- 12.6 Contractors shall comply with all HMRC guidelines in relation to VAT invoices (<https://www.gov.uk/vat-businesses>).
- 12.7 Invoices must include Value Added Tax (VAT) information, Purchase Order numbers and line details of the items being invoiced
- 12.8 Contractors must be able to provide electronic invoices (eInvoicing) and must ensure that no further costs are incurred for the Purchaser as a result of adopting eInvoicing. Contractors shall be required to support all eInvoicing developments and solutions that are introduced by the Scottish Government.
- 12.9 Contractors must be able to accept payment via Purchasing Card, providing a breakdown of VAT at an item line level.

16. Recovery of Sums Due

- 16.1. 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.
- 16.2. 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.

17. Data Protection

- 17.1. The Service Provider acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Service Provider acts as the Data Processor and the Purchaser acts as the Data Controller.
- 17.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Service Provider under Data Protection Laws and the Service Provider hereby agrees to comply with those obligations and duties.
- 17.3. The Service Provider will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 17.4. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 17.5. The Service Provider must:
 - 17.5.1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;
 - 17.5.2. subject to clause 14.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
 - 17.5.3. take all reasonable steps to ensure the reliability and integrity of any Service Provider Representatives who have access to the Personal Data and ensure that the Service Provider Representatives:
 1. (a) are aware of and comply with the Service Provider's duties under this clause;
 2. (b) are subject to appropriate confidentiality undertakings with the Service Provider or the relevant Sub-contractor;

3. (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 4. (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 5.
- 17.5.4. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 17.6. The Service Provider shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Service Provider must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
 - 17.7. If the Service Provider engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Service Provider must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
 - 17.8. The Service Provider must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
- 14.9 The Service Provider must notify the Purchaser if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;
- and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.
- 14.10 Taking into account the nature of the Processing and the information available, the Service Provider must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
 - (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
 - (d) supporting the Purchaser with preparation of a data protection impact assessment;
 - (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.
- 14.11 At the end of the provision of Services relating to processing the Service Provider must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 6.
- 14.12 The Service Provider must:
- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Service Provider's compliance with this clause 14;
 - (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 14 and contribute as is reasonable to those audits and inspections;
 - (c) inform the Purchaser, if in its opinion, an instruction from the Purchaser infringes any obligation under Data Protection Laws.
- 14.13 The Service Provider must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
- 14.14 If requested, the Service Provider must make such records referred to clause 14.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 14.15 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 14.14 with minimum disruption to the Service Provider's day to day business.
- 14.16 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Purchaser publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Service Provider should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.
- 14.17. At all times when the Service Provider or sub-contractors are in possession of and/or processing Purchaser Data, Purchaser Protected Information and/or other sensitive information, the Service Provider shall, and shall ensure that all Sub-contractors shall, ensure that systems, policies and procedures comply with any additional security

requirements contained within the Specification (Schedule ?) of this Standard Terms of Supply

- 14.18 The Service Provider shall give the Purchaser, on request, copies of all third party Cyber Security accreditations held to demonstrate that the security requirements of the specification are being fulfilled.

18. Transparency and Freedom of Information

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

- 15.7 The Service Provider acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not 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.

19. Purchaser Protected Information

- 19.1. The Service Provider must:
- 19.1.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
 - 19.1.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;
 - 19.1.3. 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
 - 19.1.4. not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.

- 19.2. 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.
- 19.3. Clause 16.1 does not apply to the extent that:
- 19.3.1. disclosure is required by law or by order of any competent court or tribunal;
 - 19.3.2. information is in the possession of the Service Provider without restriction as to its disclosure prior to its disclosure by the Purchaser;
 - 19.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 19.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 19.3.5. information is independently developed without access to the Purchaser Protected Information.
- 19.4. 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 0 (Termination Rights).

20. Service Provider Sensitive Information

- 20.1. The Purchaser must:
- 20.1.1. treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
 - 20.1.2. not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- 20.2. Clause 17.1 does not apply to the extent that:
- 20.2.1. disclosure is required by law or by order of any competent court or tribunal;
 - 20.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;
 - 20.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 20.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 20.2.5. information is independently developed without access to the Service Provider Sensitive Information.
- 20.3. 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:
- 20.3.1. pursuant to a Request for Information concerning the information (see clause 18 (Transparency and Freedom of Information));
 - 20.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;

- 20.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 20.3.4. in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;
 - 20.3.5. to any consultant, Service Provider or other person engaged by the Purchaser, for example to conduct a gateway review;
 - 20.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament , a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
 - 20.3.7. in response to any inquiry of the European Commission concerning the Contract;
or
 - 20.3.8. 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.
- 20.4. 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 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

20A. SERVICE PROVIDER OBLIGATIONS

20A.1 The Service Provider shall:

20A.1.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;

20A.1.2 obtain, and maintain throughout the Term, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

20A.1.3 ensure that:

- (a) the release of any new Software or upgrade to any Software complies with the interface requirements in the Specification and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Purchaser as soon as reasonably practical before the release of any new Software or upgrade;
- (b) all Software including upgrades, updates and new releases used by or on behalf of the Service Provider are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (c) it shall minimise any disruption to the Services, the Purchaser's System, the Service Provider's System and/or the Purchaser's operations when carrying out its obligations under this Contract;
- (d) ensure that any documentation and training provided by the Service Provider to the Purchaser are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (e) co-operate with the Related Service Providers and provide reasonable information, advice and assistance in connection with the Services to any Related Service Providers to enable such Related Service Providers to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Purchaser and/or to any Replacement Service Provider;
- (f) to the extent it is legally able to do so, hold on trust for the sole benefit of the Purchaser, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Purchaser may notify from time to time to the Service Provider;
- (g) unless it is unable to do so, assign to the Purchaser on the Purchaser's written request and at the cost of the Service Provider any such warranties and/or indemnities as are referred to in clause 20A.1.3 (f);
- (h) provide the Purchaser with such assistance as the Purchaser may reasonably require during the Term in respect of the supply of the Services; and
- (i) gather, collate and provide such information and co-operation as the Purchaser may reasonably request for the purposes of ascertaining the Service Provider's compliance with its obligations under this Contract.

- 20A.2 An obligation on the Service Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Service Provider to procure that all Service Provider Representatives also do, or refrain from doing, such act or thing.

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.

21A TRANSFERRED ASSETS

- 21A.1 The Service Provider shall carry out an audit of any Purchaser materials, software, assets, equipment or other property owned by and/or licenced or leased to the Purchaser (the "**Purchaser Assets**") that are to be transferred from the Purchaser to the Service Provider as part of this Contract and provide the Purchaser with a report detailing the Purchaser Assets (the "**Assets Report**").
- 21A.2 The Purchaser will then review the Assets Report and confirm its acceptance or otherwise of the same.
- 21A.3 If the Purchaser notifies the Service Provider of any discrepancies in the Assets Report the Service Provider shall update the Assets Report in accordance with the Purchaser's comments.
- 21A.4 Throughout the Term, the Purchaser shall ensure that the Assets Report is accurate and kept up to date and shall make the Assets Report available for review by the Purchaser upon request. The Exit Plan shall outline the arrangements in respect of the Purchaser Assets at the expiry of the Term

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 Contractor does not involve a Relevant Transfer.

Or

- 24.2 The Parties agree that the commencement of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Incoming Employees.
- 24.3 The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the -

Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.

- 24.4 The Contractor indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 22.3.

25. Information about Contractor Employees

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

26. Staff transfer on expiry or termination

- 26.1 The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.

Or

- 26.2 The Contractor indemnifies the Purchaser and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Purchaser or any replacement Contractor may suffer as a result of or in connection with:

26.2.1 the provision of information pursuant to clause 23;

26.2.2 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;

26.2.4 any failure by the Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and

26.2.5 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.

- 26.3 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).

- 26.4 The Contractor indemnifies the Purchaser and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 24.3.

27. Security

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

- 27.2 The Service Provider must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

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

29. Specially Created Intellectual Property Rights

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

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

30. Licences of Intellectual Property Rights

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

- 30.2 The Service Provider grants to the Purchaser a perpetual, royalty-free, irrevocable and exclusive license to use to 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 57 (Termination Rights) and 58 (Termination on Insolvency and Change of Control) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Service Provider.

32.7 The Purchaser may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

33. Change of Control

The Service Provider must notify the Purchaser:

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

34. Sub-Contracting

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

34.2 The Service Provider may not sub-contract its obligations under the Contract to other subcontractors without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall be

responsible for the acts and omissions of its sub-Service Providers as though they are its own.

