

FRAMEWORK REFERENCE NUMBER 2018/S 143-326359

FRAMEWORK AGREEMENT

-between-

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

-and-

(2) HAVEN PRODUCTS LIMITED (THE “CONTRACTOR”)

-relating to the supply of-

RESERVED COMMODITIES FOR SUPPORTED BUSINESS FRAMEWORK

LOT 2 – DOCUMENT MANAGEMENT

for the benefit of

THE SCOTTISH MINISTERS AND THE SCOTTISH PUBLIC SECTOR

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PREAMBLE:

- ONE The Authority requires the supply of Services to Framework Public Bodies;
- TWO On 28 July 2018 the Authority's contract notice relating to the Framework Agreement was published in the Official Journal of the European Union with reference number 2018/S 143-326359;
- THREE On 22 August 2018 the Contractor completed its ESPD;
- FOUR On 28 July 2018 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FIVE On 22 August 2018 the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Contractor Haven Products Ltd. 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 Scottish Procurement.

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

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

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

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

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

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

“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 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 1998 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 22 August 2018.

“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.

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

"ITT" means the Authority's invitation to tender dated 28 July 2018.

"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 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 22 August 2018.

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

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

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

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

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

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

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

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

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

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

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

2. Condition Precedent: Requirement for Parent Company Guarantee

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

3. Nature of this Agreement

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

4. Period

- 4.1. The period of this Framework Agreement is from and including 10 December 2018 (the "Commencement Date") to and including 9 December 2020, unless it is terminated earlier or extended under Clause 4.2.
- 4.2. The Authority may, by giving notice to the Contractor, extend the period of the Framework Agreement to a date falling no later than 2 years from the Commencement Date by the use of two separate 12 month extensions. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.
- 4.3. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

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

6. Specification and Service Levels

The Specification sets out the Services that the Contractor has undertaken to provide. The Specification includes Service Levels (Key Performance Indicators) setting out particular levels of service that the Contractor has undertaken to meet. These are also attached at Schedule 1.

7. Price

7.1 The pricing of goods and services supplied through this Framework Agreement will be established through the Award Process (Call-off).

8. Award Procedures

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

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

8.2.1. the period of the Framework Agreement has expired;

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

8.2.3. the Contractor's appointment to provide Services to the Authority **or** 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, the Service Levels, the Award Procedures and the terms of this Framework Agreement.

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

9.2.1. if the Authority becomes entitled to terminate this Framework Agreement under clause 42 (Termination Rights) or 43 (Termination on Insolvency or Change of Control); or

9.2.2. in any other circumstance provided for in the Management Arrangements.

9.3. Suspension under clause 9.2 shall terminate upon cessation of all of any circumstances referred to in subclauses 9.2.1 and 9.2.2.

9.4. The Contractor must continue to perform existing Call-off Contracts during any period of suspension under clause 9.2.

10. Official Secrets Acts

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

SECTION B

11. Contractor's Status

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

12. Notices

12.1. Any notice or other communication which is to be given by a Party to the other under this Framework Agreement must be:

12.1.1. given in writing;

12.1.2. addressed in accordance with clause 12.3; and

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

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

12.2.1. 2 Working Days after the day on which the letter was posted; or

12.2.2. 4 Working Hours, in the case of e-mail.

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

12.3.1. For the Authority:
Scottish Procurement
7th Floor, 5 Atlantic Quay
150 Broomielaw, Glasgow G2 8LU

For the attention of REDACTED
Tel: REDACTED
Fax: Not used
E-mail: REDACTED

12.3.2. For the Contractor:
Haven Products Limited
325 Govan Road
Glasgow

G51 2SE
For the attention of: REDACTED
Tel: REDACTED
Fax: Not used
E-mail: REDACTED

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

13. Recovery of Sums Due

Wherever under this Framework Agreement any sum of money is recoverable from or payable by the Contractor to the Framework Public Body, the Framework Public Body 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 acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in connection with the Services 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.

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

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

- 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. The Contractor must:

14.5.1. process Personal Data only as necessary in accordance with obligations under the Framework Agreement and any written instructions given by the Authority (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Contractor is subject; in which case the Contractor must, unless prohibited by that law, inform the Authority 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 Contractor's obligations under this Framework Agreement 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 Authority's prior written consent;

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

- (a) are aware of and comply with the Contractor's duties under this Clause;
- (b) are subject to appropriate confidentiality undertakings with the Contractor or the relevant Sub-contractor;

- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; 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 Contractor shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Authority. In the case of general written authorisation, the Contractor must inform the Authority of any intended changes concerning the addition or replacement of any other sub-contractor and give the Authority an opportunity to object to such changes.

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

14.8 The Contractor must provide to the Authority 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 Authority 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 Framework Agreement; 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 Authority from time to time.

14.10 Taking into account the nature of the Processing and the information available, the Contractor must assist the Authority in complying with the Authority'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 Authority without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Authority with communication of a personal data breach to a Data Subject;
- (d) supporting the Authority with preparation of a data protection impact assessment;
- (e) supporting the Authority with regard to prior consultation of the Supervisory Authority.

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

14.12 The Contractor must:

- (a) provide such information as is necessary to enable the Authority to satisfy itself of the Contractor's compliance with this clause 14;
- (b) allow the Authority, 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 Authority if, in its opinion, an instruction from the Authority infringes any obligation under Data Protection Laws.

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

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

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

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

15. Freedom of Information

15.1. The Contractor acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Authority to enable the Authority to comply with FOISA and the Environmental Information Regulations.

- 15.2. If the Contractor receives a Request for Information the Contractor must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.
- 15.3. Where the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4. The Contractor acknowledges that the 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 Contract:
 - 15.4.1. in certain circumstances without consulting the Contractor, or
 - 15.4.2. following consultation with the Contractor and having taken its views into account.
- 15.5. Where clause 15.4.1 applies the Authority must take reasonable steps, where practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure.
- 15.6. Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 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.

