FRAMEWORK REFERENCE NUMBER: SP-18-007

FRAMEWORK AGREEMENT

-between-

(1) THE SCOTTISH MINISTERS ACTING THROUGH THE SCOTTISH GOVERNMENT (THE "AUTHORITY")

-and-

(2) [MediaCom Holdings Ltd] (THE "CONTRACTOR")

AND OTHER FRAMEWORK CONTRACTORS

-relating to the supply of-

MEDIA PLANNING, BUYING AND ASSOCIATED SERVICES

LOT 1 - UK and Overseas Media

-for the benefit of-

THE SCOTTISH MINISTERS ACTING THROUGH THE SCOTTISH GOVERNMENT AND FRAMEWORK PUBLIC BODIES

Table of Contents

SECTION A

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

SECTION B

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

SECTION C

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

SECTION D

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

SECTION E

33. Warranties and Representations
34. Indemnity
35. Limitation of liability
36. Insurances
37. Dispute Resolution
38. Severability
39. Waiver and Cumulative Remedies
40. Force Majeure
41. Disruption
42. Termination Rights
43. Termination on Insolvency or Change of Control
44. Exit Management

45. Compliance with the Law and Changes in the Law
46. Offences
47. Tax arrangements
48. Blacklisting
49. Conflicts of interest
50. Consequences of Expiry or Termination
51. Entire Agreement
52. Governing Law and Jurisdiction

SCHEDULES

Schedule 1 Lot 1 UK and Overseas media
Schedule 2 Lot 1 Pricing Schedule
Schedule 3 Lot 1 Award Procedures
Schedule 4 Management Arrangements
Schedule 5 Standard Terms Of Supply
Schedule 6 Parent Company Guarantee
Schedule 7 Transparency Reports and Contractor Sensitive Information
Schedule 8 Exit Management
Schedule 9 Data Protection
Schedule 10 Approved sub-contractors

PREAMBLE:

ONE The Authority requires the supply of Services to Scottish Ministers acting through the Scottish Government and Framework Public Bodies;

TWO On 7 February 2019 the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number OJEU reference number; (2019/S 028-062525).

THREE On 12 March 2019 the Contractor completed its ESPD;

FOUR On 7 February 2019 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;

FIVE On 12 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 acting through the Scottish Government.

"**Authority Protected Information**" means any information provided by the Authority to the Contractor which:

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

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

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

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

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

"**Commencement Date**" has the meaning given in clause 4.1.

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

"**Contractor**" means MediaCom Holdings Limited, 124 Theobalds Road, London, WC1X 8RX, its registered company number 03525784 .

"**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 12 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.

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

the foregoing. In addition to the contracting authorities listed, the framework agreement will be available to charities entered on the Scottish Charity Register and voluntary organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

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

https://www.gov.scot/publications/public-bodies-in-scotland-guide/

Scottish Non-Departmental Public Bodies are listed at:

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

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

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

"**Framework Contractors**" means the Contractor and Republic of Media Limited, Carat Scotland, a trading division of Dentsu Aegis Limited, The Media Shop Scotland Limited and Spiritmedia Scotland Limited.

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

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

"**ITT**" means the Authority's invitation to tender dated 7 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 Service Levels, the Award Procedures and the terms of this Framework Agreement, set out in Schedule 4.

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

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

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

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

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

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

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

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

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

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

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

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

"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 12 March 2019.

"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

2.1. 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-lot agreement containing a Single–supplier lot and a Multi-supplier lot and the Contractors that are party to it are the Framework Contractors. No other Contractors are party to the Framework Agreement.

3.3. The Contractor acknowledges that it is not the exclusive supplier of the Services to Framework Public Bodies and as such no guarantee of work or volume of work has been granted by any Framework Public Body.

3.4. 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 1 September 2019 (the “Commencement Date”) to and including the 31 August 2023, unless it is terminated earlier.

4.2. The period of a call-off contract, must not exceed the expiry date of the Framework Agreement, however the Order placed, and the period in which the adverts run, may continue beyond the expiry date.

5. Break

5.1. 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

6.1. 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, Schedule 2, 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, where applicable, in the Pricing Schedule for the purposes of a Call-off Contract.

8. Award Procedures

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

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

8.2.1. the period of the Framework Agreement has expired;

8.2.2. the Framework Agreement has been terminated; or

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

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

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

9. Management Arrangements

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

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

9.2.1. if the Authority becomes entitled to terminate this Framework Agreement under clause 42 (Termination 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 sub-clauses 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

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

SECTION B

11. Contractor's Status

11.1. 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. Two Working Days after the day on which the letter was posted; or
12.2.2. Four 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:
5 Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU
For the attention of: REDACTED
Tel: REDACTED
E-mail: REDACTED

12.3.2. For the Contractor: Mediacom Holdings Limited, 124 Theobalds Road, London, WC1X 8RX
For the attention of: REDACTED
Tel: REDACTED
E-mail: REDACTED

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

13. Recovery of Sums Due

13.1. 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; and
(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 (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:-

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

18.1.2. '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

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

SECTION C

20. Key Individuals

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

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

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

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

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

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

21. Offers of Employment

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

21.2. This clause does not prevent the Contractor from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the

normal course of business and not placed with the objective of soliciting the Authority's employees.

22. Staff Transfer at Commencement

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

22.2. The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.

22.3. The Contractor indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 22.2.

23. Information about Contractor Employees

23.1. The Authority may by notice require the Contractor to disclose such information as the Authority may require relating to those of the Contractor's employees carrying out activities under or connected with the Framework Agreement.

23.2. The Contractor must disclose by notice all such information as is required by the Authority under clause 23.1, within such reasonable period specified by the Authority. The Contractor acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.

23.3. The Contractor consents to the disclosure by the Authority of all information provided by the Contractor under this clause to other Contractors that the Authority may invite to tender or appoint for services to be provided in substitution for the Services.

24. Staff Transfer on Expiry or Termination

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

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

24.2.1. the provision of information pursuant to clause 23;

24.2.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;

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

24.2.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.

24.3. The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).

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

25. Security

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

25.2 The Contractor must notify the Authority of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

SECTION D

26. Parties' pre-existing Intellectual Property Rights

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

27. Specially Created Intellectual Property Rights

27.1. All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Framework Agreement belong to the Authority.

27.2. The Contractor assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 27.1. This assignation takes effect on the Commencement Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor must execute all documentation necessary to effect this assignation.

28. Licences of Intellectual Property Rights

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

28.2. The Contractor grants to the Authority a perpetual, royalty-free, irrevocable and exclusive license 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. Assignation 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 31.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

31.4. The Contractor shall include in every sub-contract:

31.4.1 a right for the Contractor to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 42.4 occur; and

31.4.2 a requirement that the sub-contractor includes a provision having the same effect as 31.4.1 in any sub-contract which it awards.

In this Clause 31.4, 'sub-contract' means any contract between two or more contractors, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement.

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

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

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

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

32. Amendment

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

SECTION E

33. Warranties and Representations

33.1. The Contractor warrants and represents that:

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

33.1.2. in entering the Framework Agreement it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;

33.1.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;

33.1.4. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement;

33.1.5. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Framework Agreement;

33.1.6. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement;

33.1.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and

33.1.8. as at the Commencement Date, all insurances that must be effected under the Standard Terms of Supply have been effected.

34. Indemnity

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

35. Limitation of Liability

35.1. Neither Party is liable to the other Party under the Framework Agreement for any:

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

35.1.2. indirect or consequential loss or damage.

35.2. But clause 35.1 does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Contractor.

35.3. The liability of either Party under the Framework Agreement for Defaults is limited to £1,000,000 per Order, 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.

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

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 £1,000,000 per Order, 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 £1,000,000 per Order, 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 37.2 is subject to the Arbitration (Scotland) Act 2010.

38. Severability

38.1. 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;
42.2.2. in accordance with any provisions of the Standard Terms of Supply relating to the following activities:

42.2.2.1. entering, attending or occupying the Authority's premises;
42.2.2.2. making use of the Authority's property or information technology systems, or giving the Authority the use of the Contractor's property or information technology systems;
42.2.2.3. having dealings with the Authority's employees, Contractors, suppliers or contractors;
42.2.2.4. soliciting the Authority's employees;
42.2.2.5. making representations or giving professional advice to the Authority;
42.2.2.6. generating information for or giving information to the Authority;
42.2.2.7. receiving information from or holding information on behalf of the Authority; and
42.2.2.8. carrying out publicity or marketing activities;

42.2.3. where a Call-off Contract with the Contractor under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.
42.2.4. where, at any time before the term of the Framework Agreement, the Contractor or any person falling within the description set out in paragraph (2) of regulation 58 of

The Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that regulation.

42.3 The Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Contractor.

42.4 The Authority may terminate the Contract in the event that:

(a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
(b) the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
(c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

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

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

43. Termination on Insolvency and Change of Control

43.1. The Authority may terminate the Framework Agreement with immediate effect by notice where in respect of the Contractor:

43.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
43.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
43.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
43.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
43.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
43.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
43.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
43.1.8. a debt relief order is entered into; or
43.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.

43.2. The Authority may terminate the 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 (Assignation 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

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

44.2. 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.

44.3. 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 44.4. 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.

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

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

44.4.2 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;

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

44.4.4 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;

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

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

44.5. 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 Contactor 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

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

49. Conflicts of interest

49.1. The Contractor must take appropriate steps to ensure that the Authority is not placed in a position where, in the reasonable opinion of the Authority, there is an actual or potential conflict between the interests of the Contractor and the duties owed to the Authority under the Framework Agreement.

49.2. The Contractor must disclose by notice to the Authority full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

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

50. Consequences of Expiry or Termination

50.1. Where the Authority terminates the Framework Agreement under clause 42 (Termination Rights) and makes other arrangements for the supply of Services, the Contractor indemnifies the Authority against all costs incurred in making those arrangements.

50.2. The termination of this Framework Agreement in accordance with clause 42 (Termination Rights) and/or clause 43 (Termination on Insolvency and Change of Control) or its expiry shall not affect the accrued rights of either party.

50.3. Following the service of a termination notice, the Contractor shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.

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

50.4.1. clause 1 (Definitions and Interpretation);
50.4.2. clause 8 (Award Procedures);
50.4.3. clause 10 (Official Secrets Acts);
50.4.4. clause 13 (Recovery of Sums Due);
50.4.5. clause 14 (Data Protection);
50.4.6. clause 15 (Transparency and Freedom of Information);
50.4.7. clause 16 (Authority Protected Information);
50.4.8. clause 17 (Contractor Sensitive Information);
50.4.9. clause 18 (Audit and Records Management);
50.4.10. clause 19 (Publicity);
50.4.11. clause 21 (Offers of Employment);
50.4.12. clause 23 (Information about Contractor Employees);
50.4.13. clause 26 (Parties pre-existing Intellectual Property Rights);
50.4.14. clause 27 (Specially created Intellectual Property Rights);
50.4.15. clause 28 (Licences of Intellectual Property Rights);
50.4.16. Clause 29 (Claims relating to Intellectual Property Rights);
50.4.17. clause 33 (Warranties and Representations);
50.4.18. clause 34 (Indemnity);
50.4.19. clause 37 (Dispute Resolution Procedure);
50.4.20. clause 39 (Waiver and Cumulative Remedies);

50.4.21. clause 47 (Tax arrangements);
50.4.22. clause 50 (Consequences of Expiry or Termination); and
50.4.23. clause 52 (Governing Law and Jurisdiction).

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

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

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

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

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

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

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

51. Entire Agreement

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

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

51.2.1 the clauses of this Framework Agreement;
51.2.2 the Standard Terms of Supply;
51.2.3 the other Schedules; and
51.2.4 any other document referred to in the clauses of this Framework Agreement.

52. Governing Law and Jurisdiction

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

IN WITNESS WHEREOF these presents typewritten on this and the 29 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 Mediacom Holdings Limited
At.. REDACTED.....	At...REDACTED.....
On..REDACTED.....	On..REDACTED.....
Signature..REDACTED.....	Signature...REDACTED.....
Full name ..REDACTED.....	Full name..REDACTED.....
Position ..REDACTED.....	Position..REDACTED.....
Address..REDACTED.....	Address..REDACTED.....
In the presence of	**In the presence of**
Signature..REDACTED.....	Signature..REDACTED.....
Full name ..REDACTED.....	Full name..REDACTED.....
Address..REDACTED.....	Address..REDACTED.....

This and the following 38 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

SCHEDULE 1 – SPECIFICATION AND SERVICE LEVELS

Media Planning, Buying and Associated Services – Reference No SP-18-007

Introduction / Purpose

1. This Framework Agreement is for the provision of Media Planning, Buying and Associated Services and is for a duration of four years. The Framework will cover the provision of Media Planning & Buying, for the booking of advertisements to run in Scotland, UK & Ireland and Overseas, in support of activities including, but not restricted to, social marketing public information (including access to services) and revenue generating promotion.

   The purpose of this agreement is to provide the Scottish Public Sector with a new, open and transparent approach to media planning, buying and associated services, with the Contractors providing the best possible outcomes for media campaigns.

   Contractors shall be capable of delivering value for money, as well as providing excellent customer service including strategic media planning and buying advice, and be capable of working in partnership with creative agencies and specialists to deliver all aspects of a fully integrated paid for media campaign.

   The Contractor must at all times act in an open and transparent manner with each Framework Public Body and appointed Framework auditor delivering the services under this agreement, in particular being open and transparent in relation to the charges, placement of media and the access to and provision of data in relation to the service.

2. This Framework will operate under two Lots:-

   Lot 1 - UK and Overseas Media

   Lot 2 - International Media

   NB: This agreement does include recruitment campaigns and social marketing public information campaigns. However, recruitment advertising to fill vacancies within a Framework Public Body and Statutory Public Information Notices will be provisioned under a separate Framework Agreement.

Statement of Requirements – Lot 1

3. The following requirement covers the provision of Lot 1 Media Planning, Buying and Associated Services (Scotland, UK and Overseas). The Contractor shall execute media planning and buying activity across the media channels detailed (TV, Radio, Digital, Press, Out of Home, Cinema etc.).

Background

4. The Scottish Ministers acting through Scottish Procurement are the contracting Authority for the Scottish Government, its Agencies and NDPBs.

5. The Framework Agreement will be available for use by the Scottish Ministers (including Agencies), Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross- border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the 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

Definitions

6. The words used in this Statement of Requirements shall have the following meanings:

6.1. **"Advertising"** means the Framework Public Bodies advertising for which the Contractor performs media planning and buying activity under this Framework;

6.2. **"Associated Media Services"** includes services employed in development and pursuance of paid media advertising and promotional activity drawing on existing media channels where there is no associated media cost and therefore the activity carries no commission for the Contractor;

6.3. **"Campaign"** means paid media advertising using press, television, radio, out of home (and other ambient), digital including but not limited to display, native, paid search and social media, mobile, cinema, direct mail and on-line in any combination, as well as sponsored editorial, broadcast and digital agreements with media organisations, which the Contractor is required to plan and carry out in accordance with the provisions of paragraphs 13 to 8 below;

6.4. **"Framework Agreement"** means a set of overarching terms and conditions under which a Framework Public Body can raise an order in accordance with the call-off procedures detailed at Schedule 3. Each order is a contract between the Contractor and the Framework Public Body. There is no guarantee of any business;

6.5. **"Full Cost"** means the cost after all discounts have been deducted and inclusive of Advertising Standards Board of Finance (ASBOF) / Broadcast Advertising Board of Finance (BASBOF), Framework Levy and VAT. Note however, that VAT must be shown separately on all invoices, and that the Fee Commission and any other costs (e.g. ASBOF/BASBOF @ 0.1% of net expenditure) must be calculated on the VAT exclusive figure and shown separately on all invoices, with the exception of International activity;

6.6. **"Key Individual(s)"** means those of the Contractor's personnel named in the Technical Proposal as the proposed Account Manager and as members of the proposed team to service the Framework;

6.7. **"Media Schedule"** means the schedule prepared by the Contractor and approved by the Framework Public Body's Contract Manager;

6.8. **"Net Media Cost"** means the agreed price for media purchases after all negotiated, trade discounts have been applied and after the deduction of the standard agency commission, but excluding the Contractor Buying Fee/Commission, industry levies (ASBOF/BASBOF) and VAT;

6.9. **"Public Information"** means marketing activity directly linked to providing public information and advice on strategic objectives, specifically related to legislation or to providing access information to services. Public Information includes general public and specific audiences such as employers, or specific socio-economic groups;

6.10. **"Social Marketing**" means the use of traditional marketing approaches to change attitudes and behaviours of the population for social good to improve and save lives;

6.11. **"Strategic Contract Manager"** means the contract manager of the Authority.

Period of Contract

7. The Framework Agreement will commence on 1 September 2019, for a period of 48 months or until it is sooner terminated in accordance with the Conditions.

Commencement of Full Operations

8. The Contractor will take on responsibility for Media Planning, Buying and Associated Services from 1 September 2019. Media Planning, Buying and Associated Services ordered before 31 August 2019 will be delivered under the previous Framework.

General Service Requirements

9. In performing the Services, the Contractor shall be required to operate to the required Service Levels and to:

9.1. Provide a full established account management approach and project management expertise as specified by the Framework Public Body;

9.2. Work collaboratively with the Authority and Framework Public Bodies' other contractors, including the outbound Contractor, where appropriate, to secure all relevant assets and intellectual property arising from the Framework, to ensure consistency of materials and end-to-end service;

9.3. Provide expert advice on Best Value by ensuring the most cost effective solution at all times;

9.4. Ensure each quotation is clearly presented in a format that complies with the original enquiry, easily comprehended, and provide complete cost breakdown in accordance with the Pricing Schedule at Schedule 2. The Contractor must keep the Framework Public Body regularly informed of progress and ensure that authorisation is recorded at key stages of the process;

9.5. Provide clear, concise and accurate estimates in response to Framework Public Body briefs;

9.6. Ensure all estimates are approved in writing by the Framework Public Body and that a corresponding purchase order is raised before any work commences;

9.7. At all times the Contractor will update and communicate promptly any changes to the scope of the requirement which might impact on costs, forecast results, or delivery deadlines in writing to the customer;

9.8. Notify the Framework Public Body of final invoice price on completion of job, supported by a final activity report, within timescale and as agreed with the Framework Public Body, prior to invoice issue;

9.9. Provide expert advice on the methodology of delivering the requirement, based on cost efficiency, brand safety and the engagement of the intended audience;

9.10. Ensure that all goods and services provided under this Framework meet acceptable quality as defined by the Authority and Framework Public Body;

9.11. Seek customer feedback at the appropriate stages of each project/campaign and provide aggregated summary reports to the Authority and Framework Public Body's contract manager;

9.12. Provide a guaranteed delivery service within timescales agreed with the Framework Public Body;

9.13. Take all reasonable action to monitor all staff and sub-contractors to remove the risk of political and reputational damage through oversight, acts of malevolence, etc. which may occur, causing embarrassment or legal action being taken against the Framework Public Body;
9.14. Keep abreast of any technological development and respond appropriately;
9.15. Ensure all activity through the Framework complies with broader organisational objectives (economical; environmental; ethical; technological etc.);
9.16. Demonstrate full & current knowledge of, promote and consistently apply, accessibility requirements as specified by the Framework Public Body. The Contractor must keep abreast of all relevant statutory legislation;
9.17. Provide a flexible, approach to be able to respond to deadlines required for service levels; and;
9.18. Monitor competitive activity and context to keep the Framework Public Body abreast of relevant developments.

Brand Safety

10. The Contractor must provide brand safety to the highest possible standards using the defined guidelines below, with ongoing monitoring and evaluation and improvement process for mitigating and eliminating risks in digital and addressable advertising media, including using the latest technology protection procedures, process controls, testing environments, reporting structures and escalation procedures.

11. Brand Safety will be paramount across all Framework Public Bodies when planning and purchasing all media formats as part of an individual activity or as a wider initiative. At all times the Contractor will provide proposals to ensure brand safety on behalf of the Framework Public Body applying all available techniques to avoid objectionable, inappropriate or non-compatible content.

12. Brand Safety will be regularly monitored, reviewed and updated for all Framework Public Bodies and will be 100% open and transparent. Contractors will work in partnership with all 3rd party providers and must ensure full transparency and providing zero tolerance principles and values, which are:

    12.1. Protect the integrity of all Framework Public Bodies;
    12.2. Manage any risk of misplacement of display advertising on all formats; and
    12.3. Make every effort to ensure that Brand Safety is maintained in every instance.

