**SP-19-013**

**FRAMEWORK AGREEMENT**

**-between-**

**THE SCOTTISH MINISTERS**

**-and-**

**(2) XMA Limited (THE "CONTRACTOR")**

**-relating to the supply of-**

**WEB BASED & PROPRIETARY DEVICES**

**-for the benefit of-**

**THE SCOTTISH MINISTERS AND OTHER PUBLIC BODIES**

**Table of Contents**

**SECTION A**

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

**SECTION B**

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

**SECTION C**

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

**SECTION D**

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

**SECTION E**

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

43. Termination on Insolvency or Change of Control
44. Exit Management
45. Compliance with the Law and Changes in the Law
46. Offences
47. Tax arrangements
48. Supply Chain Transparency & Protections
49. Blacklisting
50. Supply Chain Protections
51. Compliance with Anti-Slavery and Human Trafficking Laws
52. Conflicts of interest
53. Consequences of Expiry or Termination
54. Entire Agreement
55. Governing Law and Jurisdiction

**SCHEDULES**

Schedule 1 Specification and Service Levels
Schedule 2 Pricing Schedule
Schedule 3 Award Procedures
Schedule 4 Management Arrangements
Schedule 5 Standard Terms Of Supply
Schedule 6 Parent Company Guarantee
Schedule 7 Transparency Reports and Contractor Sensitive Information
Schedule 8 Exit Management
Schedule 9 Data Protection
Schedule 10 Approved sub-contractors
Schedule 11 Security Management

**PREAMBLE:**

ONE The Authority requires the supply of Goods & related Services to Framework Public Bodies;

TWO On 09/08/2019 the Authority's contract notice relating to the Goods & related Services was published in the Official Journal of the European Union with reference number 2019/S 154-379208

THREE On 17/09/2019 the Contractor completed its ESPD;

FOUR On 09/08/2019 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Goods & related Services;

FIVE On 17/09/2019 the Contractor submitted its Tender;

SIX On the basis of the Tender, the Authority has selected the Contractor to supply the Goods & related 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 Goods & related Services;

EIGHT This Framework Agreement also includes:

- a Specification setting out the Goods & related 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 Goods & related Services;
- Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
- Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

**SECTION A**

## 1. Definitions and Interpretation

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

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

"**Authority**" means the Scottish Ministers .

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

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

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

"**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 Goods & related Services between a Framework Public Body and the Contractor entered into in accordance with the Award Procedures and based on the Standard Terms of Supply.

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

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

"**Contractor**" means XMA Limited, Pavilion 2, Junction 24 Business Park, Helen St, Glasgow, G51 3AD, 02051703

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

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

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

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

"**Data Protection Laws**" means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or

requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.

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

"**Environmental Information Regulations**" means the Environmental Information (Scotland) Regulations 2004.

"**ESPD**" means the European Single Procurement Document completed by the Contractor and sent to the Authority on 17/09/19

"**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 a public body transparently referred to in the OJEU/advert that is entitled to call-off from this framework agreement.

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

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

"**ITT**" means the Authority's invitation to tender dated 09/08/2019

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

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

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

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

(e) any requirements of any regulatory body,

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

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

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

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

"**Pricing Schedule**" means the details of the pricing of the Goods & related 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 Goods & related 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 17/09/19

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Condition Precedent: Requirement for Parent Company Guarantee

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

## 3. Nature of this Agreement

3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.

3.2. This Agreement is a single-supplier framework agreement and the contractor that is party to it is the Contractor. 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. Save to the extent specifically provided for in this Agreement, the Contractor acknowledges that it is not the exclusive supplier of the Goods & related 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 30 November 2019 (the “Commencement Date”) to and including 29 November 2021, unless it is terminated earlier or extended under Clause 4.2.

4.2. The Authority may, by giving notice to the Contractor, extend the period of the Framework Agreement to a date falling no later than four years from the Commencement Date. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.

4.3. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

## 5. Break

The Authority may terminate the 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 Goods & related Services that the Contractor has undertaken to provide. The Specification includes Service Levels setting out particular levels of service that the Contractor has undertaken to meet.

## 7. Price

7.1 Schedule 2 (Pricing and Product Listing) sets out the basis of the pricing of the Goods as at the Commencement Date.

7.2 The prices in Schedule 2 (Pricing and Product Listing) will remain fixed for the term of the Framework Agreement and may be varied only in accordance with the arrangements set out in the Schedule 2 (Pricing and Product Listing).

7.3 Accordingly, the Contractor may not unilaterally increase the prices in Schedule 2 (Pricing and Product Listing). But nothing in this Framework Agreement prevents the Contractor from improving on the pricing in Schedule 2 (Pricing and Product Listing) for the purposes of a Call-off Contract.

## 8. Award Procedures

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

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

8.2.1. the period of the Framework Agreement has expired;

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

8.2.3. the Contractor's appointment to provide the Goods & related Services to the 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 the Goods & related Services to the Framework Public Bodies for a notified period of time:

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

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

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

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

## 10. Official Secrets Acts

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

**SECTION B**

## 11. Contractor's Status

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

## 12. Notices

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

12.1.1. given in writing;

12.1.2. addressed in accordance with clause 12.3; and

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

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

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

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

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

12.3.1. For the Authority:
Scottish Procurement
For the attention of: Redacted
Tel: Redacted
E-mail: Redacted

12.3.2. For the Contractor:
XMA Limited
For the attention of: Redacted
Tel: Redacted
E-mail: Redacted

## 13. Recovery of Sums Due

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

## 14. Data Protection

14.1. The Contractor will, in conjunction with the Authority and in its own right and in respect of the Services, ensure it will be compliant with the Data Protection Laws.

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

14.3. The Parties acknowledge that the Contractor may Process Personal Data in delivery of Services under a Call-off Contract under this Framework Agreement. For the purposes of any such Processing, Parties agree that the Contractor acts as the Data Processor and the Authority acts as the Data Controller.

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

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

**15. Transparency and Freedom of Information**

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

(a) provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;

(b) transfer to the Authority all Requests for Information relating to this Agreement that the Contractor receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request For Information and which is in the Contractor's possession or control. The information must be provided within 5 Working Days (or such other period as the Authority may reasonably specify) in the form that the Authority requires.

(d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

15.2 If the Request for Information appears to be directed to information held by the Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.

15.3 If the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.

15.4 The Contractor acknowledges that the Authority may, acting in accordance with the Authority's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Framework Agreement:

15.4.1 in certain circumstances without consulting the Contractor, or

15.4.2 following consultation with the Contractor and having taken its views into account.

15.5 Where 15.4.1 applies the Authority must take reasonable steps, if practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure to the extent that it is permissible and reasonably practical for it to do.

15.6 Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Authority must take reasonable steps, where practicable, to consult with the Contractor before disclosing it pursuant to a Request for Information.

15.7 The Contractor acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Contractor Sensitive Information. However, if the Authority believes that publication of any element of the Transparency Information should be treated as Contractor Sensitive Information the Authority may, in its discretion exclude such information from publication.

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

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

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

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

**16. Authority Protected Information**

16.1. The Contractor must:

16.1.1. treat all Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;

16.1.2. only use the Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;

16.1.3. only disclose the Authority Protected Information to such Contractor Representatives that are directly involved in the performance of the Framework Agreement and need to know the information; and

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

16.2. The Contractor must immediately notify the Authority of any breach of security concerning the Authority Protected Information. The Contractor must fully co-operate with the Authority in any

investigation that the Authority considers necessary to undertake as a result of any such breach of security.

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

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

16.3.2. information is in the possession of the Contractor without restriction as to its disclosure prior to its disclosure by the Authority;

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

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

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

16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Contractor is a material breach for the purposes of clause 42 (Termination Rights).

**17. Contractor Sensitive Information**

17.1. The Authority must:

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

17.1.2. not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.

17.2. Clause 17.1 does not apply to the extent that:

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

17.2.2. information is in the possession of the Authority without restriction as to its disclosure prior to its disclosure by the Contractor;

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

17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or

17.2.5. information is independently developed without access to the Contractor Sensitive Information.

17.3. Nothing in this Framework Agreement prevents the Authority from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Framework Agreement:

17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));

17.3.2. in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;

17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;

17.3.4. in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;

17.3.5. to any consultant, contractor or other person engaged by the Authority, for example to conduct a gateway review;

17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a Member of the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament;

17.3.7. in response to any inquiry of the European Commission concerning the Framework Agreement; or

17.3.8. for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Authority has used its resources.

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

**18. Audit**

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

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

**19. Publicity**

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

**SECTION C**

**20. Key Individuals**

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

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

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

20.3.1. appropriate arrangements must be made to minimise any adverse impact on the

Framework Agreement which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and

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

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

**21. Offers of Employment**

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

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

**22. Staff transfer at commencement**

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

**23. Information about Contractor Employees**

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

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

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

**24. Staff transfer on expiry or termination**

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

**25. Security**

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

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

**SECTION D**

**26. Parties' pre-existing Intellectual Property Rights**

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

**27. Specially Created Intellectual Property Rights**

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

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

**28. Licences of Intellectual Property Rights**

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

28.2. The Contractor grants to the Authority a perpetual, royalty-free, irrevocable and exclusive license to use all Intellectual Property Rights referred to in clause 27.1 above (Specially Created Intellectual Property Rights).

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 Goods & related Services or otherwise performing its obligations under the Framework Agreement and must ensure that the provision of the Goods & related 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 Goods & related 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 Goods & related Services or Deliverables or substitute alternative Goods & related Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or

29.3.2. procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Authority, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.

29.4. The Contractor must not without the consent of the Authority make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

**30. Assignation and Change of Control**

30.1. The Contractor may not assign its interest in the Framework Agreement without the prior written consent of the Authority.

30.2. The Contractor must notify the Authority:

30.2.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur;

30.2.2. immediately following a change of Control that has occurred; and

30.2.3. where it proposes to make any change to its sub-contractor named by the Contractor in its tender.

30.3. Subject to clause 30.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

(c) any private sector body which substantially performs the functions of the Authority,

provided that any such assignation, novation or other disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

30.4. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 30.5, affect the validity of the Framework Agreement. In such circumstances, the Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.

30.5 If the rights and obligations under the Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause 30.3 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):

(a) the rights of termination of the Authority in clauses 42 (Termination Rights) and 43 (Termination on Insolvency and Change of Control) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof with the prior consent in writing of the Contractor.

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

**31. Sub-Contracting**

31.1. The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.

31.2. The Contractor may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

31.3. Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:

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

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

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

31.3.4. is in the same terms as that set out in this clause 31.3 (including for the avoidance of doubt this clause 31.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

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

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

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

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

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

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

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

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

**32. Amendment**

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

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

**SECTION E**

**33. Warranties and Representations**

33.1. The Contractor warrants and represents that:

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

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

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

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

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

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

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

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

**34. Indemnity**

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

**35. Limitation of Liability**

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

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

35.1.2. indirect or consequential loss or damage.

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

35.3. The liability of either Party for Defaults resulting in direct loss of or damage to the property of the other under or in conjunction with this Framework Agreement shall in no event exceed £2,500,000 for any one occasion.

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

35.4.1. death or personal injury caused by its negligence;

35.4.2. misrepresentation;

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

**36. Insurance**

36.1. The Contractor must effect and maintain with a reputable insurance company:

36.1.1. Public/product liability insurance in the sum of not less than £2,500,000 for any one incident and unlimited in total, unless otherwise agreed by the Authority in writing; and

36.1.2. professional indemnity insurance in the sum of not less than £1,000,000; and

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

36.2. Such insurance must be maintained for the duration of the Framework Agreement and for a minimum of 5 years following the expiry or termination of the Framework Agreement.

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

## 37. Dispute Resolution

37.1. The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Framework Agreement, including any question regarding its existence, validity or termination, in accordance with the Management Arrangements.

37.2. Any dispute or difference arising out of or in connection with this Framework Agreement, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of arbitration shall be Scotland. The language used in the arbitral proceedings shall be English.

37.3. Any arbitration under clause 37.2 is subject to the Arbitration (Scotland) Act 2010.

## 38. Severability

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.

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

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

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

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

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

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

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

**43. Termination on Insolvency and Change of Control**

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

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

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

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

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

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

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

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

43.1.8. a debt relief order is entered into; or

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

43.2. The Authority may terminate the Contractor's interest in the Framework Agreement by notice with immediate effect within 6 months of:

43.2.1. being notified that a change of Control has occurred in accordance with clause 30 (Assignation and Change of Control); or

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

43.3. But the Authority may not terminate the Contractor's interest in the Framework Agreement under clause 43.2 where approval of the change of control has been granted by notice by the Authority.

**44. Exit Management**

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

44.1 The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Authority may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 37 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

44.2 A draft of the Exit Plan shall be produced by the Contractor and supplied to the Authority within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 44.3. The Authority shall provide to the Contractor the Authority's comments on the plan within one (1) month of the Authority's receipt of the plan. The Contractor shall take into account the comments and suggestions of the Authority and shall issue the final version of the Exit Plan to the Authority within ten (10) Working Days of receipt of the Authority's comments.

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

44.3.1 the activities required to enable the Authority to re-tender the Authority Requirements and/or the provision of the Goods & related Services;

44.3.2 the activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Goods & related Services;

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

44.3.4 support for the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Authority, including prior to and during such transition period;

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

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

44.4 No amendment of the Exit Plan shall be made without prior written consent of the Authority.

**45. Compliance with the Law and Changes in the Law**

45.1 The Contractor shall, in complying with all obligations incumbent upon it in terms of the Framework Agreement or any other contract with the Authority, comply in all respects with, and shall ensure that the Contractor's agents, employees and representatives whomsoever comply with the Law.

45.2 Without prejudice to the generality of sub-clause 1 above (general compliance with the Law provision), the Contractor must not unlawfully discriminate against any person in terms of the Equality Act 2010 in its activities relating to the Framework Agreement or any other contract with the Authority.

45.3 The Contractor shall take all reasonable steps to ensure the observance of the provisions of sub-clause 1 above by all of their servants, employees, agents, consultants and sub-contractors.

45.4 If the cost to the Contractor of the performance of its obligations under the Framework Agreement shall be increased or reduced by reason of the making after the date of the Framework Agreement of any relevant Law that shall be applicable to the Framework Agreement the amount of such increase shall be borne by the Contractor.

**46. Offences**

46.1. The Contractor must not commit or attempt to commit any offence:

46.1.1. under the Bribery Act 2010;

46.1.2. of fraud, uttering, or embezzlement at common law; or

46.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

46.2. Breach of clause 46.1 is a material breach for the purposes of clause 42 (Termination Rights).

## 47. Tax Arrangements

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

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

47.3 The Authority may, at any time during the term of this Framework Agreement, request the Contractor to provide information which demonstrates how the Contractor complies with sub-clauses 47.1 and 47.2 above or why those clauses do not apply to it.

47.4 A request under sub-clause 47.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.

47.5 The Authority may supply any information which it receives under clause 47 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

47.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of this clause 47 by all of their servants, employees, agents, consultants and sub-contractors.

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

## 48. Financial Distress

48.1 During the Term, the Contractor shall regularly monitor its own and each of its Key Sub-contractors' credit ratings or (where used as proxies for credit ratings) Dun & Bradstreet rating, which at the Commencement Date are as follows:

| ORGANISATION | AGENCY | RATING (FAILURE SCORE) |
|---|---|---|
| XMA Limited | Dun & Bradstreet | Redacted |

48.2 During the Term, the Contractor shall not enter into a Key Sub-contract, or extend the duration of a Key Sub-contract if, at the time the Key Sub-contract is entered into or extended, the relevant Key Sub-contractor has:

48.2.1 a credit rating that is lower than S&P “investment grade (BBB)” (or the equivalent credit rating level for another Rating Agency); or

48.2.2 a Dun & Bradstreet Failure Score of 51 (lower than average risk) or more.

48.3 The Contractor shall promptly notify (or shall procure that its auditors promptly notify) the Purchaser in writing following the occurrence of a Financial Distress Event (and in any event ensure that such notification is made within ten (10) Working Days of the date on which the Contractor first becomes aware of the Financial Distress Event).

48.4 If the Purchaser reasonably believes that the Financial Distress Event could adversely impact the performance of this Contract, at the request of the Purchaser the Contractor shall:

48.4.1 (and shall procure that the relevant Key Sub-contractors shall) meet with the Purchaser as soon as practicable to review the effect of the Financial Distress Event on the continued performance of this Contract;

48.4.2 as soon as practicable and in any event within ten (10) Working Days (taking into account any discussions and any representations made pursuant to clause 48.4.1), provide a draft Financial Distress Event Remedial Plan for approval by the Purchaser explaining how the Contractor and/or relevant Key Sub-contractor will remedy the potential adverse impact of the Financial Distress Event on the continued performance of this Contract; and

48.4.3 provide such financial information as the Purchaser may reasonably require to support clause 48.4.2.

48.5 The Contractor shall incorporate any reasonable comments provided by the Purchaser on the draft Financial Distress Event Remedial Plan and provide such number of revised drafts as may reasonably be required until the Purchaser has approved the Financial Distress Event Remedial Plan (which approval shall not be unreasonably withheld or delayed).

48.6 Following approval of any Financial Distress Event Remedial Plan pursuant to clause 48.5, the Contractor shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Contract.

**49. Blacklisting**

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

**50 Supply Chain Transparency & Protections**

Knowledge of the supply chain

50.1 In performing its role as a reseller, the Contractor will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the “Contractor’s Suppliers”) prepare and maintain a written supplier code of conduct or supplier policy that addresses the following.