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

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

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

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

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) subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and sub-contractor as the case may be.

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

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

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

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

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

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

34.6.1 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.

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
 - 40.2.3 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;

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

43.2.3 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 0 (Termination Rights).

44. Tax Arrangements

44.1 Where the Service Provider is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

44.2 Where the Service Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

44.3 The Purchaser may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.

44.4 A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.

- 44.5 The Purchaser may supply any information which it receives under clause 44 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 44.6 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.
- 44.7 Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

45. Discrimination

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

46. Blacklisting

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

47. Sustainability

- 47.1 The Contractor shall perform its obligations under the Call-off Contract in a manner so as to:

47.1.1 conserve energy and minimize carbon emissions, where practical;

47.1.2 conserve materials such as wood, paper and other natural resources;

47.1.3 minimise waste and maximise, recycling while supporting circular economy outcomes through extending the useful life, reuse and reconditioning of devices;

47.1.4 phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

47.1.5 make all reasonable efforts to minimise its use of packaging, reuse where practical and avoid the use of packaging which consumes a disproportionate amount of energy or resources during manufacture, use, or disposal or which contains materials derived from threatened species or threatened environments.

47.1.6 maintain security of supply through appropriate supply chain management of risks, which are reasonable within the control of the Contractor, and which may arise due to the availability of components, environmental of social factors and others as relevant.

- 47.2 If requested by the Purchaser the Contractor shall provide the Purchaser with a

copy of its environmental policy as well as evidence as to how it reasonably meets the commitment made within the policy

- 47.3 Contractors are expected to have appropriate standards for its organisation and its supply chain regarding legal, ethical and social issues. This should include for example: health and safety, waste disposal and recycling, security of employment rights and relevant labour standards, working conditions, equality, the use of conflict minerals within products and corruption.
- 47.4 The Contractor must take all reasonable steps to ensure that all Services supplied under this Framework Agreement are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin, in particular in relation to labour standards, working conditions and the use of child labour.
- 47.5 The Contractor will be required to maintain a comprehensive labour standards system at all times and make management information available to the Purchaser every 12 months and on request.

48. Conflicts of interest

- 48.1 The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under the Contract.
- 48.2 The Service Provider must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 48.3 Breach of this clause by the Service Provider is a material breach for the purposes of clause 57 (Termination Rights).

SECTION G FINAL PROVISIONS

49. Warranties and Representations

The Service Provider warrants and represents that:

- 49.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- 49.2 in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 49.3 it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 49.4 as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract;

- 49.5 no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 49.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 49.9 in the 3 years prior to the Commencement Date:
 - 49.9.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - 49.9.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 49.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 49.11 it has made appropriate inquiries (for example as regards the Purchaser's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;
- 49.12 it is familiar with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;
- 49.13 it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;
- 49.14 there are no actual or potential conflicts between the interests of the Service Provider and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and
- 49.15 it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

50. Indemnity

- 50.1 The Service Provider shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Service Provider.
- 50.2 The Purchaser shall indemnify the Service Provider in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise

out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Service Provider acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Service Provider:-

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

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

51. Limitation of Liability

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

48.1.1 loss of profits, business, revenue or goodwill; or

48.1.2 indirect or consequential loss or damage.

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

51.3 The liability of either Party under the Contract for Defaults is limited to £5,000,000 per instance or any greater/other sums as may be agreed with the Framework Public Body.

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

48.4.1 death or personal injury caused by its negligence;

48.4.2 misrepresentation;

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

48.4.4 any breach of any obligations under Data Protection Laws.

52. Insurances

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

52.1.1 public liability insurance in the sum of not less than **£5,000,000** per instance or such greater/other sums as may be agreed with the Framework Public Body

52.1.2 professional indemnity insurance in the sum of not less than **£5,000,000** per instance or such greater/other sums as may be agreed with the Framework Public Body; and

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

52.2 Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.

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

53. Force Majeure

- 53.1 Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 3 months, either Party may terminate the Contract with immediate effect by notice.
- 53.2 Any delay or other failure by the Service Provider in performing its obligations under the Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 53.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 53.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 53.4 The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

54. Dispute Resolution

- 54.1 The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract. In accordance with the Management Arrangements (Schedule 4).
- 54.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements (Schedule 4), shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 54.3 Any arbitration under clause 54.2 is subject to the Arbitration (Scotland) Act 2010.

55. Severability

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

56. Waiver and Cumulative Remedies

- 56.1 Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.
- 56.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 13 (notices).

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

57. Termination Rights

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

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

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

57.1.3 the Default is a material breach of the Contract.

57.2 The purchaser may also terminate the Contract in accordance with any provisions of the Schedules.

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

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

(b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

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

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

57.4 The Purchaser may also terminate the Contract in the event of a failure by the Service Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.

57.5 The Purchaser may also terminate the Contract where, at any time before the term of the Contract, the Service Provider or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits an offence referred to in paragraph (1) of that regulation.

58. Termination on Insolvency and Change of Control

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

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

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

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

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

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

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

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

58.1.8 a debt relief order is entered into; or

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

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

58.2.1 being notified that a change of Control has occurred in accordance with clause 33 (Change of Control); or

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

58.3 But the Purchaser may not terminate the Contract under clause 58.2 where approval of the change of control has been granted by notice by the Purchaser.

59. Exit Management

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

59.1 The Service Provider agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Service Provider agrees that the Purchaser may proceed directly to court notwithstanding anything to the

contrary in the dispute resolution procedure outlined in Clause 54 (Dispute Resolution). If a court of competent jurisdiction finds that the Service Provider has breached (or attempted or threatened to breach) any such obligation, the Service Provider agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Service Provider shall not oppose the entry of an appropriate order compelling performance by the Service Provider and restraining the Service Provider from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

- 59.2 A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within [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 Purchaser's comments.
- 59.3 The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
- 59.3.1 the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;
 - 59.3.2 the activities necessary to support any Replacement Service Provider or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;
 - 59.3.3 details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;
 - 59.3.4 support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;
 - 59.3.5 the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and
 - 59.3.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Service Provider or the Purchaser.
- 59.4 No amendment of the Exit Plan shall be made without prior written consent of the Purchaser.

60. Consequences of Expiry or Termination

- 60.1 Where the Purchaser terminates the Contract under clause 57 (Termination Rights) and makes other arrangements for the provision of services, the Service Provider indemnifies the Purchaser against all costs incurred in making those arrangements.
- 60.2 Where the Purchaser terminates the Contract under clause 5 (Break), the Purchaser indemnifies the Service Provider against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).
- 60.3 Any indemnity given by the Purchaser under clause 60.2 is subject to the Service Provider:
- 60.3.1 taking all reasonable steps to mitigate its loss;

- 60.3.2 taking all reasonable steps to recover its losses under any insurance policies held by it; and
 - 60.3.3 submitting a fully itemised and costed list of losses which it seeks to recover from the Purchaser together with supporting evidence.
- 60.4 Except as provided for in clauses 50 (Indemnity), 60.1 and 60.2, and Schedule 4 no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.
- 60.5 On expiry or termination of the Contract the Service Provider must:
- 60.5.1 immediately return to the Purchaser all Purchaser Property and Purchaser Protected Information in its possession; and
 - 60.5.2 destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.
- 60.6 The following provisions survive the expiry or termination of the Contract:
- 60.6.1 clause 1 (Definitions and Interpretation);
 - 60.6.2 clause 13 (Recovery of Sums Due);
 - 60.6.3 clause 14 (Data Protection);
 - 60.6.4 clause 15 (Transparency and Freedom of Information);
 - 60.6.5 clause 16 (Purchaser Protected Information);
 - 60.6.6 clause 17 (Service Provider Sensitive Information);
 - 60.6.7 clause 18 (Audit [and Records Management]);
 - 60.6.8 clause 19 (Publicity);
 - 60.6.9 clause 23 (Offers of Employment);
 - 60.6.10 clause 25 (Information about Service Provider Employees);
 - 60.6.11 clause 26 (Staff transfer on expiry or termination);
 - 60.6.12 clause 28 (Parties' pre-existing Intellectual Property Rights);
 - 60.6.13 clause 29 (Specially Created Intellectual Property Rights);
 - 60.6.14 clause 30 (Licences of Intellectual Property Rights);
 - 60.6.15 clause 31 (Claims relating to Intellectual Property Rights);
 - 60.6.16 clause 37 (Official Secrets Acts);
 - 60.6.17 clause 40 (Service Provider's Equipment);
 - 60.6.18 clause 41 (Purchaser Property);
 - 60.6.19 clause 44 (Tax arrangements);
 - 60.6.20 [clause 47 (Sustainability)];
 - 60.6.21 clause 49 (Warranties and Representations);
 - 60.6.22 clause 50 (Indemnity);
 - 60.6.23 clause 51 (Limitation of Liability);
 - 60.6.24 clause 52 (Insurances);
 - 60.6.25 clause 54 (Dispute Resolution);
 - 60.6.26 clause 56 (Waiver and Cumulative Remedies);
 - 60.6.27 this clause 60; and
 - 60.6.28 clause 62 (Governing Law and Jurisdiction).
- 60.7 If a Judicial Order is made, the provisions of the Management Arrangements (Schedule 4) referring to that possibility apply.