    Contractors must ensure highest levels of brand safety in relation to how, and where brand messages are displayed when activated through programmatic interactions between buyer and seller.

13. Framework Public Bodies take brand safety extremely seriously and look to pursue every possible measure to protect their brands. As such we are looking for Contractors to have a robust approach in place which is constantly evolving with the introduction of the latest technologies in the marketplace to ensure the Framework is at the forefront of managing any risk. Contractors must adopt the highest available industry standards and as a minimum must be able to provide the following levels of brand safety management, processes and safeguards including, but not restricted to:

    - Content Category Exclusions
    - Human Vetted Blacklists
    - Fraud Protection
    - Keyword Blacklists (all Programmatic)
    - Specific Content Blocking (Display only)
    - Channel Blacklists (YouTube only)
    - YouTube specific Third party ad safety (YouTube only)
    - Channel Whitelist/Site Whitelists/PMPs (all Programmatic)

- Content Filtering e.g. (inappropriate or graphic content, tragedy and conflict, political content, sensitive social issues, sexually suggestive content, sensational and shocking, profanity and rough language)
- Negative keywords Searches e.g. Bad News (terrorism, tragic accidents, hate speech, crime, etc.), Swear words (bad language, homophobia, sexism, racism, anti-social, etc.) and Bad content (illegal downloads, copyright infringement, weapons, drugs etc.)
- Constantly audited domains to ensure white and blacklists are kept up-to-date
- Pre-bid technology to block ads being served if risk exists
- Semantic blocking technology
- Real-time content verification technology
- URL keyword blocking technology (the scanning of URLs for inappropriate words)

Media Channel Service Requirements

14. The Contractor(s) will be required to work with the relevant creative agencies, providing input and insight to maximise the impact of creative treatments in support of marketing objectives.

15. The Contractor shall prepare in partnership with the Framework Public Body's creative advertising contractor's schedule(s) showing media strategy, budgets, list of all required formats, copy deadlines, approval deadlines and such information as the Framework Public Body's Contract Manager may require.

16. In each instance the Contractor must provide timely and accurate proposals for each medium, with supporting rationale. Proposals must indicate whether the media presented is subject to price guarantee, and whether the guarantee has been met or exceeded. Where media is selected with no price guarantee, the Contractor must provide their justifications for this.

17. Proposals must represent the highest level of engagement and should not be restricted to delivery by group companies or any other third party where this does not reflect the greatest value to the advertiser. Proposals must indicate where any further or prior relationship exists between the media agency and the media owner or subcontractor. This will include but is not restricted to group discount schemes, retrospective discounts and shared ownerships in part or whole.

18. Where media purchases involve subcontracting through third parties, the transaction must be fully reported including all commission or other transfers of value should be reported along with their values. The Media Channels will include, but not be restricted to: Cinema, Press & Magazine, Television, Radio, Out of Home, Digital, Social Media, Mobile, Sponsorship and Events.

19. Each channel may be planned and purchased individually or as part of a wider media initiative.

20. The Contractor shall be required to deliver all of the following service requirements for each Media Channel. The Contractor will also produce media proposals providing clear detail of the audience to be addressed and the media to be employed.

21. <u>Television</u>

    Television Media includes but is not restricted to the following:

    21.1. TV Advertising;
    21.2. Programme sponsorship;
    21.3. Idents and bumpers;
    21.4. Product placement; and
    21.5. All associated online activity.

22. Television proposals, including any online activity, must provide clear detail of the audience to be addressed and the media to be employed, campaign dates, the stations from which the commercial is to be transmitted, the duration of each commercial, the full cost of screening, how the advertising will be targeted, the daypart(s), centre break and positioning in break

(centre verses end etc), to be booked and the audience delivered, total TV ratings, impacts, target audience coverage, opportunities to see and duration of campaign.

23. Press & Magazine

Press Media includes but is not restricted to the following:

23.1. Overseas, National (in any country), Regional and Local press titles;
23.2. Consumer magazines including split runs and inserts;
23.3. Editorial/Advertorial opportunities;
23.4. Trade press titles;
23.5. All associated digital activity; and
23.6. Specialist magazines

24. Press proposal, including any online activity, must provide clear detail of the audience to be addressed and the media to be employed. It must also outline the newspapers and other publications in which it is intended to insert advertisements, the number of insertions, the size and estimated cost of each insertion, the full cost of all insertions, and the target dates on which the advertisements are due to appear. Details must also be provided of target audience coverage, both circulation and readership and opportunities to see as well the positioning and editorial environment of each advertisement. The Contractor will also be responsible for negotiating editorial approval as required.

25. Radio

Radio Media includes but is not restricted to the following:

25.1. Radio advertising;
25.2. Radio platforms;
25.3. Programme sponsorship;
25.4. Live reads;
25.5. Idents and bumpers; and
25.6. All associated digital activity.

26. Radio proposals must provide clear detail of the metric reported against all adults as well as the audience to be addressed and the media to be employed, the selection of stations from which the commercial is to be transmitted, the length of the commercial, the daypart(s) to be used, and daypart weighting, the full cost, opportunities to hear, audience reach and coverage in each area.

27. Cinema

Cinema media includes but is not restricted to the following:

27.1. On-screen advertising;
27.2. In-cinema advertising, (poster sites etc…);
27.3. All associated digital activity; and
27.4. In cinema partnership activity.

28. Cinema proposals must provide clear detail of the audience to be addressed and the media to be employed, the timing, duration, geographical coverage, targeting and audience to be delivered, including targeted admissions. The specific screenings where this is applicable, technical requirements including digital copy transmission costs and bulks etc, and the full cost of each screening.

29. Digital

Digital media may be planned and purchased either as individual activity or as part of a wider initiative. At all times the Contractor will provide proposals to ensure brand safety as detailed at paragraphs 10 to 13 above, on behalf of the Framework Public Body, applying all available

techniques to avoid objectionable, inappropriate or non-compatible content. The Contractor is entrusted as brand custodian and must at all times appraise and advise the Framework Public Body of any escalation of risk, resulting from elements within the Framework Public Body's brief or requirements. The Contractor must not increase the exposure to risk of the Framework Public Body without fully outlining the risk and discussing alternatives.

30. Where buying through real time bidding and/or other programmatic buying is to be used this will be discussed with the Framework Public Body and all criteria will be agreed in advance as well as content and timing of reporting.

31. Display advertising, the specific publishers and placements to be used, ad-serving, creative formats (leaderboard, MPU, full takeover, etc. static, interactive, etc.), estimated number of impressions, expected CTR, CPCs, Reach, frequency caps, cost per video view, cost per completed video view, as applicable; estimated conversions & CPA/ROI based on KPIs provided by Framework Public Body, and full costs including creative production and artwork, media costs and management / reporting fees.

32. The Contractor will produce lead generation proposals for all platforms including social media providing clear detail of the audience to be addressed, media type, targeting, reach, estimated CPCs and conversions, and the costs including campaign optimisation / management and reporting.

33. Paid Search (PPC), full keyword research lists, including estimated search volumes per region, estimated CPCs and CTR; costs including ad copy writing, daily campaign optimisation / management and real-time reporting (e.g. dashboard etc as required).

34. Online PR/blogger outreach (as part of wider media proposals) the placement list, type of coverage (e.g. Editorial coverage, email shots, etc.), estimated reach, average dwell times, (average monthly sessions, size of email database, etc.); costs including outreach activity, paid placements and reporting.

35. Search Engine Marketing and Optimisation services required to develop and rationalise strategy, perform technical audits and investigate technical issues and help develop and create appropriate content marketing campaigns.

36. <u>Social Media Advertising</u>

    36.1. social media advertising; the format type, targeting, reach, estimated CPCs, Reach, frequency, Cost per video view/completed view, promoted tweets, estimated spend & conversions (boosted posts, ads on social media platforms), full demographics of target audience, potential reach and levels of engagement by click (retweets, shares, likes, CTR), full costs including copywriting (where required), optimisation/management and reporting;

    36.2. access to Contractors systems, may include but is not limited to, specific social media advertising accounts, to enable in-house management of select campaign activity where immediate live activity is required.

37. <u>Mobile</u>

    Mobile media includes but is not restricted to the following:

    37.1. Display advertising banners;
    37.2. In App advertising (including social);
    37.3. SMS Text messaging;
    37.4. Paid Search (as above); and
    37.5. Activity tracking - to include geo targeting verification.

    Mobile proposals must provide clear detail as to sites/APPs being targeted by operating system, the volume of impressions, formats to be used, clicks (App downloads, views,

engagements, click through rates) etc to be delivered, targeting efficiency and verification of the viewability of advertising messages.

38. Out of Home

Out of Home Media includes but is not restricted to the following:

38.1. Roadside billboards;
38.2. Street furniture - bus shelters and telephone booths etc;
38.3. Transit - buses, truckside and taxis etc including media at train and bus stations;
38.4. Airport advertising; and
38.5. Ambient media including building wraps, bathroom media, and petrol pumps etc.

39. The Contractor will produce Out of Home proposals providing clear detail of the audience to be addressed and the media to be employed; including the format sizes, numbers and locations of all activity as relevant, duration of the activity and full costs including production where required, along with impact deliveries as reported by route, digital rotations that would include a comprehensive breakdown of digital, out of home delivers (by sight, by day, by clock hour, etc.) coverage, frequency, Gross Rating Points by town/conurbation and region as required. Also production and despatch charges at cost where required.

Framework Public Bodies Service Requirements

40. The Contractor will be required to deliver all of the following service requirements to Framework Public Bodies.

41. The Contractor shall work in a co-operative, communicative and open manner with the Framework Public Body's Contractors drawn from the Marketing Services Framework or any other Marketing Services arrangements and/or other related industries and sectors and take pro-active steps to understand the Framework Public Bodies strategic and corporate requirements.

42. The Contractor must provide a high level of expert knowledge, insight and innovation in any related media sectors, particularly online and activities of interest to the Framework Public Bodies, within Scotland, UK & Ireland, and Overseas as identified by the Framework Public Body. This will include, but should not be limited to, the following:

Channels

42.1. All Media Channels;

42.1.1. Television, including companies' online/digital output;
42.1.2. National/Regional print press, including their online/digital output;
42.1.3. Local press, including their on-line/digital output;
42.1.4. Independent local radio, including their on-line/digital output;
42.1.5. Community radio sector, including their on-line/digital output;
42.1.6. Cinema on-screen advertising;
42.1.7. Digital media;
42.1.8. Mobile media; and
42.1.9. Out of Home.

42.2. On-line advertising, including geo-targeting, social media (PPC, RTA etc);
42.3. On-line tracking and reporting services, including third party licences such as but not limited to GA360;
42.4. B2B Channels;
42.5. Micro and macro issues within media regions including television regions;
42.6. Consumer magazines, including Scotland only tactics such as split run, wrappers;
42.7. Community screens and ambient activity; and

42.8. International media – includes but is not exclusive to, TV, Radio, Cinema, Digital, Social, Mobile, Press and Out of Home.

Audiences

42.9. Audience segments within territories of interest as defined by Framework Public Bodies – this may include social demographic, geographic, local, regional, national and/or international territories;
42.10. Hard to reach audiences;
42.11. Audiences by TV region; and
42.12. Audiences by life stage, attitude or behaviour.

Media Planning

43. The Contractor, in support of media planning activities, must provide services as listed below:

43.1. Developing a robust media strategy, planning and buying of TV, Radio, Press, Cinema, Online/Digital and Out of Home media and other related activity as required.
43.2. The Contractor must be able to deliver the capability and experience of developing a robust media strategy and planning, to provide the highest level of engagement of identified audiences including support of social marketing / behaviour change, where applicable, including innovative channels and formats where appropriate.
43.3. The Contractor must be able to provide a sound understanding and application of audience insight, analysis of segmentation, analysis of quantitative and qualitative research to support the development of the media brief.
43.4. The Contractor must be able to set quantifiable objectives for the media activity and develop strategy for their delivery, based on clear understanding of the Framework Public Body's objectives and audiences.
43.5. The Contractor must be able to identify appropriate metrics to reflect outcomes of activity and support accurate evaluation and work to the Framework Public Body's KPI metric.
43.6. The Contractor will develop objectives for each proposed media channel, clearly indicating how each contributes to the wider media campaign including geographic as well as age, socio-demographic and/or behavioural and intent-based targeting.
43.7. Where no price guarantee exists for the media being purchased, with the exception of biddable media (i.e. any auction based purchase within Digital Display and Paid Social), the Contractor must highlight this in the media planning proposal and offer a price guarantee to be added to the Pricing Schedule along with the rationale behind this. This information must be provided with the spend details on a quarterly basis.

44. Media will be planned on a project basis and may include, either individually or in combination, such services in support of planning activity as required, including, but not restricted to the following:

44.1. Strategic planning (cognisant of creative implications);
44.2. Market Intelligence;
44.3. Trend forecasting;
44.4. Audience insight;
44.5. Response analysis;
44.6. Competitive analysis;
44.7. Campaign Evaluation (Role and contribution of media);
44.8. Media Evaluation;
44.9. Media analysis in support of independent research and campaign tracking, and
44.10. The Contractor will maintain fully transparent relationships with all third parties including media owners and resellers, including trading desks etc.

Clash Management

45. It is imperative that any potential clash with any other known public sector campaign, targeting a similar audience or for a similar topic, is highlighted as soon as possible to the Framework Public Body's Contract Manager for advice. The Contractor shall ensure there is a mechanism to identify, during the planning and scheduling phase, that two campaigns on similar topics or targeting similar audiences, for either the same or other Framework Public Bodies, do not appear in the same digital space, programme, film, publication, website or platform, and in the case of TV or cinema broadcast media, are not aired during the same commercial break. Similar controls should be developed to avoid clash occurring in the other media channels.

46. The Contractor will have measures in place to prevent artificial price rises as a result of the Framework Public Body's biddable (i.e. any auction based purchase), campaigns competing over the same audiences.

47. The Contractor will put in place frequency limits across all channels where measureable, not only on individual campaigns, but with audiences as well to prevent oversaturation and message fatigue for campaign activity.

Strategic Media Buying

48. Media Buying will include such services as required to deliver negotiation and purchase of media to achieve the most cost-effective engagement in a range of channels and activities including, but not restricted to, the following:

    48.1. TV, Radio, Press, Cinema, Digital, Mobile, Social Media and Out of Home media;
    48.2. Digital advertising (including technical requirements i.e. Pay per lead, search, cost per click, cost per acquisition and cost per engagement);
    48.3. Social networking;
    48.4. AFP/Infommercials;
    48.5. Mobile marketing;
    48.6. Direct Mail (address lists) applying all GDPR requirements;
    48.7. Understanding of PR;
    48.8. Media Platforms and Partnerships; and
    48.9. Programming.

49. The Contractor, in delivering a valuable service, must provide a customer facing resource of appropriate number, expertise and ability as appropriate and required for each Framework Public Body in delivering pro-active customer-centric services including, but not restricted to, the following:

    49.1. Knowledge and understanding of sensitivities of the political landscape;
    49.2. Management of media platforms as required;
    49.3. Creative/Partnership/Sponsorship/Events/Experiential;
    49.4. Post-activity evaluation, the Contractor will be required to provide Return on Social Marketing Investment modelling and reporting, (ROSMI) where appropriate;
    49.5. Demonstrable targeting and segmentation expertise;
    49.6. Evaluation and recommendation of developments and innovations in media inventory and practice;
    49.7. Data to respond to Freedom of Information (FoI) Requests and Parliamentary Questions (PQ's) etc. in a timely manner and without charge;
    49.8. Set KPIs in agreement with Framework Public Body's for every campaign and report against an agreed dashboard;
    49.9. Demonstrate strong collaborative working skills in combination with other marketing services agencies, ensuring the best use of time of all parties involved;
    49.10. Ability to supply briefings for Ministerial, senior management, corporate management team or board meetings, on media sector or individual media;
    49.11. Full and timely access to audit the financials and data from all media activity;

49.12. Proof of appearance for each media channel, (proof of viewing in digital) as required by the Framework Public Body; and
49.13. Access to all media inventory without restriction by group, deal or relationship.

50. The Contractor must also supply timely and accurate market intelligence without charge including but not restricted to:

50.1. UK and Global media sector; new launches, new developments, titles, channels, sites, significant appointments etc;
50.2. TGI/NRS/Jicreg;
50.3. ABC/ABCe and RAJAR, JET etc quarterly, including analysis and implications;
50.4. BARB/Route/Addynamix/Comscore/Nielsen Online;
50.5. Regular media inflation/deflation estimates; and
50.6. Digital monitoring, including identifying and evaluating all new and developing channels to enable effective recommendation.

51. The Contractor shall prepare, in a timely manner, and in partnership with the Framework Public Body's creative advertising contractors Schedule(s) showing media strategy, budgets, copy deadlines, approval deadlines, and all technical specifications/mechanical data for every format as required and any deviations from brand safety agreement to enable the creative agency to fulfil the schedule, and any other such information as the Framework Public Body's Contract Manager may require, but showing at least:

51.1. In the case of a press advertising campaign, the newspapers and other publications in which it is intended to insert advertisements, the number of insertions, the size and estimated cost of each insertion, the full cost of all insertions, and the target dates on which the advertisements are due to appear, circulations, target audience coverage and opportunities to see, and the position of each advertisement (where available);
51.2. In the case of a television advertising campaign, campaign dates, the stations from which the commercial is to be transmitted, the duration of each commercial, the full cost of screening, how the advertising will be targeted and the audience delivered, total TV ratings, impacts, target audience coverage, opportunities to see and duration of campaign;
51.3. In the case of a cinema advertising campaign, the timing, duration, geographical coverage, targeting and audience to be delivered, and the full cost of each screening including distribution production charges;
51.4. In the case of a radio advertising campaign, the selection of stations from which the commercial is to be transmitted, the length of the commercial, the full cost, opportunities to hear, audience reach and coverage in each area;
51.5. In the case of an outdoor advertising campaign, the format sizes and numbers, the targeting and geographical coverage of posters to be displayed, over what period and the full cost including any production costs (net) if applicable; and
51.6. In the case of digital media proposals, the specific sites (if guaranteed - numbers, format sizes and locations) or targeting (if programmatic) on which the materials are to be displayed, over which period and the full cost, coverage of target audiences and full technical specification; opportunity for dynamic creative (if appropriate).

52. The Framework Public Body may approve such Media Schedules with or without modification, and any modifications made by the Framework Public Body shall thereafter be deemed to be incorporated in, and to form part of, the Schedules.

53. If the Framework Public Body approves the Media Schedules in accordance with the foregoing paragraphs, and requires the Contractor to carry out the campaign outlined in it, the Contractor shall book the necessary mediums and make any further preparations as required for the delivery of the campaign. The Contractor will provide an estimate of final media costs which must be approved as required by the Framework Public Body in writing and a purchase order raised, before the relevant medium is booked.

54. Without prejudice to the foregoing paragraphs, the full cost must be agreed prior to the commencement of any work of whatsoever nature. Where this relates to campaign activity,

(including, but not restricted to, preparatory work), the Contractor and the Framework Public Body shall agree the full cost of the campaign which shall be chargeable by the Contractor to the Framework Public Body. The cost of the campaign shall not exceed the full cost without the express prior written agreement of the Framework Public Body.

55. The Contractor must provide estimates (the best approximation of full cost at time or ordering) and notify the Framework Public Body of key booking deadlines allowed within production plans. Under normal service conditions this will be within ten working days of discussing the campaign however timings could be considerably shorter where required to meet a specific business need. Estimates must be approved in writing by the Framework Public Body before any work commences.

56. As standard service, all Framework Public Body e-mails must be acknowledged by e-mail within 24 hours. Framework Public Body calls must be returned within two hours. Estimates must be approved in writing by the Framework Public Body before any work commences and a purchased order raised. The Contractor will advise the Framework Public Body and the creative agency of any revision to media schedule prior to booking or copy deadlines as appropriate.