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 (18.1 and 18.2 applies to Goods procured through Lots 1,3 and 4 – See Terms of Supply for Goods)**
- 18.1. The Contractor must retain and maintain until 5 years after the end of the Framework Agreement period full and accurate records of the Framework Agreement including the Orders placed, the Services provided and payments made and reimbursed under it.

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

Audit and Records Management (18.3 through to 18.8 applies to Services procured through Lot 2, Document Management – See Terms of Supply for Services)

- 18.3 In these Clause 18.3 through to 18.8, the following terms have the following meanings:-

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

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

- 18.4 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.
- 18.5 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.
- 18.6 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.
- 18.7 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.
- 18.8 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 18.7.

19. Publicity

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

SECTION C

20. Key Individuals

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

21. Offers of Employment

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

22. Staff transfer at commencement

- 22.1. The Parties agree that the commencement of the provision of the Services by the Contractor 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 does not involve a Relevant Transfer.
- 24.2. The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 24.3. 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:
 - 24.3.1. the provision of information pursuant to clause 23;
 - 24.3.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 24.3.3. any failure by the Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and
 - 24.3.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.
- 24.4. The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 24.5. 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 24.4.

25. Security and Cyber 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.
- 25.3. Specifically to Lot 2 of this agreement, Document Management, throughout the Term the Infrastructure Provider must maintain Cyber Essentials Plus certification, or equivalent standard, and provide evidence of this to the Authority when requested.
- 25.4. If the Infrastructure Provider does not have Cyber Essentials Plus Certification, or equivalent standard, at the Effective Date, it shall (at its own cost) obtain Cyber Essentials Plus Certification or equivalent prior to any contract signing. Failing which the Authority may give notice to terminate this Agreement without penalty.

SECTION D

26. Parties' pre-existing Intellectual Property Rights

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

27. Specially Created Intellectual Property Rights

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

28. Licences of Intellectual Property Rights

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

- 30.1. The Contractor may not assign its interest in the Framework Agreement without the prior written consent of the Authority.
- 30.2. The Contractor must notify the Authority:
 - 30.2.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur;
 - 30.2.2. immediately following a change of Control that has occurred; and
 - 30.2.3. where it proposes to make any change to its sub-contractor named by the Contractor in its tender.
- 30.3. Subject to clause 30.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:
 - (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority,provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

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

31. Sub-Contracting

- 31.1. The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 31.2. The Contractor may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 31.3. Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:
- 31.3.1. requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of Services and the sub-contractor’s invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;
 - 31.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;

- 31.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Framework Agreement, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 31.3.4. is in the same terms as that set out in this clause 31.3 (including for the avoidance of doubt this clause 31.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.
- 31.4. The Contractor shall include in every sub-contract:
- 31.4.1 a right for the Contractor to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 42.4 occur; and
 - 31.4.2 a requirement that the sub-contractor includes a provision having the same effect as 31.4.1 in any sub-contract which it awards.
- In this Clause 31.4, 'sub-contract' means any contract between two or more contractors, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement.
- 31.5. Where requested by the Authority, copies of any sub-contract must be sent by the Contractor to the Authority as soon as reasonably practicable.
 - 31.6. Where the Contractor proposes to enter into a sub-contract it must:
 - 31.6.1 advertise its intention to do so in at least one trade journal, and the Public Contracts Scotland Portal; and
 - 31.6.2 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

32. Amendment

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

SECTION E

33. Warranties and Representations

The Contractor warrants and represents that:

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

34. Indemnity

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

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

- (a) acts on the Authority's specific written instructions but fails to notify the Authority in accordance with clause 14.12(c) of this Framework Agreement;
- (b) fails to comply with any other obligation under the Framework Agreement.

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 incident, 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; or
 - 35.4.4. any breach of any obligations under the 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 5 Million GBP
 - 36.1.2. product liability insurance in the sum of not less than 5 Million GBP
 - 36.1.3. third party motor vehicle insurance of not less than 10 Million GBP; and
 - 36.1.4. employer's liability insurance in accordance with any legal obligation for the time being in force (currently 5 Million GBP).
- 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

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 3 months, either Party may terminate the Framework Agreement with immediate effect by notice.
- 40.2. Any delay or other failure by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by a Contractor Representative is only to be regarded as due to Force Majeure if that Contractor Representative is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 40.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 40.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 40.4. The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events.

41. Disruption

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

42. Termination Rights

- 42.1. The Authority may terminate the Contractor's interest in the Framework Agreement by notice to the Contractor with immediate effect if the Contractor commits a Default and if:
 - 42.1.1. the Contractor has not remedied the Default to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
 - 42.1.2. the Default is not in the opinion of the Authority, capable of remedy; or
 - 42.1.3. the Default is a material breach of the Framework Agreement.
- 42.2. The Authority may also terminate the Contractor's interest in the Framework Agreement:
 - 42.2.1. in accordance with any provision of the Schedules;
 - 42.2.2. in accordance with any provisions of the Standard Terms of Supply relating to the following activities:
 - 42.2.2.1. entering, attending or occupying the Authority's premises;
 - 42.2.2.2. making use of the Authority's property or information technology systems, or giving the Authority the use of the Contractor's property or information technology systems;
 - 42.2.2.3. having dealings with the Authority's employees, Contractors, suppliers or contractors;
 - 42.2.2.4. soliciting the Authority's employees;
 - 42.2.2.5. making representations or giving professional advice to the Authority;
 - 42.2.2.6. generating information for or giving information to the Authority;
 - 42.2.2.7. receiving information from or holding information on behalf of the Authority; and
 - 42.2.2.8. carrying out publicity or marketing activities;

- 42.2.3. where a Call-off Contract with the Contractor under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.
- 42.2.4. where, at any time before the term of the Framework Agreement, the Contractor or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that regulation.
- 42.2.5. The Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Contractor.
- 42.3. 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.
- 42.4. The Authority may also terminate the Framework Agreement in the event of a failure by the Contractor to comply in the performance of its obligations under the Framework Agreement with legal obligations in the fields of environmental, social or employment law.