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 the Order Form or agreed between the Purchaser and the Supplier and documented within the agreed exit management plan.

61. Entire Agreement

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

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

61.2.1 the clauses of the Contract;

61.2.2 the Schedules; and

- 61.2.3 the Framework Agreement, and

61.2.4 any other document referred to in the Contract.

62. Governing Law and Jurisdiction

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

IN WITNESS WHEREOF these presents typewritten on this and the **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 Organisation **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 1 to the foregoing Contract between the Organisation and Service Provider name»

SCHEDULE 1 – SPECIFICATION AND SERVICE LEVELS

This and the following 7 pages comprise Schedule 2 to the foregoing Contract between the Organisation and : Service Provider name»

SCHEDULE 2 - PRICING SCHEDULE

This and the following [] pages comprise Schedule 3 to the foregoing Contract between the Organisation and Service Provider name»

SCHEDULE 3 – ORDERING PROCEDURES

This and the following [] pages comprise Schedule 4 to the foregoing Contract between the Organisation and « Service Provider name »

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

This and the following [] pages comprise Schedule 5 to the foregoing Contract between the Organisation and : Service Provider name»

SCHEDULE 5 – KEY INDIVIDUALS

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

This and the following [] pages comprise Schedule 6 to the foregoing Contract between the Organisation and «Service Provider name»

SCHEDULE 6 – APPROVED SUB-CONTRACTORS

approved Sub-Service Provider(s)

Relevant obligations

1. e.g. Subco Limited (SC123456)

e.g. high risk consultancy services

2.

This and the following [] pages comprise Schedule 7 to the foregoing Contract between the Organisation and «Service Provider name»

SCHEDULE 7 – TRANSPARENCY REPORTS AND SERVICE PROVIDER 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>			

Part 2

SERVICE PROVIDER SENSITIVE INFORMATION

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

This and the following [] pages comprise Schedule 8 to the foregoing Contract between the organisation and **Service Provider name**.

SCHEDULE 8 – PARENT COMPANY GUARANTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

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

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

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

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

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

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

This and the following [] pages comprise Schedule 9 to the foregoing Contract between the Organisation and «Service Provider name»

SCHEDULE 9 – DATA PROTECTION

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

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

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are set out in the Contract.

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Clause 14 of the Contract.

This and the following [] pages comprise Schedule 10 to the foregoing Contract between the Organisation and « Service Provider name »

SCHEDULE 10 – EXIT MANAGEMENT

[]

This and the following [] pages comprise Schedule 11 to the foregoing Contract between the organisations and UK Cloud Ltd

SCHEDULE 11 – Security Management

DEFINITIONS

In this Schedule, the following definitions shall apply:

“**Security Policy Framework**” means the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Contractor to the Service Provider.

“**Security Tests**” means tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the Security Plan and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

SECURITY ARRANGEMENTS

Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security in relation to the Services.

The Contractor shall ensure the up-to-date maintenance of a suitable security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Purchaser.

SECURITY PLAN

Within twenty (20) Working Days after the Commencement Date, the Contractor shall prepare and submit to the Purchaser for approval in accordance with paragraph 3.3 a fully developed, complete and up-to-date Security Plan which shall comply with the requirements of paragraph 3.2.

The Security Plan shall:

meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with paragraph 6 and, where not specifically addressed by these standards, ensure that controls are in place to combat common threats as described in the Cyber Essentials scheme (such as the “5 technical controls”);

at all times provide a level of security which:

is in accordance with Law and this Contract;

as a minimum demonstrates Good Industry Practice;

addresses issues of incompatibility with the Contractor’s own organisational security policies;

meets any specific security threats of immediate relevance to the Services and/or the Purchaser/or Framework Public Body Data;

complies with the security requirements as set out in Schedule 1 (*Specification [and Service Levels]*);

complies with the Purchaser's IT policies; and

is in accordance with the Security Policy Framework;

document the security incident management processes and incident response plans applicable to the Services;

document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Contract Provider becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority /or Framework Body approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy;

identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Contractor;

detail the process for managing any security risks from Sub-contractors and third parties authorised by the Purchaser with access to the Services, processes associated with the delivery of the Services, the Purchaser / or Framework Public Body Property, the sites used by the Contractor to deliver the Services, the Contractor's System, the Purchaser's System (to the extent that it is under the control of the Contractor) and any IT, information and data (including the Purchaser Confidential Information and the Purchaser' Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;

unless otherwise specified by the Purchaser in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Purchaser's Property, the sites used by the Contractor Provider to deliver the Services, the Contractor's System, the Purchaser System (to the extent that it is under the control of the Contractor) and any IT, information and data (including the Purchaser Confidential Information and the Purchaser Data) to the extent used by the Purchaser or the Contractor in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the Services;

set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule;

demonstrate that the solution has minimised the Purchaser and Cocontractor's effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services;

cross referencing if necessary to other Schedules which cover specific areas included within standards ISO/IEC 27001 and ISO/IEC 27002;

be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Purchaser engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and

be in accordance with the Security Policy Framework.

The Contractor shall update the Security Plan in accordance with any comments from the Purchaser, and shall review and revise the Security Plan regularly (or as per such other time period as agreed between the Parties) all in accordance with Paragraph 4 (such updates shall incorporate any comments received from the Purchaser).

The Contractor shall deliver all Services in accordance with the Security Plan.

AMENDMENT AND REVISION OF THE SECURITY PLAN

The Security Plan shall be fully reviewed and updated by the Contractor regularly to reflect:

- emerging changes in Good Industry Practice;
- any change or proposed change to the IT Environment, the Services and/or associated processes;
- any new perceived or changed security threats; and
- any reasonable change in requirement requested by the Purchaser.

The Contractor shall provide the Purchaser with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Purchaser. The results of the review shall include, without limitation:

- suggested improvements to the effectiveness of the Security Plan;
- updates to the risk assessments;
- proposed modifications to respond to events that may impact on the Security Plan including the security incident management process, incident response plans and general procedures and controls that affect information security; and
- suggested improvements in measuring the effectiveness of controls.

Subject to paragraph 4.4, any change which the Contractor proposes to make to the Security Plan (as a result of a review carried out pursuant to paragraph 4.1, a Purchaser request, a change to Schedule 1 (*Specification [and Service Levels]*) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Purchaser.

The Purchaser may, where it is reasonable to do so, approve and require changes or amendments to the Security Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

SECURITY TESTING

The Contractor shall conduct relevant Security Tests from time to time (and at least annually). Security Tests shall be designed and implemented by the Purchaser so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Contractor. Subject to compliance by the Contractor with the foregoing requirements, if any Security Tests adversely affect the Contractor's ability to deliver the Services so as to meet the Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the Security Tests.

The Contractor shall provide the Purchaser with the results of such tests (in a form approved by the Purchaser in advance) as soon as practicable after completion of each Security Test.

Where any Security Test carried out reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Contractor shall promptly notify the Purchaser of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Purchaser prior written

approval, the Contractor shall implement such changes to the Security Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Purchaser or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan is to address a non-compliance with the security requirements (as set out in Schedule 1 (*Specification [and Service Levels]*)) or the requirements of this Schedule, the change to the Security Plan shall be at no cost to the Purchaser.

If any repeat Security Test carried out pursuant to paragraph 5.3 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall be deemed to constitute a material Default that is capable of remedy .

SECURITY PLAN COMPLIANCE

The Purchaser shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the Security Plan maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in Schedule 1 (*Specification [and Service Levels]*) and the Baseline Security Requirements.