57. When preparing and carrying out any campaign, the Contractor shall work in close association with the Framework Public Body, and shall provide such associated services and information relating to both the campaign and non-campaign activity, to the Framework Public Body as they may from time to time require. Written reports will be supplied by the Contractor within 48 hours of all meetings following discussions on any aspect of the campaign. Status report, media schedules etc. should be prepared and distributed to the Framework Public Body and creative agency team on a timing as agreed and as required. All reports to be delivered to the Framework Public Body and creative agency team or as instructed. Further, the Contractor shall comply with all requirements relating to the planning or carrying out of any campaign as the Framework Public Body may from time to time specify. Without prejudice to the generality of the foregoing, the Contractor shall advise the Framework Public Body on how the cost of the campaign may be reduced and on any other aspects of the campaign which the Framework Public Body may require.

58. In the event that the Contractor engages or employs any person, firm, company or other entity for the purposes of carrying out services relating to campaign or other activity, it shall do so as principal and not as agent or representative of the Framework Public Body. Accordingly, all duties, obligations and other responsibilities which may arise in relation to such person, firm, company or other entity shall be satisfied by the Contractor. Without prejudice to the generality of the foregoing, the Contractor shall be responsible for making all payments which may become due to such person, firm, company or other entity (subject always to such rights of reimbursement as the Contractor may have in accordance with paragraphs 104 and 105 below). Where the Framework Public Body has paid the Contractor for adverts placed, the Contractor shall be responsible for ensuring that the media owner is paid in full. For unbilled / part-billed media, this shall be rebated to the Framework Public body in accordance with paragraph 91 and 92 below. Any value rebated to the Framework Public Body, will only be re-imbursed to the Contractor, following receipt of a valid invoice from the media owner. A copy of the media owner's invoice must be submitted to the Framework Public Body with the Contractor's invoice.

59. The Contractor shall propose effective ways of reaching the target audience and will make all necessary arrangements with the Framework Public Body, including liaison with the relevant creative advertising contractor(s) for the transmissions of any commercials which are to be used in any campaign and to book all necessary media on time. The time will be bought at the lowest possible rates taking advantage of any special rates which may be available to the Framework Public Body. Only in exceptional circumstances will the Framework Public Body expect to be charged for late copy charges, and must be agreed in advance with the Framework Public Body.

60. The Contractor shall place all orders for the insertion of any advertisement in the press, editorials, online, digital, out of home/ambient or the screening of all cinema advertising, at

the lowest possible rates, taking advantage of any special rates which may be available to the Framework Public Body.

61. Where appropriate, the Contractor shall ensure that all relevant clearances have been obtained and in the case of digital that all technical compatibility has been appropriately and timeously tested in accordance with the specification set out in the production schedule. It is the responsibility of the Contractor to ensure all digital materials supplied by the Framework Public Body's Creative Agency comply fully with the requirements of the schedule and are delivered in a timely manner to meet all deadlines. No additional costs will be charged for creative testing.

62. In order to develop objective assessment of Framework Public Bodies media activities, each of the Framework Public Bodies shall independently commission all research to support the campaign. The Contractor should provide data such as, but not limited to, measurement of reach/frequency, on-line and off-line.

Metrics Analysis

63. The Contractor shall measure usage and traffic of host websites and will also be expected to make proactive recommendation for any alterations required to pursue the objectives for the activity, both before and during the activation of a campaign, in addition to making future recommendations upon completion.

64. All digital services supplied by the Contractor, both strategically and for the purposes of individual projects, must take into account the need and the potential for measurement and analysis.

65. Ad serving - The Contractor will provide ad-serving services as detailed below, including, but not restricted to:

    65.1. Hosting and delivering all creative executions;
    65.2. Tracking and reporting including integration of other tracking tools (Web Analytics, Search etc. and adserver selection, rich media metrics such as viewability);
    65.3. Campaign set up, generating trafficking instruction for each keyword or placement;
    65.4. Ensuring creative delivery is to specification and that creative has correct tagging inserted;
    65.5. Trafficking executions to media owners within nominated ad server;
    65.6. Ensuring Framework Public Body website provides end to end tracking mechanics e.g. Placing tags on Framework Public Body websites to attribute sales to online activity;
    65.7. Quality checking creative placements and linking;
    65.8. Quality checking search placements and linking URL's;
    65.9. Generating coding for creative units, facilitating tracking and analysis;
    65.10. Delivering, as required, update reports for duration campaign and post campaign analysis;
    65.11. Implement and execute safe-serve policy; and where a site over-delivers by more than 10% vs plan, excluding paid search, adserving charges will be capped (unless agreed otherwise with the Framework Public Body).

Campaign Measurement

66. The Contractor must measure campaigns based on outcomes. The Contractor shall provide evaluation and measurement of campaign performance/outcomes , this may include:

    66.1. Reporting against outcome key performance indicators outlined in all Framework Public Bodies campaign briefs;
    66.2. Being able to adjust live campaign activities to take account of ongoing evaluation and measurement results. The Contractor must regularly update the Framework Public Body on optimisation work undertaking to improve the performance of activity, providing a final optimised schedule to allow for invoice reconciliation and

to enable the Framework Public Body to utilise this feedback to help improve campaign activity;

66.3. Working to the time lines set out in the framework agreement, and relevant call-off contract(s) and campaign briefs;

66.4. Collaboration on projects between different Framework Public Bodies utilising this framework agreement; and

66.5. Proactively manage multiple relationships between Framework Public Bodies and third party related organisations at call-off contract level to create and ensure a high level of efficiency, value and best practice delivery.

66.6. Access to live analytics, including viewability measurements (e.g. Google Analytics, Facebook etc.

Viewability

67. The Framework definition of a viewable ad impression is a served ad impression where the ad was contained in the viewable space of the browser window, on an in-focus browser tab, with 100% viewability and the following specific durations across the following digital advertising placements:

67.1. Display – 100% in view, for a minimum of 1 continuous second;

67.2. Video (e.g. pre-roll) – 100% in view for half the duration of the ad (15 second cap, sound on);

67.3. In-feed Video in Social – 100% in view for half the duration of the ad (15 sec cap, no sound);

67.4. The 'In-feed Video in Social' standard refers to video inventory bought on an impression basis across applicable social media platforms;

67.5. Native/Outstream Video - 100% for half the duration of the ad (15 second cap, no sound); and

67.6. The Authority reserves the right to review these standards.

68. Campaigns buying below the viewability standards for a Viewable Impression will be required to show evidence for this decision in their respective media proposals and any further documentation as required.

69. The Contractor shall work with the Framework Public Body to test different viewability standards across campaigns in order to inform longer-term decision making around expected standards and to achieve the most effective outcomes for campaigns.

70. The Contractor shall accept responsibility to have the appropriate measurement technology in place in order to accurately measure Viewable Impressions and Viewability Standards.

71. Where there is no viewability tracking measure available, the Contractor must detail this in the media proposal, which must be agreed by the Framework Public Body.

Content Verification

72. The Framework Public Body will agree with the Contractor which brand safety and content verification tools ("CV Tools") will be used in relation to the Framework Public Body Digital Media Placements to enable the Framework Public Body to monitor content verification, viewability measurement and fraud detection. The Contractor shall disclose to the Framework Public Body the partnership agreements it has entered into, together with the underlying measurement criteria, relating to the CV Tools. The parties will monitor the performance of the CV Tool on an ongoing basis and the cost of such CV Tools shall be charged to the Framework Public Body on a pass through basis. The Contractor shall also disclose to the Framework Public Body any interests that it or the Contractors Agency Group has in any technology suppliers used in the course of the Services.

73. The Framework Public Body must be provided with access to full reports from the CV Tool on an ongoing basis regarding the Framework Public Bodies digital media placements including data on the number and rate of Viewable Impressions, total impressions, click-throughs and

any other applicable engagement metrics agreed between the parties in relation to each Digital Media Placement. Where available, the reports shall also include details of any brand safety issues, clash management and any actual or suspected traffic fraud in relation to each Digital Media Placement.

74. The Framework Public Body, Media Auditor and its representatives will be provided with full access to the CV Tool in relation to the Framework Public Bodies Digital Media Placements. Where ads are placed in connection with any fraudulent, non-viewable and/or unsafe traffic and such ads are paid for by the contractor, the contractor must use reasonable endeavours to recover the value of such ads placed in cash, credits and/or other compensation on a proportionate basis Each Framework Public Body using an appropriate monitoring tool shall receive a proportionate share of any sums, credits or other compensation where the same is recovered by the contractor.

75. The Framework Public Body shall only pay for ads that have been declared as Viewable Impressions and in order to enable the Framework Public Body to verify this, the contractor shall provide the Framework Public Body and Media Auditor with access to monthly campaign level viewability reports and administrative access to the Framework Public Bodies account on the viewability platform.

76. Where the Contractor is not obliged to pay for ads (whether declared as Viewable Impressions or not), the Framework Public Body shall not be required to pay for such ads. Where ads are placed in connection with any fraudulent, non-viewable and/or unsafe traffic and such ads are paid for by the Contractor, the Contractor must use reasonable endeavours to recover the value of such ads placed in cash, credits and/or other compensation on a proportionate basis. Each Framework Public Body using an appropriate monitoring tool shall receive a proportionate share of any sums, credits or other compensation where the same is recovered by the Contractor.

77. The Contractor shall, in conjunction with the Framework Public Body, conduct quarterly reviews and updates of the Blacklist Content and on-going audits of the Blacklist Content against ad network buys, programmatic trading and promptly share the results with the Framework Public Body. The Framework Public Body shall be entitled to request for specific websites to be removed/blocked from its digital campaigns (provided such notice is given at least twenty four (24) hours before activation) and the Framework Public Body must approve the use of any ad network before any insertion orders (IOs) or trading deals are signed off by the Contractor.

78. The Contractor is aware of the Digital Trading Standards Group ("DTSG") "Good Practice Principles" and will comply with those principles, including using its reasonable endeavours to minimise the risk of ad misplacement, when supplying the Services. The Contractor shall not place media on websites that appear on the Police Intellectual Property Crime Unit ("PIPCU") Infringing Website List, or similar agreed resources.

Programmatic Trading

79. In relation to Programmatic Media procured by the Contractor, the Contractor shall:

    79.1. Outline, log and report to the Framework Public Body in relation to the full time equivalents (FTE) working across the programmatic trading of the Framework Public Body;
    79.2. Disclose to the Framework Public Body and Media Auditor any managed services fees and explain and demonstrate how they will be calculated and applied;
    79.3. Disclose to the Framework Public Body any additional margins or profit from managing the Framework Public Body Programmatic Media;
    79.4. Disclose to the Framework Public Body rebates or preferred vendor arrangements, including areas such as discounted tech platform fees, shared platform managed services staffing support, rebates tied to spend tiers, etc;

79.5. Disclose to the Framework Public Body its programmatic preferred media or data deals that the Contractor has brokered for its agency trading desk in order to avoid bias;

79.6. Grant the Framework Public Body and Media Auditor appropriate read only and administrative access to all media-buying platforms, including access to reports and (where required by the Framework Public Body) to online and offline data including API access. Where applicable, the Contractor may implement a fully disclosed and transparent programmatic trading desk model for the Framework Agreement and will provide an itemised breakdown of all costs and/or fees for any aspect of the programmatic trading desk but not limited to tech, media, data, custom engineering; and;

79.7. Comply with the Framework Public Body strict programmatic optimisation and trading controls including tolerance of bid prices, floor prices, buying strategy on Open Marketplace (OMP) and Private Market Place (PMP) deals, strategy budgets, campaign budgets, including all standard campaign management controls, in order to avoid unwarranted trading.

Ad Fraud

80. The Contractor shall adopt policies and strategies to identify traffic fraud and mitigate its impact including implementing technology to detect and prevent such fraud and filtering traffic through vendors who prioritise fraud detection.

81. Where ad fraud tools are employed, the Framework Public Body shall only pay for ad impressions, clicks or post-campaign conversions verified by the ad fraud tool as being human traffic and, to enable the Framework Public Body and Media Auditor to verify compliance, the Contractor shall provide the Framework Public Body with access to monthly campaign level ad fraud reports and administrative access to the Framework Public Body's account on the ad fraud detection platform.

82. Where ads are placed in connection with any fraudulent, non-viewable and/or unsafe traffic and such ads are paid for by the Contractor, the Contractor must use reasonable endeavours to recover the value of such ads placed in cash, credits and/or other compensation on a proportionate basis. Each Framework Public Body using an appropriate monitoring tool shall receive a proportionate share of any sums, credits or other compensation where the same is recovered by the Contractor.

Digital Media Data

83. Where access to Framework Public Bodies data management platform is granted, the Contractor shall:

83.1. Produce, for the Framework Public Bodies approval, a suitable data retention and management policy which includes user controls to prevent unauthorised and/or accidental sharing or use of the Framework Public Bodies data;

83.2. As soon as reasonably practicable, destroy the Framework Public Body data upon request or on termination of this Framework Agreement;

83.3. Disclose any data collection and shared data workspaces where the Framework Public Body data might be at risk of being disclosed and/or be co-opted into an unauthorised data pool and confirm that the Framework Public Body data is being logically separated;

83.4. Undertake due diligence of the data management platforms and other ad technology vendors with regards to data security, data privacy compliance, system and user controls and EU GDPR and ePrivacy regulations and all other Data Protection Legislation; and

83.5. The Contractor will provide a dedicated seat on the Demand Side Platforms (DSP) in order to treat all data separately from the Contractor programmatic trading desk.

Price Guarantees

84. The Contractor will use the estimated collaborative historic volume data of Framework Public Bodies to obtain the best price guarantees possible from media owners. All Collaborative Framework Public Bodies media activities will be based on these price guarantees or where no guarantee exists the best rate achievable. Where using the services of a specialist sub-contractor or other intermediary, to assist with the delivery of the service, the Contractor shall demonstrate Value for Money in sub-contractor procurement.

85. Where no price guarantee exists for the media being purchased by a Framework Public Body, with the exception of biddable media (i.e. any auction based purchase within Digital Display and Paid Social), unless a clear audit mechanism can be agreed, the Contractor must provide the Strategic Contract Manager with a price guarantee proposal for this media along with the rationale behind the media's inclusion or exclusion. This must be provided to the Strategic Contract Manager at the end of every quarter. Including new media will help to ensure that the maximum percentage of the Framework Public Bodies spend is being audited.

86. It is a requirement of the Contractor to create value for each Framework Public Body on an individual basis. The Contractor will provide all Framework Public Body spend information to the nominated media auditor to allow the auditor to evaluate each Framework Public Body's expenditure, this will be requested on a quarterly basis and reported on every six months to measure whether the rates charged offer value in excess of the price guarantees as specified in the Pricing Schedule. Additionally, at the end of each year of the Framework, the Media Auditor will aggregate the results across all media channels to create an annual value figure for each Framework Public Body.

87. Within each year of the Framework, and within individual media channels, rates higher than the price guarantees may be charged, however over the year, the total media per channel purchased on behalf of each Framework Public Body must meet or better the price guarantees specified in the Pricing Schedule.

88. Failure to meet the price guarantees on this annual basis within each individual medium for each Framework Public Body, will mean the Contractor is liable to pay each Framework Public Body who has not received the guaranteed value, the Fee Commission re-imbursement percentage figure specified in the Pricing Schedule.

Media Auditor

89. The Contractor must provide full support to the Framework Public Bodies pre-appointed independent media auditor. The media auditor will be paid by a Framework levy that the Contractor must oversee. The levy will be collected by the Contractor and paid to a nominated representative, currently VisitScotland, on a quarterly basis. The Framework levy will be set at 1% and will be calculated by the Contractor applying 1%% to the Framework Public Body's cost excluding VAT and the 0.1% ASBOF/BASBOF levy. VAT will then be charged on the levy value but not on the ASBOF/BASBOF levy. The Strategic Contract Manager reserves the right to amend the percentage figure at any point during the period of the Framework. Following the end of every quarter, Scottish Procurement will request the total levy value, including VAT, from the Contractor and share this information with VisitScotland colleagues who will raise an invoice for the levy value, including VAT. The Contractor will then pay Visit Scotland the full amount due. Visit Scotland will then pay the media auditor for their services including VAT.

90. The media auditor will request spend information on a quarterly basis and undertake a review of the Contractor's delivery vs the price guarantees, with the exception of biddable media (i.e. any auction based purchase within Digital Display and Paid Social advertising), however the media auditor may review these purchases against market rates and report this on a six monthly basis to the Strategic Contract Manager. Additionally, the media auditor will conduct a review of the annual performance against the price guarantees and benchmark the quality and price against the industry standard, in each year of the Framework. The Contractor will provide all relevant data, including rates, rebates etc. and co-operate in an open, transparent

and timely manner. The Strategic Contract Manager reserves the right to change the appointment or on-going services from the auditor.

Unbilled Media / Rebates

91. The Contractor shall notify the Framework Public Body of any orders for the placing of advertisements or commercials which were either not placed in accordance with the Media Schedule or were faulty in any other way, within one working day of the incident becoming apparent to the Contractor. The Contractor shall also take such steps as are necessary to obtain for the Framework Public Body, compensation in respect of such errors. The Contractor must provide the media auditor, on a quarterly basis, details of any compensation received for adverts either not placed in accordance with the Media Schedule or were faulty.

92. Where space or time has been received, but the Contractor is not invoiced, or not invoiced in full, for the media, the Contractor shall advise the Framework Public Body of the level and detail of all omissions including, but not restricted to part-billed and unbilled media.

93. Within six weeks from the end of every quarter of the Framework, the Contractor must provide a report to the Strategic Contract Manager, detailing the value of unbilled and part-billed media outstanding for every Framework Public Body. The report should detail for how long the amounts have been outstanding (in months). Three months after the end of each Framework year, including the final year, the Contractor must provide a report to the Strategic Contract Manager detailing the value of unbilled and part-billed media outstanding at that point, for every Framework Public Body, and the full value for both unbilled and part-billed media, must be returned to the Framework Public Body, within 4 weeks. Where the Contractor subsequently receives an invoice related to any of the unbilled or part-billed media value returned, the Framework Public Body will re-imburse the Contractor, subject to receiving a valid invoice from the media owner to substantiate the claim for payment. The cut-off point for accepting invoices will be in accordance with Contractor's statutory obligations.

94. The Framework Public Body shall receive the benefit of all commissions, discounts and rebates obtained by the Contractor, to the Contractor, in conjunction with other Group Companies which are derived directly or indirectly from the handling by the Contractor of the Framework Public Body accounts, and all discounts as available to all purchasers will be passed on to the Framework Public Body, by way of the Incremental Contractor Discount. This may be rebated by cheque or by additional media value as determined by the Framework Public Body.

95. The Contractor expressly acknowledges that it shall pass on to the Framework Public Body the full benefit of all Framework Public Body business related rebates such as, but not limited to, rate card and negotiated rebates, discounts, free spots and advertisements, year-end rebates and compensation for wrong or poor quality insertions, by way of the Incremental Contractor Discount. These compensatory insertions should be clearly highlighted to the appointed media auditor. This may be rebated by cheque or by additional media value as determined by the Framework Public Body.

96. The Contractor must advise the Framework Public Body of any activity undertaken where it is commissioned by a media owner, such as consulting and research projects, where fees are paid or value in kind is provided.

97. All AVBs (agency volume bonuses) discounts relating to a Framework Public Body's activity must be identified in advance and passed back to the Framework Public Body within 30 days of receipt by the Contractor, including those instances where these are received at group level or through associated companies and third parties.

98. Where free inventory and/or media credits are employed in delivering the activities of the Framework Public Body this should be declared in advance and a mechanism to return value agreed with the Framework Public Body. This may be rebated by cheque or by additional media value using guaranteed rates or better as determined by the Framework Public Body.

99. If, in a medium operating discounts, the space or time used by the Framework Public Body varies from that agreed by the Contractor with the medium, or the invoice received is at odds with what has been booked or invoiced by the Contractor to the Framework Public Body, the amounts will be disclosed and an adjusting payment will be made by the Contractor so that the Framework Public Body pays no more than the Net Media cost agreed at time of booking with the medium. In the case of an over-delivery vs the original agreed delivery, an additional payment may be made by the Framework Public Body, but only when an agreement to pay more along with the additional amount has been secured by the Contractor in advance of the over-delivery having occurred and certainly not retrospectively.