43. Termination on Insolvency and Change of Control

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

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

44. Exit Management

- 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 Resolution3). 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 the first 12 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;

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 Contractor enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Contractor must ensure that a provision is included which is in the same terms as this clause 47 subject only to modification to refer to the correct designation of the equivalent party as the Contractor.

48. Blacklisting

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

50.4.20. clause 39 (Waiver and Cumulative Remedies);

50.4.21. clause 47 (Tax arrangements);

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

50.4.23. clause 52 (Governing Law and Jurisdiction).

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

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

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

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

50.8 On expiry or termination of the Framework Agreement the Contractor must:

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

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

51. Entire Agreement

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

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

51.2.1. the clauses of this Framework Agreement;

51.2.2. the Standard Terms of Supply;

51.2.3. the other Schedules; and

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

52. Governing Law and Jurisdiction

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

IN WITNESS WHEREOF these presents typewritten on this and the 34 preceding pages together with the 5 Schedules annexed hereto are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of Haven Products Ltd.

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

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This and the following 2 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and : Haven Products Ltd.

SCHEDULE 1 – STATEMENT OF REQUIREMENTS AND SERVICE LEVELS

Statement of Requirements

1. Supported Business - Definition

Under current EU legislation a supported business means an economic operator whose main aim is the social and professional integration of disabled or disadvantaged persons and where at least 30% of the employees of the economic operator are disabled or disadvantaged persons.

Only suppliers who are able to demonstrate they meet this definition are eligible to bid for a place on the framework.

2. Workforce Matters and Fair Work Practices

The suppliers on the framework are required to commit to being a best practice employer in order to support Scottish Ministers workforce policies. The suppliers will take the engagement and empowerment of staff seriously by; taking a positive approach to rewarding staff at a level that helps tackle poverty (e.g. through a commitment to paying at least the living wage), providing skills and training which help staff fulfil their potential, not unfairly exploiting staff (e.g. in relation to matters such as the inappropriate use of zero hours contracts): demonstrating organisational integrity with regards to the delivery of those policies.

3. Key Performance Indicators

Suppliers on the framework will require a self-monitoring system which enables the organisation to monitor performance and ensure performance does not fall below that as specified within the Key Performance Indicators.

4. Data Protection act and General Data Protection Regulations (GDPR)

Suppliers on the framework, where appropriate, will be required to comply with the General Data Protection Regulations as detailed in Terms of Supply (Schedule 9 of the Terms & Conditions).

5. Cyber Security

Suppliers on the framework, where appropriate, will be aligned to the general principles of the Cyber Essential Plus scheme. As detailed in Terms of Supply (Schedule 9 of the Terms & Conditions).

6. Product Compliance, Marking and Labelling

It is a requirement that all products supplied via the framework, comply with all relevant EU, UK and other safety and fire resistance standards and regulations specific. Suppliers must demonstrate, throughout the term of the framework, how on-going compliance is maintained and compliance testing performed.

7. Environmental Products

The supply of products that are environmentally sustainable and which encourage re-use, whilst ensuring no degradation to product quality, functionality and durability is a core requirement.

8. Packaging & Waste

Suppliers on the framework will be required to work with public bodies in identifying and proposing plans & initiatives to support reduction in packaging and other waste under this Framework Agreement, without hindering the safe delivery of products.

Service Levels

Framework Service Level Review Meetings

Periodic meetings will be held between the Authority's Framework Manager and the Contractor's Framework Manager to review and improve the performance of the Framework Agreement against the agreed service levels as measured through Key Performance Indicators (KPIs).

Framework Key Performance Indicators

The KPIs in Table 1 below are the minimum requirements; further KPIs will be agreed with the Contractor.

Table 1

Framework for Commodities Reserved for Supported Businesses - Key Performance Indicators																
	KPI	Type	Description	Threshold	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
Commercial Management	Meeting Call-Off requirements	%	Respond to all call off requests in a timely manner relevant and proportionate to each call off opportunity. As specified by the Framework Public Body	95%												
	Timely Creation of invoices	%	Timely issuance of invoices arising from Call offs - Maximum 14 days from delivery The number of on time invoice submissions divided by the number of invoice submissions	95%												
Contract Managam	Meeting reporting requirements	%	Timely management information submissions (see Specification for details) The number of on time management information submissions divided by the number of management information submissions required	100%												
	Meeting Accreditation requirements	%	Copies of accreditation certificates to be shared within 28 days of award	100%												

This page comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and Haven Products Ltd.

SCHEDULE 2 - PRICING SCHEDULE

Pricing will be established by Framework Public Bodies during the Award Process (Call-off)

This and the following 2 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and Haven Products Ltd.

SCHEDULE 3 – AWARD PROCEDURES

ORDERING PROCEDURES

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

NB: Framework Public Bodies conducting a call-off for a “Duration contract” must use the contract exclusively for the scope of their requirement, subject to the Terms of Supply; Goods - Clause 6 (Break) and Terms of Supply; Services – Clause 5 (Break).
 - 1.2. A Framework Public Body can undertake a mini-competition inviting all Contractors, in a specific lot, to tender for the work and then award a contract to the successful Contractor.

MINI COMPETITION PROCEDURE

2. Framework Public Body's Obligations
 - 2.1 The Framework Public Bodies shall:
 - 2.1.1 invite tenders, from all Contractors appointed to the Framework, by conducting a mini-competition for its requirements in accordance with the conditions herein, and:
 - 2.1.2 set weightings for the Award Criteria in the mini-competition invitation to tender against more precisely formulated technical criteria.
 - 2.2 **Technical Criteria** - xx% weighting shall be set by Framework Public Bodies at mini-competition
 - 2.3 **Commercial Criteria** - xx% weighting shall be set by Framework Public Bodies at mini-competition
3. 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 more precisely formulated technical criteria relative to the subject matter of the specific Lot. Framework Public Bodies must provide full details in the invitation to tender document.
4. Set a time limit for the receipt of the mini-competition tenders which takes into account factors such as the complexity of the subject matter of the Order and the time needed to submit tenders.
5. Keep each mini-competition tender confidential until the expiry of the time limit for the receipt by it of mini-competition tenders.
6. 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.