- child labour,
- forced labour,
- working hours,
- wages,
- discrimination,
- health and safety,
- freedom of association,
- collective bargaining,
- disciplinary practices,
- humane treatment of workers,
- training,
- engagement with NGOs, and
- worker grievance procedures .

The Contractor will provide the Authority with a copy of the Contractor’s Suppliers codes of conduct or supplier policies on request.

50.2 The Contractor will use its reasonable endeavours to ensure that the Contractor’s Suppliers prepare and maintain appropriate policies and procedures to identify, manage and mitigate

labour and human rights risks in their supply chains relevant to this Framework Agreement (the "Contractor Supply Chain").

50.3 The Contractor will, within 20 Working Days of the Framework Commencement Date, provide the Authority with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the Contractor Supply Chain. The Contractor will notify the Authority of any changes as soon as reasonably practicable.

50.4 The Authority will have the right to share with participating framework public bodies all information provided by the Contractor in relation to these Supply Chain Protection provisions.

Supply chain working conditions

50.5 The Contractor will submit an annual written report to the Authority outlining the Contractor's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Contractor Supply Chain.

50.6 The Contractor will take all reasonable steps to ensure that all Goods supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.

50.7 In respect of the Contractor Supply Chain and the Contractor's Suppliers, the Contractor must ensure the following:

50.7.1 forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;

50.7.2 child labour is not used in any stage of manufacturing or in the provision of services or supplies;

50.7.3 workers do not undertake excessive working hours. For the purposes of this Framework Agreement, working hours must not exceed the maximum set by local law; a working week must not be more than 60 hours per week, including overtime, except in emergency or unusual situations and workers shall be allowed at least one day off every seven days;

50.7.4 compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits; in compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates; that deductions from wages as a disciplinary measure shall not be permitted; that for each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed; and that all use of temporary, dispatch and outsourced labour will comply with local laws;

50.7.5 all workers must have the right to form and join trade unions, of their own choosing, to bargain collectively and to engage in peaceful assembly and the right of workers to refrain from such activities must be respected;

50.7.6 workers must not be subject to any harsh or inhumane treatment, including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be the threat of any such treatment;

50.7.7 workers must not be subject to harassment or unlawful discrimination; and

50.7.8 workers must be provided with safe and healthy working conditions.

50.8 In respect of the Contractor Supply Chain and the Contractor's Suppliers, the Contractor will use its reasonable endeavours to ensure the following:

50.8.1 compliance with all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;

50.8.2 implementation of an appropriate (e.g. anonymous) whistleblowing policy which encourages openness and ensures support and protection from detrimental treatment for workers which raise genuine concerns.

Managing risks in the supply

50.9 The Contractor will use its reasonable endeavours to require the Contractor's Suppliers to audit, evaluate and report in writing to the Contractor not less than once every twelve (12) months on performance against the Contractor's Suppliers' codes of conduct and or supplier policies and their policies on labour and human rights impacts in respect of the Contractor Supply Chain. The Contractor shall provide the Authority on request with a copy of any such reports in so far as they relate to the Contractor Supply Chain.

50.10 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers undertake a defined program of supply-chain audits. Audits must be undertaken by third party accredited certification bodies and independently verified. These audits must either include or be supplemented by external consultation and engagement with local labour unions or civil society organisations/NGOs, and off-site worker interviews to gain a more accurate understanding of working conditions. The Contractor shall provide the Authority on request with a copy of any such audits, and supplementary evidence where relevant, in its possession or control in so far as they relate to the Contractor Supply Chain.

Corrective and preventive measures to ensure social responsibility in the supply chain

50.11 The Contractor will use its reasonable endeavours to ensure the outcomes of the Contractor's Suppliers supply-chain audits are subject to corrective actions by the Contractor's Suppliers in a timely manner. The Contractor shall provide the Authority on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to the Contractor Supply Chain .

50.12 The Contractor will use its reasonable endeavours to actively engage with the Contractor Supply Chain to ensure continuous improvement in labour and human rights standards and supplier compliance with such standards .

50.13 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Contractor Supply Chain not less than once every twelve (12) months .

Measures to control the supply chain

50.14 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers' sourcing policies address labour and human rights impacts during the extraction phase of production and include the use of conflict free smelters in accordance with the Responsible Minerals Initiative. The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Contractor Supply Chain and provide the Authority on request with details.

50.15 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers implement and adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as the same may be updated from time to time) and produce a publicly viewable annual summary of their due diligence and risk management measures consistent with this guidance.

50.16 The Contractor will use its reasonable endeavours to provide the Authority on request with evidence of direct and ongoing collaboration by the Contractor's Suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Contractor Supply Chain.

Supply chain contract termination

50.17 The Contractor will use its reasonable endeavours to ensure that all contracts in the Contractor Supply Chain give the Authority a right to terminate the sub-contract if the supplier fails to comply with legal obligations in the fields of environmental, social, labour or human rights law.

**51. Compliance With Anti-Slavery And Human Trafficking Laws**

51.1. In performing its obligations under this Agreement, the Contractor shall:

51.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015;

51.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

51.1.3. include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause;

51.1.4. notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;

51.1.5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority; and

51.1.6. provide the Authority and its third party representatives access to such records.

51.2. The Contractor represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

51.3. The Contractor shall prepare and deliver to the Customer, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

51.4. The Authority may terminate this Agreement with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of this clause.

**52. Conflicts of interest**

52.1 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.

52.2 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.

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

**53. Consequences of Expiry or Termination**

53.1 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 Goods & related Services, the Contractor indemnifies the Authority against all costs incurred in making those arrangements.

53.2 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.

53.3 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.

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

- clause 1 (Definitions and Interpretation);
- clause 8 (Award Procedures);
- clause 10 (Official Secrets Acts);
- clause 13 (Recovery of Sums Due);
- clause 14 (Data Protection);
- clause 15 (Transparency and Freedom of Information);
- clause 16 (Authority Protected Information);
- clause 17 (Contractor Sensitive Information);
- clause 18 (Audit );
- clause 19 (Publicity);
- clause 21 (Offers of Employment);
- clause 23 (Information about Contractor Employees);
- clause 26 (Parties pre-existing Intellectual Property Rights);
- clause 27 (Specially created Intellectual Property Rights);
- clause 28 (Licences of Intellectual Property Rights);
- clause 29 (Claims relating to Intellectual Property Rights);
- clause 33 (Warranties and Representations);
- clause 34 (Indemnity);
- clause 37 (Dispute Resolution Procedure);
- clause 39 (Waiver and Cumulative Remedies);
- clause 47 (Tax arrangements);
- this clause 53 (Consequences of Termination); and
- clause 55 (Governing Law and Jurisdiction).

53.5 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 Goods & related Services previously performed by the Contractor under the Framework Agreement.

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

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

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

**54. Entire Agreement**

54.1 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).

54.2 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:

54.2.1 the clauses of this Framework Agreement;

54.2.2 the Standard Terms of Supply;

54.2.3 the other Schedules; and

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

**55. Governing Law and Jurisdiction**

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

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

| | |
|---|---|
| **SIGNED** for and on behalf of the Scottish Ministers | **SIGNED** for and on behalf of XMA Limited |
| At..... | At..... |
| On..... | On..... |
| Signature..... | Signature..... |
| Full name: …….. | Full name..... |
| Position:…….. | Position..... |
| Address: ……. | Address..... |
| **In the presence of** | **In the presence of** |
| Signature..... | Signature..... |
| Full name ..... | Full name..... |
| Address..... | Address..... |

This and the following 314 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and XMA Limited.

**SCHEDULE 1 – SPECIFICATION AND SERVICE LEVELS**

## 1 Introduction

1.1 The Scottish Ministers are seeking to establish a single-supplier National Framework for Web Based & Proprietary Client Devices.

1.2 The key aims of the Framework Agreement are to:

- Deliver a range of best in class, future proofed devices on a firm price, call-off basis ensuring value for money throughout the term of the Framework Agreement;
- Include flexibility to introduce new technology through a process of continuous improvement during the term of the Framework Agreement;
- Increase the uptake of eProcurement and expand eProcurement capability, through the adoption of cXML ordering and invoicing, resulting in increased transactional efficiencies for buyer and supplier;
- Maintain a standard of Cyber Resilience including accreditation to Cyber Essentials Plus or equivalent standards within six months of award;
- Provide the same level of service to all Framework Public Bodies, regardless of their size or geographical location.

1.3 The Framework Agreement supports the Scottish Government's National Performance Framework, and the National Outcomes which articulate the Government's Purpose 'To focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth'.

1.4 The Contractor will be required to minimise the environmental impacts of products and services delivered where practical, contribute to a more circular economy, provide relevant opportunities for community benefits, and provide assurance regarding respect for labour rights and working conditions in the supply-chain.

1.5 The Framework Agreement will form part of a wider portfolio of ICT Products Frameworks which are available to Framework Public Bodies, designed to support the Digital Public Services Strategy: Realising Scotland's full potential in a digital world: a digital strategy for Scotland and other associated strategies and policies such as the High-Level Operating Framework and Hosting & Data Centre Strategy.

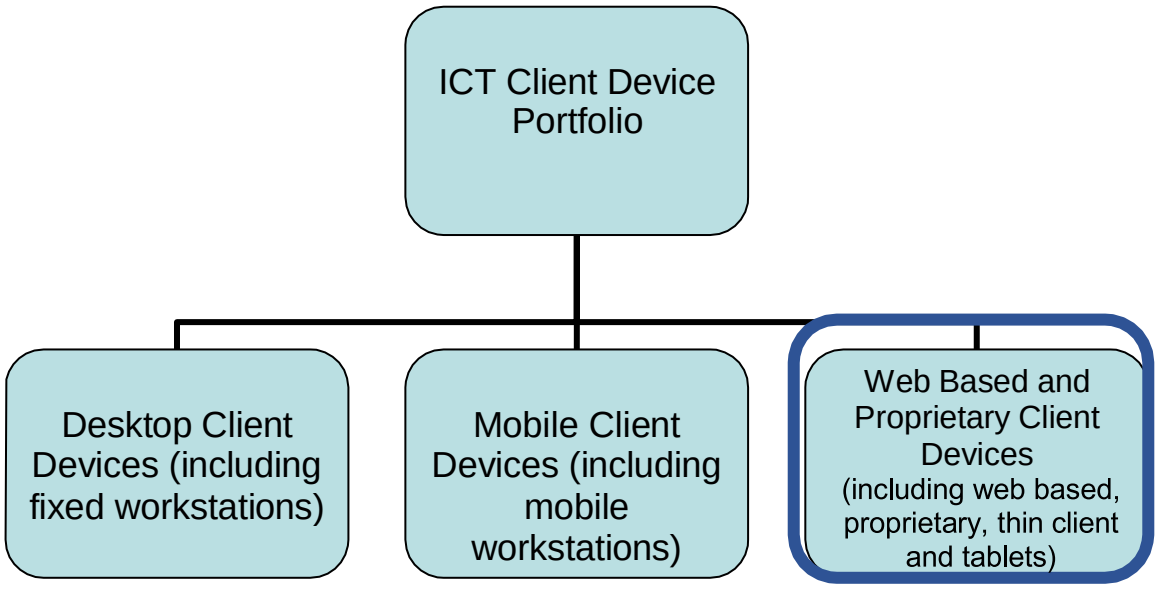
1.6 One of the drivers for Realising Scotland's full potential in a digital world: a digital strategy for Scotland is to ensure ICT is deployed in an energy-efficient manner which reduces the carbon footprint of Scottish public sector organisations. The Green ICT Strategy and Climate Change Plan support the Scottish Government's objective for A Greener Scotland and organisations will be encouraged to contribute to their own vision for a cost effective, sustainable and energy efficient ICT estate by purchasing through the National Frameworks.

1.7 The Contractor will be expected not only to meet the requirements established within this specification but also to ensure the delivery of a high quality service to the Framework Public Bodies using this agreement. The Contractor will be expected to demonstrate the application and implementation of industry best-practice within internal and customer-facing processes. They will be expected to fully participate in continuous improvement and other initiatives to ensure the long term success of the contractual relationship and that value received by Framework Public Bodies is significantly and demonstrably greater than could be achieved by sourcing these categories of device elsewhere.

1.8 In order to maximise use of the Framework Agreement, the Contractor will be required to support the Authority in promoting the Framework Agreement across the Scottish public sector, at no additional cost. The Contractor will be required to actively promote the benefits of the Framework Agreement including financial, environmental, resource and operational efficiencies. This activity will be managed by the Contractor's Account Manager in conjunction with the Authority.

## 2 Framework Scope

2.1 The ICT Client Device Portfolio includes the following Framework Agreements.




2.2 The following core products are within the scope of this Framework:

- **Web Based Devices**

  - Maximum 11.6" Mobile Device Optimised for Web Based Computing
  - Maximum 14" Mobile Device Optimised for Web Based Computing
  - Open Source Tablet

- **Proprietary Devices**

  - A range of fixed, mobile and tablet computers based on two proprietary operating systems

- **Thin Client Devices**

- A range of thin client, manufacturers, devices and technologies

- **A range of Open Source Tablet Devices**

2.3 The Contractor will be required to deliver the complete range of goods and services required. The Authority does not guarantee any level of expenditure or demand for goods and/or services under the Framework.

## 3 Accessories & Associated Services

3.1 The Contractor will provide a range of accessories and associated and added value services to support the deployment and operation of devices available under the Framework Agreement.

3.2 The Authority reserves the right to add or remove services, upgrades, downgrades and accessories to complement the contracted devices.

3.3 The Contractor will be required to maintain sufficient stock of accessories to ensure lead times are consistently achieved.

3.4 All services associated with the deployment of framework devices are considered in scope of this Framework Agreement. These include but are not limited to –

- Imaging
- Asset Tagging
- Installation to Desk
- Bonded Storage

3.5 Detailed minimum requirements for each of the services listed above are contained in Annex A. Any requirements, including commercial terms, not specifically detailed in Annex A. will be subject to agreement between Framework Public Bodies and the Contractor.

## 4 Framework Start Date

4.1 The Framework Agreement will commence on 30 November 2019.

## 5 Framework Duration

5.1 The initial period of the Framework Agreement will be two years.

5.2 The Authority reserves the right to extend the Framework Agreement in accordance with Clause 4 (Contract Period) of the Terms and Conditions. Any extension will be at the sole discretion of the Authority.

## 6 Access to the Framework Agreement

6.1 The Framework Agreement will be available to all Scottish public sector and third sector bodies, as defined in the OJEU Contract Notice and Framework Terms and Conditions.

6.2 Framework Public Bodies with contracts in place for the management of their client device estate may authorise their service provider to act on their behalf in the procurement of devices via this Framework Agreement, provided the asset remains the property of the Framework Public Body.

## 7 Dedicated Portal

7.1 An implementation plan will be established jointly with the Contractor and the Authority to ensure that the provision of Goods via a dedicated portal tailored to meet Scottish Procurement's requirements, commences no later than 31 January 2020.

7.2 Prior to 31 January 2020, the Contractor will be required to receive orders by email.

7.3 The Contractor will be required to accept and fulfil volume orders in accordance with the stated lead times.

## 8 eCommerce Mobilisation

8.1 The Contractor will work with the Framework Public Bodies to ensure a smooth transition to their preferred eCommerce route; either online portal, dedicated portal, punch-out implementation, or a combination of routes.

# SECTION B – STATEMENT OF REQUIREMENTS

## 9 Service Delivery

9.1 The Contractor will provide the full range of devices as detailed in Section 2 – Framework Scope, as per the Service Levels and Key Performance Indicators detailed within this Statement of Requirements document.

## 10 Minimum Technical Specification

10.1 Detailed minimum technical specifications, and benchmarking scores (where applicable) are contained in Annex B.

## 11 Product Lifespan & Transition

11.1 In accordance with the minimum technical specifications listed at Annex B, Contractors must guarantee a minimum lifespan for each of the core devices proposed under this Framework Agreement. Contractors should note that, if successful, these devices will be supplied to Framework Public Bodies until the end of the initial lifespan detailed, for each device.

11.2 Throughout the term of the Framework Agreement, as devices reach their end of life date, Contractors will be required to transition contracted devices to next generation technology or an equivalent device (whichever applies to the technology roadmap for that device) at **no additional cost**.

11.3 Once devices are resident on the framework, if the manufacturer changes any aspect of the product range, the Authority reserves the right to transition to the latest device with no changes to the costing methodology.

## 12 Complementary Form Factors

12.1 Throughout the term of the Framework Agreement, where additional technologies or new form factors are introduced, which are specific to the Framework Agreement, the Authority reserves the right to include these in addition to the core offerings. The successful Contractor will be required to demonstrate that these additional devices represent value for money in the marketplace.

12.2 Where a Framework Public Body cannot identify a device which meets their requirements from the menu of core devices, the Contractor will be expected to work with Framework Public Bodies, on a project specific basis, to identify an alternative device which meets their business need.

## 13 Evaluation Loan Pool

13.1 To allow Framework Public Bodies to fully evaluate that devices are 'fit for purpose' in meeting their specific requirement, the Contractor will provide evaluation devices on a free of charge, trial basis, where required. The duration of the evaluation process will be agreed between Framework Public Bodies and the successful Contractor.

13.2 The Contractor will facilitate the evaluation process including delivery and collection of evaluation devices, ensuring that the administration overhead placed on Framework Public Bodies is kept to a minimum. Contractors will be required to maintain sufficient stock of evaluation devices within their loan pool to ensure devices are made available to a number of Framework Public Bodies concurrently.