100. For all media, including outdoor expenditure, the Contractor will return to the Framework Public Body, the rebate percentage figures specified in the Pricing Schedule, of the Net Media Cost once a full year's expenditure has been fully reconciled and agreed by both parties, and the Framework Public Body has fully paid for all media expenditure. For the avoidance of doubt this additional percentage of net expenditure is in addition to the media owner's standard commission which will be passed on to the Framework Public Body pursuant to paragraph 93 above. Payment will be made within 3 months of the end of each contract year in which the volume rebate applies.

101. In the case of a campaign involving any media channel, the Contractor must provide such proof of appearance as is available, including:

101.1. Buying reports where relevant for all media including TV, radio and cinema;
101.2. Supply a voucher copy (hard copy or electronic) or tear sheet of the newspaper or other publication in which the advertisement appears along with the total number of pages of the publication in which the advertising has appeared, or if no voucher copy or tear sheet is available, a certificate of insertion into the publication in question;
101.3. Verification that advertising appeared for the agreed duration at booked sites or procure an outdoor inspection if so directed by the Framework Public Body.
101.4. In the case of digital display, Native and Social marketing campaigns the Contractor must provide screenshots of advertising/creative content in situ.

102. Without prejudice to the generality of previous paragraphs, the Framework Public Body may, at any time, require the Contractor to end the campaign by notice in writing, notwithstanding that it has not been completed in accordance with the Media Schedule. On receipt of such notice, the Contractor shall take all necessary steps to bring the campaign to an end, and to terminate as quickly as practicable all commitments of whatsoever nature and expenditure relating to the campaign. The Contractor will advise the Framework Public Body at all stages, of any costs whilst endeavouring to negotiate to reduce or avoid such charges as are relevant.

103. In the event that the Framework Public Body gives notice to end any campaign in accordance with the previous paragraph, then notwithstanding any other provision of this Schedule or any other part of the Framework or Order, the Framework Public Body shall have no liability to the Contractor to pay any sum whatsoever arising out of or in connection with any commitment entered into or expenditure incurred by the Contractor in relation to the campaign after the service of such notice. However, nothing in this paragraph shall affect any liability which the Framework Public Body may have in relation to any commitment entered into or expenditure incurred by the Contractor prior to the serving of such notice.

104. The Contractor shall be responsible for meeting all costs and expenses in preparing for or participating in the Procurement process, relating to any campaign. The Framework Public Body shall pay to the Contractor as appropriate, in addition to the Contractor's fee or other agreed, charging arrangement and after prior approval of the costs:

104.1. All agreed full costs by selected medium after all volume or trade discounts have been applied;
104.2. The agreed full cost of editorial contracts entered into with media providers;
104.3. Any other costs agreed in writing, by the Contract Manager and the Contractor, which may reasonably be reimbursed; and

104.4. The agreed full cost for services supplied where these are not in support of paid for media activity and which do not confer commission. Such costs must be agreed in advance in writing with the Framework Public Body and draw on the agreed hourly rates for such services.

105. Such payment will be made in accordance with the Framework Conditions.

106. If a campaign should be abandoned for whatever reason, the Contractor will be entitled within three months of the agreed abandonment date, to enter into negotiations with the Framework Public Body, regarding compensation payments such as, cancellation costs. Framework Public Bodies will only be liable for external costs. These will only be considered where evidence is supplied that these were approved by the Framework Public Body in writing and commitment made acting on this instruction and where a valid invoice has been received from the media owner. The Contractor shall make every reasonable effort to sell on booked media at the best possible rates.

107. The service must be provided between 0900 and 1730 hours daily, Monday to Friday, excluding Public and Bank Holidays recognised by the Framework Public Bodies in accordance with Employment Legislation, or as required out with these times. An immediate and emergency service must also be available at all times to support unforeseen activities where these are identified as an urgent priority.

The Contractors Commitment

108. The Contractor must have experience and capability in the development and delivery of media activity reflecting the highest quality of targeting and the most cost-effective application of the budget to deliver exemplar levels of engagement in support of Framework Public Body's objectives.

109. The Contractor must have capability and experience in delivering and managing media campaigns across all channels both individually and in combination and the structure, resource and capacity to deal with multiple multi-channel campaigns occurring at any one time

110. The Contractor must understand the fast changing media landscape and the related consumer habits of audiences of interest to the Framework Public Bodies and be able to recommend effective media engagement in support of social marketing and behaviour change as well as other stated objectives.

111. The Contractor will have embedded processes to identify and evaluate new media techniques and opportunities as they develop.

112. The Contractor will be required to provide advice and expertise on the potential for, and the benefits of all aspects of media activity used to target both generic and niche audiences.

113. In providing the services described above, the Contractor shall be committed to providing a high level of service to the Framework Public Bodies. This level of service must be consistent for every individual Framework Public Body irrespective of the value of their requirement.

114. The Contractor will bring in specialist services and additional resource as and when required where the expertise and/or capacity does not already exist within the Contractor's own agency, in order to meet the requirements of the Framework Public Body.

Staffing

115. The Contractor shall provide a daily service to the Framework Public Body and shall have a thorough knowledge and experience of all markets and sectors as specified and will represent a mix of advice, skills and expertise. They will have sufficient resource to match the needs and context of the Framework Public Body.

116. The Framework Public Body acknowledges and agrees that it may be necessary for the Contractor to replace the personnel servicing them, with alternative personnel with similar levels of seniority and experience. The Contractor will ensure that the Key named Individual(s) are actively involved in the provision of the Services. Should any Key Individual leave the Contractor, the Contractor will, with the Framework Public Body's consent, appoint a suitable replacement, such consent not to be unreasonably withheld or delayed.

117. The Contractor's staff shall have contact with Framework Public Body staff at all levels. The Contractor shall ensure that their staff are both courteous and diplomatic in dealing the Framework Public Body.

118. The Contractor shall act in willing co-operation with creative advertising contractors and other communications contractors appointed by the Framework Public Body from time to time when developing all communications plans and activities. The Framework Public Body shall ensure that its creative advertising contractors and other communications contractors act in willing co-operation with the Contractor.

119. The Framework Public Body will give the Contractor clear briefings and ensure that all the facts given about the campaigns are accurate. The Contractor will co-operate fully with the Framework Public Body and use all care and skill to make the advertising as successful as is to be expected from a competent media planning and buying Contractor. The Framework Public Body will help the Contractor do this by making available to the Contractor all relevant information and co-operating with the Contractor.

120. The Contractor shall recognise the idiosyncrasies of providing the services to the Public Sector in Scotland. In particular, it shall ensure that Schedules for media planning are reflective of the target audience.

121. The Contractor shall perform its duties under the Framework in a spirit of openness and transparency at all times. Such openness and transparency will extend to details of contractual negotiations with media owners. The Contractor shall communicate problems or potential problems to Framework Public Bodies at the earliest possible opportunity. The Contractor will be proactive in respect of providing such information.

122. The Contractor shall, in its negotiations with media owners, at all times bear in mind the propriety standards that impact upon the Framework Public Body. The Contractor shall be sensitive to the need for the Framework Public Body to be objective and shall take no action that could compromise that position.

123. The Contractor will promote innovation and make recommendations to the Framework Public Bodies as to how market developments, including new media, could enhance the Campaigns in which they are involved. Any such recommendations must reflect the financial and creative implications of the proposal. Above all, the Contractor shall be responsive, flexible and creative.

124. The Contractor will not prepare case studies or similar documents summarising Framework Public Body activities, either as an award entry or for promotional purposes etc., without first seeking the express permission of the Framework Public Body. In every instance the output, (case study, award entry etc.) must be signed off by the appropriate individual within the Framework Public body before this can be published, distributed or entered for awards. To note permission must be sought for each application, permission given for one use does not confer permission for subsequent activity.

Service Provision

125. The Framework Public Body may require the Contractor to provide services on Bank and Public Holidays, weekend, evenings or overnight as well as a normal working week. The Contractor shall be required to provide up to date contact details for out of hours for key personnel, including any sub-contractors.

126. The Framework Public Body may require the Contractor to provide services at the Framework Public Body's locations(s). Any requirement will be agreed with the Framework Public Body. Where required, the Contractor must be available to attend short notice meetings in a time agreed with the Framework Public Body, but as a minimum, within 2 hours.

127. A number of the Framework Public Bodies, including NHS Scotland, Visit Scotland and the Scottish Government operate a "Code Red" action plan in the event of emergency or any other urgent matter. A call quoting "Code Red" must be dealt with as an emergency, requiring instant response and ability for 24/7 support if required. Relevant Contractor Personnel contacts must be named at the commencement of the call off contract, including out-of-hours contact details. Thereafter they will be responsible for managing the "Code Red" response and must ensure sufficient cover to provide continual support.

128. Scottish National Blood Transfusion Service (SNBTS) - Given the need to initiate a quick response in the event of a major incident or shortage, the Contractor must be able to increase the number of operators allocated to SNBTS in reaction to a blood shortage within 4 hours of being alerted to the event. In such an event, the personnel providing the service to SNBTS be dedicated to this Framework Public Body and "protected" from all other Contractor's accounts.

Framework Levy

129. The Contractor will be subject to a framework Levy. The Framework levy will be set at 1% for all media activity purchased under Lot 1, and will be calculated by the Contractor applying 1% to the Framework Public Body's cost excluding VAT and the 0.1% ASBOF/BASBOF levy. VAT will then be charged on the levy value but not on the ASBOF/BASBOF levy.

130. The nominated representative shall submit an invoice to the Contractor in respect of the Levy due each quarter, based on the Management Information provided pursuant to the Frameworks Management Information Requirements.

131. The Contractor shall pay the amount stated in any invoice submitted by the Authority within 30 Days of the date of issue of the invoice.

132. The Levy shall apply to value of the Order (excluding VAT) as specified in each and every Order and shall not be varied as a result of any reduction in the Charges due to the application of any service credits and/or any other deductions made under any Call-Off Agreement.

133. Where any payment or sum of money due from the Contractor to the nominated representative under this Framework Agreement is not paid in full by the due date, interest on such outstanding sums shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

Advertising Standards

134. Both parties shall comply with the CAP (Committee of Advertising Practice) and BCAP (Broadcast Committee of Advertising Practice) codes and other relevant codes of advertising laid down whether on a statutory or a self-regulatory basis. Both parties shall abide by any other rulings as stipulated by Ofcom and the Advertising Standards Authority.

135. In order to satisfy the requirements of any applicable self-regulatory codes or statutory requirements, such as Sarbanes Oxley or equivalent, the Framework Public Body and the Contractor will co-operate with each other in ensuring that suitable objective factual product and other information is available as required in order that Clearcast compliance (in the case of TV advertising) and RACC (radio advertising) can be achieved.

135.1. Framework Public Body Content Provision – The Framework Public Body will abide by all regulations and rulings of the Advertising Standards Authority, the British Code of Advertising Practice and any other codes of advertising standards laid down to ensure

that all advertising in respect of which the Contractor carries out any Media booking complies in all respects with all relevant laws and shall be decent, honest and truthful.

135.2. The Framework Public Body warrants that:

135.2.1. all advertisements and/or other marketing materials (including, but not limited to, trademarks, graphic designs, sound production, video, software, data, and marketing strategy documents), supplied by the Framework Public Body (and/or any third party acting on behalf of the Framework Public Body) to the Contractor and any content on the Framework Public Body's websites in connection with the Services (collectively referred to as "Framework Public Body Content") shall not:

135.2.2. be false or misleading, indecent, libellous, or unlawful;

135.2.3. contain any Financial Promotion as defined in the Financial Services and Markets Act 2000.(FSMA);

135.2.4. infringe or violate any intellectual property rights of any third party; and,

135.2.5. harm or adversely affect the operation of the website, computer network or other equipment of any third party and/or media owner.

135.3. The Framework Public Body shall indemnify the Contractor against loss, damage, costs or expenses arising from any claims (whether formal or otherwise), suits, or proceedings resulting from or in connection with any Framework Public Body Content, save to the extent that such loss or damage has arisen due to the Contractor's use of the Framework Public Body Content (i) in breach of this Agreement, (ii) against the Framework Public Body's explicit instructions, or (iii) other than as permitted by the Framework Public Body or this Agreement.

135.4. The Framework Public Body hereby grants to the Contractor a non-exclusive, royalty free licence to use the Framework Public Body Content and any other material provided by or on behalf of the Framework Public Body, to the extent necessary to allow the Contractor to perform the Services, which shall include the right to sub-licence the same to Media Owners, suppliers and sub-contractors in connection with the performance of any part of the Services, including without limitation for the purpose of seeding, posting, distributing or displaying Framework Public Body Content or other material, or inserting or procuring the placement of links.

Sustainability/Environmental/Corporate & Social Responsibility (CSR)

136. The Contractor shall comply with the Scottish Ministers sustainable development strategy and ethical policy with respect to the delivery of this Framework. The Contractor's policies and processes will support the Scottish Ministers 'Greener Scotland' strategic objective including: a proactive approach to sustainable consumption and the efficient use of resources; consideration given to social and environmental consequences; policies which ensure that business activities have a direct positive impact on climate change and energy; and policies which encourage natural resource protection and environmental enhancement. Further details of the Scottish Ministers policies in this area can be found at the following links:

http://www.scotland.gov.uk/Topics/sustainabledevelopment

https://www.gov.scot/Topics/Government/Procurement/policy/corporate-responsibility/Sustainability

137. The Scottish Government is committed to sustainable procurement and to this end the Contractor is required to use ethically sourced products in the provision of the required products and services during the period of the Framework. The Contractor will be required to report to the Authority within their quarterly Management Information reporting, details of any sustainability and environmental measures and achievements.

138. The Contractor will also be expected to embrace the Scottish Government's requirement for delivering community benefits through the Framework Agreement. To assist the Scottish Government in understanding what opportunities exist to deliver benefits to the community through the Framework, the Contractor will be required to report to the Authority as part of their quarterly Management Information reporting, details of any community benefit measures and achievements such as Targeted Recruitment and Training, skills development, employment, apprenticeships, etc. Further details, see attached link:

https://www.gov.scot/Topics/Government/Procurement/policy/corporate-responsibility/Sustainability/CommunityBenefits

Corporate Identity / Branding

139. The Contractor must at all times comply with all aspects of the Authority and individual Framework Public Body's guidelines on the use of corporate identity and any other brand guidelines specified by the Framework Public Body. The nature of this Framework is such that the Contractors are expected to act as custodians of the brand, ensuring branding guidelines are followed at all times. The Contractor shall liaise with the Framework Public Body to establish their individual requirements for the maintenance of a data file holding the corporate identity information required to operate the Framework Agreement. Framework Public Bodies shall make available, upon request, their branding guidelines. The Contractor shall act as brand guardian for individual Framework Public Bodies' brands and ensure compliance with the brand guidelines on individual Orders.

Quality Control

140. The Contractor shall ensure that a robust Quality Control System is operated and documented on all requirements. In the unlikely event that there is a breach of Quality Control, there shall be an agreed process for rectification, escalation and prevention of similar occurrences. This work shall be at the Contractor's own expense.

Accessibility

141. The Contractor must ensure that all services are designed to comply with all relevant accessibility guidelines. Link attached:

https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction

Account Management

142. The Contractor shall have an intuitive structure of experienced account management to provide a robust resource dedicated to the delivery of customer objectives, including support and escalation.

143. At the request of the Framework Public Body's Contract Manager, the Contractor shall promptly provide, without charge, a detailed programme and project plan with regard to a specific project. On request, the Contractor will be required to provide progress reports against the programme and project plan.

Ordering

144. Call-off contracts may be awarded as a direct award, based on a ranking system, or mini-competition to cover one or more Orders as set out by the Framework Public Body in the Call-off contract. Framework Public Bodies conducting a call-off contract for a period of time must use the contract exclusively for the scope of their requirement, subject to the Standard Terms of Supply (Schedule 5).

145. The Contractor shall be available to accept Orders on every Working Day and provide the Framework Public Body with a point of contact to deal with any queries during the same period.

146. The Authority requires the Contractor to provide Order acknowledgement to the Framework Public Body in all instances and where the Framework Public Body subsequently cancels an Order, the Contractor should acknowledge receipt of such cancellation

Project Management

147. The Contractor must deliver the full scope of the requirement using effective project management processes and techniques. The project management procedures must be defined and agreed with the Framework Public Body at the start of any project. The Contractor's project manager must outline the resources that will be used to manage the project including, but not limited to, how the team will manage issues; scope changes, identify and manage risk; ensure quality and maintain effective communication throughout the lifetime of the project. The Contractor must ensure that all parties have a common understanding of key roles and responsibilities and of how the project will be managed. Any scope-change requests must be approved by the Framework Public Body and confirmed in writing by the Contractor's project manager.

Security

148. The Contractor shall deliver the full scope of the requirement in accordance with the Authority and the Framework Public Body's security requirements (e.g. management of politically sensitive/confidential information pre-publication and must ensure that it is stored securely at all time, security requirements whilst on their premises; security requirements when handling, storing and distributing work and in secure data transfer of work). For electronic transfer, any information classified as Official-Sensitive and above must be encrypted and able to be dealt with off-line. Technical controls, appropriate to the risk posed to any digital system, should be put in place to protect the confidentiality, integrity and availability of the information it will hold.

149. The Contractor shall be able to isolate the development of materials within their premises to ensure that only nominated staff directly involved are exposed at any given time. All such staff shall be expected to sign and abide by Confidentiality Agreements at all times. Similarly, any work placed with the Contractor's sub-contractors will be subject to Confidentiality Agreements. The Contractor shall be responsible for ensuring that any such sub-contractors have a similar and agreed level of security in place prior to work being placed with them.

150. As and when required the Contractor shall store all appropriate material in a secure area that only the Contractor's authorised personnel shall be permitted access to. The Contractor shall ensure that all files and electronic material be stored securely with appropriate separately located back-ups and that final, editable files should be returned to the Framework Public Body at the conclusion of the work.

151. The Contractor shall be responsible for adhering to any restrictions or special security measures advised by the Framework Public Body. Contractor staff must carry and display passes at all times when on the Framework Public Body's premises and comply with any policies and procedures.

Data Protection & Information Security

152. The data that the Contractor will handle under this Framework Agreement will be classed as Official or Official-Sensitive and should be treated with care, taking into account relevant legislation, at all times. Further information on Government Security Classifications and Framework Agreements can be found at:

https://www.gov.uk/government/publications/government-security-classifications

153. The Contractor will ensure the confidentiality of the data stored and/or communicated as part of this Framework Agreement, including both electronic and paper-based data.

154. The Contractor will employ effective administration and record control processes in order to underpin service delivery whilst also ensuring data is protected in compliance with the requirements of Data Protection Laws.

155. The Contractor will ensure procedures and processes are in place to ensure security of client data, enabling them to work with Framework Public Bodies with high Information Technology (IT) security requirements to deliver services, ensuring continuity and protection against cyber-attacks. This must include commercial grade full disk encryption for all data and secure email for data in transit.

156. Contractors as a minimum must have:

156.1. Processes in place ensuring security of client data including processes for assessing future risks;
156.2. Acceptable Destruction policies and processes for deleting data;
156.3. Procedures in place for Disaster Recovery Testing, including the dates, duration and frequency;
156.4. Methods for the back-up of delivering services should an incident occur including manpower and access to equipment;
156.5. Appropriate commercial licenses for software in place; and
156.6. Methods in place to mitigate against cyber-attack and crime using online technologies including processes relating to Boundary Firewalls and Internet Gateways, Secure Configuration, Access Control, Malware Protection and Patch Management.

157. Information on the Scottish Government Cyber Resilience Strategy can be found by following this link: A Cyber Resilience Strategy for Scotland.

158. For further information please see the UK Governments Cyber Essentials Scheme and consider the information included within the scheme. Cyber Essentials Scheme.

159. The Contractor will employ effective administration and record control processes in order to underpin service delivery whilst also ensuring data is protected in compliance with the requirements of the Data Protection Laws.

160. The Contractor will ensure information held under the Government Security Classifications are correctly managed and safeguarded.

161. The Register of Fee Payers is a register of organisation who process personal data held by the Information Commissioner's Office (ICO) which includes the name and address of the data controller and contact details for the Data Protection Officer. The register can be found at https://ico.org.uk/about-the-ico/what-we-do/register-of-fee-payers/

162. Some Framework Public Bodies are included under the Scottish Government entry in the Register of Fee Payers held by the ICO. Other Framework Public Bodies have their own entry in the Data Protection Register held by the ICO.