7. The highest scoring compliant Tenderer will be appointed the Call-off Contract. In the event of a tie the Framework Public Body reserves the right to appoint the Tenderer who obtains the highest technical score.
8. On the basis set out above, award its Services requirements by placing an Order with the successful Framework Contractor in accordance with the following:
 - 9.1 states the Services requirements;
 - 9.2 states the Specification;
 - 9.3 states the charges payable for the Services requirements in accordance with the tender submitted by the successful Framework Contractor; and
 - 9.4 incorporates the Standard Terms of Supply detailed at Schedule 5.
9. Provide unsuccessful Framework Contractors with a feedback in relation to the reasons why their tenders were unsuccessful. The substance and form of the feedback given to unsuccessful bidders in the mini competition will be at the Framework Public Body's discretion.

10. Framework Contractors Obligations

- 11.1 The Contractor will, in writing, by the time and date specified by the Framework Public Body, provide the Framework Public Body with either:
 - 11.1.1 a statement to the effect that it does not wish to tender in relation to the relevant Services requirements; or
 - 11.1.2 a proposal with full details of its tender made in respect of the relevant Specification which should include, as a minimum:
 - (a) subject line to comprise unique reference number and Contractor name, so as to clearly identify the Contractor;
 - (b) 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;
11. The Contractor agrees that tenders submitted in relation to a mini-competition held pursuant to Paragraph 3 shall remain open for acceptance for thirty (30) days (or such other period specified in the mini-competition invitation to tender issued by the relevant Framework Public Body).
12. Notwithstanding the fact that the Framework Public Body has followed the procedure set out above in Paragraph 3, the Framework Public Body shall be entitled at all times to decline to make an award for its Service requirements. Nothing in this Framework Agreement shall oblige any Framework Public Body to place any Order for Services.

13. Responsibility for Awards

- 14.1 The Contractor acknowledges that each Framework Public Body is independently responsible for the conduct of its award of Orders under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-
- 14.2 the conduct of the Framework Public Body in relation to the Framework Agreement; or

14.3 the performance or non-performance of any Orders between the Contractor and the Framework Public Body entered into pursuant to the Framework Agreement.

14. Order Form

15.1 The format of any Order may vary between Framework Public Bodies. Framework Public Bodies may place an order using their own Order templates but the order must include a completed copy of Terms of Supply (Schedule 5) to the framework.

This and the following page comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and Haven Products.

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

1. Roles & Responsibilities

1.1 The summary obligations of Contractors, Authority and Framework Public Bodies, as further developed below, are as follows:

1.1.1. The Contractor will:

- a) provide Key Personnel details
- b) provide a nominated Individual with the Authority approval, who will communicate with the Authority and Framework Public Bodies;
- c) meet, monitor and report on Framework Public Bodies spend;
- d) meet and continually improve monitoring and reporting on Contactor performance under the Contract;
- e) work with each Framework Public Bodies to develop and agree specific requirements and format for tailored management information reports and further developing these reports where required;
- f) attend Contract management meetings as required – both with individual Framework Public Bodies and the Authority;
- g) resolve issues and complaints;
- h) support and enable the Authority and / or the Framework Public Bodies(s) to carry out reviews of the Contract;
- i) provide feedback and input to enable continuous improvement; and
- j) work with the Framework Public Bodies and Authority as required to provide timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence.

1.1.2. The Authority will:

- a) prepare the Contract management strategy;
- b) prepare Contract points of contact;
- c) review and manage continuous development;
- d) monitor performance of the Contract;
- e) chair Contract management meetings as required;
- f) support resolution of issues and complaints;
- g) collate lessons learnt from Framework Public Bodies and other Public Bodies and the Contractor to enable continuous improvement; and

- h) work with the Framework Public Bodies and other Public Bodies and Contractor as required to provide timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence

1.1.3 The Framework Public Bodies will:

- a) prepare a Contract management strategy for their specific requirements under this Contract;
- b) monitor the day to day performance of the Contract in direct relation to the services the Framework Public Bodies is receiving;
- c) chair Contract management meetings in direct relation to the services the Framework Public Bodies is receiving;
- d) work with the Contractor to enable continuous improvement and review progress;
- e) work with the Contractor to support resolution of issues and complaints.

2. Contract Management Information Report

2.1 The Contract Management Information Report will include, as a minimum, the following details (on a cumulative basis and also for the quarterly period):

- a) a summary for each Framework Public Bodies of the Contractor's activity under the Contract in the last month;
- b) the level of spend with the Contractor of each Framework Public Bodies under the Contract;
- c) the level of actual and target performance for the key parameters detailed within the key performance indicators in Schedule 1;
- d) the number of complaints by Framework Public Bodies surrounding performance by the Contractor;
- e) the number of complaints by Framework Public Bodies surrounding performance that were not acknowledged within the prescribed time-limits by the Contractor; and
- f) An overview of any and all outstanding disputes between the Contractor and any Framework Public Bodies and their anticipated resolution time.

2.2 The Contractor will agree the exact content, format and style for the Contract Management Information Report with the Authority during the mobilisation phase of this Contract.

3. Complaints

3.1 The Contractor shall maintain written details of any complaints received and how they are handled and make these available to the relevant specific Framework Public Bodies and to the Authority as requested or required.