## 14 Supplier Catalogue

14.1 The Contractor will be required to assist Scottish Procurement to support and achieve the benefits of the Framework Agreement through the education of decision makers and users, on how cost can be reduced for Framework Public Bodies.

14.2 This will include the production of a Supplier Catalogue which as a minimum must include:

- Standard Goods and Services available
- Technical Specifications
- Upgrades & Accessories
- Part Numbers
- Pricing
- How to Order
- How Product Information can be Accessed
- eProcurement
- Warranty Information
- Account Management Details
- Escalation Processes
- Guidance on Receipt of Goods
- End-of-life management.

## 15 eCommerce

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

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

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

- PECOS P2P system provides a consistent interface to suppliers through standard order, receipt and invoice functionality. It enables business workflows and audited approval processes to be implemented to ensure compliance to procurement and finance guidelines.

- PECOS Content Manager (PCM) hub hosts electronic catalogues for contracts at national, sectoral and local level. It increases compliance to contracts, drives out appropriate contract management information and embeds standard procedures and processes. The hub allows suppliers and procurement teams to easily manage the upload, validation, approval and publication of electronic catalogues for use by public sector bodies. The hub also enables the distribution of catalogues in a variety of formats, e.g PECOS, Civica and Parabilis to allow the upload of catalogues into different P2P systems. PCM is currently being used by the procurement Centres of Expertise and a number of individual Contracting Authorities.

- eInvoicing is an electronic service that facilitates the exchange of information between buyers and suppliers. It allows invoices and related documents to be issued, received and reconciled electronically through a secure channel.

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

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

15.5 PECOS P2P and PCM provide a number of key benefits to Contractors:

- standard and consistent interfaces to the public sector in the presentation of catalogues, the receipt of purchase orders and payment mechanisms (including eInvoicing and Purchase Cards);

- where P-Cards are utilised, suppliers can receive payment in as little as 3 days from when the goods are dispatched from warehouse;

- where catalogues are used, the supplier only needs to amend content once and it then flows to all Contract Authorities using that catalogue;

- receipt of accurate and standard purchase orders which should reduce the number of invoice mismatches; and

- development of eCommerce capabilities to support further business opportunities.

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

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

15.8 Content Options:

- eCatalogue - simple to create, using a standard excel template to detail products, pricing, UNSPSC (commodity) coding, images etc.;

- Punch-Out - where a transactional website has already been developed by the supplier, PECOS P2P shall connect to this website allowing users to create a shopping basket and bring back the details to complete the requisition within PECOS P2P;

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

15.9 Purchase Order Transmission Options:

- Post – a paper purchase order is produced by PECOS P2P and posted to the supplier.

- Fax - PECOS P2P creates an electronic fax purchase order that is sent automatically to the supplier.

- E-mail - PECOS P2P produces an PDF purchase order that is automatically sent to the supplier's e-mail in-box.

- cXML - PECOS P2P sends a cXML file directly to the supplier's back office system (please note that there is a one-off charge for this method but allows multiple Contracting Authorities to use the connection).

  Preferred option of transmission should be aligned with supplier capability and which option will be most efficient to support business needs.

15.10 Payment Options:

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

- Embedded Purchase Card - This payment option allows the supplier to charge the cost of the goods/services provided to a VISA/MasterCard electronic Purchasing Card (ePC) belonging to a Contracting Authority . The supplier shall receive payment from VISA/MasterCard therefore negating the need to provide an invoice to the Contracting Authority.

- Consolidated Electronic Invoice - Supplier submits a single invoice covering multiple purchase orders in an electronic file.

- Self-Billing - Once the Goods Received Note (GRN) has been entered on PECOS P2P, a payment instruction is automatically sent to the Contracting Authority's finance system to make payment to the supplier for the goods/services received.

- Electronic Invoices - Supplier submits an electronic invoice either directly to PECOS P2P/relevant system (cXML) and/or via the SG eInvoicing Solution, which can go again direct to PECOS P2P or a Contracting Authority's finance system.

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

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

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

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

## 16 Bespoke Website

16.1 The successful Contractor will be required to create bespoke web pages for this Framework Agreement on a secure section of their company's web server. A secure online ordering portal and punch-out site will be required.

16.2 Website content will be subject to clarification upon framework award, but typically will include a dedicated Scottish Procurement National Framework Agreement landing page providing secure access to catalogue, associated documents, product details, framework pricing, stock levels, company information, contact details and any other information as may be required.

16.3 The Contractor will be required to make the Framework Terms and Conditions available on their website and include functionality which allows end users, as part of the ordering process, to state they have read and accepted the Terms and Conditions which are applicable to all orders placed under the framework.

16.4 Scottish Procurement have a number of other formally tendered national Framework Agreements currently in place. These frameworks are available to all Scottish public sector bodies. The Contractor will NOT promote Goods other than those within the scope of this framework on the punch-out site or portal web pages dedicated to the National Web Based & Proprietary Client Device Framework, unless successful in being awarded a separate client device framework.

16.5 Framework Public Bodies may also require their own dedicated web pages containing a tailored list of Goods available to their users. This will be subject to negotiation between the Contractor and individual Framework Public Bodies and should be completed within 4 weeks of a request.

## 17 Packaging

17.1 The Contractor will be required to support a reduction in packaging under this Framework Agreement. This must not hinder the safe delivery of products.

17.2 This reduction must be supported by the Contractor applying the waste hierarchy in packaging use, while reducing environmental impacts through:

- Sustainably sourced materials;
- A minimum of 50% recycled content;
- Re-usable packaging systems, such as unboxed palletised packaging or others;
- Recyclable materials, including the avoidance of single-use plastics;
- Creative packaging design and innovative materials;
- Compliance with all relevant EU and other packaging and waste regulations;
- Plastics use not containing halogen containing polymers.

17.3 Packaging must not contain any plant based material that was illegally sourced from its country of origin. The Contractor will be expected to be able to verify legal sourcing of relevant materials.

17.4 Items are to be packed by order, with individual orders packed and labelled separately. The Contractor will be responsible for ensuring that all packaging is of adequate size and of substantial quality to prevent damage to the goods and with regard to the environment. Each delivery must be accompanied by a delivery note, in a plastic sleeve, containing the following information as a minimum:

- Contact;
- Delivery Address;
- Purchase Order Number;
- Product Code and Description;
- Product Quantity and details of goods/quantity to follow;
- Serial Number (where available)
- MAC Address (where available)
- Quantity of parcels made up for each order.

17.5 The Contractor will be responsible for the removal of packaging where an additional service element is required e.g., installation. Or if arranged prior to delivery with the successful contractor.

## 18 Lead Times

18.1 From receipt of a valid Purchase Order, maximum lead times for standard core devices will be 10 working days. Non-standard configurations and additional services will each incur an additional 5 working day lead time, taking the maximum to 20 working days.

18.2 In remote and island locations, a lead time which includes an extra 2 working days will be acceptable but Contractors should aim to achieve the standard lead time where possible.

## 19 Delivery

19.1 A full delivery service must be provided, which includes but is not limited to, the list given below:

- Bulk delivery to stores – one bulk delivery to one central point, i.e. stores
- Single location with multiple drops – one bulk delivery split across multiple locations within the same site, i.e. a school or hospital
- Multiple locations – one order with multiple site locations spread across a geographical area, i.e. a Local Authority
- Call off – one bulk order to be held, in bonded storage, and called-off by the Framework Public Body as and when required

19.2 No deliveries are to take place outside of the hours of 0900 to 1700 unless otherwise agreed. Black-out periods e.g. during lunch breaks may be imposed on deliveries to schools and other similar locations; the individual Framework Public Body would be expected to advise the Contractor of any specific requirements. When making deliveries to schools, personnel must report first to the school office and delivery vehicles may be driven through school playgrounds only on the approval and direction of an authorised person.

19.3 A signature will be required for each delivery made. Under no circumstances should goods be left outside the building.

19.4 In the event of a query, the Contractor will be required to provide proof of delivery, electronically if required, to the Framework Public Body.

19.5 No mechanical off-loading, lifting or moving equipment is supplied by the Framework Public Body. No assistance is available to the Contractor for the purpose of off-loading and placing goods within the delivery location.

## 20 Delivery Locations

20.1 The Framework Agreement will be available to Framework Public Bodies across all areas of Scotland. The Contractor must provide Framework Public Bodies with the same level and quality of service, irrespective of their size or geographical location and will be required to undertake deliveries throughout the whole of Scotland.

## 21 Consolidation

21.1 Unless expressly agreed by the Framework Public Body, deliveries should be consolidated, i.e. where a device and accessories have been ordered together on a single Purchase Order, all items should arrive at the requested delivery location in one consignment.

## 22 Returns & Collections

22.1 Framework Public Bodies should notify the Contractor of Goods which are faulty, received in a damaged state or delivered in error, within 5 Working Days.

22.2 All faulty, damaged or incorrectly delivered items must be replaced or uplifted by the Contractor within 5 Working Days.

22.3 Framework Public Bodies should ensure the Goods are available for collection, unopened (if received in error) and in the same condition they were delivered.

22.4 The Contractor will be expected to monitor the level of returns and ensure compliance with the relevant key performance indicator.

22.5 Items ordered in error by a Framework Public Body may be returned at the sole discretion of the Contractor and may be subject to a restocking fee, which will not exceed 10% of the unit cost including the cost of collection.

## 23 Delivery Fleet

23.1 The Contractor will be expected to maintain an efficient delivery fleet and minimise the environmental impact of deliveries, such as through efficient logistics, full loads and driver training. It is expected that the Contractor will continually monitor and report on the fleets' efficiency and work to reduce the environmental impact over the term of the Framework Agreement.

## 24 Invoicing Process

24.1 Electronic invoicing is a minimum requirement.

24.2 The Contractor must also be capable of supplying consolidated invoices. Invoices must include Purchase Order number and line item detail of the items being invoiced.

24.3 Where electronic invoicing is not being used, the invoices will be sent to the email address specified. Where Framework Public Bodies cannot accept electronic invoices then hard copy invoices will be made available; these will be sent to an agreed address.

24.4 The Contractor shall promote the option of providing electronic and/or consolidated invoices where possible to the Framework Public Body.

## 25 Payment

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

## 26 Warranty

26.1 Warranty must cover parts and labour on a collect and return basis. The duration will be as specified in the minimum specification for each device, and will commence on the date of delivery to the Framework Public Body.

26.2 At the point of collection of faulty devices, the Contractor will be required to ensure that packaging is made available to facilitate secure transportation of the device to the repair centre.

## 27 Warranty Registration

27.1 The Contractor must have a process in place to ensure the appropriate level of warranty has been registered, ensuring a seamless process for Framework Public Bodies logging a warranty call.

## 28 Dead on Arrival (DOA)

28.1 Devices can be classed as Dead On Arrival (DOA) up to 30 days from a Framework Public Body's receipt of the device. For the avoidance of doubt, DOA implies the device cannot be physically powered on or be ready for use after removing the device from the packaging.

28.2 In this instance DOA devices should be replaced. In the event that a replacement cannot be provided due to product constraint or supply chain difficulty, the Contractor should repair the product in line with the terms of the warranty arrangement for that particular device.

28.3 To ensure a minimal amount of disruption, the Contractor will be expected to prioritise the delivery of a replacement device to the Framework Public Body.

28.4 The Contractor will be required to provide this service across the geography of Scotland.

## 29 Security

29.1 The Contractor will be required to undertake appropriate security and other checks, including Disclosure Scotland, necessary to ensure that their drivers, and travelling representatives, are suitably screened in order to undertake deliveries and other visits to sensitive locations such as schools, hospitals and government buildings. Details of Disclosure Scotland requirements can be found at: https://www.mygov.scot/organisations/disclosure-scotland/.

29.2 Framework Public Bodies may require different levels of security clearance. The Contractor should ensure they have a sufficient number of Baseline Personnel Security Standard (BPSS) security cleared qualified service engineers.

## 30 Information Security

30.1 Due to the sensitive nature of public sector data, there will be Framework Public Bodies whose IT policy dictates that, in the event of a fault, removable media should not be removed from the premises. The Contractor will have a procedure in place for the secure disposal/transport of removable media e.g. the provision of a 'defective media retention' service at minimal cost to the Framework Public Body.

30.2 The Contractor must ensure that they are aligned to the principles of the Cyber Essential Plus scheme and fully compliant within 6 months of the Framework Commencement Date.

## 31 Framework Management

31.1 The Contractor will nominate a dedicated Framework Manager to act as a single point of contact for the purposes of managing and operating the framework. The Framework Manager will ensure the agreed service levels are maintained and will work on an on-going basis with their Account Management Team to ensure that a high level of service is consistently delivered, best value is assured throughout the term of the framework and that opportunities to develop best practice are maximised.

## 32 Framework Review Meetings

32.1 The Framework Manager and/or members of the Account Management Team will attend regular review meetings with Scottish Procurement and/or Framework Public Bodies as required.

32.2 If required, the Account Management Team must be available to participate in regular conference calls with the Authority. The purpose of these conference calls will be to discuss day-to-day operation of the Frameworks and any associated issues.

## 33 Account Management Team

33.1 The Contractor shall provide an Account Manager for each Framework Public Body, to pro-actively co-ordinate orders and provide comprehensive support and links between the Contractor and the Framework Public Body. The support must include pre, during and after sales support, technical information and advice on all devices.

## 34 Order Fulfilment

34.1 An order fulfilment service level of 97% delivered within the agreed lead times will be required for all Goods ordered under this Framework Agreement. The Account Management Team should contact Framework Public Bodies to advise them where any requirements may exceed the stated lead times before accepting the order.

## 35 Order Acknowledgement

35.1 An automated order acknowledgement must be provided within 24 hours of an order being received. A weekly automated report must be issued to Framework Public Bodies providing information on orders placed, including Framework Public Body's Order Number, item and quantity ordered and status (shipped or confirmed delivery date).

## 36 Performance and Reporting

36.1 Key Performance Indicators (KPIs) will be utilised to monitor the performance of the frameworks on a quarterly basis. The Contractor will be required to report against these KPIs in line with the Management Information requirements.

36.2 The table below provides proposed Key Performance Indicators (KPIs) and expected performance targets which will be agreed by both Parties on award of the Framework Agreement:

| Service Area | Key Performance Indicator | Target Level |
|---|---|---|
| **Framework Utilisation** | Increase the number of Framework Public Bodies utilising the framework. | To be mutually agreed |
| **eCommerce Capability** | Increase the number of Framework Public Bodies utilising eCommerce. | To be mutually agreed. |
| **Response Time to Queries, Requests for Advice, etc.** | Response from Framework Manager.<br><br>Response from Account Management Team | 24 hour response for standard requests for information from Scottish Procurement and/or Framework Public Bodies.<br>4 hour response for issues deemed urgent by Scottish Procurement and/or Framework Public Bodies. |
| **Response Time to Queries, Requests for Advice, etc.** | Response from Dedicated Framework Manager. | 24 hour response for standard requests for information from Scottish Procurement.<br>4 hour response for issues deemed urgent by Scottish Procurement. |
| **Management Information/KPI Reporting** | Contractor to provide Management Information in electronic format (or make available online) to Scottish Procurement and/or Framework Public Body (where requested). | Reports to be made available on 10th Working Day following the end of the relevant quarter, in the format required by Scottish Procurement (with the exception of FOISA, FMQ, PQ & MCS requests as detailed in section 37).<br><br>A weekly 'highlight' report will be provided, containing, as a minimum:<br>– Orders received by customer<br>– Quantity of Devices<br>– Order Value<br>– Backorders<br>– Total Qty/Value for week |
| **Customer Satisfaction** | Annual customer satisfaction review | To be mutually agreed, (i.e. 90% of Client's responding that the service is Good or Excellent). |
| **Complaints** | Complaints to be escalated and resolved as per agreed procedure | Complaints must be acknowledged within 2 Working Days. No complaint should be left unresolved for more than 10 Working Days from date it was recorded. Response metrics from the dedicated escalations mailbox will be provided as evidence to support this KPI. |
| **Line Fulfilment** | Line fulfilment of 97% | Line fulfilment of 97% in 10 Working Days for standard |

| | | |
|---|---|---|
| | | core devices and 15 Working Days for non-standard devices. Additional services to be fulfilled within 5 Working Days. |
| **Replacement of Faulty and/or Damaged, or Incorrectly Delivered Goods** | The number of faulty, damaged or delivered in error orders. | 99.5% of all products shipped to be free from defect and as specified in customer order. |
| **Continuous Improvement & Innovation** | The Contractor will work with Scottish Procurement and/or Framework Public Bodies to map the full end-to-end supply chain, identify and prioritise supply chain initiatives which drive down cost, improve the quality and efficiency, throughout the term of the framework. | To be mutually agreed. |
| **Sustainability** | The Contractor will work with Scottish Procurement and/or Framework Public Bodies to contribute to, and improve the sustainability of the supply chain.<br><br>This is intended to include, but will not be restricted to consideration of the following:<br><br>• Improving workers' rights, Labour standards, working conditions and child labour within the supply chain:<br>• Setting Policy, Objectives and Targets;<br>• Providing Names of suppliers within the supply chain and any changes;<br>• Implementing Continual Improvement Programmes;<br>• Monitoring and Reporting performance;<br>• Conducting Audits against appropriate standards e.g. ETI Base Code, SEDEX or equivalent;<br>• Undertaking Corrective Actions & Reviews<br>• Adopting Environmental initiatives, such as:<br>  • Carbon reduction;<br>  • Circular economy outcomes<br>  • Packaging & Waste reduction<br>• Approach to delivery of Community benefits. | To be mutually agreed. |

| | | |
|---|---|---|
| | • Policy and continual improvement programme regarding conflict minerals | |
| **Payment** | Prompt payment of sub-contractors within 30 days of receipt of a valid invoice. | 100% Compliance. |
| **Price Competitiveness** | Demonstrate pricing applied is equal to or better than prices available elsewhere in the market. | On a quarterly basis, provide evidence to demonstrate that pricing for 100% of core devices is equal to or better than pricing available elsewhere. |

## 37 Management Information

37.1 The Contractor will be required to produce management information, including transactional data, in relation to the overall performance of the framework. This information will be provided to Scottish Procurement every 3 months, 10 Working Days after the previous quarter end. The reports will provide a sufficient level of detailed, accurate information, so as to enable Scottish Procurement to understand how each Framework Public Body is procuring devices under the Framework Agreement. The information and level of detail will be agreed between Scottish Procurement and the successful Contractor. The information will also be made available to the individual Framework Public Body as required.