If, on the basis of evidence provided by such audits, it is the Purchaser reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 1 (*Specification [and Service Levels]*) and/or the Baseline Security Requirements is not being achieved by the Contractor, then the Purchaser shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Contractor does not become compliant within the required time then the Purchaser shall have the right to obtain an independent audit against these standards in whole or in part.

If, as a result of any such independent audit as described in paragraph 6.2 the Contractor is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 1 (*Specification [and Service Levels]*) and/or the Baseline Security Requirements then the Contractor shall, at its own expense, immediately undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Purchaser in obtaining such audit.

BREACH OF SECURITY

Each Party shall notify the other in accordance with the agreed security incident management process as defined by the Security Plan upon becoming aware of any Breach of Security or attempted Breach of Security.

Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph **Schedule 1Part 17.1**, the Contractor shall:

immediately take all reasonable steps (which shall include any action or changes reasonably required by the Purchaser) necessary to:

minimise the extent of actual or potential harm caused by any Breach of Security;

remedy such Breach of Security to the extent possible and protect the integrity of the Purchaser's System and the Service Provider's System to the extent within its control against any such Breach of Security or attempted Breach of Security;

apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Contractor, if the mitigation adversely affects the Contractor's ability to deliver the Services so as to meet the Service Levels (if applicable), the Contractor shall be granted relief against any resultant under-performance for such period as the Purchaser, acting reasonably, may specify by written notice to the Contractor;

prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and

supply any requested data to the Purchaser within two (2) Working Days of the Purchaser's request and without charge (where such requests are reasonably related to a possible incident or compromise); and

as soon as reasonably practicable provide to the Purchaser full details (using the reporting mechanism defined by the Security Plan) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Purchaser.

If any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Plan with the security requirements (as set out in Schedule 1 (*Specification and Service Levels*)) or the requirements of this Schedule, then any required change to the Security Plan shall be at no cost to the Purchaser.

VULNERABILITES AND CORRECTIVE ACTION

The Purchaser and the Contractor acknowledge that from time to time vulnerabilities in the Purchaser System, the Contractor's System and the Services will be discovered which unless mitigated will present an unacceptable risk to the Purchaser's information, including Purchaser Data.

The severity of threat vulnerabilities for the Services shall be categorised by using an appropriate vulnerability scoring systems including:

the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and/or

Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

The Contractor shall ensure the application of security patches to vulnerabilities in a timely and prioritised manner.

The Contractor shall ensure all COTS Software is upgraded within six (6) months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term.

The Contractor shall:

implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Government Body;

ensure that the Purchaser's System and the Contractor's System (to the extent within the control of the Service Provider) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Purchaser System, the Contractor's System and the Services by actively monitoring the threat landscape during the Term;

pro-actively scan the Purchaser System and the Contractor's System (to the extent within the control of the Contractor) for vulnerable components and address discovered vulnerabilities through the processes described in the Security Plan as developed under paragraph 3.2.1;

from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Purchaser within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the Purchaser System and the Contractor's System (to the extent within the control of the Contractor) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

propose interim mitigation measures to vulnerabilities in the Purchaser's System, and the Contractor's System known to be exploitable where a security patch is not immediately available;

remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Purchaser's System and the Contractor's System); and

inform the Purchaser when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Services, the Purchaser System and the Contractor's System and provide initial indications of possible mitigations.

If the Contractor is unlikely to be able to mitigate the vulnerability within a timely manner under paragraph 8, the Contractor shall immediately notify the Purchaser.

This and the following [] pages comprise Schedule 12 to the foregoing Contract between the Organisation and UK Cloud Ltd

SCHEDULE 12 – Business Continuity and Disaster Recovery

1. BCDR PLAN

1.1 Within sixty (60) Working Days from the Commencement Date the Service Provider shall prepare and deliver to the Purchaser for the Purchaser's written approval a plan, which shall detail the processes and arrangements that the Service Provider shall follow to:

1.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

1.1.2 the recovery of the Services in the event of a Disaster.

1.2 The BCDR Plan shall:

1.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "Business Continuity Plan"); and

(c) Part C which shall relate to disaster recovery (the "Disaster Recovery Plan"); and

1.2.2 unless otherwise required by the Purchaser in writing, be based upon and be consistent with the provisions of paragraphs 2, 3 and 4.

1.3 Following receipt of the draft BCDR Plan from the Service Provider, the Purchaser shall:

1.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

1.3.2 notify the Service Provider in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Purchaser.

1.4 If the Purchaser rejects the draft BCDR Plan:

1.4.1 the Purchaser shall inform the Service Provider in writing of its reasons for its rejection; and

1.4.2 the Service Provider shall then revise the draft BCDR Plan (taking reasonable account of the Purchaser's comments) and shall re-submit a revised draft BCDR Plan to the Purchaser for the Purchaser's approval within twenty (20) Working Days of the date of the Purchaser's notice of rejection. The provisions of paragraph 1.3 and this paragraph 1.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution in accordance with the procedure outlined in clause 54 (Dispute Resolution).

2. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

2.1 Part A of the BCDR Plan shall:

- 2.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 2.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Purchaser by a Related Service Provider;
 - 2.1.3 contain an obligation upon the Service Provider to liaise with the Purchaser and (at the Purchaser's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
 - 2.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Purchaser and any of its other Related Service Providers in each case as notified to the Service Provider by the Purchaser from time to time;
 - 2.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Purchaser;
 - 2.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
 - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 2.1.7 provide for documentation of processes, including business processes, and procedures;
 - 2.1.8 set out key contact details (including roles and responsibilities) for the Service Provider (and any Sub-contractors) and for the Purchaser;
 - 2.1.9 identify the procedures for reverting to "normal service";
 - 2.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 2.1.11 identify the responsibilities (if any) that the Purchaser has agreed in writing that it will assume in the event of the invocation of the BCDR Plan; and
 - 2.1.12 provide for the provision of technical advice and assistance to key contacts at the Purchaser as notified by the Purchaser from time to time to inform decisions in support of the Purchaser's business continuity plans.
- 2.2 The BCDR Plan shall be designed so as to ensure that:
- 2.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 2.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Purchaser is minimal as far as reasonably possible;

- 2.2.3 it complies with the relevant provisions of ISO/IEC 27002, ISO/IEC 22301 and all other industry standards from time to time in force; and
- 2.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 2.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 2.4 The Service Provider shall not be entitled to any relief from its obligations under the Service Levels (if applicable) or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Service Provider of this Contract.

3. BUSINESS CONTINUITY PLAN – PRINCIPLES AND CONTENTS

- 3.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Purchaser expressly states otherwise in writing:
 - 3.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - 3.1.2 the steps to be taken by the Service Provider upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 3.2 The Business Continuity Plan shall:
 - 3.2.1 address the various possible levels of failures of or disruptions to the Services;
 - 3.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “Business Continuity Services”);
 - 3.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of other Services during any period of invocation of the Business Continuity Plan; and
 - 3.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

4. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 4.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Service Provider ensures continuity of the business operations of the Purchaser supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 4.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 4.3 The Disaster Recovery Plan shall include the following:
 - 4.3.1 the technical design and build specification of the Disaster Recovery System;

- 4.3.2 details of the procedures and processes to be put in place by the Service Provider in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
- (a) backup methodology and details of the Service Provider's approach to data back-up and data verification;
 - (b) identification of all potential disaster scenarios;
 - (c) risk analysis;
 - (d) documentation of processes and procedures;
 - (e) hardware/software configuration details;
 - (f) network planning including details of all relevant data networks and communication links;
 - (g) invocation rules;
 - (h) Services recovery procedures; and
 - (i) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- 4.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 4.3.4 details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 4.3.5 access controls to any disaster recovery sites used by the Service Provider in relation to its obligations pursuant to this Schedule; and
- 4.3.6 testing and management arrangements.

5. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 5.1 The Service Provider shall review the BCDR Plan (and the risk analysis on which it is based):
- 5.1.1 on a regular basis and as a minimum once every six (6) months or as part of a major reconfiguration of the Services or the Service Provider's supply chain;
 - 5.1.2 within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 5.1.3 where the Purchaser requests any additional reviews (over and above those provided for in paragraphs 5.1.1 and 5.1.2 by notifying the Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Purchaser's written requirements. Prior to starting its review, the Service Provider shall provide an accurate written estimate of the total costs payable by the Purchaser for the Purchaser's approval. The costs of both Parties of any such additional reviews shall be met by the Purchaser except that the Service Provider shall not be entitled to charge the Purchaser for any costs that it may incur above any estimate without the Purchaser's prior written approval.