This and the following [] pages comprise Schedule 5 to the Framework Agreement between the Purchaser and Haven Products

«F1: CONTRACT REFERENCE NUMBER (IF ANY)»

SUPPLY OF SERVICES CONTRACT

--between-

(1) THE PUBLIC BODY (THE “PURCHASER”)

-and-

(2) HAVEN PRODUCTS (THE “CONTRACTOR”)

-relating to the supply of-

RESERVED COMMODITIES FOR SUPPORTED BUSINESS FRAMEWORK

LOT 2 – DOCUMENT MANAGEMENT

-for the benefit of-

THE SCOTTISH MINISTERS AND THE SCOTTISH PUBLIC SECTOR

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PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO On 28 July 2018 a contract notice relating to Framework Agreement for these Services was published in the Official Journal of the European Union with reference number 2018/S 143-326359;
- THREE On 22 August 2018 the Service Provider completed its ESPD;
- FOUR On «F13: date ITT issued» the Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;
- FIVE On «F14: date Tender submitted» the Service Provider submitted its Tender;
- SIX On the basis of the Tender, the Purchaser has selected the Service Provider to supply the Services under the Contract;
- SEVEN The Contract establishes standard terms of supply for the provision of services;
- EIGHT The Contract also includes:
- a Specification setting out the Services that the Service Provider has undertaken to provide «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;
 - «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 **Error! Reference source not found.** (Assignment).

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

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

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

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

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

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

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

“ESPD” means the European Single Procurement Document completed by the Service Provider and sent to the Purchaser on 22 August 2018.

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

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

“Exit Management Date” means each of the following:

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

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

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

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

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

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

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

“ITT” means the Purchaser’s invitation to tender dated «F13: date ITT issued».

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

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

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider’s compliance with the Specification, «F23: the Service Levels», the Ordering Procedures and the terms of the Contract, set out in Schedule 4.

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

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

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

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

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

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

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

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

“**Purchaser**” means “»”.

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.

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

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

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

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

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

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

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

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

“Service Provider” means Haven Products Ltd.
325 Govan Road
Glasgow
G51 2SE.

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

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

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

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

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

“**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 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. The Service Provider acknowledges that it is not the exclusive Service Provider of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

4. Period

- 4.1. The period of the Contract is from and including «F29 commencement date» (the “**Commencement Date**”) to and including «F30 initial expiry date», 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

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»

The Service Provider must comply with the Specification set out in Schedule 1. In particular, the Service Provider must meet or exceed the Service Levels.

7. Pricing Schedule

- 7.1. The Pricing Schedule sets out details of the pricing of the Services
- 7.2. The prices in the Pricing Schedule 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

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

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

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

10.3.1. For the Purchaser:

«F38: Purchaser address for notices»

For the attention of: «F39: Purchaser individual contact for notices»

Tel: «F40: Purchaser phone number»

E-mail: «F42: Purchaser e-mail address for notices»

10.3.2. For the Service Provider:

325 Govan Road

Glasgow

G51 2SE

For the attention of: Mr Jamie Lawson

Tel: 07971 507 211

E-mail: jamie.lawson@havenproducts.co.uk

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. **Not Used**

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

12. Payment and Invoicing

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

12.2. The Service Provider must render invoices within 14 days service delivery.

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

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

12.5. Not Used.

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

13. Recovery of Sums Due

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

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

14. Data Protection

14.1. The Service Provider acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Service Provider acts as the Data Processor and the Purchaser acts as the Data Controller.

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

Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.

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

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

14.9 The Service Provider must notify the Purchaser if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

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

(a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.

(b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;

(c) assisting the Purchaser with communication of a personal data breach to a Data Subject;

(d) supporting the Purchaser with preparation of a data protection impact assessment;

(e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

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

14.12 The Service Provider must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Service Provider's compliance with this clause 14;
- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 14 and contribute as is reasonable to those audits and inspections;
- (c) inform the Purchaser, if in its opinion, an instruction from the Purchaser infringes any obligation under Data Protection Laws.

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

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

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

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

15. Freedom of Information

15.1. The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Purchaser to enable the Purchaser to comply with FOISA and the Environmental Information Regulations.

15.2. If the Service Provider receives a Request for Information the Service Provider must promptly respond to the applicant. Where 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. Where the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.

15.4. The 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 of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Service Provider or the Contract:

- 15.4.1. in certain circumstances without consulting the Service Provider, or
- 15.4.2. following consultation with the Service Provider and having taken its views into account.
- 15.5. Where clause 15.4.1 applies the Purchaser must take reasonable steps, where 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.
- 15.6. Where a Request for Information concerns Service Provider Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information.

16. Purchaser Protected Information

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

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

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

- 18.2 The Service Provider must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.3 The Service Provider must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser's representatives, such access to those records as may reasonably be requested by the Purchaser in connection with the Contract.
- 18.4 The Service Provider shall, for the duration of the Contract, provide the Purchaser with all assistance requested by the Purchaser acting reasonably to assist the Purchaser in complying with its obligations under the Act and with the Purchaser's Records Management Plan where such compliance is in respect of records created or to be created by the Service Provider on behalf of the Purchaser in terms of this Contract. This assistance will be at no cost to the Purchaser.
- 18.5 At the end of the Contract, the Service Provider shall transfer the records in question to the Purchaser, such transfer to include full ownership of the records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the Purchaser. The Service Provider shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Purchaser on the same terms.
- 18.6 If the Service Provider shall become bankrupt (whether voluntarily or compulsorily), unable to pay its debts, insolvent or make arrangements with its creditors or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntarily or compulsorily), otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then immediately upon the occurrence of any of these events, the records which would, in terms of clause 18.5 fall to be offered to the Purchaser shall be deemed to be held on trust by the Service Provider on behalf of the Purchaser. The Service Provider shall thereafter, if and when so required by the Purchaser, transfer the records in question to the Purchaser, such transfer to be on the same terms as would apply to a transfer made in terms of clause 18.5.]