37.2 Data and/or information to support the answering of freedom of information (FOISA) requests, First Minister Questions (FMQs), Parliamentary Questions (PQs) and Ministerial Correspondence Submissions (MCS) will be provided within 5 Working Days, as and when required by Scottish Procurement or the Framework Public Body.

37.3 The Contractor will be required to hold and to be able to make readily available to Scottish Procurement and Framework Public Bodies, a minimum of 24 months of historical data. Records must be retained and maintained for 5 years as per the Framework Terms and Conditions.

37.4 All information should be provided electronically and will be available in MS Excel format.

37.5 There will be no additional costs for any additional management information requirements requested.

## 38 Escalation

38.1 First line management of operational issues will be undertaken between the Framework Public Body and their Account Manager. A clear issue management and escalation process will be established by the Contractor in consultation with Scottish Procurement. This will include the provision of a dedicated escalations mailbox where complaints and issues raised by Framework Public Bodies will be recorded, together with an audit trail of the time taken for the Contractor response. An 'issue' is defined as a failure to meet the requirements outlined in this Statement of Requirements. A 'complaint' is defined as a formal escalation in writing to the Contractor.

38.2 The Contractor will acknowledge all complaints within 2 working Days and advise the Authority of all complaints received with 24 hours of receipt. The Contractor will within 2 Working Days of receipt of a complaint, provide a full response or action plan detailing how the compliant will be resolved and the expected resolution date.

38.3 If a complaint is not resolved within the stated timescales the Contractor will update the Authority on progress on a daily basis.

## 39 Communications

39.1 Scottish Procurement will be the primary route for the communication of changes to the Framework Agreement. The Contractor will, however, be expected to maintain regular dialogue with Framework Public Bodies. Scottish Procurement must authorise any publication relating to the framework, prior to distribution.

39.2 The Authority will publish and distribute to Framework Public Bodies via Scottish Procurement's secure website, relevant information relating to the framework.

## 40 Environmental Policy/Products

40.1 The Contractor will increase the sourcing of components that reduce adverse effects on the environment, whilst ensuring no degradation to the product quality. The Contractor will adhere to, and fulfil all obligations relevant under the WEEE Directive and Restriction of Hazardous Substances (RoHS) guidelines, for the duration of the Framework Agreement, ensuring that all waste and end-of-life equipment and/or components which cannot be re-used is recycled avoiding waste to landfill.

40.2 The Contractor will assist Framework Public Bodies, where relevant, to deliver circular economy outcomes through appropriate measures to extend devices' useful life, through appropriate measures such as product design, take back of products aligning with Framework Public Bodies replacement cycles, reuse of devices or parts or re-conditioning of devices.

## 41 Security of Supply

41.1 The Contractor will maintain security of supply through appropriate and robust management of supply chain risks, which are reasonably within their control, and which may arise due to availability of components, environmental, social or other relevant factors.

## 42 Conflict Minerals

42.1 It is recognised that there are concerns regarding the use of 'conflict minerals' within electronics products, which are mined in conditions of armed conflict and human rights abuses, and which are sold or traded by armed groups. The US introduced the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 which focuses on certain minerals arising from the Democratic Republic of Congo (DRC) and applies only to US listed companies. In 2017 the EU adopted the conflict minerals regulations (http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/legal-texts-and-documents/) which obliges EU companies to source their imports of tin, tantalum, tungsten and gold responsibly and to ensure that their supply chains do not contribute to funding armed conflict. These 'due diligence' rules will become binding from 1 January 2021, though importers are encouraged to apply them as soon as possible

42.2 Throughout the term of the Framework Agreement, the Contractor will be required to demonstrate how they assess the likelihood of conflict minerals within products, and what measures they have undertaken to minimise and eliminate, where practical, such minerals. The Contractor will be required to comply with any existing, new and emerging legislation and/or self-certification system.

## 43 Environmental Standards

43.1 The Contractor will be required to maintain a standard of environmental protection, including, certification to ISO 14001/EMAS or equivalent standards, relevant to the delivery of this Framework Agreement. They will also be expected to support carbon reporting to assist Framework Public Bodies in meeting their environmental targets. All products should meet or exceed the minimum environmental standards detailed in the minimum specification for each device.

## 44 Energy Efficiency

44.1 All products should meet or exceed the minimum energy efficiency standards detailed in the minimum specification for each device.

## 45 Social & Ethical Responsibility

45.1 The Authority has included obligations within the contract conditions relating to ethical working conditions and labour standards, which are relevant to the products/services to be delivered. These obligations reflect Scotland's commitment to economic, social and human rights as reflected in the International Labour Organisation (ILO) core conventions, the International Covenant on Economic, Social and Cultural Rights (ICESR), Scotland's National Action Plan for Human Rights (SNAP), the UN Sustainable Development Goals (SDGs) and the Human Trafficking and Exploitation (Scotland) Act 2015.

45.2 The Contractor will perform its obligations in accordance with the Authority's, and Framework Public Bodies' ethical sourcing policies, which require appropriate standards regarding economic, social and human rights, with a strategic aim to improve working conditions and prevent worker exploitation within the supply-chain.

45.3 The Contractor must take all reasonable steps to ensure that all Goods supplied under this Framework Agreement are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin, in particular, in relation to labour standards, working conditions and the use of child labour.

45.4 The Contractor will to have a comprehensive system which demonstrates an on-going and systematic approach to identifying and managing risks relating to labour standards, working conditions and use of child labour in the supply chains relevant to the Framework Agreement.

45.5 This should include policy, roles and responsibilities, objectives, targets and programmes, training and awareness, communications, documentation and procedures, supply chain management, emergency response, monitoring and reporting (including identification of all suppliers, changes made and audits undertaken in accordance with appropriate standards e.g. ETI Base Code, SEDEX, or equivalent), corrective action and review.

The Contractor will be required to demonstrate continual improvement in working conditions and labour standards, while enhancing policies and systems and, where relevant, work with the Authority during the term of the Framework Agreement to ensure compliance with new and emerging legislation.

## 46 Risk, Disaster Recovery & Business Continuity

46.1 The Contractor must have effective and tested Disaster Recovery and Business Continuity plans, policies and procedures in place in respect of all Goods offered under this Framework Agreement. These plans and procedures must be auditable and available on request.

If requested, the Contractor will provide support and input to the Business Continuity and Disaster Recovery plans of Framework Public Bodies by making Goods available under this Framework Agreement, at short or urgent notice.

46.2 The Contractor must have a risk management strategy and a risk management plan for the delivery of Goods available under this Framework Agreement.

## Annex A – Associated Services

The following services are considered to be within the scope of the National Framework.

- Imaging
- Asset Tagging
- Installation
- Bonded Storage

Contractors should note that the Scottish Ministers give no guarantee as to the level of demand for these services. The minimum requirement for each of the services is provided below:

### Imaging

There may be a requirement for some Framework Public Bodies to have devices pre-imaged to their configuration prior to delivery. Some may have multiple images at any one time; images will be limited to 15GB. Any imaging requirements above this size must be discussed independently with the Framework Public Body.

### Asset Tagging

There may be a requirement for some Framework Public Bodies to have equipment asset tagged prior to delivery. Asset tags must be 100% aluminium and remain readable and in place, for the life of the asset on which they are applied. A minimum of 3 lines and a maximum of 5 lines of text is required. The last line of text may be a barcode.

An asset register, containing asset and serial number should be issued to the end user organisation. The option to add MAC addresses should be available, if required.

### Installation to Desk

There may be a requirement for some Framework Public Bodies to have equipment installed to desk. At a minimum, this will include:

- Delivery to installation site
- Unboxing of equipment
- Removal and disposal of packaging
- Connection to mains power, monitor and network point (if applicable)
- Power on test

Installations will be completed Monday to Friday, 9am to 5pm, excluding Scottish public holidays unless otherwise agreed with the Contractor.

Packaging must be removed and disposed of by the Contractor at the time of installation, in accordance with the relevant legislation and this document “ITT - Schedule 1a (SoR & KPIs) - Web Based and Proprietary Client Device Framework)”.

Framework Public Bodies will be expected to provide site addresses and agree an installation schedule with the Contractor.

**Bonded Storage**

There may be a requirement for some Framework Public Bodies to have equipment held in bonded storage for a period of up to 6 months free of charge. Client device unit prices submitted in the document titled 'ITT - Schedule 2 (Pricing) - Web Based and Proprietary Client Device Framework" will include the provision of bonded storage and onward delivery, for a period of up to 6 months, should it be required.

The relevant warranty period for each device held in storage, will commence on the date on which it is received by the Framework Public Body.

Contractors should note the requirement to ensure that Framework Public Bodies are granted an irrevocable licence to enter the Contractor or Sub-contractor premises to inspect or remove goods. "ITT - Schedule 5 (Call Off Terms & Conditions) - Web Based and Proprietary Client Device Framework)" provides further information.

**Additional Services**

All services associated with the deployment of framework devices are considered to be within scope of this Framework Agreement. Any requirements not covered by those detailed in this document, including commercial terms, will be subject to agreement between Framework Public Bodies and the successful Contractor.

This and the following 14 pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and XMA Limited

**SCHEDULE 2 - PRICING SCHEDULE**

## 1 Framework Pricing

1.1 The Pricing and Goods set out in this Schedule are the core devices, upgrades, downgrades, accessories and associated services as at the Commencement Date.

1.2 The Contractor will submit their most competitive price offering for Web Based & Proprietary Client Devices on the following basis:

- Proprietary Devices - a minimum discount from list prices to be applied for the duration of the framework.
- Web Based Devices - may be supplied from a single or multiple manufacturer(s) at a fixed price for the duration of the framework.
- Thin Client Devices - to be supplied from a range of manufacturers on a fixed cost-plus basis for the duration of the framework.

1.3 All prices are in pounds Sterling (£) exclusive of VAT.

1.4 The prices are inclusive of all the requirements in the Framework Agreement and supporting Schedules.

1.5 Prices should represent value for money to the taxpayer throughout the term of this Framework Agreement.

1.6 The Contractor will be required to work with the Authority to determine financial and other benefits realised throughout the term of the Framework Agreement.

## 2 Product Offering

2.1 Throughout the term of the Framework Agreement, as devices reach their end of life, the Contractor will transition contracted devices to an equivalent or next generation device at no extra cost.

2.2 Core devices are to be underpinned by a range of upgrades, downgrades, accessories and associated services. Scottish Ministers reserve the right to amend the product offering to complement contract devices throughout the term of the framework agreement.

2.3 The accessories for Proprietary Devices should be from the same manufacturer as the device proposed. A national framework is currently in place for IT peripherals where third party accessories can be sourced. For the avoidance of doubt, any accessory which can be physically or wirelessly connected to a proprietary device, should be from the same manufacturer as the proprietary device supplied.

2.4 Additional form factors and/or alternative technology solutions may be added at the sole discretion of the Authority.

2.5 The product offering shall not be varied to include Goods other than Web Based and Proprietary Client Devices and associated services.

## 3 Services

3.1 The unit prices for each service, detailed in this schedule, shall remain fixed under this Framework Agreement.

3.2 Any service requirements not covered by those detailed in this document, will be subject to agreement between Framework Public Bodies and the Contractor.

## 4 Delivery Charges

4.1 All unit prices submitted in the Pricing Schedule include delivery.

## 5 Price Adjustment

5.1 Pricing and Discounts shall remain fixed for the term of the Framework Agreement except where:

5.1.1 Web Based Client Devices - The exchange rate has increased or reduced by more than an average of 5% in comparison to the Baseline daily exchange rate over a rolling six-month period.

5.1.1.1 The initial Baseline exchange rate will be the Bank of England US $/Sterling exchange rate (Baseline) on the Framework commencement date.

5.1.1.2 If the daily average Bank of England US $/Sterling exchange rate increases/decreases by more than 5% compared to the Baseline daily exchange rate over a rolling six-month period (Rolling Daily Average), a price review may be considered.

5.1.1.3 Any request for a price review must be submitted in accordance with the Price Review Process section 7 within this document.

5.1.1.4 A price review cannot be requested prior to six months following the Framework commencement date.

5.1.1.5 Where a price adjustment is agreed following a price review a price adjustment is agreed the Device Unit Cost will be amended as follows.

- Device Unit Cost +/- % difference between the Rolling Average and Baseline exchange rates.
- The Baseline will be reset at the Rolling Daily Average exchange rate used in the above calculation.

5.1.1.6 See Annex for a worked example of the Price Adjustment process.

5.1.2 The Contractor, at their sole discretion and where applicable, reduces the price and/or increases the discount; or

5.1.3 The Authority has provided the Contractor with Benchmarked prices in accordance with clause 5 (Benchmarking).

5.2 It is recognised that the Contractor may, from time to time, run promotions at prices lower than standard Framework Agreement Pricing.

5.3 The Authority must be made aware in advance and approve any special promotional pricing. Special promotional pricing must clearly identified in supplier catalogue and made available to all Framework Bodies.

## 6 Benchmarking

6.1 The Contractor must demonstrate to the Authority throughout the term of the Framework Agreement that the pricing available through the Framework Agreement is competitive and represents value for money.

6.2 The Authority reserves the right to benchmark, or commission 3rd party benchmarking of the Contractor's product prices at any time in order to determine that they still represent best value for money for Framework Public Bodies.

6.3 If the benchmark indicates that the pricing could be improved, the Contractor will be expected to review and improve the framework pricing.

6.4 The Authority reserves the right to suspend or terminate the Contractor's appointment to provide Goods to Framework Public Bodies if the pricing is not competitive and does not represent value for money.

## 7 Price Review Process

7.1 A request for a price review must be submitted in writing by either Party and provide documentary evidence which fully supports any proposed change.

7.2 Where a request has been made by the Contractor and considered to be justifiable by the Authority, a business case will be prepared by the Authority and submitted for approval in accordance with the Authority's internal governance.

7.3 Following approval, a notice period of 10 Working Days is required to disseminate the proposed changes across the Scottish public sector via the procurement Centres of Expertise.

7.4 The Contractor may also request a price review where significant hardship is incurred due to events which result in a substantial increase in the cost of performing its contractual obligations.

7.5 Such a price review will only be considered where the Contractor can establish to the satisfaction of the Authority that the increase in costs is due to events which

a. are beyond the Contractor's control

b. could not reasonably have been anticipated prior to conclusion of the contract,

c. could not reasonably have been avoided or overcome, and;

d. are not related to a contractual risk already assumed by the Contractor.

7.6 Consideration of any price review will be at the sole discretion of the Authority.

7.7 Irrespective of the outcome of any price review, the Contractor will be bound to perform its contractual obligations even where events render performance more onerous or costly than originally anticipated.