- 5.2 Each review of the BCDR Plan pursuant to paragraph 5.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Service Provider within the period required by the BCDR Plan or, if no such period is required, within such period as the Purchaser shall reasonably require. The Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Purchaser a report (a "Review Report") setting out:
- 5.2.1 the findings of the review;
- (a) any changes in the risk profile associated with the Services; and
 - (b) the Service Provider's proposals (the "Service Provider's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Service Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 5.3 Following receipt of the Review Report and the Service Provider's Proposals, the Purchaser shall:
- 5.3.1 review and comment on the Review Report and the Service Provider's Proposals as soon as reasonably practicable; and
- 5.3.2 notify the Service Provider in writing that it approves or rejects the Review Report and the Service Provider's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Purchaser.
- 5.4 If the Purchaser rejects the Review Report and/or the Service Provider's Proposals:
- 5.4.1 the Purchaser shall inform the Service Provider in writing of its reasons for its rejection; and
- 5.4.2 the Service Provider shall then revise the Review Report and/or the Service Provider's Proposals as the case may be (taking reasonable account of the Purchaser's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Service Provider's Proposals to the Purchaser for the Purchaser's approval within twenty (20) Working Days of the date of the Purchaser's notice of rejection. The provisions of paragraph 5.3 and this paragraph 5.4 shall apply again to any resubmitted Review Report and Service Provider's Proposals, provided that either Party may refer any disputed matters for resolution in accordance with the procedure outlined in clause 54 (Dispute Resolution).
- 5.5 The Service Provider shall as soon as is reasonably practicable after receiving the Purchaser's approval of the Service Provider's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Service Provider's Proposals. Any such change shall be at the Service Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

6. TESTING OF THE BCDR PLAN

- 6.1 The Service Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 6.2, the Purchaser may require the Service Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Purchaser considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 6.2 If the Purchaser requires an additional test of the BCDR Plan, it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Purchaser's requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Purchaser unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 6.3 The Service Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Purchaser and shall liaise with the Purchaser in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Purchaser in this regard. Each test shall be carried out under the supervision of the Purchaser or its nominee.
- 6.4 The Service Provider shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Purchaser. Copies of live test data used in any such testing shall be (if so required by the Purchaser) destroyed or returned to the Purchaser on completion of the test.
- 6.5 The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Purchaser a report setting out:
 - 6.5.1 the outcome of the test;
 - 6.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 6.5.3 the Service Provider's proposals for remedying any such failures.
- 6.6 Following each test, the Service Provider shall take all measures requested by the Purchaser, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Service Provider, at no additional cost to the Purchaser, by the date reasonably required by the Purchaser and set out in such notice.
- 6.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Service Provider of any of its obligations under this Contract.
- 6.8 The Service Provider shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Purchaser.

7. INVOCATION OF THE BCDR PLAN

In the event of a complete loss of service or in the event of a Disaster, the Service Provider shall immediately invoke the BCDR Plan (and shall inform the Purchaser promptly of such invocation along with the anticipated maximum period of outage). In all other instances the Service Provider shall invoke or test the BCDR Plan only with the prior written consent of the Purchaser.

This and the following [] pages comprise Schedule 6 to the foregoing Contract between the Organisation and «Service Provider name»

SCHEDULE 6 – APPROVED SUB-CONTRACTORS

approved Sub-Service Provider(s)

1. e.g. Subco Limited (SC123456)

2.

Relevant obligations

e.g. high risk consultancy services

Guidance notes: Please delete this Schedule if there are no approved sub-contractors as at contract award

This and the following [] pages comprise Schedule 7 to the foregoing Contract between the Organisation and «Service Provider name»

SCHEDULE 7 – TRANSPARENCY REPORTS AND SERVICE PROVIDER 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>(Contract Document)</i>			Once
<i>(Performance)</i>			TBC
<i>(Charges)</i>			TBC
<i>(Major sub-contractors)</i>			TBC
<i>(Technical)</i>			TBC

Part 2

SERVICE PROVIDER SENSITIVE INFORMATION

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

Guidance notes: Since the introduction of the FOI regime it has been recommended practice to ask Service Providers to be clear as to which of their information is sensitive and should not be disclosed under FOISA. Please delete this Schedule if it is not possible to identify this information. **Buyers should nonetheless make active efforts for this Schedule to be completed.**

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

SCHEDULE 8 – PARENT COMPANY GUARANTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

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

9.6 For the purposes of this Clause 9:

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

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

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

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

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

This and the following [] pages comprise Schedule 9 to the foregoing Contract between the Organisation and «Service Provider name»

SCHEDULE 9 – DATA PROTECTION

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

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

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are set out in the Contract.

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Clause 14 of the Contract.

This and the following [] pages comprise Schedule 10 to the foregoing Contract between the Organisation and « Service Provider name »

SCHEDULE 10 – EXIT MANAGEMENT

[]

This and the following [] pages comprise Schedule 11 to the foregoing Contract between the Organisation and « Service Provider name»

SCHEDULE 11 – Security Management

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“**Security Policy Framework**” means the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Contractor to the Service Provider.

“**Security Tests**” means tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the Security Plan and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2. SECURITY ARRANGEMENTS

2.1 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security in relation to the Services.

2.2 The Contractor shall ensure the up-to-date maintenance of a suitable security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Purchaser.

3. SECURITY PLAN

3.1 Within twenty (20) Working Days after the Commencement Date, the Contractor shall prepare and submit to the Purchaser for approval in accordance with paragraph 3.3 a fully developed, complete and up-to-date Security Plan which shall comply with the requirements of paragraph 3.2.

3.2 The Security Plan shall:

3.2.1 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with paragraph 6 and, where not specifically addressed by these standards, ensure that controls are in place to combat common threats as described in the Cyber Essentials scheme (such as the “5 technical controls”);

3.2.2 at all times provide a level of security which:

- (a) is in accordance with Law and this Contract;
- (b) as a minimum demonstrates Good Industry Practice;
- (c) addresses issues of incompatibility with the Contractor’s own organisational security policies;
- (d) meets any specific security threats of immediate relevance to the Services and/or the Purchaser/or Framework Public Body Data;
- (e) complies with the security requirements as set out in Schedule 1 (*Specification and Service Levels*);
- (f) complies with the Purchaser’s IT policies; and
- (g) is in accordance with the Security Policy Framework;

- 3.2.3 document the security incident management processes and incident response plans applicable to the Services;
- 3.2.4 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Contract Provider becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority /or Framework Body approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy;
- 3.2.5 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Contractor;
- 3.2.6 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Purchaser with access to the Services, processes associated with the delivery of the Services, the Purchaser / or Framework Public Body Property, the sites used by the Contractor to deliver the Services, the Contractor's System, the Purchaser's System (to the extent that it is under the control of the Contractor) and any IT, information and data (including the Purchaser Confidential Information and the Purchaser' Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
- 3.2.7 unless otherwise specified by the Purchaser in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Purchaser's Property, the sites used by the Contractor Provider to deliver the Services, the Contractor's System, the Purchaser System (to the extent that it is under the control of the Contractor) and any IT, information and data (including the Purchaser Confidential Information and the Purchaser Data) to the extent used by the Purchaser or the Contractor in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the Services;
- 3.2.8 set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule;
- 3.2.9 demonstrate that the solution has minimised the Purchaser and Cocontractor's effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services;
 - (a) cross referencing if necessary to other Schedules which cover specific areas included within standards ISO/IEC 27001 and ISO/IEC 27002;
 - (b) be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Purchaser engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and
 - (c) be in accordance with the Security Policy Framework.
- 3.3 The Contractor shall update the Security Plan in accordance with any comments from the Purchaser, and shall review and revise the Security Plan regularly (or as per such other time period as agreed between the Parties) all in accordance with Paragraph 4 (such updates shall incorporate any comments received from the Purchaser).
- 3.4 The Contractor shall deliver all Services in accordance with the Security Plan.