19. Publicity

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

SECTION C: PROVISION OF SERVICES

20. Provision of the Services

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

21. Deliverables and Milestones

- 21.1. The Service Provider must provide the Services, including any Deliverables:
- 21.1.1. at the date(s), time(s) and location(s) required by the Purchaser; and
 - 21.1.2. in good time to meet any Milestones required by the Purchaser.
- 21.2. When the Service Provider believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.
- 21.3. The Purchaser may thereafter by notice to the Service Provider:
- 21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or
 - 21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.
- 21.4. Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause **Error! Reference source not found.**, the Service Provider must at its expense immediately rectify or remedy any defects and/or delays.
- 21.5. Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.
- 21.6. Whether the defect or delay is due to the Purchaser or not, the Service Provider shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

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

23. Offers of Employment

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

24. Staff transfer at commencement

- 24.1. The Parties agree that the commencement of the provision of the Services by the Service Provider 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 **Error! Reference source not found.**, within such reasonable period s pecified by the Purchaser. The Service Provider acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.
- 25.3. The Service Provider consents to the disclosure by the Purchaser of all information provided by the Service Provider under this clause to other service providers that the Purchaser may invite to tender or appoint for services to be provided in substitution for the Services.

26. Staff transfer on expiry or termination

- 26.1. The Parties agree that the ceasing of the provision of the Services by the Service Provider does not involve a Relevant Transfer.
- 26.2. The Parties agree that the ceasing of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 26.3. The Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Purchaser or any replacement service provider may suffer as a result of or in connection with:
- 26.3.1. the provision of information pursuant to clause **Error! Reference source not found.**;
- 26.3.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Service Provider in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
- 26.3.3. any failure by the Service Provider to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any replacement service provider to comply with its obligations under regulation 13 of TUPE; and
- 26.3.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Purchaser to comply with any legal obligation to such trade union, body or person.
- 26.4. The Service Provider is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 26.5. The Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses

and any other liabilities which the Purchaser or replacement service provider may incur in respect of the emoluments and outgoings referred to in clause 26.4.

27. Security

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

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

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

29. Specially Created Intellectual Property Rights

- 29.1. All Intellectual Property Rights «F56: in Deliverables and» and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Service Provider on behalf of the Purchaser for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract belong to the Purchaser.
- 29.2. The Service Provider assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1. This assignation takes effect on the Commencement Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Service Provider. The Service Provider must execute all documentation necessary to effect this assignation.

30. Licences of Intellectual Property Rights

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

31. Claims relating to Intellectual Property Rights

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

32. Assignment

- 32.1. The Service Provider may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.
- 32.2. Notwithstanding clause 32.1 the Service Provider may assign to another person (an "**Assignee**") the right to receive the price due to the Service Provider under the Contract subject to:
- 32.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and
 - 32.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.
- 32.3. The Service Provider must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 32.4. Subject to clause 32.6, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Purchaser; or
 - (c) any private sector body which substantially performs the functions of the Purchaser,

provided that any such assignation, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.

- 31.5 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.
- 31.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Purchaser such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Purchaser in clauses 57 (Termination Rights) and 58 (Termination on Insolvency and Change of Control) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Service Provider.
- 32.7 The Purchaser may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

33. Change of Control

The Service Provider must notify the Purchaser:

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

34. Sub-Contracting

- 34.1. «F51: The Purchaser approves the appointment of the sub-contractors specified in Schedule 6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.»
- 34.2. The Service Provider may not sub-contract its obligations under the Contract 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.

- 35.2. Clause 7 (Pricing Schedule) makes special provision for the variation of the Pricing Schedule.

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

36. Compliance with the Law etc.

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

- 36.1. all applicable law;
- 36.2. any applicable requirements of regulatory bodies; and
- 36.3. Good Industry Practice.

37. Official Secrets Acts

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

38. Service Provider's responsibility for staff etc.

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

39. Access to the Purchaser's premises

- 39.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Service Provider from time to time is on a non-exclusive licence basis free of charge. The Service Provider must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 39.2. The Service Provider must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 39.3. At the Purchaser's written request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 39.4. The Service Provider must ensure that any individual Service Provider Representative entering the Purchaser's premises has completed the process for obtaining Baseline

Personnel Security Standard clearance. The Service Provider acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.

- 39.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Service Provider Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 39.6. The Purchaser may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 39.7. The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.
- 39.8. All decisions of the Purchaser under this clause are final and conclusive.

40. Service Provider's Equipment

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

41. Purchaser Property

- 41.1. Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.
- 41.2. The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:
 - 41.2.1. keep the Purchaser Property in good order and condition (excluding wear and tear);
 - 41.2.2. comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
 - 41.2.3. use any Purchaser Property solely in connection with the Contract and for no other purpose; and
 - 41.2.4. store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.
- 41.3. The Purchaser Property is deemed for the purposes of clause 41.1 to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Purchaser otherwise within 5 Working Days of receipt.
- 41.4. The Service Provider must not:
 - 41.4.1. modify or replace the Purchaser Property;
 - 41.4.2. use the Purchaser Property as security for a loan or other obligation;
 - 41.4.3. sell, or attempt to sell or part with possession of the Purchaser Property; or
 - 41.4.4. allow anyone to obtain a lien over, or right to retain, the Purchaser Property.
- 41.5. The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.
- 41.6. The Service Provider undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Service Provider must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

42. Health and Safety etc.

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

- 42.4. The Service Provider must promptly make available its statutory health and safety policy statement to the Purchaser on request.

43. Offences

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

44. Tax Arrangements

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

45. Discrimination

- 45.1. 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.

46. Blacklisting

46.1. 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.

47. Sustainability

The Supplier must commit to deliver the sustainability requirements as detailed in the Statement of Requirements detailed at Schedule 1.