## 8 Pricing and Product Listing

8.1 The Price and Product Listing is contained in the following pages.

## Annex

Worked Example: Exchange Rate Variation of Price Calculation

Dates, Exchange Rates and Unit Costs are for illustration only

| | | |
|---|---|---|
| 03-Nov-16 | Contract Start Date | |
| 03-Nov-16 | Daily $/£ Exchange Rate | 1.2455 |
| 03-Nov-16 | Unit Cost | £300 |

| | (a) | (b) | (c) | (d) |
|---|---|---|---|---|
| Date | Baseline Exchange Rate ($/£) | Six-Month Rolling Daily Average Exchange Rate ($/£) | % Difference (a)-(b) | Unit Cost |
| 03-Nov-16 | 1.2455 | - | - | £ 300.00 |
| 08-Sep-17 | 1.2455 | 1.3105 | -5.22% | £ 284.34 |
| 08-Sep-17 | 1.3105 | - | - | £ 284.34 |
| 11-Oct-18 | 1.3105 | 1.2365 | 5.65% | £ 300.41 |

## Web Based Accessories & Services - Pricing

| Description | 11" Device | 14" Device |
|---|---|---|
| Slip Case / Sleeve | £ REDACTED | £ REDACTED |
| Carry case / bag | £ REDACTED | £ REDACTED |
| Additional Power Supply Unit | £ REDACTED | £ REDACTED |
| Security Lock | £ REDACTED | £ REDACTED |
| Extended Warranty: 3-4 year collect and return | £ REDACTED | £ REDACTED |
| Extended Warranty: 3-5 year collect and return | £ REDACTED | £ REDACTED |
| Management Console Licence (Corporate customers only) | £ REDACTED | £ REDACTED |
| Asset Tagging | £ REDACTED | £ REDACTED |
| **TOTAL** | **£** REDACTED | **£** REDACTED |

| | Device Meets Minimum Specification | Manufacturer / Range / Model Proposed | Publicly Available List Price £ (ex VAT) | Framework Discount % | Firm Unit Price £ (ex VAT) | EDUCATION ONLY % DISCOUNT |
|---|---|---|---|---|---|---|
| Proprietary Device - Fixed | Yes | iMac 21.5" | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - Fixed (High Performance) | Yes | MacPro | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - Mobile | Yes | 13" MacBook Pro | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - 7.9" | Yes | iPad Mini WiFi 64GB | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - Tablet 9.7" – 10.2" | Yes | 10.2-inch iPad Wi-Fi 32GB | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - Tablet 11" | Yes | 11" iPad Pro WiFi 64GB | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device – Tablet 12.9" | Yes | 12.9" iPad Pro Wifi 64GB | REDACTED | REDACTED | REDACTED | REDACTED |

| | Device Meets Minimum Specification | Manufacturer / Range / Model Proposed | Publicly Available List Price £ (ex VAT) | Framework Discount % | Firm Unit Price £ (ex VAT) | EDUCATION ONLY % DISCOUNT |
|---|---|---|---|---|---|---|
| Proprietary Device - Fixed Device | Yes | MS Studio 2 | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - Mobile Standard Device | Yes | 13" Surface Book 2 | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - Tablet Device – 10” | Yes | Surface Go | REDACTED | REDACTED | REDACTED | REDACTED |
| Proprietary Device - Tablet Device – 12.3” | Yes | Surface Pro 6 | REDACTED | REDACTED | REDACTED | REDACTED |

| Weighted Accessories & Services - Proprietary Brand A | Price |
|---|---|
| Proprietary A - Protective Case (9.7” – 10.2”) | REDACTED |
| Proprietary A - Protective Case (11”) | REDACTED |
| Proprietary A - Protective Case (12.9”) | REDACTED |
| Proprietary A - Screen Protector (9.7” – 10.2”) | REDACTED |
| Proprietary A - Screen Protector (11”) | REDACTED |
| Proprietary A - Screen Protector (12.9”) | REDACTED |
| Proprietary A - KB Case (32GB) | REDACTED |
| Proprietary A - Smart KB 9.7 Pro | REDACTED |
| Proprietary A - Smart KB 10.5 Pro | REDACTED |
| Proprietary A - Smart KB 11 Pro | REDACTED |
| Proprietary A - Smart KB 12.9 Pro | REDACTED |
| Proprietary A - Stylus / Pen | REDACTED |
| Proprietary A - USB Power Adapter | REDACTED |
| Proprietary A - Lightning -USB Cable | REDACTED |
| Proprietary A - Lightning - HDMI | REDACTED |
| Proprietary A - Lightning to VGA | REDACTED |
| Proprietary A - TV Streaming Device | REDACTED |
| Enhanced Additional Year Warranty Service providing direct access to Technology Experts for Proprietary Tablet Devices, local access to repair centres and additional hardware support. | REDACTED |
| Proprietary A - 45W Power Adapter | REDACTED |
| Proprietary Brand A - 60W Power Adapter | REDACTED |
| Proprietary Brand A - 85W Power Adapter | REDACTED |
| Proprietary Brand A - USB-C Cable | REDACTED |
| Proprietary Brand A - DVI Adapter | REDACTED |
| Proprietary Brand A - VGA Adapter | REDACTED |
| Proprietary Brand A - HDMI Adapter | REDACTED |
| Proprietary Brand A - Wireless Keyboard | REDACTED |
| Proprietary Brand A - Wireless Mouse | REDACTED |
| Proprietary Brand A - Wireless Trackpad | REDACTED |
| Asset Tagging | REDACTED |
| Device Enrolment | REDACTED |
| Laser Etching | REDACTED |
| **TOTAL** | £ REDACTED |

| Weighted Accessories & Services - Proprietary Brand B | Proposed Pricing | |
|---|---|---|
| Proprietary B - Pen / Stylus | £ | REDACTED |
| Proprietary B - Type Cover | £ | REDACTED |
| Proprietary B - Dock | £ | REDACTED |
| Proprietary B - Mouse | £ | REDACTED |
| Proprietary B - Mini DP - VGA Adapter | £ | REDACTED |
| Proprietary B - Power Supply Unit Proprietary Brand B | £ | REDACTED |
| Proprietary B - Sleeve | £ | REDACTED |
| Proprietary B - Extended Warranty | £ | REDACTED |
| Asset Tagging | £ | REDACTED |
| Device Enrolment | £ | REDACTED |
| Laser Etching | £ | REDACTED |
| **TOTAL** | **£** | REDACTED |

| Additional Accessories | Proposed Pricing |
|---|---|
| *Surface Go Type Cover Black* | £ REDACTED |
| *Surface Go Sig Type Cover Platinum* | £ REDACTED |
| *Surface Pro Signa Fingerprint ReaderKeyboard Type Cover - Black* | £ REDACTED |
| *Microsoft Arc Touch Bluetooth Mouse - Black* | £ REDACTED |
| *Surface Pro 4 Ethernet Adapter for all Surface Devices* | £ REDACTED |
| *Surface Pro 4 HDMI Adapter for all Surface Devices* | £ REDACTED |
| *Universal Sleeve - 11"/27.9cm - Black* | £ REDACTED |
| *Universal Sleeve - 14"/35.6cm - Black* | £ REDACTED |
| *Kensington Docking Station SD7000 Surface Pro* | £ REDACTED |
| *EHS 3YR Warranty UK Surface Go* | £ REDACTED |

| Additional Accessories | Price |
|---|---|
| *Apple Pencil (2nd Generation)* | £ REDACTED |
| *Sphero BOLT* | £ REDACTED |
| *Sphero BOLT Power Pack* | £ REDACTED |
| *Lock'n'Charge Carrier 20 (Charge/Store Trolley) - Netbooks/Chrome/Tablets* | £ REDACTED |
| *Lock'n'Charge Carrier 30 (Charge/Store Trolley) - Netbooks/Chrome/Tablets* | £ REDACTED |
| *Lock'n'Charge Carrier 40 (Charge/Store Trolley) - Netbooks/Chrome/Tablets* | £ REDACTED |
| *Apple EarPods with 3.5mm Headphone Plug* | £ REDACTED |
| *Kanex ATV Pro (for Apple TV)* | £ REDACTED |
| *Parrot Minidrone Evo - Airborne Cargo Mars - White* | £ REDACTED |
| *BAYAN AUDIO SOUNDBOOK BT SPEAKER WHT* | £ REDACTED |

| Manufacturer | Device Type | Range / Model | Price £ (ex VAT) |
|---|---|---|---|
| Dell | Open Source | Wyse 3040 Thin Linux | REDACTED |
| | Zero Client | Wyse 3040 Thin OS | REDACTED |
| | Enterprise Client | Wyse 5010 Client Enterprise | REDACTED |
| | PCoIP Client | Wyse 5030 PCoIP Client | REDACTED |
| HP | Open Source | HP Thin Pro T630 | REDACTED |
| | Zero Client | HP Zero Client T630 | REDACTED |
| | Enterprise Client | HP T630 - Win 10 IoT | REDACTED |
| | PCoIP Client | HP T310 | REDACTED |
| Lenovo | Open Source | Lenovo M715Q with Linux OS | REDACTED |
| | Enterprise Client | Lenovo M715Q with Win10 IoT | REDACTED |
| | Software-based Thin Client | Lenovo Cloud Desktop | REDACTED |
| | PCoIP Client | VXL- V240 | REDACTED |
| IGEL | Open Source | IGEL UD3 Enterprise Linux | REDACTED |
| | Enterprise Client | IGEL UD3 Win 10 IoT | REDACTED |
| | PCoIP Client | IGEL UD3 PCOIP VM Ware AWS | REDACTED |
| | Software-based Thin Client | IGEL Workspace | REDACTED |
| | | TOTAL BASKET PRICE | £ REDACTED |
| | | % Margin | REDACTED |
| | | Total Weighted Price | £ REDACTED |

This and the following 3 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and XMA Limited

**SCHEDULE 3 – AWARD PROCEDURES**

## 9 Ordering Procedure

9.1 Where a Framework Public Body decides to source Goods through this Framework Agreement then it shall be entitled at any time during the Period to place an order for Goods by submitting a Purchase Order and/or Purchase Order Information to the Contractor in accordance with the procedures described in this Schedule 3 (Ordering Procedure) and the requirements and guidance defined in the Buyers Guide (see section 3.1 below).

## 10 Direct Buying Route

10.1 Where a Framework Public Body is able to determine the part number details and price for their requirement from the Buyers Guide, Contractor's portal or eProcurement catalogue, the Contracting Authority will simply place an order with the Contractor as per the instructions outlined in the Ordering Procedures, providing the required Purchase Order Information (see section 7) and in accordance with Schedule 5 (Call Off Terms & Conditions).

10.2 Where a Framework Public Body is unable to determine the information required to place an order the Framework Public Body shall be provided with a named Account Manager who will provide support including pre, during and after sale support, technical information and advice on all devices.

10.3 In the event that a Framework Public Body makes an approach to the Contractor with a request for the supply of products and services which are the same as or similar to the Goods available on this Framework Agreement, the Contractor shall promptly and in any event within five (5) Working Days of the request by the Contracting Authority and before the supply of the equivalent products or services, inform such Contracting Authority of the existence of this Framework Agreement and its ability to place orders for the Goods pursuant to it.

## 11 Framework Mobilisation

11.1 Immediately following confirmation of award, Framework implementation meetings will take place between the Authority and the Contractor. During these meetings the Contractor will be expected to support and develop the content of a Buyer's Guide. The Contractor will also be expected to support the ratification of the pricing and provision of quotation methodology.

11.2 The Contractor will also work with individual Framework Public Bodies to ensure a smooth transition to their preferred eProcurement route; either cXML (both order and invoice), dedicated portal or punch-out implementation.

11.3 The Buyer's Guide will include (but not be restricted to):

- Details of the Contractor's organisation;

- Details of the Ordering process and links to Contractor sites as appropriate;
- Account Management details;
- Customer service and support processes;
- Escalation process; and
- Best Value initiatives.

11.4 The output of 3.1, 3.2 and 3.3 must be fully implemented within six weeks of confirmation of award and at no additional cost to the Authority or Framework Public Body. The Contractor will ensure that the Account Manager or equivalent senior representative attends all Implementation Meetings. The Contractor's representative must be empowered to make decisions on behalf of the Contractor's organisation.

## 12 Ordering Procedures

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

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

12.3 The Framework Public Body will be required to provide an Order that refers to the Framework Agreement and details the Framework Public Body's reference number. The Contractor will include the Framework Public Body's reference number on all correspondence.

12.4 An automated order acknowledgement must be provided by the Contractor within 24 hours of an order being received from a Framework Public Body. A weekly automated report must be issued to the Framework Public Body providing information on orders placed, including the Framework Public Body's order number, item and quantity ordered and status (shipped or confirmed delivery date).

12.5 Core devices will be delivered within 10 working days and all other non-standard configurations and additional services will incur an additional 5 working days, taking the maximum to 20 working days.

12.6 The Contractor will work with the Framework Public Body to reduce the number and/or frequency of orders being placed and in turn reduce the cost of delivery over the duration of the Framework Agreement.

## 13 eCommerce

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

13.2 The Contractor shall create bespoke web pages for this Framework Agreement on a secure section of their company's web server. A secure online portal and punch-out site is a minimum requirement for ordering Web Based and Proprietary devices.

13.3 The Contractor will be able to make use of and support a range of eCommerce technologies, including but not limited to:

- **Content Management -** Pecos Content Management (PCM) facilitates the upload, approval, distribution and on-going management of electronic content to support both collaborative contract arrangements and local contracts (where appropriate). The system ensures that content is provided to end users from the Contractors in the most efficient manner possible, with the correct pricing & product descriptions displayed. The main advantage to Contractors is that they are able to manage and provide their content once in a standard format which is easily validated and then published onto the purchase-to-pay systems of many public sector buying organisations. Contractors should be able to provide electronic catalogues (eCatalogues) to be used in PCM or to provide a "punch-out" capability to their own eCatalogues.

- **Ordering -** PECOS (Professional Electronic Commerce Online System) is the eOrdering system of choice for the Scottish public sector. It enables the generation and submission of orders using fax, e-mail, and industry standard electronic protocols including EDI and cXML.

- **Payment -** a number of finance systems are used across the Scottish public sector, and when interfaced with PECOS or through their own integrated e-Ordering systems provide Contracting Authorities with a full Purchase to Pay (P2P) solution. Many systems also include functionality to receive and match invoices electronically (i.e. eInvoicing), manage low- value/high-volume transactions through Purchasing Cards (e.g. Electronic Procurement Card), consolidate multiple purchase orders into a single invoice and even remove the need for an invoice through self-billing on receipt of an approved purchase order.

13.4 The Contractor will be expected to provide an overview of their eCommerce capability within the Buyers Guide, and facilitate the provision of quotations if the Framework Public Body is unable to determine the appropriate ordering information from the Contractor's web pages.

## 14 Purchase Order Information

14.1 The minimum information to be provided at the time of placing an order is:

14.1.1 Date of Purchase Order;

14.1.2 Name of person placing the Purchase Order;

14.1.3 Framework Public Body's Purchase Order Reference;

14.1.4 The Goods to be supplied including quantity;

14.1.5 Reference to the Framework Agreement and acceptance of the Call Off Terms and Conditions;

14.1.6 Time(s) and dates(s) for the delivery of the Goods (taking into account the minimum periods of delivery);

14.1.7 Premises to which the Goods are to be delivered including points (and whether special delivery requirements are required);

14.1.8 Arrangement for invoicing; and

14.1.9 Procurement Card number (if applicable).

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

**SCHEDULE 4 – MANAGEMENT ARRANGEMENTS**

## 1 Introduction

1.1 The successful delivery of this Framework Agreement will rely on the ability of the Contractor and the Authority developing a strategic relationship immediately following framework award.

1.2 To achieve this, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information (MI), and the sharing of information between all Parties.

1.3 This Schedule outlines the general structures and management activities that should be followed during the Framework Period, both in terms of the Authority-Contractor relationship and the Contractor-Framework Public Body relationship.

## 2 Key Individuals

2.1 The Contractor and Authority will agree a number of Key Roles and Key Personnel and the Contractor must ensure the continuity of Key Personnel throughout the Period of the Framework Agreement.

2.2 The Contractor is expected to identify and allocate a named dedicated Framework Manager resource for the framework.

2.3 The role of the Framework Manager will be to manage the overall Framework Agreement with the Authority and to ensure any contractual non-conformance is addressed. The Framework Manager will also be responsible for attending quarterly operational Governance Meetings with the Authority to feedback on consolidated Management Information and discuss opportunities for continuous improvement. They will be responsible for the management of the individual Call-offs and provide a Single Point of Contact (SPoC) for the Framework Public Bodies using the Framework Agreement.

2.4 On a mutually agreed basis the Framework Manager (or other appointed named deputy from the Contractor's organisation) will be required to meet with the Framework Public Bodies to ensure all their requirements are being met and to demonstrate the Contractor's ability to maintain, and improve delivery against KPIs throughout the Contract. The activities of the Framework Manager (and any other appointed named deputies) are fully inclusive within the costs provided in Schedule 2 (Pricing).

2.5 Where a Framework Public Body has an existing Account Manager in place with the Contractor, the Contractor should, where possible, offer the option of retaining this Account Manager.

2.6 The Contractor will be required to produce and maintain an organisation chart for the Contract and Account Management structure for this Framework Agreement

which details the escalation route for each of the areas. Clear escalation routes should be identified for the provision of Goods and achieving the KPIs within this Framework Agreement in line with the governance process.

## 3 Meetings

3.1 Annual and/or quarterly Governance Meetings will be established between the Authority and the Contractor and separately with Framework Public Bodies as required.

3.2 The purpose of the Governance Meetings will be to address operational issues such as achievement of Key Performance Indicators (KPIs), utilisation of the Framework Agreement, realisation of savings and benefits, and opportunities to market the Agreement more effectively. These will be attended by the Framework Manager and appointed representatives of the Authority and specific Contracting Authorities invited as appropriate.

3.3 The Account Team must be available on a weekly basis, at a pre-agreed time to participate in a conference call with the Authority. The purpose of the conference call will be to address operational issues.

3.4 In addition to regular meetings with the Authority, the Contractor is expected to develop relationships and meet regularly with nominated individuals within each Framework Public Body to ensure that the level of service provided on a local basis is satisfactory.

3.5 Where specific problems are identified locally, the Contractor will attempt to resolve such problems directly with the nominated individual within that organisation.

3.6 Where the Contractor becomes aware of a trend that would have a negative effect on one or more of the Framework Public Bodies, they should immediately notify the Authority to discuss pre-emptive corrective action.

## 4 Management Information

4.1 The Contractor is required to create and/or maintain a database with up to date and accurate information at all times in order to provide the Authority and/or the Framework Public Body with Management Information (MI) as requested. The information and level of detail will be agreed between the Authority and/or Framework Public Body and the Contractor. The Contractor will be required to develop and incorporate agreed requirements into the database at no cost to the Authority or Framework Public Body.

4.2 The Contractor must provide a strategic view of the utilisation of the Framework Agreement and high level information on the Framework Public Bodies buying under the Framework. On a quarterly basis, this standard MI will be provided both to the Authority and, if the requested, to Framework Public Bodies. Reports should be submitted to the Authority within 10 Working Days of the end of each quarter. The Authority and the Contractor will look to develop and continuously improve the MI throughout the term of the Framework Agreement.