163. The Authority or Framework Public Body may conduct an audit and or a site visit of the Contractor's premises to allow validation and the environment used to store the data shared with them, in each case subject to and in accordance with the terms of the Framework Agreement or Call-off Contract (as applicable).

Invoicing Procedures

164. All Framework Public Bodies will be set up as individual accounts and be responsible for receiving and paying their own invoices as well as pursuing outstanding debt.

165. Monthly billing run, must include one invoice per medium for each campaign, per Framework Public Body, within 30 days following the burst of activity. Fees/commissions, other costs (e.g. ASBOF/BASBOF), Value Added Tax (VAT) and framework levy where applicable, must be shown separately on all invoices as a strictly net charge.

166. No advanced payment requests shall be considered by the Framework Public Body. Payment can only be made after satisfactory completion of the Service and following submission of an accurate invoice.

167. The precise format of invoices will be agreed between individual Framework Public Bodies and the Contractor following the award of the Call-off contract. However as a minimum, each invoice submitted must include details relating to the Framework Public Body's order including but not limited to:

167.1. cost centre code and purchase order number (where applicable);
167.2. Contract reference number and date;
167.3. contact details (marketing manager name, telephone number and e-mail address);
167.4. description of service (campaign details);
167.5. detailed breakdown of cost;
167.6. net cost;
167.7. VAT rate (where applicable);
167.8. gross cost;
167.9. framework levy and industry levies (ASBOF/BASBOF etc);
167.10. a billing schedule; and
167.11. confirmation (Yes/No) whether an invoice has been received from the media owner, and if required by the Framework Public Body, a copy of the invoice.

168. The Contractor shall aim to achieve 100% accurate invoicing. The accuracy of invoicing should not fall below 98% by volume per Framework Public Body, in any one month. In the event that an invoice is queried, the Contractor and the Framework Public Body shall undertake to resolve the issue within two working days of the dispute having arisen. Where it is not resolved within this period of time, the issue shall be escalated to the Framework Public Body's Contract Manager and Contractor's Account Manager.

169. Each invoice, where required by the Framework Public Body, must be supported by a copy or other accepted evidence of the relevant advertisement(s) as (voucher copy), on screen grab for digital, as it appeared in the selected medium.

170. Each invoice must bear details relating to the Framework Public Body's order, cost centre code and purchase order number (where applicable). The precise format of this document and billing process will be agreed with the individual Framework Public Body following the award of the Framework Agreement.

171. It is likely that all ordering and potentially some invoicing will be processed through the Framework Public Bodies' e-Procurement system. The Contractor shall work with Framework Public Bodies employer to identify the most appropriate ways of trading electronically and developing e-trading for this Framework. Further information about the systems used by Framework Public Bodies (PECOS & EASEbuy) and e-Procurement Scotland programme can be found at http://www.eprocurementscotland.com.

Foreign Currency

172. The cost to the Contractor of media, materials or services purchased overseas for the Advertising may be more or less than the cost anticipated at the date when the Contractor ordered the relevant media, materials or services, (or obtained the Framework Public Body's approval for such costs) as a result of fluctuations in the rate of currency exchange. If so, the Contractor will only charge the Framework Public Body upon written authority from the Framework Public Body's Contract Manager at the rate of currency exchange in operation on the date the Contractor pays for the relevant media, materials or services, which shall be deemed to be the closing mid-point rate in London for that day as subsequently quoted in the

next published edition of The Financial Times. Where an invoice is submitted in foreign currency (e.g. Euro, US Dollar etc), the sterling equivalent must also be quoted.

Management Information

173. On a six monthly basis the Framework Public Bodies are to receive a summary of the Contractor's delivery vs the cost and quality guarantees by Framework Public Body by medium. This work is to be carried out by the Framework Public Body appointed media auditor. The six monthly reports are cumulated across each year resulting in a full year performance. In order for this work to be carried out the Contractor is to deliver the following information on the following dates:

    173.1. On the Friday following the 15th day of the month following the quarter in question, a full and detailed breakdown of the gross spend and total billable spend (incl. VAT) by Framework Public Body/Medium/ Campaign is to be sent to the appointed media auditor.
    173.2. By the end of the following week, at the latest, full media booking details by Framework Public Body are to be supplied so that the audit vs guarantees can be commenced. Any questions relating to the data supplied are to be resolved during the next week.
    173.3. A draft of the audit findings is to be sent to the Contractor in the week prior to the report's issue so that a consensus document can be sent to the Framework Public Bodies by the end of the sixth week after the quarter in question.
    173.4. Quarterly report on progress of unbilled/part-billed media payments.

174. Reports must provide comprehensive information relating to the charges incurred by each individual Framework Public Body. These reports must also provide sufficient information to enable the Contractor to monitor expenditure. Individual Framework Pubic Body requests should be reported in a fashion that best suits each party.

175. As a minimum, the Contractor will provide the following types of management reports on request from a Framework Pubic Body's:

    175.1. Full costs, broken down by Framework Public Body, Framework Public Body cost-centre (where more than one exists), number of campaigns and medium by financial year; and
    175.2. Details of volume of business through each particular medium, media owners and publications by Framework Public Body by financial year etc.
    175.3. Real time digital dashboards.

176. If requested by the Strategic Contract Manager, the Contractor must provide the latest copy of their audited accounts.

Framework / Contract Management

177. The roles and responsibilities of the Contractor, Framework Public Body and Authority in carrying out Framework, Contract and Commercial management activities, are detailed at Schedule 4.

Crisis, Political Risk and Issue Management

178. The Contractor shall be required to provide the Framework Public Body with contingency and risk planning both on a proactive and reactive basis. The Contractor must demonstrate evidence within their proposal of a robust process for the management of crisis situations which shall include an ability to react quickly & efficiently to a range of crises across the Framework whether it is a situation of their own making (e.g. failed delivery; technological failure; sub-contractor failure; unacceptable print; etc.) or a Framework Public Body issue (e.g. ministerial requirement; last minute text changes; etc.).

eCommerce

179. The effective use of technology is at the heart of procurement reform and Scottish Procurement is leading a number of core initiatives to ensure that public procurement delivers value for money and contributes to the Scottish economy.

180. The Scottish Government's eCommerce Shared Service brings together all the steps involved in doing business with the public sector in Scotland. It is a collaborative electronic environment that promotes improved capability across public procurement in Scotland. As well as enabling business to be conducted more simply, consistently and effectively, it plays a key strategic role in delivering and sustaining procurement benefits and best practices. The use of technology presents greater opportunities for procurement managers to influence business by streamlining and standardising procurement process, delivering more effective contracts, monitoring procurement activity and collaborating more effectively.

181. The eCommerce Shared Service delivers Purchase-to-Pay (P2P) capability through the following systems:

    a. PECOS P2P system provides a consistent interface to suppliers through standard order, receipt and invoice functionality. It enables business workflows and audited approval processes to be implemented to ensure compliance to procurement and finance guidelines.
    b. Catalogue Content Management (CCM) hub hosts electronic catalogues for contracts at national, sectoral and local level. It increases compliance to contracts, drives out appropriate contract management information and embeds standard procedures and processes. The hub allows suppliers and procurement teams to easily manage the upload, validation, approval and publication of electronic catalogues for use by public sector bodies. The hub also enables the distribution of catalogues in a variety of formats, such as the PECOS P2P catalogue file, to allow the upload of catalogues into different P2P systems.

182. PECOS P2P has been deployed to approximately 100 Scottish public sector Contracting Authorities including local authorities, central government, NHS, universities and colleges. CCM is currently being used by the procurement Centres of Expertise and a number of individual Contracting Authorities to manage the approval of catalogues and access to catalogues.

183. Further information regarding the eCommerce Shared Service and the solutions they manage can be found at:

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

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

    a. standard and consistent interfaces to the public sector in the presentation of catalogues, the receipt of purchase orders and payment mechanisms (including eInvoicing and Purchase Cards);
    b. where P-Cards are utilised, suppliers can receive payment in 3-4 days from when the goods are dispatched from warehouse; where catalogues are used, the supplier only needs to amend content once and it then flows to all Contract Authorities using that catalogue;
    c. receipt of accurate and standard purchase orders which should reduce the number of invoice mismatches; and
    d. development of eCommerce capabilities to support further business opportunities.

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

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

Content Options

187. Most P2P systems support the following options for capturing and displaying products and services.

a. eCatalogue **-** An electronic Catalogue is typically an excel spread sheet that contains specific information about products or services including product descriptions, product codes, pricing, images, units of measure, UNSPSC codes, contract reference number as well as other relevant details relating to warranties, environmental credentials etc.

A number of Scottish Public Sector organisations utilise the Scottish Government CCM tool to create and manage e-catalogues. Further information can be accessed through the following link

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

b. Punch-Out Site **-** A Punch-Out site is a supplier specific online transaction website which can be configured to provide a micro-site that displays items that are specific to the Framework/Contract.

Punch out is preferable where:

- There is a significant volume of products provided;
- The products have configurable specifications, such as computers or furniture;
- The products have frequent price changes; or
- Where the content to be provided is of a specialist nature.

It will be the supplier's responsibility to create and maintain the Punch-Out site and arrangements will be put in place to ensure that the products/services displayed are regularly checked for accuracy. Where a transactional website has already been developed by the supplier, PECOS P2P shall connect to this website allowing users to create a shopping basket and bring back the details to complete the requisition within PECOS P2P.

The supplier will be required to maintain price and product data in accordance with that agreed in the Framework.

Bidders should note that most P2P solutions support Punch-out and any costs associated will be communicated to the successful bidder by the appropriate Scottish public body. An example of a CXML connection cost – PECOS is £1,300.00 per connection.

The successful supplier will be required to provide the URL to access the punch-out site

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

Upon contract award, it is critical that the catalogue content, order and invoice transmission options are in time for the commencement date across the Scottish Public Sector.

188. If there is a requirement for catalogues to be provided the following key activities should be considered by the supplier and the contracting authority when implementing a new Framework / Contract. Sufficient time should be factored into the implementation phase prior to commencement of the contract. The steps below indicate the tasks requiring to be completed

Supplier:

- to prepare catalogue content;
- to configure and test the connection and/or cXML PO transmission (if required) from other P2P systems in use;
- Agree timescales for public bodies to carry out end-to-end testing for their P2P systems;
- Agree timescales for making any necessary changes from the testing period.
- Test PO and transmission option with P2P systems

Buyer:

- to Upload, validate and approve the eCatalogue in CCM to ensure that it is fit for purpose;

Purchase Order Transmission Options

189. There are a variety of options across the Scottish Public Sector for transmitting Purchase Orders. Each Scottish public sector body will provide information to the successful bidder in regards to the option(s) they prefer, Where the supplier cannot support the preferred option, the public body will work with the supplier to review other options available or to assist them with transition to the preferred option. The main options are listed below.

a. XML PO is sent directly to a supplier's back office system. This allows the order to be automatically captured by the supplier's system, thereby removing the need to manually enter the order and reducing potential errors.

7 There is likely to be a charge to configure cXML ordering. In the case of PECOS this one off charge £1,300 will cover all connections required across the Scottish Public sector organisations that use PECOS however this may not be the same position for cXML charges to other P2P systems. Any costs associated from other systems will be communicated to the successful bidder by the relevant Scottish public sector body.

b. pdf E-mail – PECOS P2P produces an PDF purchase order that is automatically sent to the supplier's e-mail in-box;
c. Secure email –required where personal data is being transmitted.
d. Paper/Phone/Post – a paper purchase order is produced by PECOS P2P and posted to the supplier.

<u>Invoice Options</u>

190. There are a number of different payment options available but bidders should note that for this Framework /Contract, eInvoicing is the preferred option. This will ensure compliance with the EU eInvoicing Directive which comes into force on 27 November 2018. The main options are listed below.

a. <u>eInvoicing</u>: The Scottish Government is enabling eInvoicing capability across the Scottish public sector through PECOS P2P. To support this; suppliers will be required to submit their invoices and credit notes in a machine readable data format such as PDF or cXML.

Submitted invoices must be HMRC compliant and must include the following data:

- Purchase Order Number;
- Product or service item number;
- Line item detail such as price, unit of measure and description;
- The invoice period;
- Seller information;
- Buyer information;
- Payee information;
- Seller's tax representative information;

- Delivery details;
- Payment instructions;
- Allowance or charge information;
- Invoice totals;
- VAT breakdown

It is critical that the invoice issued by the supplier matches the information contained within the PO to ensure that the invoice data above is correctly mapped to the invoice processing environment.

There are no costs to suppliers to issue an invoice or credit note to the Scottish Government's eInvoicing solution.

Bidders should note other P2P/finance solutions may also accept eInvoices and any costs associated will be communicated to the successful bidder by the relevant Scottish public sector body.

b. Embedded Purchase Card: Most P2P systems enable an Electronic Procurement Card (ePC) to be embedded against a supplier to allow all orders to be charged against it. There is a Merchant Fee that will be charged against each order raised. Each Scottish public sector body will provide information to the successful bidder in regards to the fee that will be incurred. The fee will vary dependant on the Public Sector organisations agreement with the card provider. This payment method is optional and not mandated for all suppliers.

c. Self-Billing/Electronic Receipt Settlement - Most P2P systems support the ability for the Goods Received Note (GRN) to act as the instruction to pay the supplier which removes the need for the supplier to issue an invoice.

d. Consolidated Electronic Invoice - Supplier submits a single invoice covering multiple purchase orders in an electronic file for an agreed period of time. The format of the electronic file will have to be agreed between the supplier and the relevant Scottish public body.

e. Paper Invoice - Supplier submits a paper invoice to the organisation as standard for each purchase order received;

- Purchase Order Number;
- Product or service item number;
- Line item detail such as price, unit of measure and description;
- The invoice period;
- Seller information;
- Buyer information;
- Payee information;
- Seller's tax representative information;
- Delivery details;
- Payment instructions;
- Allowance or charge information;
- Invoice totals;
- VAT breakdown.

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

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

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

194. It is critical that the invoice issued by the supplier matches the information contained within the PO to ensure that the invoice data above is correctly mapped to the invoice processing environment.

195. There are no costs to suppliers to issue an invoice or credit note to the Scottish Government's eInvoicing solution.

196. other P2P/finance solutions may also accept eInvoices and any costs associated will be communicated to the successful bidder by the relevant Scottish public sector body.

Health and Safety

197. The Contractor shall comply with all of the Framework Public Bodies' health and safety policies, procedures and systems. In addition to the Health & Safety at Work Act 1974, the Contractor shall comply with all statutory instruments, orders, rules & regulations made there under, and all relevant bylaws, regulations, rules or orders made by any appropriate local or regulatory authority or body.

198. The Contractor shall have a health and safety management system that complies with all relevant and current health and safety legislation. This must contain an up-to-date general policy statement signed on behalf of the Contractor.

199. It is expected that sound risk assessment methodology shall be applied to all work activities that the Contractor undertakes in discharging the Framework.

Equal Opportunities

200. The Contractor shall be required to comply with all Framework Public Bodies equal opportunities policies in every respect, and not discriminate in relation to employment on the grounds of disability, sex, sexual orientation, colour, race, ethnic or national origin, or religion. The Framework Public Bodies shall provide all relevant information upon request.

Ethical Requirements

201. The Scottish Government is committed to sustainable procurement and to this end the Contractor is required to have appropriate standards for its organisation and its Supply Chain regarding legal, ethical and social issues and therefore required to use ethically sourced products in the provision of the required goods and services.

202. The Contractor will perform its 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, security of employment rights, equality, corruption and fair trade, in particular in developing or countries with low production costs.

203. The Contractor shall comply with and include in any sub-contract arrangements, all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015. The Contractor shall:

    203.1. maintain throughout the Framework, its own policies and procedures to ensure its ethical compliance;
    203.2. not engage, in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

203.3. as part of its audit process, implement reasonable due diligence and reasonable monitoring procedures for its sub-contract arrangements to ensure that there is no slavery or human trafficking and that such arrangements comply with the Ethical Requirements. The Framework Public Body shall approve such due diligence procedures. The Contractor shall provide any such information as the Framework Public Body requires in relation to the Contractor's and Sub-Contractor's compliance with these Framework Terms.

203.4. notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking and/or breach of the Ethical Requirements in the supply chain which has any connection with the Framework or any call-off arrangements.

203.5. provide information as the Authority requires in the Monthly Performance Report, relating to their and their Sub-Contractors' compliance with Ethical Requirements provided that such information in in the possession or control of the Contractor.

203.6. comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements). The Contractor shall:

203.7. Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 and 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK

203.8. Have and maintain in place throughout the Framework term its own policies and procedures, including adequate procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

203.9. Promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Framework; and

203.10. Immediately notify the Purchaser (in writing) if a foreign public official becomes an officer or employee of the Contractor or acquires direct or indirect interest in the Contractor and the Contractor warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the Commencement Date of the Framework.

204. The Contractor shall ensure than any person associated with the Contractor who is preforming the Services or providing goods in connection with the Framework does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor (Relevant Terms). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Purchaser for any breach by such persons of any of the Relevant Terms.

205. Breach of paragraphs 171 to 173 shall be deemed to be a material breach for the purposes of Clause 42 (Termination on Default).

Sub-Contractor Arrangements

206. Where the Contractor's nominated Sub-Contractors are unable to supply to the quality, range or price required by the Framework Public Body, the Contractor shall source the products and services from alternative Sub-Contractors who can demonstrate the appropriate quality and skills in delivery. Any failure to provide the Ordered Service or products due to Sub-Contractor non-performance shall not be acceptable and alternative supply source must always be available.

207. Where the Contractor nominates Sub-Contractors to assist with delivery of a service and or product, the Contractor shall demonstrate Value for Money in sub-contractor procurement.

Business Continuity / Disaster Recovery & Cyber Resilience

208. The Contractor shall maintain up to date Business Continuity Plans, including a specific element relating to the uninterrupted provision of the services for each Framework Public Body. The Authority/Framework Public Body may ask the Contractor to provide a copy of their Business Continuity Plan at any time during the period of the Framework Agreement.

209. The Contractor shall have in place appropriate and relevant Business Continuity and Disaster Recovery Plans, policies and procedures in respect of any applicable services offered under the Framework Agreement. The Authority/Framework Public Body may ask the Contractor to provide a copy of their Business Continuity Plan at any time during the period of the Framework Agreement.

210. The Contractor should also refer to procedures or activities carried out to mitigate against cyber-attack and crime using online technologies. The Contractor should refer to the UK Governments Cyber Essentials Scheme and consider the information included within the scheme.

211. These plans and procedures must be available on request by the Authority or other Framework Public Body.

Complaints

212. The Contractor will record and ensure action is taken to resolve complaints and issues as well as take action to avoid future complaints and issues. The Contractor will maintain written details of any complaints received and how they are handled and make these available to the specific Framework Public Body and the Authority as requested. Where the Contractor becomes aware of an issue or pattern of events that would have a negative effect on one or more of the Framework Public Body's, they should immediately notify the Authority to discuss corrective action.

213. Where a complaint is made directly to the Framework Public Body in relation to the Framework / Contract, the Framework Public Body will pass this information to the Contractor and Framework Public Body and if deemed necessary assist them in the complaint investigation.

214. Where a complaint is made or issue is raised directly to the Framework Public Body in relation to Framework Public Body's Contract Management, the Framework Public Body will adhere to their own complaints policy and procedure.

Recommendations to remedy identified problems

215. The Strategic Contract Manager may make recommendations to the Framework Public Body and instruct the Contractor to remedy identified problems. Such recommendations/instructions will be discussed with the Contractor and Framework Public Body and a timescale for remedy agreed.

Post Framework / Contract Expiry

216. The period of a call-off contract, must not exceed the expiry date of the Framework Agreement, however the Order placed, and the period in which the adverts run, may continue beyond the expiry date.

217. The Contractor will continue to submit spend and performance information to the Authority and Framework Public Body until all open Orders under the Framework have expired.

218. When the Framework has expired the Authority will no longer manage the Framework.

Performance Management

219. For the purpose of Performance Monitoring of the Service, the Authority or Framework Public Body may apply a Balance Scorecard mechanism.

    219.1. The Balanced Scorecard mechanism allows for the overall performance of the Service to be monitored as opposed to the focus being placed on one particular area.

219.2. The Balanced Scorecard is a fair, open and transparent means of delivering the Authority's obligations to monitor and report on the performance of the Service.