48. Conflicts of interest

48.1. The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under the Contract.

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

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

SECTION G FINAL PROVISIONS

49. Warranties and Representations

The Service Provider warrants and represents that:

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

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

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

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

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

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

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

50. Indemnity

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

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

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

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

51. Limitation of Liability

- 51.1. Neither Party is liable to the other Party under the Contract for any:
 - 51.1.1. loss of profits, business, revenue or goodwill; or
 - 51.1.2. indirect or consequential loss or damage.
- 51.2. But clause 51 does not exclude any liability of the Service Provider for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Service Provider.
- 51.3. The liability of either Party under the Contract for Defaults is limited to £1,000,000 per incident, or such greater/other sum as may be agreed with the Purchaser.
- 51.4. But neither Party excludes or limits liability to the other Party for:
 - 51.4.1. death or personal injury caused by its negligence;
 - 51.4.2. misrepresentation;
 - 51.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
 - 51.4.4. any breach of any obligations under Data Protection Laws.

52. Insurances

- 52.1. The Service Provider must effect and maintain with a reputable insurance company:
 - 57.1.1. public liability insurance in the sum of not less than 5 Million GBP
 - 57.1.2. product liability insurance in the sum of not less than 10 Million GBP
 - 57.1.3. third party motor vehicle insurance of not less than 5 Million GBP; and
 - 57.1.4. employer's liability insurance in accordance with any legal obligation for the time being in force (currently £5m GBP).
- 52.2. Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.
- 52.3. The Service Provider must give the Purchaser, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

53. Force Majeure

- 53.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations

under the Contract for a period in excess of 3 months, either Party may terminate the Contract with immediate effect by notice.

- 53.2. Any delay or other failure by the Service Provider in performing its obligations under the Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 53.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 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.
- 53.4. The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

54. Dispute Resolution

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

55. Severability

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

56. Waiver and Cumulative Remedies

- 56.1. Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.
- 56.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 10 (notices).
- 56.3. A waiver of any Default is not a waiver of any subsequent Default.
- 56.4. The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

57. Termination Rights

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

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

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

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

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

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

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

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

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

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

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

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

58. Termination on Insolvency and Change of Control

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

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

- 58.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 58.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 58.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 58.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 58.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 58.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
 - 58.1.8. a debt relief order is entered into; or
 - 58.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.
- 58.2. The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:
- 58.2.1. being notified that a change of Control has occurred in accordance with clause **Error! Reference source not found.** (Change of Control); or
 - 58.2.2. where no such notification has been given, the date that the Purchaser becomes aware of the change of control.
- 58.3. But the Purchaser may not terminate the Contract under clause 58.2 where approval of the change of control has been granted by notice by the Purchaser.

59. Exit Management

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

- 59.1 The Service Provider agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Service Provider agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 54 (Dispute Resolution). If a court of competent jurisdiction finds that the Service Provider has breached (or attempted or threatened to breach) any such obligation, the Service Provider agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Service Provider shall not oppose the entry of an appropriate order compelling performance by the Service Provider and restraining the Service Provider from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 59.2 A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 59.3. The Purchaser shall provide to the Service

Provider the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The Service Provider shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Purchaser's comments.

59.3 The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:

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

59.3.2 the activities necessary to support any Replacement Service Provider or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;

59.3.3 details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;

59.3.4 support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;

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

59.3.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Service Provider or the Purchaser.

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

60. Consequences of Expiry or Termination

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

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

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

60.3.1. taking all reasonable steps to mitigate its loss;

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

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

60.4. Except as provided for in clauses 50 (Indemnity), and the management arrangements, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.

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

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

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

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

- 60.6.1. clause 1 (Definitions and Interpretation);
- 60.6.2. clause 13 (Recovery of Sums Due);
- 60.6.3. clause 14 (Data Protection);
- 60.6.4. clause 15 (Freedom of Information);
- 60.6.5. clause 16 (Purchaser Protected Information);
- 60.6.6. clause 17 (Service Provider Sensitive Information);
- 60.6.7. clause 18 (Audit and Records Management)];
- 60.6.8. clause 19 (Publicity);
- 60.6.9. clause 23 (Offers of Employment);
- 60.6.10. clause 25 (Information about Service Provider Employees);
- 60.6.11. clause 26 (Staff transfer on expiry or termination);
- 60.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);
- 60.6.13. clause 29 (Specially Created Intellectual Property Rights);
- 60.6.14. clause 30 (Licences of Intellectual Property Rights);
- 60.6.15. clause 31 (Claims relating to Intellectual Property Rights);
- 60.6.16. clause 37 (Official Secrets Acts);
- 60.6.17. clause 40 (Service Provider's Equipment);
- 60.6.18. clause 41 (Purchaser Property);
- 60.6.19. clause 44 (Tax arrangements);
- 60.6.20. clause 47 (Sustainability);
- 60.6.21. clause 49 (Warranties and Representations);
- 60.6.22. clause 50 (Indemnity);
- 60.6.23. clause 51 (Limitation of Liability);
- 60.6.24. clause 52 (Insurances);
- 60.6.25. clause 54 (Dispute Resolution);
- 60.6.26. clause 56 (Waiver and Cumulative Remedies);
- 60.6.27. this clause 60; and
- 60.6.28. clause 62(Governing Law and Jurisdiction).

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

60. 8 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 termination which may be recovered by the Authority from the Contractor and shall include (but not be restricted to):

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

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

60.11 the costs and expenses incurred by on or behalf of the Authority in

61. Entire Agreement

61.1. 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).

61.2. 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:

61.2.1 the clauses of the Framework Agreement, 2018/S 143-326359 [OJEU Reference]

61.2.2 these Standard Terms of Supply;

61.2.3 the other Schedules; and

61.2.4 any other document referred to in the clauses of the Framework Agreement, 2018/S 143-326359 [OJEU Reference].

62. Governing Law and Jurisdiction

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

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

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of Haven Products Ltd.

At.....	At.....
On.....	On.....
Signature.....	Signature.....
Full name	Full name.....
Position	Position.....
Address.....	Address.....

In the presence of

Signature.....
Full name

Address.....

In the presence of

Signature.....
Full name.....
Address.....