4.3 All MI should be made available in electronic and paper formats as requested by the Authority and/or the Framework Pubic Body. The format of the required management information will be agreed between each Party and the Contractor at the implementation meeting.

4.4 Throughout the term of the Framework Agreement, the Authority will liaise regularly with the Framework Public Bodies and where common problems are identified, it will be the responsibility of the Contractor to liaise with the Authority to agree a satisfactory course of action.

4.5 The Contractor is required to provide data and/or information to support the answering of freedom of information (FOISA) requests, First Minister Questions (PQs) and Ministerial Correspondence Submissions (MCS) within 5 Working Days, as and when required by the Authority or the Framework Public Body.

## 5 Continuous Improvement

5.1 The Authority will work with the Contractor to implement a system that delivers continuous improvement over the Period of the Agreement. By continuous improvement it is meant that improvements are to be delivered for one or more of the following outputs on an on-going basis:

- reduction in whole life costs to Framework Public Bodies;
- technology
- process
- performance improvements
- quality (reliability, delivery, etc.)
- user satisfaction;
- specified contractual KPIs and any applicable service levels;
- the facilitation or promotion of best practice across all Scottish public sector organisations.

5.2 Continuous improvement will be discussed with the Authority and Contractor at the designated Governance meeting.

## 6 Complaints

6.1 Complaints of any nature relating to the performance of the Framework Agreement must be acknowledged by the Contractor within 2 Working Days. The Contractor is required to maintain a full record of all Complaints raised, the escalation within its own organisation, any response provided and the resolution status. The Contractor will provide details of all Complaints and their resolution in the quarterly Management Information returns.

6.2 The Contractor will operate a clear written protocol, as approved by the Authority, for handling Complaints timely and effectively.

## 7 Framework Performance

7.1 The Contractor will complete a balanced scorecard for submission to the Authority on a quarterly basis.

7.2 The Contractor and Authority will utilise the balanced scorecard to formally monitor and review all aspects of the Framework Agreement's performance at the quarterly Governance meeting.

7.3 The Authority will seek stakeholder input to validate the accuracy of the balance scored submission.

7.4 The Authority will work with the Contractor to resolve all performance issues.

7.5 Poor performance or the failure to rectify persistent issues may lead to the suspension of the Contractor's appointment to provide Goods to Framework Public Bodies for a notified period of time.

This and the following 54 pages comprise Schedule 5 to the Framework Agreement between the Scottish Ministers and XMA Limited

**SCHEDULE 5 – STANDARD TERMS OF SUPPLY**

**SUPPLY OF GOODS CONTRACT**

**-between-**

**(1) THE SCOTTISH MINISTERS ACTING THROUGH (THE "PURCHASER")**

**-and-**

**(2) XMA Limited (THE "SUPPLIER")**

**-relating to the supply of-**

**WEB BASED & PROPRIETARY CLIENT DEVICES**

# SCHEDULE 5 – CALL OFF TERMS & CONDITIONS

## Tender Reference: SP-19-013

**Table of Contents**

**SECTION A INTRODUCTORY PROVISIONS**

1. Definitions and Interpretation
2. Condition Precedent
3. Nature of the Contract
4. Purchaser's Obligations
5. Period
6. Break
7. Statement of Requirements «F6: and Key Performance Indicators»
8. Catalogue and Pricing Schedule
9. Ordering Procedures and Management Arrangements
10. Official Secrets Acts

**SECTION B GENERAL PROVISIONS**

11. Supplier's Status
12. Notices
13. Price
14. Payment and Invoicing
15. Recovery of Sums Due
16. Data Protection
17. Transparency and Freedom of Information
18. Purchaser Protected Information
19. Supplier Sensitive Information
20. Audit
21. Publicity
22. Security

**SECTION C SUPPLY TERMS**

23. Supply of Goods
24. Delivery and Non-Delivery
25. Packaging and Labelling
26. Acceptance and Rejection
27. Return and Refund
28. Risk and Ownership
29. Installation and Training
30. Guarantee

**SECTION D HIRE TERMS**

31. Hire of Goods
32. Purchaser's Rights
33. Purchaser's Obligations in respect of hired Goods
34. Ownership of hired Goods
35. Upgrades, Downgrades and Improvements
36. End of the hire period
37. Special pricing provision

**SECTION E INTELLECTUAL PROPERTY AND GOVERNANCE**

38. Parties' pre-existing Intellectual Property Rights
39. Specially Created Intellectual Property Rights

40. Licenses of Intellectual Property Rights
41. Claims relating to Intellectual Property Rights
42. Assignation
43. Change of Control
44. Sub-Contracting
45. Amendment

**SECTION F SUPPLIER CONDUCT REQUIREMENTS**

46. Compliance with the Law etc.
47. Supplier's responsibility for staff etc.
48. Access to the Purchaser's premises
49. Supplier's Equipment
50. Health and Safety
51. Offences
52. Tax arrangements
53. Discrimination
54. Blacklisting
55. Supply Chain Protections
56. Compliance With Anti-Slavery And Human Trafficking Laws
57. Conflict of Interest

**SECTION G FINAL PROVISIONS**

58. Warranties and Representations
59. Indemnity
60. Limitation of Liability
61. Insurances
62. Force Majeure
63. Dispute Resolution
64. Severability
65. Waiver and Cumulative Remedies
66. Termination Rights
67. Termination on Insolvency or Change of Control
68. Exit Management
69. Consequences of Expiry or Termination
70. Entire Agreement
71. Governing Law and Jurisdiction

**SCHEDULES**

Schedule 1 Statement of Requirements and Key Performance Indicators
Schedule 2 Catalogue and Pricing Schedule
Schedule 3 Ordering Procedures
Schedule 4 Management Arrangements
Schedule 5 Approved Sub-Contractors
Schedule 6 Transparency Reports and Supplier Sensitive Information
Schedule 7 Parent Company Guarantee
Schedule 8 Exit Management
Schedule 9 Data Protection

**PREAMBLE**

ONE The Purchaser requires the supply of Goods;

TWO On 09/08/2019 the Authority's contract notice relating to the Goods & related Services was published in the Official Journal of the European Union with reference number TED32/2019-173

THREE On 17/09/2019 the Contractor completed its ESPD;

FOUR On 09/08/2019 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Goods & related Services;

FIVE On 17/09/2019 the Contractor submitted its Tender;

SIX On the basis of the Tender, the Purchaser has selected the Supplier to supply the Goods under the Contract;

SEVEN The Contract establishes standard terms of supply for the supply and hire of Goods;

EIGHT The Contract also includes:

- a Statement of Requirements setting out the Purchaser's general requirements for the supply of Goods & related Services , including Key Performance Indicators;
- a Catalogue and Pricing Schedule setting out the catalogue of Goods to be supplied and details of the pricing of the Goods;
- details of the Supplier's information which is deemed to be Supplier Sensitive Information;
- Ordering Procedures prescribing the procedures for ordering particular Goods; 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 89.2 (Assignation).

"**Catalogue and Pricing Schedule**" means the catalogue of Goods to be supplied and details of the pricing of the Goods set out in Schedule 2.

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

"**Contract**" means this Contract between the Parties consisting of clauses and «F16: number of Schedules» Schedules.

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

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

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

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

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

"**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 Supplier's Representatives in the performance of the Supplier's obligations under the Contract.

"**ESPD**" means the European Single Procurement Document completed by the Supplier and sent to the Purchaser on 17/09/19

"**Exit Management**" means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Supplier to the Purchaser or any Replacement Supplier as set out in Clause 67 (Exit Management) and Schedule 8 (Exit Management).

"**Exit Plan**" means the exit management plan developed by the Supplier and approved by the Purchaser in accordance with Clause 67 (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 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 Supplier under the same or similar circumstances.

"**Goods**" means the Goods as are to be supplied by the Supplier to the Purchaser as set out in the Catalogue and Pricing Schedule and as may be ordered in accordance with the Ordering Procedures.

"**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 09

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

"**Key Performance Indicators**" means the key performance indicators identified as such in the Statement of Requirements

"**Management Arrangements**" means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Supplier's compliance with the Statement of Requirements, «F18: the Key Performance Indicators», the Ordering Procedures and the terms of the Contract, set out in Schedule 4.

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

"**Ordering Procedures**" means the procedures for ordering particular Goods set out at Schedule 3.

"**Party**" means either of the Purchaser or the Supplier.

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

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

"**Purchaser**" means the Scottish Ministers «F2: acting through…».

"**Purchaser Protected Information**" means any information provided by the Purchaser to the Supplier 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).

"**Replacement Supplier**" means any third party supplier appointed to supply the Goods 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 the Contract.

"**Statement of Requirements**" means the Purchaser's general requirements for the supply of Goods including Key Performance Indicators, set out in Schedule 1.

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

"**Supplier**" means XMA Limited, Pavilion 2, Junction 24 Business Park, Helen St, Glasgow, G51 3AD, 02051703

"**Supplier Representatives**" means all persons engaged by the Supplier 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 Supplier);
- its agents, suppliers and carriers; and
- any sub-contractors of the Supplier (whether approved under clause 31 (Sub-contracting) or otherwise).

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

- «F21: is specified as Supplier Sensitive Information in Schedule 6 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).

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

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

"**Transparency Reports**" means a report in accordance with Schedule 6 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Purchaser in the interests of transparency.

"**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:

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

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

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

48.2.4. 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;

48.2.5. 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;

48.2.6. reference to "expiry or termination" of the Contract includes the making of a Judicial Order;

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

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

**2. Condition Precedent: Requirement for a Parent Company Guarantee**

It shall be a condition of this Contract that, if required by the Purchaser, the Supplier shall deliver a validly executed parent company guarantee in the form set out in Schedule 7 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 Supplier shall be at the risk of the Supplier and the Purchaser shall not be liable for and the Supplier irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Supplier 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 Supplier.

**3. Nature of the Contract**

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

3.2. The Contract is for the purchase of Goods.

3.3. Save to the extent specifically provided for in the Contract, the Supplier acknowledges that it is not the exclusive supplier of the Goods to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

**4. Purchaser's Obligations**

4.1. Save as otherwise expressly provided, the obligations of the Purchaser under the Contract are obligations of the Purchaser in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Purchaser in any other capacity, nor shall the exercise by the Purchaser of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Purchaser to the Supplier.

**5. Period**

5.1. The period of the Contract is from and including «F23 commencement date» (the "**Commencement Date**") to and including «F24 initial expiry date», unless it is terminated earlier or extended under clause 4.2.

5.2. The Purchaser may, by giving notice to the Supplier, extend the period of the Contract to a date falling no later than «F25 insert longstop expiry date». Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

**6. Break**

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

**7. Statement of Requirements «F6: and Key Performance Indicators»**

7.1. The Supplier must comply with the Statement of Requirements. «F26: In particular, the Supplier must meet or exceed the Key Performance Indicators.»

**8. Catalogue and Pricing Schedule**

8.1. The Catalogue and Pricing Schedule sets out details of:

8.2. the Goods that are to be supplied under the Contract; and

8.3. the pricing of those Goods.

8.4. «F27: The list of Goods in the Catalogue and Pricing Schedule is not to be varied for the period of the Contract. **or** The list of Goods in the Catalogue and Pricing Schedule may be varied in accordance with the arrangements set out in the Catalogue and Pricing Schedule.»

8.5. «F28: The prices in the Catalogue and Pricing Schedule are not to be increased for the period of the Contract. **or** The prices in the Catalogue and Pricing Schedule may be varied in accordance with the arrangements set out in the Catalogue and Pricing Schedule.»

8.6. Accordingly, the Supplier may not unilaterally increase the prices in the Catalogue and Pricing Schedule. But nothing in the Contract prevents the Supplier from improving on the prices in the Catalogue and Pricing Schedule for the purposes of a particular Order.

8.7. The Catalogue may be varied by substitution or by addition of a product, or products, provided such product is, or products are, similar to the product/ products originally listed in the Catalogue. Any such substitution or addition requires the Purchaser's prior written approval.

**9. Ordering Procedures and Management Arrangements**

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

9.2. The Parties must comply with the Ordering Procedures.

9.3. The Supplier must maintain the capacity to supply Goods throughout the period of the Contract.

9.4. The Parties must comply with the Management Arrangements.

**10. Official Secrets Acts**

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

**SECTION B: GENERAL PROVISIONS**

**11. Supplier's Status**

11.1. At all times during the period of the Contract the Supplier is an independent supplier and nothing in the Contract 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 the Contract.

**12. Notices**

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

12.2. given in writing;

12.3. addressed in accordance with clause 12.3; and

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

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

12.6. 2 Working Days after the day on which the letter was posted; or

12.7. 4 Working Hours after the communication was sent, in the case of fax or e-mail.

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

12.9. For the Purchaser:

«F30: Purchaser address for notices»
For the attention of: «F31: Purchaser individual contact for notices»
Tel: «F32: Purchaser phone number»
Fax: «F33: Purchaser fax number for notices»
E-mail: «F34: Purchaser e-mail address for notices»

12.10. For the Supplier:

«F35: Supplier address for notices»
For the attention of: «F36: Supplier individual contact for notices»
Tel: «F37: Supplier phone number»
Fax: «F38: Supplier fax number for notices»
E-mail: «F39: Supplier e-mail address for notices»

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

12.12. 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.

**13. Price**

13.1. In consideration of the Supplier's performance of its obligations relating to an Order, the Purchaser must pay:

13.2. the price due in accordance with the Catalogue and Pricing Schedule and the Ordering Procedures; and

13.3. a sum equal to the value added tax chargeable at the prevailing rate.

13.4. No additional payment is due to the Supplier in respect of:

13.5. providing documentation in accordance with clause 70.2.5 (Supply of Goods);

13.6. packaging and labelling the Goods in accordance with clause 72 (Packaging and Labelling); or

13.7. the cost of installing the Goods or providing training in accordance with clause 76 (Installation and Training).

13.8. The Supplier may not suspend the supply of Goods if it considers that the Purchaser has failed to pay the price due.

**14. Payment and Invoicing**

14.1. The Purchaser must pay all sums due to the Supplier within 30 days of receipt of a valid invoice or 30 days of the date of delivery of the Goods, whichever is the later.

14.2. The Supplier must render invoices «F40: insert invoicing frequency».

14.3. The Supplier must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Goods supplied. The Supplier must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.

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

14.5. Interest is payable by the Purchaser on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

14.6. In this clause 14, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

**15. Recovery of Sums Due**

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

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

**16. Data Protection**

16.1. The Supplier acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in performance of the Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.

16.2. 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 16 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.

16.3. The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

16.4. The Supplier 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.

16.5. The Supplier must:

16.5.1. 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 Supplier is subject; in which case the Supplier 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 Supplier's obligations under this Contract or as is required by the Law;

16.5.2. subject to clause 16.5.1 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;

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

(a) are aware of and comply with the Supplier's duties under this Clause;
(b) are subject to appropriate confidentiality undertakings with the Supplier 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.

16.6. implement appropriate technical and organisational measures including those set 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.;

16.7. The Supplier shall not engage a sub-contractor to carry out Processing in performance of the Contract without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier 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.

16.8. If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier 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 Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.

16.9. The Supplier 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.

16.10. The Supplier 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.

16.11. Taking into account the nature of the Processing and the information available, the Supplier 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.

16.12. At the termination or expiry of the Contract the Supplier 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.

16.13. The Supplier must:

(a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this clause 16;

(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 16 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 the Data Protection Laws.

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

16.15. If requested, the Supplier must make such records referred to clause 16.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

16.16. Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 16.14 with minimum disruption to the Supplier's day to day business

16.17. 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 Supplier 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.

## 17. Transparency and Freedom of Information

17.1. The Supplier acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations. The Supplier shall:

(a) provide all necessary assistance and cooperation as the Purchaser may reasonably request to enable the Purchaser to comply with its obligations under FOISA and Environmental Information Regulations;

(b) transfer to the Purchaser all Requests for Information relating to this Agreement that the Supplier receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Purchaser with a copy of all information held on behalf of the Purchaser which is requested in a Request For Information and which is in the Supplier's possession or control. The information must be provided within 5 Working Days (or such other period as the Purchaser may reasonably specify) in the form that the Purchaser requires.

(d) not respond directly to a Request For Information addressed to the Purchaser unless authorised in writing to do so by the Purchaser.

17.2. If the Request for Information appears to be directed to information held by the Purchaser, the Supplier must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.

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

17.4. The Supplier acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Supplier or the Contract:

17.4.1 in certain circumstances without consulting the Supplier, or

17.4.2 following consultation with the Supplier and having taken its views into account.

17.5. Where 17.5.4.1 applies the Purchaser must take reasonable steps, if practicable, to give the Supplier advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure to the extent that it is permissible and reasonably practical for it to do.

17.6. Where a Request for Information concerns Supplier Sensitive Information specified in Schedule 6 Part 1 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Supplier before disclosing it pursuant to a Request for Information.

17.7. The Supplier acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Supplier Sensitive Information. However, if the Purchaser believes that publication of any element of the Transparency Information should be treated as Supplier Sensitive Information the Purchaser may, in its discretion exclude such information from publication.

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

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

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

17.11. The Supplier agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Purchaser upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Purchaser may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 19.3.3) publish such Information. The Supplier shall provide to the Purchaser within 5 working days (or such other period as the Purchaser may reasonably specify) any such Information requested by the Purchaser.

**18. Purchaser Protected Information**

18.1. The Supplier must:

65.3.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;

65.3.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;

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

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

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

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

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

65.3.6. information is in the possession of the Supplier without restriction as to its disclosure prior to its disclosure by the Purchaser;

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

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

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

18.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Supplier is a material breach for the purposes of clause 113.1.3 (Termination Rights).