219.3. As operated under the Balance Scorecard mechanism, Performance Management consists of the monitoring, managing and communicating of the performance of the Framework.

219.4. The Authority shall notify the Contractor within 3 months of the Framework commencement date, the appropriate weightings to be used to measure the overall performance based on the Service Level Agreements (Key Performance Indicators).

219.5. The Contractor will apply the mechanisms of the Balanced Scorecard on a quarterly basis and a timetable shall be provided to the Authority within 3 months of the Framework commencement date.

219.6. The Authority will monitor the outcome of the Balanced Scorecard regime, consulting with Framework Public Bodies as they deem appropriate.

Key Performance Indicators (KPI)

220. Management includes the following performance measures:-

221. Scottish Procurement will use the KPIs listed below to monitor and manage the Contractors' overall performance under this Framework Agreement.

222. Scottish Procurement reserves the right to adjust, introduce new, or remove KPIs throughout the Term of the Framework Agreement. However, any significant changes to any of the KPIs shall be agreed between Scottish Procurement and the Contractor.

Key Performance Indicator (KPI)	KPI Target	Measure via
Quality		
Outcome based objectives in all applicable campaigns.	Every campaign to be assessed for suitable outcome based metrics.	Call-off brief and Contractor's media proposals.
Media selection choices are validated with performance data.	The selection of media used in every campaign has a clear rationale.	Contractor's media proposals.
Quality of media selection process.	Contractor demonstrating value choices rather than cheapest media price and the influence of quality of media to drive better outcome performance.	Experience and feedback on Contractor's decision making process for media proposals.
Usage of previous results and best practice to inform media proposals.	Every campaign proposal features previous learnings or best practice references.	Contractor's media proposals.
Delivery		
Delivers on time and against strategic objectives.	Advertising proposals delivered on time and to the media schedule agreed with the Framework Public Body.	The Contractor shall make all arrangements with the Framework Public Body's creative advertising contractor(s) for the transmissions of any media which are to be used in any campaign and to book all necessary spots/time.
Delivery of Media	All media will reflect the most cost effective targeting and be bought at the lowest possible rates taking advantage of any special rates which may be available to the Framework Public Body, without comprising quality or effectiveness. If late copy surcharges are levied, the Contractor will use their best	Reviewed with in the media schedule and verified by the media auditor.

	endeavours to reduce/negate any late copy surcharges.	
Accuracy	Realistic plans and schedules prepared in accordance with the Framework Public Body's brief and in a timely manner, meeting appropriate deadlines to enable full consideration and approval by a Framework Public Body, so that approval booking deadlines can be met.	Through media schedule
Implementation of transparency across media buying process.	Demonstration of media neutrality in media buying decision and proposal process, Including selection of price guaranteed media options where these are available and providing an appropriate business case where alternative solutions are proposed.	Framework Public Body's understanding of Contractor's delivery of transparency, in accordance with Contractor's proposals.
Data access to deliver outcome based solutions and transparent measurement of campaign performance	Contractor's providing data solutions to deliver transparency	Framework Public Body's experience of Contractors data approach to measure campaign performance.
Clash management performance to ensure adherence to Clash management and audience saturation	Clashes should be managed to eliminate or minimised with media owner and escalated to the Framework Public Body where resolution has the potential to impact on the quality of campaign delivery.	Independent verification, spot checks may occur.
Late bookings - number and value of late booking penalties in a Month with supporting information on efforts taken to remove/reduce them	All media to be reviewed and validated by the Framework Public Body, with evidence provided to support requirement for any late booking fees.	Independent verification, spot checks may occur.
Service		
Contact reports despatched within 48 hours.	100%	Through service delivery
Status Report, Media schedules etc. should be prepared and distributed to the Framework Public Body and creative agency on timing as agreed and as required.	100%	Through service delivery
All Framework Public Body's e-mails to be confirmed by e-mail within 24 hours.	100%	Through service delivery
All Framework Public Body calls to be returned within 2 hours.	100%	Through service delivery
Where required, the Contractor must be available to attend short notice meetings in a time agreed with the Framework Public Body, but as a minimum, within 2 hours.	100%	Through service delivery
The Contractor will advise the Framework Public Body and creative agency of any revision to media schedules prior to booking or copy deadlines as appropriate	100%	Through service delivery
Full budget sheets to be issued at the end of every month.	100%	Through service delivery
The Contractor will provide an estimate of final media costs which must be approved as required by the Framework Public	100%	Through service delivery

Body in writing and a purchase order raised before the relevant medium is booked.		
Cost		
Delivery of agency cost commitments	Benchmarking of agency pricing commitments across all media and adherence to commercial terms (including programmatic trading)	Reporting by agency of delivery commitment and validation using performance audit by third party
All undisputed invoices to be paid within 30 calendar days of issue.	100%	Confirmation of receipt and time of receipt by Scottish Procurement.
Contractor(s) to deliver further cost savings over the term of the agreement and provide continuous improvement and innovation	100%	Confirmation by the Strategic Contract Manager of the cost savings achieved by the dates identified in the Agency Action Plan
Over / under delivery against the Framework Price Guarantees.	100%	Fee Commission Reimbursement mechanism.
Unbilled Media (one Framework year in arrears)	100%	Annual Unbilled/Part-paid rebate mechanism.
Rebates for all media provided within the Contractor(s) pricing schedule.	100%	Through Annual Media discounts, as specified in the Pricing Schedule.
Ensure prompt payment and accurate records of ASBOF Charge /BASBOF Charge payments are maintained.	100%	Spot checks carried out by the Authority or an auditor.
Any disputes over invoices must be resolved within 3 working days from the dispute arising	100%	Measured through payment process
Monthly billing run, must include one invoice per medium for each campaign, per Framework Public Body, within 30 days following the burst of activity. Fees/commissions, other costs (e.g. ASBOF / BASBOF), Value Added Tax (VAT) and framework levy where applicable, must be shown separately on all invoices as a strictly net charge.	100%	Measured through payment process spot checks carried out.
The Contractor shall aim to achieve 100% accurate invoicing. The accuracy of invoicing should not fall below 98% in any one month. In the event that an invoice is queried, the Contractor and the Framework Public Body shall undertake to resolve the issue within two working days of the dispute having arisen. Where it is not resolved within this period of time, the issue shall be escalated to the Framework Public Body's Contract Manager and Contractor's Account Manager.	98%	Measured through payment process.
Framework Management		
Management Information (MI) returns: All MI returns to be returned to Scottish Procurement by the 10th working day of each quarter	100%	Confirmation of receipt and time of receipt by Scottish Procurement.

This survey will measure the Contractor(s) performance based on KPIs on an annual basis.	80%	Confirmation of the Agency's performance against customer satisfaction survey.
Fully comply with the reasonable data requests of the external Media Auditor	100%	6 monthly Media Audit.
Validation of Pricing Guarantees by the external Media Auditor on a 6 monthly basis.	100%	6 monthly Media Audit.
Any new media that has no price guarantee must be provided to the Strategic Contract Manager within 30 days of first appearance.	N/A	Quarterly spend MI

This and the following 33 pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

SCHEDULE 2 - PRICING SCHEDULE LOT 1

FRAMEWORK PRICES

1. **Price Guarantees -** The price guarantees quoted in this pricing schedule for all mediums, with the exception of TV Discounts, are fixed for the duration of the Framework Agreement. TV Discounts will be reviewed annually. Contractors must use these price guarantees at mini-competition stage. Following an award of contract, Contractors can charge above or below the price guarantees, however over the Framework year, the total media, per channel, purchased on behalf of each Framework Public Body must meet or better the price guarantees specified in the Pricing Schedule.

2. Failure to meet the price guarantees on this basis within each individual medium, for each Framework Public Body, will mean the Contractor is liable to pay each Framework Public Body who has not received the guaranteed value, the relevant Fee Commission re-imbursement percentage figure specified in the Pricing Schedule.

3. With regards to TV Discounts at the end of each contract year, given the pricing is relative to ITV1 Pure Station average price, there will be a need to recalibrate the discounts based on the actual performance of the stations (e.g. if ITV1 inflates more than the network, then in the subsequent year the non-ITV discount guarantees will need to increase based on the previous year's actual relativities and monthly weights).

4. There may be occasions where a campaign requires a non-standard daypart delivery. There is no expectation that a separate pricing structure is to be submitted for this, though all quality deliveries will be included, so therefore other campaigns must be delivered to offset the lack of peak etc. in order to achieve the base guarantees.

5. **Fee Commission (Planning & Buying)** - The percentage fee commission quoted in this Pricing Schedule against each of the mediums, are maximum and are fixed for the duration of the Framework Agreement. Contractors are free to reduce these at the mini-competition stage, but cannot increase them. The Fee commission will cover all of the services specified in the Schedule 1 of the Entire Agreement and will be charged against the costs prior to VAT. An example of how the Fee commission is to be charged is detailed below:

   Gross price guarantee minus the standard agency commission, plus the fee commission.

   Gross cost =£5,000 minus 15% (Std Agency Commission) = £4,250 x 5% Fee Commission = £4,462.50

   Where there is no Standard Agency Commission, the Fee Commission should be applied to the Gross cost.

6. **Fee Commission (Buying Only)** - The percentage fee commission quoted in this Pricing Schedule against each of the mediums, are maximum and are fixed for the duration of the Framework Agreement. Contractors are free to reduce these at the mini-competition stage, but cannot increase them. The Fee commission will be charged against the cost of the media purchased prior to VAT. An example is detailed below:

   Gross cost = £10,000 + 5%(Fee Commission) = £10,500

7. **Hourly Rates - (Planning Only)** - The hourly rates (ex vat) quoted in this Pricing Schedule are maximum and firm for the duration of the Framework. These rates are to be used where a Framework Public Body has a requirement for planning services only. An example is detailed below:

   Hourly rate =£50 x 10 hours = £500

8. **Media Volume Rebate** – The Framework Media Volume Rebate will be an annual percentage discount figure submitted by the Contractor and will be calculated using the total media spend (gross) against each medium at the end of each contract year.

9. The percentage rebate quoted in this Pricing Schedule against each of the mediums, are minimums and are fixed for the duration of the Framework Agreement. Contractors are free to increase the percentage rebate at the mini-competition stage in order to provide greater value to the Framework Public Body, but cannot decrease the rebate. This is additional to the standard 15% agency commission.

10. The value (£) of the Media Volume Rebate will be returned to the Framework Public Body within 3 months following the end of each contract year in full. The rebate value can be returned as additional media, using guaranteed rates or better, or by cheque as determined by the Framework Public Body.

    Examples:

    Annual TV Spend - £1,000,000 - Media Volume Rebate 3% of total spend = £30,000 - Framework Public Body would receive £30,000.

    Annual Digital Spend - £4,500,000 – Media Volume Rebate 5% of total spend = £225,000 - Framework Public Body would receive £225,000.

11. **Additional Contractor's Incremental Framework Discounts** – The Contractor may offer a percentage discount figure connected with any additional business related discounts received e.g. group commissions/discounts (over and above the standard 15% agency commission), business related rebates, free spots etc. The percentage figure quoted in the Pricing Schedule against each of the mediums, are minimums, fixed for the duration of the Framework Agreement. Contractors are free to increase the percentage figures at the mini-competition stage in order to provide greater value to the Framework Public Body, but cannot decrease the figure.

    Example:

    Annual Radio Net Spend (after Standard Agency Commission) - £250,000 – Media discount 2% of total spend =£5,000 – Framework Public Body would receive £5,000.

12. **Fee Commission Re-imbursement** –. This is the percentage of the Contractors fee commission rate that will be returned to the relevant Framework Public Body, in the event that the price guarantees are not met, within each of the mediums, for each Framework Public Body, within a Framework year. The sliding scale of percentages quoted is fixed by the Authority for the duration of the Framework Agreement.

13. The value will be returned to the Framework Public Body within 3 months following the end of each contract year and may be returned as additional media value or cash. This would be applied to the total commission earned against the total spend, on a per Framework Public Body/per medium basis. The Authority reserves the right to amend the percentage of commission to be rebated within a medium at any point during the duration of the Framework.

14. The table below specifies the percentages to be returned based on under delivery.

Under delivery	% of total commission received within a medium to be rebated
0 – 0.5%	15%
0.51 – 2.5%	25%
2.51 – 5.00%	50%
>5%	75%

Examples:

Total Gross TV Spend £1,000,000 - under-delivered by £100,000 = 10% - Fee Commission 2% of total spend = £20,000 - Framework Public Body would receive 75% of commission £15,000.

Total Gross Digital Spend - £1,500,000 – under delivered by £30,000 = 2% - Fee Commission 5% of total spend = £75,000 – Framework Public Body would receive 50% of commission £37,500

15. **Framework Levy** - In order to cover the media auditor's costs, a levy will be set at 1% and will be calculated by the Contractor applying 1% to the client cost excluding VAT and the 0.1% ASBOF/BASBOF levy. VAT will then be charged on the levy value but not on the ASBOF/BASBOF levy. The Authority reserves the right to amend the percentage figure at any point during the duration of the Framework.

16. Following the end of every quarter, Scottish Procurement will request the total levy value, including VAT, from the Contractor and share this information with our nominated partner organisation that will be looking after the Media Auditors Contract (Visit Scotland) who will raise an invoice for the levy value, including VAT. The Contractor will then pay our nominated partner the full amount due.

17. All prices quoted must be in UK sterling, ex VAT.

18. Unless otherwise stated, the Maximum Prices in Schedule 2 shall be deemed to be fully inclusive – i.e. to include any and all costs, overheads, setting up costs, account management, central costs, technology, reporting, billing, profit and no mark-up fees for sub-contracting.

19. The Contractor shall at all times work on an open book policy with the Framework Public Body;

20. The Authority or Framework Public Body shall not guarantee any volume of business.

Pricing Matrix - Pages removed as this information is commercially sensitive

This and the following 3 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

SCHEDULE 3 – AWARD PROCEDURES

1. ORDERING PROCEDURES

1.1. Framework Public Bodies utilising the Framework Agreement must adhere to the following procedures when calling off.

A call-off contract can be for a 'single order" (campaign by campaign)" or a "duration contract" for a period of time to cover one or more orders. A call-off contract must be awarded prior to the expiry of the framework. The period of a "duration contract" cannot continue beyond the expiry date of the Framework, however a "single order" or an order under a "duration contract" may run beyond the expiry.

1.2. Call-off Options are as follows:

Option 1 - Where the value of a requirement is under £100k, a Framework Public Body can make a direct award to the first ranked* Contractor. Please note that a Framework Public Body reserves the right to undertake a mini-competition, if in their opinion, it would be beneficial to do so.

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

Option 2 – Where the value of a requirement is above £100k a Framework Public Body must undertake a mini-competition inviting all Contractors to tender for the work and make an award to one.

NB: Framework Public Bodies conducting a call-off for a "Duration contract" must use the contract exclusively for the scope of their requirement, subject to the Standard Terms of Supply (Schedule 5).

2. DIRECT AWARD

2.1. The Framework Public Body must complete a Schedule 5, Standard Terms of Supply, incorporating the brief for the services required and forward to the first ranked Contractor for consideration. The Contractor should review and complete the document and submit a short proposal along with pricing to the Framework Public Body.

2.2. The Framework Public Body should set a time limit for the receipt of the Direct Award proposal which takes into account factors such as the complexity of the subject matter of the Order and the time needed to submit a proposal.

2.3. Commercial submissions should be submitted to meet the following options:

Contracting for a duration contract:- The Tenderer is required to provide full detailed costings against indicative volumes/spend, using the price guarantees set under the Framework, taking into account any rebates, discounts etc. The Fee commission to be quoted must not exceed that specified in the pricing schedule, but can be lower.

Contracting for a single Order (campaign by campaign basis) :- The Tenderer is required to provide a price proposal for the media proposed to deliver the outputs of the brief, taking into

account any rebates, discounts etc. The Fee commission to be quoted must not exceed that specified in the pricing schedule, but can be lower.

2.4. On the basis set out above, the Framework Public Body can award its services requirements by awarding a contract to the successful Framework Contractor in accordance with the following:

- Standard Terms of Supply (Schedule 5);
- Services Requirements; and
- The charges payable for the Services Requirements in accordance with the proposal submitted by the successful Framework Contractor.

3. MINI COMPETITION PROCEDURE

3.1. Framework Public Body's Obligations

3.2. The Framework Public Bodies shall:

3.2.1. invite tenders, from all Contractors appointed to the Framework, by conducting a mini-competition for its Service requirements in accordance with the conditions herein,

3.2.2. Consult in writing with all the Framework Contractors appointed to the Framework and invite them, within a specified time limit, to submit a mini-competition tender in writing for each Order to be awarded; and

3.2.3. Set weightings for the Award Criteria in the mini-competition invitation to tender against the following:

3.3. Technical Criteria (XX% weighting shall be set by Framework Public Bodies at mini-competition)

3.3.1. General understanding of the requirement along with details of how any risks e.g. political, reputational, operational and financial can impact on the provision of the service and what action you would propose to mitigate these risks. (XX%)

3.3.2. Demonstrable experience and expertise of the proposed personnel to meet the Ordered services outputs (XX%);

3.3.3. Operational proposals with particular emphasis on quality and performance measurements, and customer satisfaction (XX%).

3.4. Commercial Criteria (XX% weighting shall be set by Framework Public Bodies at mini-competition) Detailed below are the options to calculate price:-

3.4.1. Contracting for a duration contract :- Tenderers are required to provide full detailed costings against indicative volumes/spend, using the price guarantees set under the Framework, taking into account any rebates, discounts etc. The Fee commission to be quoted must not exceed that specified in the pricing schedule, but can be lower.

3.4.2. Contracting for a single Order (campaign by campaign basis) :- Tenderers are required to provide full detailed costings to deliver the outputs of the brief. The price will be calculated using the price guarantees set under the Framework, taking into account any rebates, discounts etc. The Fee commission to be quoted must not exceed that specified in the pricing schedule, but can be lower.

3.5. The evaluation criteria allows for flexibility regarding the composition of percentage weightings allocated against each of the criteria shown. The mini competition should be conducted on the basis of the criteria listed above and on the same, or if necessary, more precisely formulated terms. A Framework Public Body should consider the introduction of additional terms, for example, sustainable benefits, full details must be provided in the invitation to tender document.

3.6. Set a time limit for the receipt of the mini-competition tenders which takes into account factors such as the complexity of the subject matter of the Order and the time needed to submit tenders.

3.7. Keep each mini-competition tender confidential until the expiry of the time limit for the receipt by it of mini-competition tenders.

3.8. Apply the Award Criteria and weightings to the Framework Contractors' compliant tenders submitted through the mini-competition as the basis of its decision to award an Order for its Services requirements.

3.9. The highest scoring compliant Tenderer will be awarded the Call-off Contract. In the event of a tie the Framework Public Body reserves the right to appoint the Tenderer who obtains the highest quality score.

3.10. On the basis set out above, the Framework Public Body can award its services requirements by awarding a contract to the successful Framework Contractor in accordance with the following:

- Standard Terms of Supply (Schedule 5);
- Services Requirements; and
- The charges payable for the Services Requirements in accordance with the tender submitted by the successful Framework Contractor.

4. FRAMEWORK CONTRACTORS OBLIGATIONS

4.1. The Contractor will, in writing, by the time and date specified by the Framework Public Body, provide the Framework Public Body with either:

4.1.1. a statement to the effect that it does not wish to tender in relation to the relevant Services requirements; or

4.1.2. a proposal with full details of its tender made in respect of the relevant Specification which should include, as a minimum:

4.1.2.1. a proposal covering the Services requirements demonstrating how the service will be delivered, in the timescale stated in the tender, how they will ensure that the quality of the work meets the Ordered Service requirements, and how customer satisfaction will be assured at all times;

4.1.2.2. the Contractor may not unilaterally increase the fee commission rates in the Pricing Schedule, but nothing in the Framework Agreement prevents the Contractor from improving on the fee commission rates in the Pricing Schedule for the purposes of a particular Call-off Contract/Order; and

4.1.2.3. details of any value for money savings achieved e.g. reduced fee commission rate.

4.2. The Contractor agrees that all mini-competition tenders submitted by the Contractor in relation to a mini-competition held pursuant to this Paragraph 4 shall remain open for acceptance for thirty (30) days (or such other period specified in the mini-competition invitation to tender issued by the relevant Framework Public Body).