4. AMENDMENT AND REVISION OF THE SECURITY PLAN

- 4.1 The Security Plan shall be fully reviewed and updated by the Contractor regularly to reflect:
 - 4.1.1 emerging changes in Good Industry Practice;
 - 4.1.2 any change or proposed change to the IT Environment, the Services and/or associated processes;
 - 4.1.3 any new perceived or changed security threats; and
 - 4.1.4 any reasonable change in requirement requested by the Purchaser.
- 4.2 The Contractor shall provide the Purchaser with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Purchaser. The results of the review shall include, without limitation:
 - 4.2.1 suggested improvements to the effectiveness of the Security Plan;
 - 4.2.2 updates to the risk assessments;
 - 4.2.3 proposed modifications to respond to events that may impact on the Security Plan including the security incident management process, incident response plans and general procedures and controls that affect information security; and
 - 4.2.4 suggested improvements in measuring the effectiveness of controls.
- 4.3 Subject to paragraph 4.4, any change which the Contractor proposes to make to the Security Plan (as a result of a review carried out pursuant to paragraph 4.1, a Purchaser request, a change to Schedule 1 (*Specification and Service Levels*) or otherwise shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Purchaser.
- 4.4 The Purchaser may, where it is reasonable to do so, approve and require changes or amendments to the Security Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

5. SECURITY TESTING

- 5.1 The Contractor shall conduct relevant Security Tests from time to time (and at least annually). Security Tests shall be designed and implemented by the Purchaser so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Contractor. Subject to compliance by the Contractor with the foregoing requirements, if any Security Tests adversely affect the Contractor's ability to deliver the Services so as to meet the Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 5.2 The Contractor shall provide the Purchaser with the results of such tests (in a form approved by the Purchaser in advance) as soon as practicable after completion of each Security Test.
- 5.3 Where any Security Test carried out reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Contractor shall promptly notify the Purchaser of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to

make in order to correct such failure or weakness. Subject to the Purchaser prior written approval, the Contractor shall implement such changes to the Security Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Purchaser or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan is to address a non-compliance with the security requirements (as set out in Schedule 1 (*Specification and Service Levels*)) or the requirements of this Schedule, the change to the Security Plan shall be at no cost to the Purchaser.

- 5.4 If any repeat Security Test carried out pursuant to paragraph 5.3 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall be deemed to constitute a material Default that is capable of remedy.

6. SECURITY PLAN COMPLIANCE

- 6.1 The Purchaser shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the Security Plan maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in Schedule 1 (*Specification and Service Levels*) and the Baseline Security Requirements.

- 6.2 If, on the basis of evidence provided by such audits, it is the Purchaser reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 1 (*Specification and Service Levels*) and/or the Baseline Security Requirements is not being achieved by the Contractor, then the Purchaser shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Contractor does not become compliant within the required time then the Purchaser shall have the right to obtain an independent audit against these standards in whole or in part.

- 6.3 If, as a result of any such independent audit as described in paragraph 6.2 the Contractor is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 1 (*Specification and Service Levels*) and/or the Baseline Security Requirements then the Contractor shall, at its own expense, immediately undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Purchaser in obtaining such audit.

7. BREACH OF SECURITY

- 7.1 Each Party shall notify the other in accordance with the agreed security incident management process as defined by the Security Plan upon becoming aware of any Breach of Security or attempted Breach of Security.

- 7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1, the Contractor shall:

- 7.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Purchaser) necessary to:

- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
- (b) remedy such Breach of Security to the extent possible and protect the integrity of the Purchaser's System and the Service Provider's System to the extent within its control against any such Breach of Security or attempted Breach of Security;

- (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Contractor, if the mitigation adversely affects the Contractor's ability to deliver the Services so as to meet the Service Levels (if applicable), the Contractor shall be granted relief against any resultant under-performance for such period as the Purchaser, acting reasonably, may specify by written notice to the Contractor;
 - (d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
 - (e) supply any requested data to the Purchaser within two (2) Working Days of the Purchaser's request and without charge (where such requests are reasonably related to a possible incident or compromise); and
- 7.2.2 as soon as reasonably practicable provide to the Purchaser full details (using the reporting mechanism defined by the Security Plan) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Purchaser.
- 7.3 If any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Plan with the security requirements (as set out in Schedule 1 (*Specification and Service Levels*)) or the requirements of this Schedule, then any required change to the Security Plan shall be at no cost to the Purchaser.

8. VULNERABILITES AND CORRECTIVE ACTION

- 8.1 The Purchaser and the Contractor acknowledge that from time to time vulnerabilities in the Purchaser System, the Contractor's System and the Services will be discovered which unless mitigated will present an unacceptable risk to the Purchaser's information, including Purchaser Data.
- 8.2 The severity of threat vulnerabilities for the Services shall be categorised by using an appropriate vulnerability scoring systems including:
- 8.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and/or
 - 8.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 8.3 The Contractor shall ensure the application of security patches to vulnerabilities in a timely and prioritised manner.
- 8.4 The Contractor shall ensure all COTS Software is upgraded within six (6) months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term.
- 8.5 The Contractor shall:
- 8.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Government Body;
 - 8.5.2 ensure that the Purchaser's System and the Contractor's System (to the extent within the control of the Service Provider) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

- 8.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Purchaser System, the Contractor's System and the Services by actively monitoring the threat landscape during the Term;
 - 8.5.4 pro-actively scan the Purchaser System and the Contractor's System (to the extent within the control of the Contractor) for vulnerable components and address discovered vulnerabilities through the processes described in the Security Plan as developed under paragraph 3.2.1;
 - 8.5.5 from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Purchaser within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the Purchaser System and the Contractor's System (to the extent within the control of the Contractor) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 8.5.6 propose interim mitigation measures to vulnerabilities in the Purchaser's System, and the Contractor's System known to be exploitable where a security patch is not immediately available;
 - 8.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Purchaser's System and the Contractor's System); and
 - 8.5.8 inform the Purchaser when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Services, the Purchaser System and the Contractor's System and provide initial indications of possible mitigations.
- 8.6 If the Contractor is unlikely to be able to mitigate the vulnerability within a timely manner under paragraph 8, the Contractor shall immediately notify the Purchaser.

This and the following [] pages comprise Schedule 12 to the Framework Agreement between the Organisation and UK Cloud Ltd

SCHEDULE 12 – Business Continuity and Disaster Recovery

1. BCDR PLAN

1.1 Within sixty (60) Working Days from the Commencement Date the Service Provider shall prepare and deliver to the Purchaser for the Purchaser's written approval a plan, which shall detail the processes and arrangements that the Service Provider shall follow to:

1.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

1.1.2 the recovery of the Services in the event of a Disaster.

1.2 The BCDR Plan shall:

1.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "Business Continuity Plan"); and

(c) Part C which shall relate to disaster recovery (the "Disaster Recovery Plan"); and

1.2.2 unless otherwise required by the Purchaser in writing, be based upon and be consistent with the provisions of paragraphs 2, 3 and 4.

1.3 Following receipt of the draft BCDR Plan from the Service Provider, the Purchaser shall:

1.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

1.3.2 notify the Service Provider in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Purchaser.

1.4 If the Purchaser rejects the draft BCDR Plan:

1.4.1 the Purchaser shall inform the Service Provider in writing of its reasons for its rejection; and

1.4.2 the Service Provider shall then revise the draft BCDR Plan (taking reasonable account of the Purchaser's comments) and shall re-submit a revised draft BCDR Plan to the Purchaser for the Purchaser's approval within twenty (20) Working Days of the date of the Purchaser's notice of rejection. The provisions of paragraph 1.3 and this paragraph 1.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution in accordance with the procedure outlined in clause 54 (Dispute Resolution).

2. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

2.1 Part A of the BCDR Plan shall:

- 2.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 2.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Purchaser by a Related Service Provider;
 - 2.1.3 contain an obligation upon the Service Provider to liaise with the Purchaser and (at the Purchaser's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
 - 2.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Purchaser and any of its other Related Service Providers in each case as notified to the Service Provider by the Purchaser from time to time;
 - 2.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Purchaser;
 - 2.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
 - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 2.1.7 provide for documentation of processes, including business processes, and procedures;
 - 2.1.8 set out key contact details (including roles and responsibilities) for the Service Provider (and any Sub-contractors) and for the Purchaser;
 - 2.1.9 identify the procedures for reverting to "normal service";
 - 2.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 2.1.11 identify the responsibilities (if any) that the Purchaser has agreed in writing that it will assume in the event of the invocation of the BCDR Plan; and
 - 2.1.12 provide for the provision of technical advice and assistance to key contacts at the Purchaser as notified by the Purchaser from time to time to inform decisions in support of the Purchaser's business continuity plans.
- 2.2 The BCDR Plan shall be designed so as to ensure that:
- 2.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 2.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Purchaser is minimal as far as reasonably possible;

- 2.2.3 it complies with the relevant provisions of ISO/IEC 27002, ISO/IEC 22301 and all other industry standards from time to time in force; and
- 2.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 2.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 2.4 The Service Provider shall not be entitled to any relief from its obligations under the Service Levels (if applicable) or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Service Provider of this Contract.