**19. Supplier Sensitive Information**

19.1. The Purchaser must:

66.1.1. treat all Supplier Sensitive Information as confidential and safeguard it accordingly; and

66.1.2. not disclose any Supplier Sensitive Information to any other person without the prior written consent of the Supplier.

19.2. Clause 19.1 does not apply to the extent that:

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

66.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Supplier;

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

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

66.2.5. information is independently developed without access to the Supplier Sensitive Information.

19.3. Nothing prevents the Purchaser from disclosing any Supplier Sensitive Information or any other information concerning the Supplier or the Contract:

66.3.1. pursuant to a Request for Information concerning the information (see clause 64 (Freedom of Information);

66.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;

66.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;

66.3.4. to any consultant, contractor or other person engaged by the Purchaser, for example to conduct a gateway review;

66.3.5. 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;

66.3.6. in response to any inquiry of the European Commission concerning the Contract; or

66.3.7. 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.

19.4. The Supplier 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 Supplier to inform its decisions concerning redaction (for example to exclude any Supplier Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

**20. Audit**

20.1. The Supplier 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 Goods supplied and payments made and reimbursed under it.

20.2. The Supplier must on request, 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.

**21. Publicity**

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

**22. Security**

22.1. The Supplier 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 Supplier from time to time.

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

**SECTION C: SUPPLY TERMS**

**23. Supply of Goods**

23.1. The Supplier must supply and where required install Goods:

70.1.1. in accordance with the Statement of Requirements, «F6: the Key Performance Indicators,» the Catalogue and Pricing Schedule and the Ordering Procedures; and

70.1.2. in accordance with the particular requirements of each Order.

23.2. The Goods must be:

70.2.1. designed and constructed so as to be safe and without risk to the health or safety of those using them when installed and properly used;

70.2.2. to the satisfaction of the Purchaser acting reasonably;

70.2.3. fit and sufficient for the purposes for which such goods are ordinarily used (having regard to the manufacturer's published specifications);

70.2.4. fit and sufficient for any particular purposes set out in the Statement of Requirements or otherwise made known to the Supplier by the Purchaser; and

70.2.5. accompanied by all documentation (such as instructions, manuals and guides) that are normally supplied by the manufacturer or supplier of the Goods or are otherwise necessary to make use of the Goods.

23.3. The Supplier acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Supplier in the supply of the Goods and the performance of its obligations under the Contract.

23.4. The Purchaser may inspect or test the Goods either complete or in the process of manufacture during Working Hours on reasonable notice at the Supplier's premises. The Supplier must at its expense provide all reasonable assistance and facilities in relation to any such inspection or test.

23.5. If requested by the Purchaser, the Supplier must provide the Purchaser with samples of the Goods for evaluation and approval, at the Supplier's expense.

23.6. For each Order for the supply of Goods, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures, the following provisions of Section C and clause 13 (Price) apply.

**24. Delivery and Non-Delivery**

24.1. The Supplier must deliver the Goods at the time(s) and date(s) and to the location(s) specified by the Purchaser.

24.2. On dispatch of any consignment of the Goods the Supplier must send the Purchaser a notice specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

24.3. The Goods are not deemed to be delivered unless an authorised representative of the Purchaser has signed an acknowledgement that the Goods have been delivered.

24.4. The Goods must not be unloaded and left outside any Purchaser's premises.

24.5. Accordingly, delivery includes the unloading and stacking of the Goods at such place as the Purchaser reasonably directs.

24.6. The point of delivery is:

71.6.1. when the Goods are removed from the transporting vehicle at the Purchaser's premises, in cases where the Goods are delivered by the Supplier; and

71.6.2. when the Goods are loaded on the Purchaser's vehicle, in cases where the Goods are collected by the Purchaser.

24.7. The Purchaser is not required to accept:

71.7.1. Goods supplied earlier than the required date and time for delivery; or

71.7.2. delivery by instalments.

24.8. Where the Goods are not delivered to the Purchaser at the due date and time for delivery or have been damaged in transit, the Purchaser may give notice to the Supplier of that fact and may require the Supplier at its expense to deliver substitute Goods or repair the Goods within the timescales specified by the Purchaser.

**25. Packaging and Labelling**

25.1. The Supplier must ensure that all packaging is of adequate size and of suitable quality to prevent damage to the Goods. The Goods must be packed in a proper manner.

25.2. «F28A: Packaging must be marked with or The Goods must be accompanied by a delivery note stating»:

72.2.1. the name of the contents;

72.2.2. the net, gross and tare weights; and

72.2.3. appropriate Contract and Order references.

25.3. All containers of fragile or hazardous Goods must bear prominent and adequate warnings.

25.4. It is agreed that packaging materials are not to be returned to the Supplier.

**26. Acceptance and Rejection**

26.1. The Purchaser is deemed to have accepted the Goods only if it expressly states the same in writing or fails to reject the Goods in accordance with clause 73.3.

26.2. Accordingly the issue by the Purchaser of a receipt note for the Goods does not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Purchaser′s acceptance of them.

26.3. The Purchaser may by notice to the Supplier within a reasonable time after delivery of the Goods reject any of the Goods which fail to conform to the requirements of the Contract or meet the particular requirements of the Order (for example, where an excess quantity of Goods has been delivered).

26.4. If the Purchaser rejects any of the Goods pursuant to clause 73.3 the Purchaser may either:

73.4.1. have such Goods promptly, and in any event within 5 Working Days, removed and replaced by the Supplier at the Supplier's expense with Goods which conform in all respects with the requirements of the Contract, and due delivery is not deemed to have taken place until such replacement has occurred; or

73.4.2. obtain a refund (if payment for any Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Purchaser in obtaining other Goods in replacement provided that the Purchaser uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

26.5. In the case of excess Goods, the Purchaser may:

73.5.1. have the excess Goods removed in accordance with clause 73.4.1; and

73.5.2. obtain payment of any costs incurred by it as a result of over-delivery (such as any costs of moving or storing the excess Goods).

**27. Return and Refund**

27.1. The Purchaser may by notice to the Supplier within a reasonable time after delivery of the Goods return any of the Goods where the Goods to be returned are in a re-saleable condition. Returned Goods must be removed promptly at the Supplier′s expense, within 5 Working Days.

27.2. If the Purchaser has paid any part of the price due in respect of any returned Goods, the Purchaser is entitled to obtain a refund from the Supplier.

27.3. The Purchaser must, if requested by the Supplier, give reasons for returning the Goods.

**28. Risk and Ownership**

28.1. Risk in the Goods passes to the Purchaser at the time of delivery, except that risk in any excess Goods referred to in clause 73 (Acceptance and Rejection) remains with the Supplier unless they are accepted by the Purchaser.

28.2. Risk in any Goods rejected or returned in accordance with clauses 73 (Acceptance and Rejection) or 74 (Return and Refund) is with the Supplier.

28.3. Ownership in the Goods passes to the Purchaser at the time of delivery.

**29. Installation and Training**

29.1. The Supplier must carry out any installation work required by the Supplier at the date(s), time(s) and location(s) required by the Purchaser. The Supplier must not begin any work without the approval of the Purchaser.

29.2. When the Supplier believes acting reasonably that it has completed any installation works it must notify the Purchaser. The Purchaser may thereafter inspect the installation work and, by notice to the Supplier:

76.2.1. accept the installation works; or

76.2.2. providing reasons, reject the installation works.

29.3. Where the Purchaser rejects installation works in accordance with clause 76.2.2 the Supplier must immediately rectify or remedy any defects.

29.4. The Supplier must carry out any out any training required by the Supplier at the date(s), time(s) and location(s) required by the Purchaser.

29.5. The Supplier is deemed to have inspected the premises at which the installation will take place so as to have understood the nature and extent of the installation to be carried out and is deemed to be satisfied in relation to all matters connected with the installation and the location. The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

**30. Guarantee**

30.1. The Supplier guarantees the Goods for «F28B: guarantee period» from the date of delivery against defects in design, materials or workmanship.

30.2. Where a defect in any of the Goods arises under proper and normal use by the Purchaser during the guarantee period, and the Purchaser gives notice of that fact to the Supplier, the Supplier must promptly, and in any event within 5 Working Days, remove and replace the defective Goods with Goods which conform in all respects with the requirements of the Contract

## SECTION D: HIRE TERMS

### 31. Hire of Goods

31.1. For each Order for the hire of Goods, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures:

78.1.1. the provisions of Section C apply, except clauses 75.3 (Risk and Ownership) and 77 (Guarantee); and

78.1.2. the provisions of this Section D apply.

31.2. The hire period agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' notice by the Purchaser.

### 32. Purchaser's Rights

32.1. The Purchaser has the right to quiet possession of the hired Goods, and the hired Goods shall be not be encumbered by any form of security.

32.2. Where a defect in any of the hired Goods arises under proper and normal use by the Purchaser the Supplier must, at its expense and without delay:

79.2.1. repair the defective Goods; or

79.2.2. remove the defective Goods and replace them with non-defective Goods of the same type and upon the same terms as the original hired Goods.

### 33. Purchaser's Obligations in respect of hired Goods

33.1. The Purchaser must make reasonable efforts to:

80.1.1. keep the hired Goods in a good and serviceable condition but no betterment by the Purchaser is required; and

80.1.2. use them in accordance with any documentation provided by the Supplier.

33.2. The Purchaser must not, without the written consent of the Supplier (such consent not to be unreasonably withheld or delayed):

80.2.1. modify or replace the hired Goods except in accordance with Clause 82 (Upgrades, Downgrades and Improvements);

80.2.2. use the hired Goods as security for a loan or other obligation;

80.2.3. sell, or attempt to sell or part with possession of the hired Goods;

80.2.4. allow anyone to obtain a lien over, or right to retain, the hired Goods;

80.2.5. move the hired Goods from the Purchaser's premises except where it is necessary to do so for the purposes of maintaining or repairing the hired Goods.

### 34. Ownership of hired Goods

34.1. Ownership in the Goods remains with the Purchaser throughout the hire period agreed in accordance with the Ordering Procedures.

34.2. The Ordering Procedures apply to any proposal during the hire period that any of the hired Goods be purchased by the Purchaser.

### 35. Upgrades, Downgrades and Improvements

35.1. The Supplier must provide support and guidance to the Purchaser in determining the most effective and efficient way of using the hired Goods to meet the Purchaser's requirements, including by bringing to the Purchaser's attention possible upgrades, downgrades and improvements that the Supplier is able to provide (including the replacement of component parts or the installation of new software).

35.2. The Ordering Procedures apply to any proposal during the hire period for upgrades, downgrades or improvements to the hired Goods.

### 36. End of the hire period

36.1. As soon as practicable upon, and in any event within 5 Working Days of, expiry of the hire period the Supplier must, at its expense, collect the hired Goods from the Purchaser.

36.2. On or before the date of collection by the Supplier the Purchaser must, at its expense, ensure that the hired Goods are in the same working order and condition as when delivered or installed, subject to due allowance being made for wear and tear that would cost not more than £«F29: wear and tear allowance» in aggregate to repair.

36.3. In the event that the Purchaser is unable to make any of the hired Goods available for collection by the Supplier, the Purchaser must pay to the Supplier the residual value of the Goods, calculated in accordance with the Catalogue and Pricing Schedule.

36.4. This clause 83 does not apply to the extent that the Parties agree that any of the hired Goods are to be purchased by the Purchaser.

### 37. Special pricing provision

The Purchaser is not liable to pay any hire charges or other recurrent or automated charges in respect of periods prior to or after the hire period.

## SECTION E: INTELLECTUAL PROPERTY AND GOVERNANCE

### 38. 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.

### 39. Specially Created Intellectual Property Rights

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

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

**40. Licences of Intellectual Property Rights**

40.1. The Supplier grants to the Purchaser a non-exclusive, non-transferable, fully paid up, royalty free licence to use any software which is an integral part of the Goods.

40.2. To the extent that such software belongs to, or is subject to rights of, a third party, the Supplier must ensure the grant to the Purchaser of an equally extensive licence to use the software.

**41. Claims relating to Intellectual Property Rights**

41.1. The Supplier must not infringe any Intellectual Property Rights of any third party in supplying the Goods or otherwise performing its obligations under the Contract and must ensure that the possession and use of the Goods does not infringe such Intellectual Property Rights.

41.2. The Supplier must not without the consent of the Purchaser make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Purchaser or the Supplier in connection with the performance of its obligations under the Contract.

**42. Assignation**

42.1. The Supplier may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.

42.2. Notwithstanding clause 89.1, the Supplier may assign to another person (an "**Assignee**") the right to receive the price due to the Supplier under the Contract subject to:

89.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and

89.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.

42.3. The Supplier 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.

42.4. Subject to clause 42.6, 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 Supplier's obligations under the Contract.

42.5 Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 42.6, 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.

42.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 42.4 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 65 (Termination Rights) and 66 (Termination on Insolvency and Change of Control) shall be available to the Supplier 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 Supplier.

42.7 The Purchaser may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier'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 Supplier'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.

**43. Change of Control**

The Supplier must notify the Purchaser:

43.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and

43.2. immediately following a change of Control that has occurred.

**44. Sub-Contracting**

44.1. «F41: The Purchaser approves the appointment of the sub-contractors specified in Schedule 5 (Approved Sub-Contractors) in respect of the obligations specified in that Schedule.»

44.2. The Supplier may not sub-contract its obligations under the Contract «F42: to other sub-Suppliers» without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract. The Supplier shall be responsible for the acts and omissions of its sub-Suppliers as though they are its own.

44.3. Where the Supplier enters into a sub-contract the Supplier must ensure that a provision is included which:

91.3.1. requires payment to be made of all sums due by the Supplier 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 Supplier in respect of Goods and the sub-contractor's invoice relates to such Goods then, to that extent, the invoice must be treated as valid and, provided the Supplier 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 Supplier, payment must be made to the sub-contractor without deduction;

91.3.2. 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;

91.3.3. 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

91.3.4. 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 Supplier and sub-contractor as the case may be.

44.4. The Supplier shall also include in every sub-contract:

44.4.1 a right for the Supplier 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 65.3 occur; and

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

In this clause 44.4, 'sub-contract' means a contract between two or more suppliers, 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.

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

44.6. Where the Supplier proposes to enter into a sub-contract it must:

91.6.1. advertise its intention to do so in at least one trade journal, at least one newspaper circulating in the locality in which the Goods are to be delivered and in the Public Contracts Scotland Portal; and

91.6.2. 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.

**45. Amendment**

45.1. The Contract may be amended only by the written agreement of both Parties. Accordingly, the Supplier may not unilaterally amend the Contract.

45.2. «F44: Clause 8 (Catalogue and Pricing Schedule) makes special provision for the variation of the Catalogue and Pricing Schedule.»

## SECTION F: SUPPLIER CONDUCT REQUIREMENTS

### 46. Compliance with the Law etc.

In supplying the Goods and otherwise when performing the Contract, the Supplier must comply in all respects with:

46.1. all applicable law; and

46.2. any applicable requirements of regulatory bodies; and

46.3. Good Industry Practice.

### 47. Supplier's responsibility for staff etc.

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

47.2. The Supplier must ensure that all Supplier Representatives:

94.2.1. are appropriately experienced, skilled, qualified and trained;

94.2.2. carry out their activities connected with the Contract all with due skill, care and diligence; and

94.2.3. obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

### 48. Access to the Purchaser's premises

48.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier 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.

48.2. The Supplier must comply with the Purchaser's policies concerning:

95.2.1. Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Supplier from time to time; and

95.2.2. conduct and security whilst on the Purchaser's premises.

48.3. At the Purchaser's written request, the Supplier 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.

48.4. The Supplier must ensure that any individual Supplier Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Supplier 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.

48.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Supplier Representatives for the

purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.

48.6. The Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Supplier Representative whose admission or continued presence would, in the reasonable opinion of the Purchaser, be undesirable.

48.7. The Purchaser must provide reasonable advice and assistance to the Supplier to facilitate the Supplier's compliance with this clause.

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

**49. Supplier's Equipment**

49.1. The Supplier must provide all Equipment necessary to perform any required activities on the Purchaser's premises or otherwise necessary for the supply of Goods.

49.2. But the Supplier must not, without the Purchaser's approval:

96.2.1. bring Equipment onto the Purchaser's premises; or

96.2.2. leave Equipment on the premises.

49.3. Any Equipment brought onto the Purchaser's premises:

96.3.1. remains the property of the Supplier; and

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

49.4. The Supplier 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 Supplier to remove from the Purchaser's premises any Equipment which in the reasonable opinion of the Purchaser is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Supplier's expense as soon as reasonably practicable.

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

96.5.1. remove all Equipment; and

96.5.2. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Supplier's activities.

49.6. The Supplier 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 Supplier.

**50. Health and Safety etc.**

50.1. While on the Purchaser's premises, the Supplier must comply with the Purchaser's policies concerning health and safety and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.

50.2. The Supplier 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 Supplier must then promptly notify the Purchaser of that fact.

50.3. The Purchaser must promptly notify the Supplier of any health and safety hazards which may exist or arise at the Purchaser's premises and which may affect the Supplier in the performance of its obligations under the Contract.

50.4. The Supplier must promptly make available its statutory health and safety policy statement to the Purchaser on request.