4.3. Notwithstanding the fact that the Framework Public Body has followed the procedure set out above in this Paragraph 4, the Framework Public Body shall be entitled at all times to decline to make an award for its Service requirements. Nothing in this Framework Agreement shall oblige any Framework Public Body to place any Order for Services.

5. RESPONSIBILITY FOR AWARDS

5.1. The Contractor acknowledges that each Framework Public Body is independently responsible for the conduct of its award of call-off contracts or orders under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-

5.1.1. the conduct of the Framework Public Body in relation to the Framework Agreement; or

5.1.2. the performance or non-performance of any call-off contracts or orders between the Contractor and the Framework Public Body entered into pursuant to the Framework Agreement.

This and the following 3 pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

Framework and Contract Management

1. Both the Framework Agreement and associated Call-off Contract activity are subject to Contract Management which is carried out by the Authority, the Contractor and the Framework Public Body and is a requirement under both the Framework Agreement and call-off contracts. Contract Management shall be applied to the mobilisation phase, transition, contract period and closure/demobilisation phase of the Framework and call-off Contracts.

2. The level of Framework Public Body Contract Management may differ depending on the value of the call-off Contract and level of risk involved.

3. The Authority shall be responsible for the Strategic Contract Management of the Framework Agreement and each Framework Public Body shall be responsible for their day to day contract management of Orders which form the call-off Contract.

4. The roles and responsibilities of the Contractor, Framework Public Body and Authority to deliver Framework and call-off Contract Management are detailed below.

5. The Contractor's roles and responsibilities in Contract Management are as follows:

   5.1 assisting with the development of the Framework management plan;
   5.2 provide a Strategic Contract Manager to manage this Framework Agreement with the Authority;
   5.3 provide for each Framework Public Body, a specified Contract Manager. For the avoidance of doubt, each Framework Public Body does not necessarily require a Contract Manager dedicated solely to that organisation;
   5.4 the nominated Contract Manager shall communicate with the Framework Public Body and the Authority;
   5.5 assist in launching this Framework Agreement with the Authority and Framework Public Bodies;
   5.6 meeting, monitoring and reporting on the Framework Public Body spend and value for money savings under the Framework to the Authority's Framework Manager on a Quarterly basis, including providing individual Framework Public Body spend and savings and consolidated spend and savings information to the Authority's Framework Manager as required and to the appointed media Auditor;
   5.7 meeting, continually improving, monitoring and reporting on the Contractor performance under the Framework Agreement to the Authority's Framework Manager on a quarterly basis, including performance against service levels of prompt payment of sub-contractors. The Contractor must provide individual Framework Public Body and consolidated Framework Public Bodies performance management information to the Authority's Framework Manager;
   5.8 working with each Framework Public Body to develop and agree specific requirements and format for tailored monthly management information reports and further developing these reports where required;
   5.9 maintain, prepare and submit additional management information reports to each Framework Public Body tailored to meet their needs, showing only information that is relevant to that particular Framework Public Body. The format of the required information shall be agreed between the Framework Public Body and the Contractor;
   5.10 attending quarterly Framework management meetings as required with the Authority and Contract management meetings with the Framework Public Body, as required;
   5.11 resolving issues and complaints in line with timescales as indicated under Performance Management Service Levels at Schedule 1;

5.12 supporting and enabling the Authority and/or the Framework Public Body to carry out amendments / extensions / reviews / audits /spot checks of the Framework/call-off Contract as required;

5.13 supporting and enabling the transition and closure of the Framework/call-off Contract as appropriate e.g. TUPE information where applicable;

5.14 providing feedback and input in the form of lessons learned into the Authority's Framework Manager to enable continuous improvement;

5.15 working with the Framework Public Body and Authority as required providing accurate and timely information relevant to freedom of information requests, parliamentary questions, ministerial correspondence and other requests for information within 48 hours. Expenditure related requests should represent the actual expenditure (Full costs) paid to date for the period requested by the Framework Public Body;

5.16 adhere to the Invoicing Requirements detailed within the Specification of Requirements;

5.17 undertake a billing run, on a monthly basis, or as agreed with individual Framework Public Bodies. The date of the month to be agreed with each Framework Public Body, with the exception of March, where the number of billing runs required should be agreed with each Framework Public Body;

5.18 undertake contract management of any sub-contractor(s);

5.19 the Framework Public Body may, from time to time, delegate all or some of their powers, in relation to the call-off Contract, to other Framework Public Body's staff or external organisations appointed by the Framework Public Body. In addition, there may be a requirement on the Contractor to liaise and communicate with other contractors at the Framework Public Body's premises as and when advised by the Framework Public Body's point of contact;

5.20 develop and deliver a programme for the promotion of the services available under the Framework to Framework Public Bodies;

5.21 by using a Balanced Scorecard (BSC) mechanism monitor the contract and supplier performance against KPIs and other specified performance indicators with UIG and Framework Public Bodies;

5.22 on a quarterly basis, issue the BSC to representatives of the Framework Public Bodies for completion, collating the results of the BSC and producing a consolidated report to the Authority using agreed templates.

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

6.1 working with the Contractor and Framework Public Bodies to finalise and mobilise the Management Plan for this Framework Agreement;

6.2 preparing and communicating Framework information to the Framework Public Bodies and the Contractor;

6.3 launching the Framework to the Centres of Expertise and Framework Public Bodies, with the Contractor;

6.4 receipting, reviewing, managing and reporting on the Framework Public Bodies spend under the Framework, in conjunction with the appointed media Auditor, to senior management on a Quarterly basis, including providing individual and consolidated spend information as required;

6.5 by using a Balanced Scorecard mechanism monitor the contract and supplier performance against KPIs and other specified performance indicators with UIG and Framework Public Bodies;

6.6 monitoring 'take-up' and spend through the framework by Framework Public Bodies;

6.7 chairing Framework management meetings as required facilitating the way forward for issues, risks and actions;

6.8 supporting the resolution of issues and complaints in line with timescales as indicated under Performance Management in the Service Levels;

6.9 carrying out reviews/amendments/extensions/audits/company financial spot checks of the Framework with input from Framework Public Bodies as required;

6.10 managing the Framework from Award until Expiry;

6.11 collating lessons learnt from the Framework Public Bodies and Contractor and feeding this into future procurements to enable continuous improvement;

6.12 working with the Framework Public Bodies and Contractor as required to provide accurate and timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence;

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

7.1 assisting with the development of the Framework management plan;

7.2 providing a Contract Manager to support managing the Framework with the Authority and Contractor;

7.3 the nominated Contract Manager communicating with the Contractor and the Authority;

7.4 supporting/attending Framework launch events as required;

7.5 Framework Public Body Contract Management – day-to-day raising of orders as per the terms of the Framework;

7.6 verifying spend under the Framework to the Authority's Framework Manager on a Quarterly basis;

7.7 monitoring and reporting on the Contractor performance under the Framework to the Authority's Framework Manager on a quarterly basis against the agreed performance management measures;

7.8 working with the Contractor to develop and agree specific requirements and format for tailored management information reports;

7.9 request, receive and review additional management information reports and provide feedback for any additional information to be included or further development of format where required;

7.10 attending and contributing to meetings run by the Authority's Framework Manager;

7.11 completing the quarterly Balance Scorecard returns;

7.12 resolving Order /call-off Contract operational issues and complaints;

7.13 supporting the Authority's Framework Manager in carrying out amendments/ extensions/reviews/audits/spot checks of the Framework as required;

7.14 contributing to Framework amendments / extensions for the Authority's Framework Manager to take forward;

7.15 supporting and enabling the transition and closure of the Framework;

7.16 providing feedback to the Authority's Framework Manager on resolving issues, risks and complaints as well as engaging in lessons learned and continuous improvement;

7.17 working with the Authority and Contractor as required to provide accurate and timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence;

7.18 working with the Contractor to agree specific requirements for Finance process and day to day operational requirements;

Performance Management

8. For the purpose of Performance Monitoring of the Service, the Authority may apply a Balance Scorecard (BSC) mechanism.

8.1 The Balanced Scorecard mechanism allows for the overall performance of the Service to be monitored as opposed to the focus being placed on one particular area.

8.2 The Balanced Scorecard is a fair, open and transparent means of delivering the Authority's obligations to monitor and report on the performance of the Service.

8.3 Information on the Scottish Government's Balanced Scorecard mechanism with an example is detailed in the link below.

http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/spdlowlevel/BalancedScorecard

8.4 The Authority shall notify the Contractor within 3 months of the Framework commencement date, the appropriate weightings to be used to measure the overall performance based on the Service Level Agreements (Key Performance Indicators).

8.5 The Contractor will apply the mechanisms of the Balanced Scorecard on a quarterly basis and a timetable shall be provided to the Authority within 3 months of the Framework commencement date.

8.6 The Authority will monitor the outcome of the Balanced Scorecard regime, consulting with Framework Public Bodies as they deem appropriate.

This and the following [ ] pages comprise Schedule 5 to the Framework Agreement between the Purchaser [insert name of purchaser] and «F3: Contractor name»

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

FRAMEWORK: MEDIA PLANNING, BUYING AND ASSOCIATED SERVICES

FRAMEWORK REFERENCE NUMBER: SP-18-007

CONTRACT REFERENCE NUMBER: [REFERENCE NUMBER]

SERVICES CONTRACT / STANDARD TERMS OF SUPPLY

-between-

THE "PURCHASER"

-and-

(2) [SERVICE PROVIDER NAME] (THE "SERVICE PROVIDER")

-relating to the supply of-

MEDIA PLANNING, BUYING AND ASSOCIATED SERVICES

LOT 1 - UK and Overseas Media

Table of Contents

SECTION A INTRODUCTORY PROVISIONS

1. Definitions and Interpretation
2. Condition Precedent
3. Nature of the Contract
4. Period
5. Break
6. Specification and Service Levels
7. Pricing Schedule
8. Ordering Procedures and Management Arrangements

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

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

SECTION C PROVISION OF SERVICES

20. Provision of the Services
21. Deliverables and Milestones

SECTION D STAFF INVOLVED IN THE PROVISION OF SERVICES

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

SECTION E PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

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

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

36. Compliance with the Law etc.
37. Official Secrets Acts
38. Service Provider's responsibility for staff etc.
39. Access to the Purchaser's premises
40. Service Provider's Equipment

41. Purchaser Property
42. Health and Safety etc.
43. Offences
44. Tax arrangements
45. Discrimination
46. Blacklisting
47. Sustainability etc.
48. Conflicts of Interest

SECTION G FINAL PROVISIONS

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

SCHEDULES

Schedule 5.1 Specification Service Levels
Schedule 5.2 Pricing Schedule
Schedule 5.3 Ordering Procedures
Schedule 5.4 Management Arrangements
Schedule 5.5 Key Individuals
Schedule 5.6 Approved Sub-contractors
Schedule 5.7 Transparency Reports and Service Provider Sensitive Information
Schedule 5.8 Parent Company Guarantee
Schedule 5.9 Data Protection
Schedule 5.10 Exit Management

PREAMBLE:

ONE The Purchaser requires the provision of services;

TWO On «F13: date ITT issued» the Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;

THREE On «F14: date Tender submitted» the Service Provider submitted its Tender;

FOUR On the basis of the Tender, the Purchaser has selected the Service Provider to supply the Services under the Contract;

FIVE The Contract establishes standard terms of supply for the provision of services;

SIX The Contract also includes:

- a Specification setting out the Services that the Service Provider has undertaken to provide «F15: , 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 «F16: , including provision for Service Credits»;
- «F17: details of Key Individuals involved in the provision of the Services»;
- «F18: details of approved sub-contractors as at Contract award»;
- «F19: details of the Service Provider's information which is deemed to be Service Provider Sensitive Information»;
- Ordering Procedures prescribing the procedures for ordering particular Services; and
- Management Arrangements for the strategic management of the relationship between the Parties.

SUBSTANTIVE PROVISIONS:

SECTION A: INTRODUCTORY PROVISIONS

1. Definitions and Interpretation

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

"**Assignee**" has the meaning given in clause 32.2 (Assignation).

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

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

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

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

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

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

"**Data Protection Laws**" means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR.

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

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

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

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

"**Exit Management**" means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Service Provider to the Purchaser or any Replacement Service Provider as set out in Clause 59 (Exit Management) and Schedule 5.10 (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, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"**ITT**" means the Purchaser's invitation to tender dated «F13: date ITT issued».

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

"**Key Individuals**" means the Service Provider Representatives identified as being key individuals for the provision of the Services as set out in Schedule 5.5.

"**Management Arrangements**" means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider's compliance with the Specification, «F23: the Service Levels», the Ordering Procedures and the terms of the Contract, set out in Schedule 5.4.

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

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

"**Ordering Procedures**" means the procedures for ordering particular Services set out at Schedule 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 «F23:, including provision for Service Credits,» set out in Schedule 5.2.

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

"**Purchaser**" means the relevant Framework Public Body ordering the Service.

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

"**Purchaser Protected Information**" means any information provided by the Purchaser to the Service Provider which:

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

"**Relevant Transfer**" has the meaning given in regulation 2(1) of TUPE.

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

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

"**Schedule**" means a schedule annexed to, and forming part of, the Contract.

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

"**Service Levels**" means the Service Levels identified as such in the Specification.

"**Service Provider**" means the Contractor appointed to deliver the Service.

"**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 31 (Sub-contracting) or otherwise).

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

- is specified as Service Provider Sensitive Information in Schedule 5.7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and

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

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

"**Specification**" means the Purchaser's general requirements for the provision of services including Service Levels, set out in Schedule 5.1.

"Supervisory Authority" has the meaning given in Data Protection Laws.

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

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

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

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

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

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

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

1.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
1.2.2. words importing the masculine include the feminine and neuter;
1.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
1.2.4. references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;
1.2.5. references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
1.2.6. reference to "expiry or termination" of the Contract includes the making of a Judicial Order;
1.2.7. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
1.2.8. headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

2. Condition Precedent: Requirement for a Parent Company Guarantee

2.1. It shall be a condition of this Contract that, if required by the Purchaser, the Service Provider shall deliver a validly executed parent company guarantee in the form set out in Schedule 5.8 to this Contract. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Purchaser. The parties acknowledge that if this condition has not been fulfilled any performance of this Contract by the Service Provider shall be at the risk of the Service Provider and the Purchaser shall not be liable for and the Service Provider irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Service Provider has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Purchaser shall have the right to terminate the Contract by notice in writing to the Service Provider.

3. Nature of the Contract

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

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

** Guidance note to clause 3.2. Where no budget or volumes have been stated, the provider should be the exclusive provider of the services detailed in the specification and this should be stated in the call off contract.*

4. Period

4.1. The period of the Contract is from and including «F29 commencement date» (the "Commencement Date") to and including «F30 initial expiry date», unless it is terminated earlier or extended under clause 4.2.

4.2. The Purchaser may, by giving notice to the Service Provider, extend the period of the Contract to a date falling no later than «F31 insert longstop expiry date». Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

5. Break

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

6. Specification and Service Levels

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

7. Pricing Schedule

7.1. The Pricing Schedule sets out details of the pricing of the Services «F23:, including provision for Service Credits».

7.2. «F33: The prices in the Pricing Schedule are not to be increased for the period of the Contract. **or** The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule.»

7.3. Accordingly, the Service Provider may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents the Service Provider from improving on the prices in the Pricing Schedule for the purposes of a particular Order.

8. Ordering Procedures and Management Arrangements

8.1. The Ordering Procedures may be invoked by the Purchaser at any time during the period of the Contract.

8.2. The Parties must comply with the Ordering Procedures.

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

8.4. The Parties must comply with the Management Arrangements.

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

9. Service Provider's Status

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

10. Notices

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

10.1.1. given in writing;
10.1.2. addressed in accordance with clause 12.3; and
10.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.

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

10.2.1. Two Working Days after the day on which the letter was posted; or
10.2.2. Four Working Hours after the communication was sent, in the case of fax or email.

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

10.3.1. For the Purchaser:
«F38: Purchaser address for notices»
For the attention of: «F39: Purchaser individual contact for notices»
Tel: «F40: Purchaser phone number»
Fax: «F41: Purchaser fax number for notices»
E-mail: «F42: Purchaser e-mail address for notices»

10.3.2. For the Service Provider:
«F43: Service Provider address for notices»
For the attention of: «F44: Service Provider individual contact for notices»
Tel: «F45: Service Provider phone number»
Fax: «F46: Service Provider fax number for notices»
E-mail: «F47: Service Provider e-mail address for notices»

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

10.5. Notices under clause 43.1 (Termination on Insolvency or Change of Control) may be sent to the Purchaser's trustee, receiver, liquidator or administrator, as appropriate.

11. Price

11.1. In consideration of the Service Provider's performance of its obligations relating to an Order, the Purchaser must pay:

11.1.1. the price due in accordance with the Pricing Schedule and the Ordering Procedures; and
11.1.2. a sum equal to the value added tax chargeable at the prevailing rate.

11.2. The Service Provider must automatically credit the Purchaser with Service Credits in accordance with the Pricing Schedule.

11.3. The Service Provider may not suspend the provision of services if it considers that the Purchaser has failed to pay the price due.

12. Payment and Invoicing

12.1. The Purchaser must pay all sums due to the Service Provider within 30 days of receipt of a valid invoice.

12.2. The Service Provider must render invoices «F48: insert invoicing frequency».

12.3. The Service Provider must ensure that each invoice contains appropriate Contract and Order references «F49: , details of any Service Credits applied» and a detailed breakdown of the Services provided. The Service Provider must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.

12.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.

12.5. Where any Service Credits have been credited to the Purchaser they must be applied against the next invoice rendered by the Service Provider. Where no invoice is due or likely to be rendered for a period exceeding 2 months, the Service Provider must promptly issue a credit note and pay the credited sum to the Purchaser within 30 days of issue.

12.6. Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by the Purchaser, the sums referred to in this clause must be properly invoiced by the Service Provider.

13. Recovery of Sums Due

13.1. Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider to the Purchaser, the Purchaser may deduct that sum from any sum due to the Service Provider whether under the Contract or otherwise.

13.2. The Service Provider must make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Service Provider.

14. Data Protection

14.1. The Service Provider acknowledges that Personal Data described in the scope of Schedule 5.9 (Data Protection) may be Processed in connection with the Services under this Contract.

For the purposes of any such Processing, Parties agree that the Service Provider acts as the Data Processor and the Purchaser acts as the Data Controller.

14.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Service Provider under Data Protection Laws and the Service Provider hereby agrees to comply with those obligations and duties.

14.3. The Service Provider will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

14.4. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

14.5. The Service Provider must:

14.5.1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;

14.5.2. subject to clause 14.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;

14.5.3. take all reasonable steps to ensure the reliability and integrity of any Service Provider Representatives who have access to the Personal Data and ensure that the Service Provider Representatives:

(a) are aware of and comply with the Service Provider's duties under this clause;

(b) are subject to appropriate confidentiality undertakings with the Service Provider or the relevant Sub-contractor;

(c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data.

14.5.4. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

14.6. The Service Provider shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Service Provider must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.

14.7. If the Service Provider engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Service Provider must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.

14.8. The Service Provider must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.

14.9. The Service Provider must notify the Purchaser if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);
(b) receives a request to rectify, block or erase any Personal Data;
(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
(d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order; and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

14.10. Taking into account the nature of the Processing and the information available, the Service Provider must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

(a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
(b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
(c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
(d) supporting the Purchaser with preparation of a data protection impact assessment;
(e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

14.11. At the end of the provision of Services relating to processing the Service Provider must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

14.12. The Service Provider must:

(a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Service Provider's compliance with this clause 14;
(b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 14 and contribute as is reasonable to those audits and inspections;

(c) inform the Purchaser, if in its opinion, an instruction from the Purchaser infringes any obligation under Data Protection Laws.

14.13. The Service Provider must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.

14.14. If requested, the Service Provider must make such records referred to clause 14.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

14.15. Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 14.14 with minimum disruption to the Service Provider's day to day business.