3. BUSINESS CONTINUITY PLAN – PRINCIPLES AND CONTENTS

- 3.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Purchaser expressly states otherwise in writing:
 - 3.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - 3.1.2 the steps to be taken by the Service Provider upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 3.2 The Business Continuity Plan shall:
 - 3.2.1 address the various possible levels of failures of or disruptions to the Services;
 - 3.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “Business Continuity Services”);
 - 3.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of other Services during any period of invocation of the Business Continuity Plan; and
 - 3.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

4. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 4.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Service Provider ensures continuity of the business operations of the Purchaser supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 4.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 4.3 The Disaster Recovery Plan shall include the following:
 - 4.3.1 the technical design and build specification of the Disaster Recovery System;

- 4.3.2 details of the procedures and processes to be put in place by the Service Provider in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
- (a) backup methodology and details of the Service Provider's approach to data back-up and data verification;
 - (b) identification of all potential disaster scenarios;
 - (c) risk analysis;
 - (d) documentation of processes and procedures;
 - (e) hardware/software configuration details;
 - (f) network planning including details of all relevant data networks and communication links;
 - (g) invocation rules;
 - (h) Services recovery procedures; and
 - (i) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- 4.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 4.3.4 details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 4.3.5 access controls to any disaster recovery sites used by the Service Provider in relation to its obligations pursuant to this Schedule; and
- 4.3.6 testing and management arrangements.

5. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 5.1 The Service Provider shall review the BCDR Plan (and the risk analysis on which it is based):
- 5.1.1 on a regular basis and as a minimum once every six (6) months or as part of a major reconfiguration of the Services or the Service Provider's supply chain;
 - 5.1.2 within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 5.1.3 where the Purchaser requests any additional reviews (over and above those provided for in paragraphs 5.1.1 and 5.1.2 by notifying the Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Purchaser's written requirements. Prior to starting its review, the Service Provider shall provide an accurate written estimate of the total costs payable by the Purchaser for the Purchaser's approval. The costs of both Parties of any such additional reviews shall be met by the Purchaser except that the Service Provider shall not be entitled to charge the Purchaser for any costs that it may incur above any estimate without the Purchaser's prior written approval.

- 5.2 Each review of the BCDR Plan pursuant to paragraph 5.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Service Provider within the period required by the BCDR Plan or, if no such period is required, within such period as the Purchaser shall reasonably require. The Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Purchaser a report (a "Review Report") setting out:
- 5.2.1 the findings of the review;
- (a) any changes in the risk profile associated with the Services; and
 - (b) the Service Provider's proposals (the "Service Provider's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Service Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 5.3 Following receipt of the Review Report and the Service Provider's Proposals, the Purchaser shall:
- 5.3.1 review and comment on the Review Report and the Service Provider's Proposals as soon as reasonably practicable; and
- 5.3.2 notify the Service Provider in writing that it approves or rejects the Review Report and the Service Provider's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Purchaser.
- 5.4 If the Purchaser rejects the Review Report and/or the Service Provider's Proposals:
- 5.4.1 the Purchaser shall inform the Service Provider in writing of its reasons for its rejection; and
- 5.4.2 the Service Provider shall then revise the Review Report and/or the Service Provider's Proposals as the case may be (taking reasonable account of the Purchaser's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Service Provider's Proposals to the Purchaser for the Purchaser's approval within twenty (20) Working Days of the date of the Purchaser's notice of rejection. The provisions of paragraph 5.3 and this paragraph 5.4 shall apply again to any resubmitted Review Report and Service Provider's Proposals, provided that either Party may refer any disputed matters for resolution in accordance with the procedure outlined in clause 54 (Dispute Resolution).
- 5.5 The Service Provider shall as soon as is reasonably practicable after receiving the Purchaser's approval of the Service Provider's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Service Provider's Proposals. Any such change shall be at the Service Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

6. TESTING OF THE BCDR PLAN

- 6.1 The Service Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 6.2, the Purchaser may require the Service Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Purchaser considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 6.2 If the Purchaser requires an additional test of the BCDR Plan, it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Purchaser's requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Purchaser unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 6.3 The Service Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Purchaser and shall liaise with the Purchaser in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Purchaser in this regard. Each test shall be carried out under the supervision of the Purchaser or its nominee.
- 6.4 The Service Provider shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Purchaser. Copies of live test data used in any such testing shall be (if so required by the Purchaser) destroyed or returned to the Purchaser on completion of the test.
- 6.5 The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Purchaser a report setting out:
- 6.5.1 the outcome of the test;
 - 6.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 6.5.3 the Service Provider's proposals for remedying any such failures.
- 6.6 Following each test, the Service Provider shall take all measures requested by the Purchaser, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Service Provider, at no additional cost to the Purchaser, by the date reasonably required by the Purchaser and set out in such notice.
- 6.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Service Provider of any of its obligations under this Contract.
- 6.8 The Service Provider shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Purchaser.

7. INVOCATION OF THE BCDR PLAN

In the event of a complete loss of service or in the event of a Disaster, the Service Provider shall immediately invoke the BCDR Plan (and shall inform the Purchaser promptly of such invocation along with the anticipated maximum period of outage). In all other instances the Service Provider shall invoke or test the BCDR Plan only with the prior written consent of the Purchaser.

This and the following 3 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 6 – PARENT COMPANY GUARANTEE

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

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

8.1 if delivered by hand; or

8.2 if sent by fax; or

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

8.4 if sent by email

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

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

9.6 For the purposes of this Clause 9:

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

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

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

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

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

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

This and the following page comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 7 – TRANSPARENCY REPORTS AND CONTRACTOR SENSITIVE INFORMATION

Part 1- Transparency Reports

The Authority will routinely publish information in relation to the Framework, 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
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major subcontractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

CONTRACTOR SENSITIVE INFORMATION

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

This and the following page comprise Schedule 8 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 8 – Exit Strategy

1. Framework 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. These services cover:

[].

2. 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.

3. Post termination

3.1. In accordance with clause 51 (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.

This and the following page comprise Schedule 9 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 9 – DATA PROTECTION

Guidance notes: This schedule is only required in the event that data is processed in connection with the framework. Otherwise,

Not Used.

This and the following page comprise Schedule 10 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 10 – APPROVED SUB-CONTRACTORS

approved Sub-contractors	Relevant obligations
1. e.g. Subco Limited (SC123456)	e.g. high risk consultancy services
2. Ark Data Centre Limited (DUNS 348582607)	
3. e2e-assure Ltd (DUNS 219689830)	

This and the following 6 pages comprise Schedule 11 to the Framework Agreement between the Scottish Ministers and UK Cloud Ltd

SCHEDULE 11 – Security Management

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Security Policy Framework” means the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Contractor to the Service Provider.

“Security Tests” means tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the Security Plan and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2. SECURITY ARRANGEMENTS

- 2.1 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security in relation to the Services.
- 2.2 The Contractor shall ensure the up-to-date maintenance of a suitable security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority/or Framework Public Body.