This and the following [] pages comprise Schedule 1 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 1 – STATEMENT OF REQUIREMENTS AND SERVICE LEVELS

Statement of Requirements

[To be completed by the Purchaser]

Call Off Key Performance Indicators

Key Performance Indicators can be set by each Purchaser at the point of call-off. The Framework level Key Performance Indicators are Included for information only:

Framework for Commodities Reserved for Supported Businesses - Key Performance Indicators																
	KPI	Type	Description	Threshold	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
Commercial Management	Meeting Call-Off requirements	%	Respond to all call off requests in a timely manner relevant and proportionate to each call off opportunity. As specified by the Framework Public Body	95%												
	Timely Creation of invoices	%	Timely issuance of invoices arising from Call offs - Maximum 14 days from delivery The number of on time invoice submissions divided by the number of invoice submissions	95%												
Contract Management	Meeting reporting requirements	%	Timely management information submissions (see Specification for details) The number of on time management information submissions divided by the number of management information submissions required	100%												
	Meeting Accreditation requirements	%	Copies of accreditation certificates to be shared within 28 days of award	100%												

This page and the following [] pages comprise Schedule 2 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 2 - PRICING SCHEDULE

[To be completed by the Purchaser]

This page and the following page comprise Schedule 3 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 3 – ORDERING PROCEDURES

The Mini Competition Procedure outlined below is an extract taken from the Framework Agreement 2018/S 143-326359 (OJEU Reference) , Schedule 3 Award Procedures and applies to these Terms of Supply.

MINI COMPETITION PROCEDURE

2. Framework Public Body's Obligations

2.1 The Framework Public Bodies shall:

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

2.1.2 set weightings for the Award Criteria in the mini-competition invitation to tender against more precisely formulated technical criteria.

2.2 **Technical Criteria** - xx% weighting shall be set by Framework Public Bodies at mini-competition

2.3 **Commercial Criteria** - xx% weighting shall be set by Framework Public Bodies at mini-competition

3. 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 more precisely formulated technical criteria relative to the subject matter of the specific Lot. Framework Public Bodies must provide full details in the invitation to tender document.
4. Set a time limit for the receipt of the mini-competition tenders which takes into account factors such as the complexity of the subject matter of the Order and the time needed to submit tenders.
5. Keep each mini-competition tender confidential until the expiry of the time limit for the receipt by it of mini-competition tenders.
6. 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.
7. The highest scoring compliant Tenderer will be appointed the Call-off Contract. In the event of a tie the Framework Public Body reserves the right to appoint the Tenderer who obtains the highest technical score.
8. On the basis set out above, award its Services requirements by placing an Order with the successful Framework Contractor in accordance with the following:
 - 8.1 states the Services requirements;
 - 8.2 states the Specification;
 - 8.3 states the charges payable for the Services requirements in accordance with the tender submitted by the successful Framework Contractor; and

8.4 incorporates the Standard Terms of Supply detailed at Schedule 5.

9. Provide unsuccessful Framework Contractors with a feedback in relation to the reasons why their tenders were unsuccessful. The substance and form of the feedback given to unsuccessful bidders in the mini competition will be at the Framework Public Body's discretion.

10. Framework Contractors Obligations

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

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

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

(c) subject line to comprise unique reference number and Contractor name, so as to clearly identify the Contractor;

(d) 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;

11. The Contractor agrees that tenders submitted in relation to a mini competition held pursuant to Paragraph 3 shall remain open for acceptance for thirty (30) days (or such other period specified in the mini-competition invitation to tender issued by the relevant Framework Public Body).

12. Notwithstanding the fact that the Framework Public Body has followed the procedure set out above in Paragraph 3, the Framework Public Body shall be entitled at all times to decline to make an award for its Service requirements. Nothing in this Framework Agreement shall oblige any Framework Public Body to place any Order for Services.

13. Responsibility for Awards

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

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

13.3 the performance or non-performance of any Orders between the Contractor and the Framework Public Body entered into pursuant to the Framework Agreement.

14. Order Form

14.1 The format of any Order may vary between Framework Public Bodies. Framework Public Bodies may place an order using their own Order templates but the order must include a completed copy of Terms of Supply (Schedule 5 to the Framework).

This page and the following [] pages comprise Schedule 4 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

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

This page and the following [] pages comprise Schedule 5 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 5 – KEY INDIVIDUALS

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

[To be completed by the Purchaser]

This page and the following [] pages comprise Schedule 6 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 6 – APPROVED SUB-CONTRACTORS

Approved Sub-Contractors

Relevant Obligations

- 1.
- 2.

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

This page and the following [] pages comprise Schedule 7 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 7 – SERVICE PROVIDER SENSITIVE INFORMATION

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

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

This page and the following [] pages comprise Schedule 8 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 8 – PARENT COMPANY GUARANTEE

To completed by the Purchaser if required

This page and the following [] pages comprise Schedule 9 to the foregoing Contract between the Scottish Ministers and Haven Products Ltd.

SCHEDULE 9 – DATA PROTECTION

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

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

Subject matter and duration of the Processing of Personal Data

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

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

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

This and the following [] pages comprise Schedule 10 to the foregoing Contract between the Purchaser and Haven Products Ltd.

SCHEDULE 10 – EXIT MANAGEMENT

To be completed by the Purchaser if required

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This page comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and Haven Products Ltd.

SCHEDULE 6 – PARENT COMPANY GUARANTEE

Not Used.

This page comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and Haven Products Ltd.

SCHEDULE 7 – CONTRACTOR SENSITIVE INFORMATION

Not used.

This page comprise Schedule 8 to the Framework Agreement between Scottish Ministers and Haven Products Ltd.

SCHEDULE 8 – EXIT MANAGEMENT

Not used

This page comprise Schedule 9 to the Framework Agreement between Scottish Ministers and Haven Products Ltd.

SCHEDULE 9 – DATA PROTECTION

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

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

Subject matter and duration of the Processing of Personal Data

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

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

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

This page comprise Schedule 10 to the Framework Agreement between Scottish Ministers and Haven Products Ltd.

SCHEDULE 10 – APPROVED SUB-CONTRACTORS

Not used.

End of Document