14.16. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Purchaser publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Service Provider should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Transparency and Freedom of Information

15.1. The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations. The Service Provider shall:

(a) provide all necessary assistance and cooperation as the Purchaser may reasonably request to enable the Purchaser to comply with its obligations under FOISA and Environmental Information Regulations;
(b) transfer to the Purchaser all Requests for Information relating to this Agreement that the Service Provider receives as soon as practicable and in any event within 2 Working Days of receipt;
(c) provide the Purchaser with a copy of all information held on behalf of the Purchaser which is requested in a Request For Information and which is in the Service Provider's possession or control. The information must be provided within 5 Working Days (or such other period as the Purchaser may reasonably specify) in the form that the Purchaser requires; and
(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 5.7 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information.

15.7. The Service Provider acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Confidential Information. However, for the avoidance of doubt, the following shall be treated as Confidential Information:

(i) any information that the Purchaser determine is exempt from disclosure in accordance with the provisions of FOISA;
(ii) Commercially Sensitive Information; and
(iii) if the Purchaser believes that publication of any element of the Transparency Information should be treated as Confidential Information the Purchaser may, in its discretion exclude such information from publication.

15.8. Notwithstanding any other provision of this Agreement, the Service Provider hereby gives consent for the Purchaser to publish to the general public, the Transparency Information in its entirety. The Purchaser shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

15.9. The Service Provider shall assist and co-operate with the Purchaser to enable the Purchaser to publish the Transparency Information including the preparation of Transparency Reports.

15.10. The Purchaser shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Service Provider.

15.11. The Service Provider agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Purchaser upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Purchaser may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 17.3.3) publish such Information. The Service Provider shall provide to the Purchaser within 5 working days (or such other period as the Purchaser may reasonably specify) any such Information requested by the Purchaser.

16. Purchaser Protected Information

16.1. The Service Provider must:

16.1.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
16.1.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;

16.1.3. only disclose the Purchaser Protected Information to such Service Provider Representatives that are directly involved in the performance of the Contract and need to know the information; and

16.1.4. not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.

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

16.3. Clause 16.1 does not apply to the extent that:

16.3.1. disclosure is required by law or by order of any competent court or tribunal;

16.3.2. information is in the possession of the Service Provider without restriction as to its disclosure prior to its disclosure by the Purchaser;

16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;

16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

16.3.5. information is independently developed without access to the Purchaser Protected Information.

16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Service Provider is a material breach for the purposes of clause 56.1.3 (Termination Rights).

17. Service Provider Sensitive Information

17.1. The Purchaser must:

17.1.1. treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and

17.1.2. not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.

17.2. Clause 17.1 does not apply to the extent that:

17.2.1. disclosure is required by law or by order of any competent court or tribunal;

17.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;

17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;

17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

17.2.5. information is independently developed without access to the Service Provider Sensitive Information.

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

17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Freedom of Information);

17.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;

17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;

17.3.4. in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;

17.3.5. to any consultant, Service Provider or other person engaged by the Purchaser, for example to conduct a gateway review;

17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament , a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;

17.3.7. in response to any inquiry of the European Commission concerning the Contract; or

17.3.8. for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.

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

18. Audit and Records Management

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

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

(ii) Records Management Plan' means the plan prepared by the Purchaser and approved by the Keeper of the Records of Scotland under section 1 of the Act.

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

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

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

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

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

of clause 18.5 fall to be offered to the Purchaser shall be deemed to be held on trust by the Service Provider on behalf of the Purchaser. The Service Provider shall thereafter, if and when so required by the Purchaser, transfer the records in question to the Purchaser, such transfer to be on the same terms as would apply to a transfer made in terms of clause 18.5.]

19. Publicity

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

SECTION C: PROVISION OF SERVICES

20. Provision of the Services

20.1. The Service Provider must provide the Services:

20.1.1. in accordance with the Specification the Service Levels and the Ordering Procedures;
20.1.2. in accordance with the particular requirements of each Order; and
20.1.3. to the satisfaction of the Purchaser acting reasonably.

20.2. The Service Provider acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Service Provider in the supply of the Services and the performance of its obligations under the Contract.

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

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

21. Deliverables and Milestones

21.1. The Service Provider must provide the Services, including any Deliverables:

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

21.2. When the Service Provider believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.

21.3. The Purchaser may thereafter by notice to the Service Provider:

21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or
21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.

21.4. Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, the Service Provider must at its expense immediately rectify or remedy any defects and/or delays.

21.5. Risk and ownership in any Deliverables that are corporeal moveable's and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.

21.6. Whether the defect or delay is due to the Purchaser or not, the Service Provider shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

22.1. The Service Provider acknowledges that the Key Individuals are essential to the proper provision of the Services to the Purchaser.

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

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

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

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

22.4. Any proposed replacement to a Key Individual is subject to the approval of the Purchaser. Subject to the Service Provider's compliance with this clause, the Purchaser must not unreasonably withhold such approval.

23. Offers of Employment

23.1. For the duration of the Contract and for a period of 12 months thereafter the Service Provider must not employ or offer employment to any of the Purchaser's employees who have been associated with the Contract and/or the contract management of the Contract without the Purchaser's prior approval.

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

24. Staff transfer at commencement

The Parties agree that the commencement of the provision of the Services by the Service Provider does not involve a Relevant Transfer. ***Purchaser – If it is clear that TUPE will not apply on the commencement of the provision of the Services retain this condition***

and delete the other conditions 24.1 to 24.3. If TUPE may apply, delete this condition and retain the other conditions 24.1 to 24.3.]

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

24.2. The Service Provider is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.

24.3. The Service Provider indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 24.2.

25. Information about Service Provider Employees

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

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

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

26. Staff transfer on expiry or termination

«F37 The Parties agree that the ceasing of the provision of the Services by the Service Provider does not involve a Relevant Transfer.» ***Purchaser – If it is clear that TUPE will not apply on the ceasing of the provision of the Services retain this condition and delete the other conditions 26.1 to 26.4. If TUPE may apply, delete this condition and retain the other conditions 26.1 to 26.4.]***

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

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

26.2.1. the provision of information pursuant to clause 25;
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 Service Provider in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
26.2.3. any failure by the Service Provider to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any replacement service provider to comply with its obligations under regulation 13 of TUPE; and

26.2.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Purchaser to comply with any legal obligation to such trade union, body or person.

26.3. The Service Provider is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).

26.4. The Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or replacement service provider may incur in respect of the emoluments and outgoings referred to in clause 26.3.

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

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

29. Specially Created Intellectual Property Rights

29.1. All Intellectual Property Rights 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 27.1. This assignation takes effect on the Commencement Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the 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 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. Assignation

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 assignation, 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 5.6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.

34.2. The Service Provider may not sub-contract its obligations under the Contract to other sub-contractors without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall be responsible for the acts and omissions of its sub-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 31.3 (including for the avoidance of doubt this clause 31.3.4) subject only to modification to refer to the correct designation of the equivalent party as the 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.

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

36.1.1. all applicable law;
36.1.2. any applicable requirements of regulatory bodies; and
36.1.3. Good Industry Practice.

53. Official Secrets Acts

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

37. Service Provider's responsibility for staff etc.

37.1. 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.

37.2. The Service Provider must ensure that all Service Provider Representatives:

37.2.1. are appropriately experienced, skilled, qualified and trained;
37.2.2. carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and
37.2.3. obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

38. Access to the Purchaser's Premises

38.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the 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.

38.2. 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.

38.3. 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.

38.4. 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.

38.5. 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.

38.6. 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.

38.7. The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.

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

39. Service Provider's Equipment

39.1. 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.

39.2. But the Service Provider must not, without the Purchaser's approval:

39.2.1. bring Equipment onto the Purchaser's premises; or
39.2.2. leave Equipment on the premises.

39.3. Any Equipment brought onto the Purchaser's premises:

39.3.1. remains the property of the Service Provider; and
39.3.2. 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.

39.4. 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.

39.5. 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:

39.5.1. remove all Equipment; and
39.5.2. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Service Provider's activities.

39.6. 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.

40. Purchaser Property

40.1. Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.

40.2. The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:

40.2.1. keep the Purchaser Property in good order and condition (excluding wear and tear);
40.2.2. comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
40.2.3. use any Purchaser Property solely in connection with the Contract and for no other purpose; and
40.2.4. store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.

40.3. The Purchaser Property is deemed for the purposes of clause 40.2.1 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.

40.4. The Service Provider must not:

40.4.1. modify or replace the Purchaser Property;
40.4.2. use the Purchaser Property as security for a loan or other obligation;
40.4.3. sell, or attempt to sell or part with possession of the Purchaser Property; or
40.4.4. allow anyone to obtain a lien over, or right to retain, the Purchaser Property.

40.5. The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.

40.6. 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.

41. Health and Safety etc.

41.1. 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.

41.2. 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.

41.3. 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.

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

42. Offences

42.1. The Service Provider must not commit or attempt to commit any offence:

42.1.1. under the Bribery Act 2010;
42.1.2. of fraud, uttering, or embezzlement at common law; or
42.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

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

43. Tax Arrangements

43.1. 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.

43.2. 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.

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

43.4. 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.

43.5. 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.

43.6. 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.

43.7. 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.

44. Discrimination

44.1. 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.

45. Blacklisting

45.1. 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.

46. Sustainability

46.1. The Service Provider should propose measures to deliver any sustainable benefits as follows: Purchaser to complete as appropriate

47. Conflicts of Interest

47.1. The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under the Contract.

47.2. The Service Provider must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

47.3. Breach of this clause by the Service Provider is a material breach for the purposes of clause 56.1.3 (Termination Rights).

SECTION G FINAL PROVISIONS

48. Warranties and Representations

48.1. The Service Provider warrants and represents that:

48.1.1. 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 Contract and that the Contract is executed by a duly authorised individual;

48.1.2. in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;

48.1.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;

48.1.4. 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 Purchaser prior to execution of the Contract;

48.1.5. 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 Contract;

48.1.6. 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 Contract;

48.1.7. 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 Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

48.1.8. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

48.1.9. in the 3 years prior to the Commencement Date:

48.1.9.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

48.1.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

48.1.10. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

48.1.11. it has made appropriate inquiries (for example as regards the Purchaser's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;

48.1.12. it is familiar with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;

48.1.13. it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;

48.1.14. there are no actual or potential conflicts between the interests of the Service Provider and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and

48.1.15. it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

49. Indemnity

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

49.2. 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.

50. Limitation of Liability

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

50.1.1. loss of profits, business, revenue or goodwill; or
50.1.2. indirect or consequential loss or damage.

50.2. But clause 35.1 does not exclude any liability of the Service Provider for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Service Provider.

50.3. The liability of either Party under the Contract for Defaults is limited to £1,000,000 per Order or any greater/other sums as may be agreed with the Framework Public Body.

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

50.4.1. death or personal injury caused by its negligence;
50.4.2. misrepresentation;
50.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
50.4.4. any breach of any obligations under Data Protection Laws.

51. Insurances

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

51.1.1. public liability insurance in the sum of not less than £1,000,000 per Order or such greater/other sums as may be agreed with the Framework Public Body;

51.1.2. professional indemnity insurance in the sum of not less than £1,000,000 per Order or such greater/other sums as may be agreed with the Framework Public Body; and

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

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

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

52. Force Majeure

52.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 3 months, either Party may terminate the Contract with immediate effect by notice.

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

52.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 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.

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

53. Dispute Resolution

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

53.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

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

54. Severability

54.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the

provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

55. Waiver and Cumulative Remedies

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

55.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 10 (notices).

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

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

56. Termination Rights

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

56.1.1. the Service Provider has not remedied the Default to the satisfaction of the Purchaser within 20 Working Days, or such other period as may be specified by the Purchaser, after issue of a notice specifying the Default and requesting it to be remedied;
56.1.2. the Default is not in the opinion of the Purchaser, capable of remedy; or
56.1.3. the Default is a material breach of the Contract.

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

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

(a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
(b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
(c) the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

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

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

56.5. The Purchaser may also terminate the Contract where, at any time before the term of the Contract, the Service Provider or any person falling within the description set out in

paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits an offence referred to in paragraph (1) of that regulation.

57. Termination on Insolvency and Change of Control

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

57.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
57.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
57.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
57.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
57.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
57.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
57.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
57.1.8. a debt relief order is entered into; or
57.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.

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

57.2.1. being notified that a change of Control has occurred in accordance with clause 33.2 (Change of Control); or
57.2.2. where no such notification has been given, the date that the Purchaser becomes aware of the change of control.

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

58. Exit Management

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

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

58.3. A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 59.4. The Purchaser shall provide to the Service Provider the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The 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.

58.4. The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:

58.4.1. the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;
58.4.2. the activities necessary to support any Replacement Service Provider or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;
58.4.3. details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;
58.4.4. support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;
58.4.5. the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and
58.4.6. all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Service Provider or the Purchaser.

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

59. Consequences of Expiry or Termination

59.1. Where the Purchaser terminates the Contract under clause 40 (Termination Rights) and makes other arrangements for the provision of services, the Service Provider indemnifies the Purchaser against all costs incurred in making those arrangements.

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

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

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

59.4. Except as provided for in clauses 34 (General Indemnity), 50.1 and 59.2 and the Management Arrangements, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.

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

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

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

59.6.1. clause 1 (Definitions and Interpretation);
59.6.2. clause 13 (Recovery of Sums Due);
59.6.3. clause 14 (Data Protection);
59.6.4. clause 15 (Transparency and Freedom of Information);
59.6.5. clause 16 (Purchaser Protected Information);
59.6.6. clause 17 (Service Provider Sensitive Information);
59.6.7. clause 0 (Audit [and Records Management]);
59.6.8. clause 19 (Publicity);
59.6.9. clause 23 (Offers of Employment);
59.6.10. clause 25 (Information about Service Provider Employees);
59.6.11. clause 26 (Staff transfer on expiry or termination);
59.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);
59.6.13. clause 29 (Specially Created Intellectual Property Rights);
59.6.14. clause 30 (Licences of Intellectual Property Rights);
59.6.15. clause 29 (Claims relating to Intellectual Property Rights);
59.6.16. clause 37 (Official Secrets Acts);
59.6.17. clause 39 (Service Provider's Equipment);
59.6.18. clause 40 (Purchaser Property);
59.6.19. clause 44 (Tax arrangements);
59.6.20. [clause 47 (Sustainability)];
59.6.21. clause 49 (Warranties and Representations);
59.6.22. clause 50 (Indemnity);
59.6.23. clause 51 (Limitation of Liability);
59.6.24. clause 52 (Insurances);
59.6.25. clause 54 (Dispute Resolution);
59.6.26. clause 56 (Waiver and Cumulative Remedies);
59.6.27. this clause 60; and
59.6.28. clause 0 (Governing Law and Jurisdiction).

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

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

59.8.1. any additional operational and administrative costs and expenses incurred by the Purchaser by virtue of such termination of the Contract;

59.8.2. the costs and expenses incurred by the Purchaser in providing, or procuring that another body provide, the Contract Services on a temporary basis until the completion of a re-tendering process; and

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

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

59.9.1. immediately return to the Purchaser all Purchaser's Property and Purchaser's Protected Information in its possession; and

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

60. Entire Agreement

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

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

60.2.1. the clauses of the Contract;
60.2.2. the Schedules; and
60.2.3. any other document referred to in the Contract.

61. Governing Law and Jurisdiction

61.1. The Contract 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 «F71: number of pages before this page» preceding pages together with the «F20: number of Schedules» Schedules annexed are executed as follows:

SIGNED for and on behalf of the
[Name of Purchaser]

At.....

On.....

Signature.....

Full name .....

Position .....

Address.....

In the presence of

Signature.....

Full name .....

Address.....

SIGNED for and on behalf of the
Service Provider

At.....

On.....

Signature.....

Full name.....

Position.....

Address.....

In the presence of

Signature.....

Full name.....

Address.....

This and the following [ ] pages comprise Schedule 5.1 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.1 – SPECIFICATION «F6: AND SERVICE LEVELS»

Purchaser should insert their Specification and Service Levels

This and the following [ ] pages comprise Schedule 5.2 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.2 - PRICING SCHEDULE

Purchaser should insert their Pricing Schedule

This and the following [ ] pages comprise Schedule 5.3 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.3 – ORDERING PROCEDURES

Purchaser should insert their Ordering Procedures

This and the following [ ] pages comprise Schedule 5.4 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.4 – MANAGEMENT ARRANGEMENTS

Purchaser should insert their Management Arrangements

This and the following [ ] pages comprise Schedule 5.5 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.5 – KEY INDIVIDUALS

Purchaser should insert details of any key individuals

This and the following [ ] pages comprise Schedule 5.6 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.6 – APPROVED SUB-CONTRACTORS

Purchaser should insert details of any approved sub-contractors

This and the following [ ] pages comprise Schedule 5.7 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.7 – TRANSPARENCY REPORTS AND SERVICE PROVIDER SENSITIVE INFORMATION

Purchaser should insert details of any 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

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 5.8 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.8 – PARENT COMPANY GUARANTEE - Delete if Not Applicable

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

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

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

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

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

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

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

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

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

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

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

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

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

6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.

8. All notices and other communications required or permitted to be given in terms of this Contract, or any proceedings relating to it, shall be in writing and will be sufficiently served:

   8.2 if delivered by hand; or

   8.2 if sent by fax; or

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

   8.4 if sent by email

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

   Scottish Ministers:

   [to be completed]

   [Guarantor]

   [to be completed]

9. Any such notice or communication shall be deemed to have been served,

   9.1 if delivered by hand, on the date of delivery;

   9.2 if sent by fax, 4 working hours after the time at which the fax was sent;

   9.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or

   9.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,

   9.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

   9.6 For the purposes of this Clause 9:

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

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

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

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

At.....

On.....

Signature.....

Full name .....

Position .....

Address.....

……

In the presence of

Signature.....

Full name .....

Address.....

……..

This and the following [ ] pages comprise Schedule 5.9 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.9 – 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:

1. *Subject matter and duration of the Processing of Personal Data*

2. The subject matter and duration of the Processing of Personal Data are set out in the Contract.
3. *The nature and purpose of the Processing of Personal Data*

5. [Include description here]

6. *The types of Personal Data to be Processed*
7.
8. [Include list of data types here]

9. *The categories of Data Subject to whom Personal Data relates*
10. [Include categories of data subjects here]

11. *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 5.10 to the foregoing Contract between the [Name of Purchaser] and «F3: Service Provider name»

SCHEDULE 5.10 – EXIT MANAGEMENT

This and the following 2 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

SCHEDULE 6 – PARENT COMPANY GUARANTEE

TO BE COMPLETED, IF APPLICABLE, AT FRAMEWORK AWARD STAGE

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 Minsters, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this Guarantee.

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

6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.

8. All notices and other communications required or permitted to be given in terms of this Framework Agreement, or any proceedings relating to it, shall be in writing and will be sufficiently served:

   if delivered by hand; or

   if sent by fax; or

   if sent by prepaid recorded or special delivery post; or

   if sent by 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,

   if delivered by hand, on the date of delivery;

   if sent by fax, 4 working hours after the time at which the fax was sent;

   if sent by pre-paid recorded or special delivery post, on the date of delivery; or

   if sent by electronic mail, 4 working hours after the time at which the email was sent,

   provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

   For the purposes of this Clause 9:

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

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

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been

served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

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

At.....

On.....

Signature.....

Full name .....

Position .....

Address.....

……..

In the presence of ……

Signature.....

Full name .....

Address.....

……

This page comprises Schedule 7 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

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

TITLE	CONTENT	FORMAT	FREQUENCY
(Contract Document)			*Once*
(Performance)			*TBC*
(Charges)			*TBC*
(Major sub-contractors)			*TBC*
(Technical)			*TBC*

CONTRACTOR SENSITIVE INFORMATION

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity
Commission levels	Potentially removes competitive advantage	Duration of contract
Hourly rates	Potentially removes competitive advantage	Duration of contract

This page comprises Schedule 8 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

SCHEDULE 8 – EXIT STRATEGY

1. Contract re-tender and re-negotiation

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

Services detailed at clause 44.9.

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 44.3.

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 44.4.

3. Post termination

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

This page comprises Schedule 9 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

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 page comprises Schedule 10 to the Framework Agreement between the Scottish Ministers and MediaCom Holdings Limited.

SCHEDULE 10 – APPROVED SUB-CONTRACTORS

TO BE COMPLETED AT FRAMEWORK AWARD STAGE IF APPLICABLE

approved Sub-contractors	Relevant obligations