3. SECURITY PLAN

- 3.1 Within twenty (20) Working Days after the Commencement Date, the Contractor shall prepare and submit to the Authority /or Framework Public Body for approval in accordance with paragraph 3.3 a fully developed, complete and up-to-date Security Plan which shall comply with the requirements of paragraph 3.2.
- 3.2 The Security Plan shall:
 - 3.2.1 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with paragraph 6 and, where not specifically addressed by these standards, ensure that controls are in place to combat common threats as described in the Cyber Essentials scheme (such as the “5 technical controls”);
 - 3.2.2 at all times provide a level of security which:
 - (a) is in accordance with Law and this Contract;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) addresses issues of incompatibility with the Contractor’s own organisational security policies;
 - (d) meets any specific security threats of immediate relevance to the Services and/or the Authority/or Framework Public Body Data;
 - (e) complies with the security requirements as set out in Schedule 1 (*Specification and Service Levels*);
 - (f) complies with the Purchaser’s IT policies; and

- (g) is in accordance with the Security Policy Framework;
- 3.2.3 document the security incident management processes and incident response plans applicable to the Services;
- 3.2.4 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Contract Provider becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority /or Framework Body approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy;
- 3.2.5 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Contractor;
- 3.2.6 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority/or Framework Public Body with access to the Services, processes associated with the delivery of the Services, the Authority / or Framework Public Body Property, the sites used by the Contractor to deliver the Services, the Contractor's System, the Authority/or Framework Public Body's System (to the extent that it is under the control of the Contractor) and any IT, information and data (including the Authority/or Framework Public Body's Confidential Information and the Authority/or Framework Public Body's Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
- 3.2.7 unless otherwise specified by the Authority/or Framework Public Body in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority/or Framework Public Body Property, the sites used by the Contractor Provider to deliver the Services, the Contractor's System, the Authority/or Framework Public Body's System (to the extent that it is under the control of the Contractor) and any IT, information and data (including the Authority/or Framework Public Body Confidential Information and the Authority/or Framework Public Body Data) to the extent used by the Authority/or Framework Public Body or the Contractor in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the Services;
- 3.2.8 set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule;
- 3.2.9 demonstrate that the solution has minimised the Authority/or Framework Public Body and Cocontractor's effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services;
 - (a) cross referencing if necessary to other Schedules which cover specific areas included within standards ISO/IEC 27001 and ISO/IEC 27002;
 - (b) be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Authority/or Framework Public Body engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and
 - (c) be in accordance with the Security Policy Framework.

3.3 The Contractor shall update the Security Plan in accordance with any comments from the Authority/or Framework Public Body, and shall review and revise the Security Plan regularly (or as per such other time period as agreed between the Parties) all in accordance with Paragraph 4 (such updates shall incorporate any comments received from the Authority/or Framework Public Body).

3.4 The Contractor shall deliver all Services in accordance with the Security Plan.

4. AMENDMENT AND REVISION OF THE SECURITY PLAN

4.1 The Security Plan shall be fully reviewed and updated by the Contractor regularly to reflect:

4.1.1 emerging changes in Good Industry Practice;

4.1.2 any change or proposed change to the IT Environment, the Services and/or associated processes;

4.1.3 any new perceived or changed security threats; and

4.1.4 any reasonable change in requirement requested by the Authority/or Framework Public Body

4.2 The Contractor shall provide the Authority/or Framework Public Body with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority/or Framework Public Body. The results of the review shall include, without limitation:

4.2.1 suggested improvements to the effectiveness of the Security Plan;

4.2.2 updates to the risk assessments;

4.2.3 proposed modifications to respond to events that may impact on the Security Plan including the security incident management process, incident response plans and general procedures and controls that affect information security; and

4.2.4 suggested improvements in measuring the effectiveness of controls.

4.3 Subject to paragraph 4.4, any change which the Contractor proposes to make to the Security Plan (as a result of a review carried out pursuant to paragraph 4.1, a Authority/or Framework Public Body request, a change to Schedule 1 (*Specification and Service Levels*) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority/or Framework Public Body.

4.4 The Authority/or Framework Public Body may, where it is reasonable to do so, approve and require changes or amendments to the Security Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

5. SECURITY TESTING

5.1 The Contractor shall conduct relevant Security Tests from time to time (and at least annually). Security Tests shall be designed and implemented by the Authority/or Framework Public Body so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Contractor. Subject to compliance by the Contractor with the foregoing requirements, if any Security Tests adversely affect the Contractor's ability to deliver the

Services so as to meet the Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the Security Tests.

- 5.2 The Contractor shall provide the Authority/or Framework Public Body with the results of such tests (in a form approved by the Authority/or Framework Public Body in advance) as soon as practicable after completion of each Security Test.
- 5.3 Where any Security Test carried out reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Contractor shall promptly notify the Authority/or Framework Public Body of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Authority/or Framework Public Body prior written approval, the Contractor shall implement such changes to the Security Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority/or Framework Public Body or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan is to address a non-compliance with the security requirements (as set out in Schedule 1 (*Specification and Service Levels*) or the requirements of this Schedule, the change to the Security Plan shall be at no cost to the Purchaser.

If any repeat Security Test carried out pursuant to paragraph 5.3 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall be deemed to constitute a material Default that is capable of remedy.

6. SECURITY PLAN COMPLIANCE

- 6.1 The Authority/or Framework Public Body shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the Security Plan maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in Schedule 1 (*Specification and Service Levels*) and the Baseline Security Requirements.
- 6.2 If, on the basis of evidence provided by such audits, it is the Authority/or Framework Public Body reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 1 (*Specification and Service Levels*) and/or the Baseline Security Requirements is not being achieved by the Contractor, then the Authority/or Framework Public Body shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Contractor does not become compliant within the required time then the Purchaser shall have the right to obtain an independent audit against these standards in whole or in part.
- 6.3 If, as a result of any such independent audit as described in paragraph 6.2 the Contractor is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 1 (*Specification and Service Levels*) and/or the Baseline Security Requirements then the Contractor shall, at its own expense, immediately undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority/or Framework Public Body in obtaining such audit.

7. BREACH OF SECURITY

- 7.1 Each Party shall notify the other in accordance with the agreed security incident management process as defined by the Security Plan upon becoming aware of any Breach of Security or attempted Breach of Security.

7.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 7.1, the Contractor shall:

7.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Purchaser) necessary to:

- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
- (b) remedy such Breach of Security to the extent possible and protect the integrity of the Authority/or Framework Public Body's System and the Service Provider's System to the extent within its control against any such Breach of Security or attempted Breach of Security;
- (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Contractor, if the mitigation adversely affects the Contractor's ability to deliver the Services so as to meet the Service Levels (if applicable), the Contractor shall be granted relief against any resultant under-performance for such period as the Authority/or Framework Public Body, acting reasonably, may specify by written notice to the Contractor;
- (d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- (e) supply any requested data to the Purchaser within two (2) Working Days of the Purchaser's request and without charge (where such requests are reasonably related to a possible incident or compromise); and

7.2.2 as soon as reasonably practicable provide to the Authority/or Framework Public Body full details (using the reporting mechanism defined by the Security Plan) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority/or Framework Public Body.

7.3 If any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Plan with the security requirements as set out in Schedule 1 (*Specification and Service Levels*) or the requirements of this Schedule, then any required change to the Security Plan shall be at no cost to the Authority/or Framework Public Body.

8. VULNERABILITES AND CORRECTIVE ACTION

8.1 The Authority/or Framework Public Body and the Contractor acknowledge that from time to time vulnerabilities in the Authority/or Framework Public Body System, the Contractor's System and the Services will be discovered which unless mitigated will present an unacceptable risk to the Authority/or Framework Public Body s information, including Purchaser Data.

8.2 The severity of threat vulnerabilities for the Services shall be categorised by using an appropriate vulnerability scoring systems including:

8.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and/or

8.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

8.3 The Contractor shall ensure the application of security patches to vulnerabilities in a timely and prioritised manner.

- 8.4 The Contractor shall ensure all COTS Software is upgraded within six (6) months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term.
- 8.5 The Contractor shall:
- 8.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Government Body;
 - 8.5.2 ensure that the Authority/or Framework Public Body's System and the Contractor's System (to the extent within the control of the Service Provider) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 8.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Authority/or Framework Public Body System, the Contractor's System and the Services by actively monitoring the threat landscape during the Term;
 - 8.5.4 pro-actively scan the Authority/or Framework Public Body's System and the Contractor's System (to the extent within the control of the Contractor) for vulnerable components and address discovered vulnerabilities through the processes described in the Security Plan as developed under paragraph 3.2.1;
 - 8.5.5 from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority/or Framework Public Body within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the Authority/or Framework Public Body's System and the Contractor's System (to the extent within the control of the Contractor) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 8.5.6 propose interim mitigation measures to vulnerabilities in the Authority/or Framework Public Body's System, and the Contractor's System known to be exploitable where a security patch is not immediately available;
 - 8.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Authority/or Framework Public Body's System and the Contractor's System); and
 - 8.5.8 inform the Authority/or Framework Public Body when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Services, the Authority/or Framework Public Body System and the Contractor's System and provide initial indications of possible mitigations.
- 8.6 If the Contractor is unlikely to be able to mitigate the vulnerability within a timely manner under paragraph 8, the Contractor shall immediately notify the Authority/or Framework Public Body.