**51. Offences**

51.1. The Supplier must not commit or attempt to commit any offence:

98.1.1. under the Bribery Act 2010;

98.1.2. of fraud, uttering, theft, embezzlement or reset at common law; or

98.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

51.2. Breach of clause 46.1 is a material breach for the purposes of clause 113.1.3 (Termination Rights).

**52. Tax arrangements**

52.1. Where the Supplier 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.

52.2. Where the Supplier 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.

52.3. The Purchaser may, at any time during the term of this contract, request the Supplier to provide information which demonstrates how the Supplier complies with sub-clauses 52.1 and 52.2 above or why those clauses do not apply to it.

52.4. A request under sub-clause 52.3 above may specify the information which the Supplier must provide and the period within which that information must be provided.

52. 5. The Purchaser may supply any information which it receives under clause 52 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.

52.6. The Supplier shall take all reasonable steps to ensure the observance of the provisions of this clause 52 by all of their servants, employees, agents, consultants and sub-contractors.

52.7. Where the Supplier enters into any contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Supplier must ensure that a provision is included which is in the same terms as this clause 52 subject only to modification to refer to the correct designation of the equivalent party as the Supplier.

**100. Discrimination**

The Supplier 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.

**101. Blacklisting**

The Supplier 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.

**102. Supply Chain Protections**

Knowledge of the supply chain

55.1 In performing its role as a reseller, the Contractor will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the "Contractor's Suppliers") prepare and maintain a written supplier code of conduct or supplier policy that addresses the following.

- child labour,
- forced labour,
- working hours,
- wages,
- discrimination,
- health and safety,
- freedom of association,
- collective bargaining,
- disciplinary practices,
- humane treatment of workers,
- training,
- engagement with NGOs, and
- worker grievance procedures .

The Contractor will provide the Authority with a copy of the Contractor's Suppliers codes of conduct or supplier policies on request.

55.2 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers prepare and maintain appropriate policies and procedures to identify, manage and mitigate labour and human rights risks in their supply chains relevant to this Framework Agreement (the "Contractor Supply Chain").

55.3 The Contractor will, within 20 Working Days of the Framework Commencement Date, provide the Authority with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the Contractor Supply Chain. The Contractor will notify the Authority of any changes as soon as reasonably practicable.

55.4 The Authority will have the right to share with participating framework public bodies all information provided by the Contractor in relation to these Supply Chain Protection provisions.

Supply chain working conditions

55.5 The Contractor will submit an annual written report to the Authority outlining the Contractor's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Contractor Supply Chain.

55.6 The Contractor will take all reasonable steps to ensure that all Goods supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.

55.7 In respect of the Contractor Supply Chain and the Contractor's Suppliers, the Contractor will use its reasonable endeavours to ensure the following:

55.7.1 forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour , slavery or trafficking of persons is not permitted;

55.7.2 child labour is not used in any stage of manufacturing or in the provision of services or supplies;

55.7.3 workers do not undertake excessive working hours. For the purposes of this Framework Agreement, working hours must not exceed the maximum set by local law; a working week must not be more than 60 hours per week, including overtime, except in emergency or unusual situations and workers shall be allowed at least one day off every seven days;

55.7.4 compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits; in compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates; that deductions from wages as a disciplinary measure shall not be permitted; that for each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed; and that all use of temporary, dispatch and outsourced labour will comply with local laws;

55.7.5 all workers must have the right to form and join trade unions, of their own choosing, to bargain collectively and to engage in peaceful assembly and the right of workers to refrain from such activities must be respected;

55.7.6 workers must not be subject to any harsh or inhumane treatment, including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be the threat of any such treatment;

55.7.7 workers must not be subject to harassment or unlawful discrimination; and

55.7.8 workers must be provided with safe and healthy working conditions.

55.8 In respect of the Contractor Supply Chain and the Contractor's Suppliers, the Contractor will use its reasonable endeavours to ensure the following:

55.8.1 compliance with all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;

55.8.2 implementation of an appropriate (e.g. anonymous) whistleblowing policy which encourages openness and ensures support and protection from detrimental treatment for workers which raise genuine concerns.

Managing risks in the supply

55.9 The Contractor will use its reasonable endeavours to require the Contractor's Suppliers to audit, evaluate and report in writing to the Contractor not less than once every twelve (12) months on performance against the Contractor's Suppliers' codes of conduct and or supplier policies and their policies on labour and human rights impacts in respect of the Contractor Supply Chain. The Contractor shall provide the Authority on request with a copy of any such reports in so far as they relate to the Contractor Supply Chain.

55.10 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers undertake a defined program of supply-chain audits. Audits must be undertaken by third party accredited certification bodies and independently verified. These audits must either include or be supplemented by external consultation and engagement with local labour unions or civil society organisations/NGOs, and off-site worker interviews to gain a more accurate understanding of working conditions. The Contractor shall provide the Authority on request with a copy of any such audits, and supplementary evidence where relevant, in its possession or control in so far as they relate to the Contractor Supply Chain.

Corrective and preventive measures to ensure social responsibility in the supply chain

55.11 The Contractor will use its reasonable endeavours to ensure the outcomes of the Contractor's Suppliers supply-chain audits are subject to corrective actions by the Contractor's Suppliers in a timely manner. The Contractor shall provide the Authority on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to the Contractor Supply Chain .

55.12 The Contractor will use its reasonable endeavours to actively engage with the Contractor Supply Chain to ensure continuous improvement in labour and human rights standards and supplier compliance with such standards .

55.13 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Contractor Supply Chain not less than once every twelve (12) months .

Measures to control the supply chain

55.14 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers' sourcing policies address labour and human rights impacts during the extraction phase of production and include the use of conflict free smelters in accordance with the Responsible Minerals Initiative. The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Contractor Supply Chain and provide the Authority on request with details.

55.15 The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers implement and adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as the same may be updated from time to time) and produce a publicly viewable annual summary of their due diligence and risk management measures consistent with this guidance.

55.16 The Contractor will use its reasonable endeavours to provide the Authority on request with evidence of direct and ongoing collaboration by the Contractor's Suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Contractor Supply Chain.

Supply chain contract termination

55.17 The Contractor will use its reasonable endeavours to ensure that all contracts in the Contractor Supply Chain give the Authority a right to terminate the sub-contract if the supplier fails to comply with legal obligations in the fields of environmental, social, labour or human rights law.

**103. Compliance With Anti-Slavery And Human Trafficking Laws**

56.1. In performing its obligations under this Agreement, the Contractor shall:

56.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015;

56.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

56.1.3. include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause;

56.1.4. notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;

56.1.5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority; and

56.1.6. provide the Authority and its third party representatives access to such records.

56.2. The Contractor represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

56.3. The Authority may terminate this Agreement with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of this clause.

**104. Conflicts of interest**

104.1. The Supplier 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 Supplier and the duties owed to the Purchaser under the Contract.

104.2. The Supplier 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.

104.3. Breach of this clause by the Supplier is a material breach for the purposes of clause 65.1.3 (Termination Rights).

## SECTION G: FINAL PROVISIONS

### 105. Warranties and Representations

The Supplier warrants and represents that:

105.1. 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;

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

105.3. 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;

105.4. 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;

105.5. 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;

105.6. 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;

105.7. 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 Supplier 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 Supplier's assets or revenue;

105.8. 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;

105.9. in the 3 years prior to the Commencement Date:

105.9.1. 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;

105.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

105.10. 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;

105.11. 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;

105.12. 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;

105.13. it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser; and

105.14. there are no actual or potential conflicts between the interests of the Supplier 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.

**106. Indemnity**

58.1 The Supplier will 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 Supplier.

58.2 The Purchaser shall indemnify the Supplier 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 Supplier acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Supplier:

(a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with clause 16.12(c) of this Contract;

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

**107. Limitation of Liability**

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

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

107.1.2. indirect or consequential loss or damage.

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

107.3. The «F45: limiter (if required)» liability of either Party under the Contract for Defaults «F46: limiter (if required)» is limited to «F47: liability cap» «F48: limiter (if required)».

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

107.4.1. death or personal injury caused by its negligence;

107.4.2. misrepresentation;

107.4.3. 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

107.4.4. any breach of any obligations under the Data Protection Laws.

**108. Insurances**

108.1. The Supplier must effect and maintain with a reputable insurance company:

108.1.1. public liability insurance in the sum of not less than «F49: PLI insurance sum» «F50: limiter»;

108.1.2. professional indemnity insurance in the sum of not less than «F51: PLI insurance sum» «F52: limiter»; and

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

108.2. 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.

108.3. The Supplier 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.

**109. Force Majeure**

109.1. 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 «F53: Force Majeure longstop», either Party may terminate the Contract with immediate effect by notice.

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

109.3. 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.

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

**110. Dispute Resolution**

110.1. The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Contract including any variation regarding its existence, validity or termination «F54: in accordance with the Management Arrangements».

110.2. 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.

110.3. Any arbitration under clause 110.2 is subject to the Arbitration (Scotland) Act 2010.

**111. 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.

**112. Waiver and Cumulative Remedies**

112.1. 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.

112.2. 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 59 (Notices).

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

112.4. 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.

**113. Termination Rights**

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

113.1.1. the Supplier 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;

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

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

113.2. «F55: The Purchaser may also terminate the Contract in accordance with any provisions of the Schedules.»

113.3. 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 Supplier 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 Supplier 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.

113.4. The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of its obligations under the Contract with legal obligations in the fields of environmental, social or employment law.

113.5. The Purchaser may also terminate the Contract where, at any time before the term of the Contract, 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 an offence referred to in paragraph (1) of that regulation.

**114. Termination on Insolvency and Change of Control**

114.1. The Purchaser may terminate the Contract with immediate effect by notice where in respect of the Supplier:

114.1.1. 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;

114.1.2. 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);

114.1.3. 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;

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

114.1.5. 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;

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

114.1.7. 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;

114.1.8. a debt relief order is entered into; or

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

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

114.2.1. being notified that a change of Control has occurred in accordance with clause 90.2 (Change of Control); or

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

114.3. But the Purchaser may not terminate the Contract under clause 43.2 where approval of the change of control has been granted by notice by the Purchaser.

**115. Exit Management**

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

67.1 The Supplier 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 Supplier agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 62 (Dispute Resolution). If a court of competent jurisdiction finds that the Supplier has breached (or attempted or threatened to breach) any such obligation, the Supplier agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Supplier shall not oppose the entry of an appropriate order compelling performance by the Supplier and restraining the Supplier from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

67.2 A draft of the Exit Plan shall be produced by the Supplier and supplied to the Purchaser within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 67.3. The Purchaser shall provide to the Supplier the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The Supplier 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.

67.3 The Supplier shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:

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

67.3.2 the activities necessary to support any Replacement Supplier or the Purchaser in carrying out any necessary due diligence relating to all or part of the Contract;

67.3.3 details of the Exit Management to be provided by the Supplier prior to the Exit Management Date;

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

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

67.3.6 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 Contract to either a Replacement Supplier or the Purchaser.

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

**116. Consequences of Expiry or Termination**

116.1. Where the Purchaser terminates the Contract under clause 65 (Termination Rights) and makes other arrangements for the supply of Goods, the Supplier indemnifies the Purchaser against all costs incurred in making those arrangements.

116.2. Except as provided for in clauses 34 (General Indemnity), 0 and «F56: 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.

116.3. On expiry or termination of the Contract the Supplier must:

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

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

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

116.4.1. clause 1 (Definitions and Interpretation);

116.4.2. clause 10 (Official Secrets Acts);

116.4.3. clause 13 (Recovery of Sums Due);

116.4.4. clause 14 (Data Protection);

116.4.5. clause 17 (Transparency and Freedom of Information);

116.4.6. clause 16 (Purchaser Protected Information);

116.4.7. clause 17 (Supplier Sensitive Information);

116.4.8. clause 20 (Audit);

116.4.9. clause 21 (Publicity)

116.4.10. clause 26 (Acceptance and Rejection);

116.4.11. clause 27 (Return and Refund);

116.4.12. clause 30 (Guarantee);

116.4.13. clause 38 (Parties' pre-existing Intellectual Property Rights);

116.4.14. clause 39 (Specially Created Intellectual Property Rights);

116.4.15. clause 40 (Licenses of Intellectual Property Rights);

116.4.16. clause 29 (Claims relating to Intellectual Property Rights);

116.4.17. clause 96 (Supplier's Equipment);

116.4.18. clause 52 (Tax arrangements);

116.4.19. [clause 55 (Sustainability etc.)]

116.4.20. clause 57 (Warranties and Representations);

116.4.21. clause 58 (Indemnity);

116.4.22. clause 59 (Limitation of Liability);

116.4.23. clause 60 (Insurances);

116.4.24. clause 62 (Dispute Resolution Procedure);

116.4.25. clause 63 (Severability);

116.4.26. clause 64 (Waiver and Cumulative Remedies);

116.4.27. this clause 68; and

116.4.28. clause 70 (Governing Law and Jurisdiction).

116.5. «F56A: If a Judicial Order is made, the provisions of the Management Arrangements referring to that possibility apply.»

**117. Entire Agreement**

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

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

117.2.1. the clauses of the Contract;

117.2.2. the Schedules; and

117.2.3. any other document referred to in the Contract.

**118. Governing Law and Jurisdiction**

The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 62 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

**IN WITNESS WHEREOF** these presents typewritten on this and the «F57: number of pages before this page» preceding pages together with the «F16: number of Schedules» Schedules annexed are executed as follows:

| | |
|---|---|
| **SIGNED** for and on behalf of the Purchaser | **SIGNED** for and on behalf of XMA Limited |
| At..... | At..... |
| On..... | On..... |
| Signature..... | Signature..... |
| Full name ..... | Full name..... |
| Position ..... | Position..... |
| Address..... | Address..... |
| **In the presence of** | **In the presence of** |
| Signature..... | Signature..... |
| Full name ..... | Full name..... |
| Address..... | Address..... |

This and the following 2 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and XMA Limited

**SCHEDULE 6 – PARENT COMPANY GUARANTEE**

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

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

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

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

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

1.3.2 any alteration to, addition to or deletion from the Framework Agreement or the scope of the obligations to be performed under the Framework Agreement, or

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

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

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

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

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

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

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

6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.

8. All notices and other communications required or permitted to be given in terms of this Framework Agreement, or any proceedings relating to it, shall be in writing and will be sufficiently served:

   8.1 if delivered by hand; or

   8.2 if sent by fax; or

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

   8.4 if sent by email

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

   Scottish Ministers:

   [to be completed]

   [Guarantor]

   [to be completed]

9. Any such notice or communication shall be deemed to have been served,

   9.1 if delivered by hand, on the date of delivery;

   9.2 if sent by fax, 4 working hours after the time at which the fax was sent;

   9.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or

   9.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,

   9.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

   9.6 For the purposes of this Clause 9:

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

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

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

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

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

At.....

On.....

Signature.....

Full name.....

Position .....

Address.....

……..

In the presence of ……

Signature.....

Full name.....

Address.....

……

This page comprises Schedule 7 to the Framework Agreement between the Scottish Ministers and XMA Limited

## SCHEDULE 7 – CONTRACTOR SENSITIVE INFORMATION

### Part 1- Transparency Reports

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

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

| TITLE | CONTENT | FORMAT | FREQUENCY |
|---|---|---|---|
| *(Performance)* | | | |
| *(Charges)* | | | |
| *(Major subcontractors)* | | | |
| *(Technical)* | | | |
| *(Performance management)* | | | |

**CONTRACTOR SENSITIVE INFORMATION**

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

This page comprises Schedule 8 to the Framework Agreement between the Scottish Ministers and XMA Limited

**SCHEDULE 8** – Exit Strategy

## 1. Contract re-tender and re-negotiation

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

[ ].

## 2. Assistance with termination

2.1 The Exit Plan shall be produced and delivered by the Contractor to the Authority in accordance with the steps defined in clause 44.2.

2.2 The Contractor shall throughout the period of the Framework Agreement, maintain and continuously update the Exit Plan which shall include the contents listed in clause 44.3.

## 3. Post termination

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

This page comprises Schedule 9 to the Framework Agreement between the Scottish Ministers and XMA Limited

**SCHEDULE 9 – DATA PROTECTION**

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

This Schedule includes certain details of the Processing of Personal Data in connection with the supply of Goods under this Contract:

*Subject matter and duration of the Processing of Personal Data*

The subject matter and duration of the Processing of Personal Data are [insert description here].

*The nature and purpose of the Processing of Personal Data*

[Include description here]

*The type 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 Condition 14 of the Framework.

This page comprises Schedule 10 to the Framework Agreement between the Scottish Ministers and XMA Limited

## SCHEDULE 10 – APPROVED SUB-CONTRACTORS

| Approved Sub-contractors | Relevant obligations |
|---|---|
| Redacted | |

This and the following page comprise Schedule 11 to the Framework Agreement between the Scottish Ministers and XMA Limited

## SCHEDULE 11 – SECURITY MANAGEMENT

### 1. SECURITY ARRANGEMENTS

1.1 The Contractor and the Authority shall both provide a reasonable level of access to any of the others Staff for the purposes of designing, implementing and managing security in relation to the provision of the Goods and related Services.

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

### 2. BREACH OF SECURITY

2.1 Each Party shall notify the other upon becoming aware of any Breach of Security or attempted Breach of Security.

2.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 4.1, the Contractor shall:

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

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

b. remedy such Breach of Security to the extent possible and protect the integrity of the Authority's System and the Contractor's System to the extent within its control against any such Breach of Security or attempted Breach of Security;

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

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

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

2.2.2 as soon as reasonably practicable provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

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

## 3. VULNERABILITIES AND CORRECTIVE ACTION

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

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

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

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

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

3.4 The Contractor shall:

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

3.4.2 ensure that is System is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

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

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

3.4.6 propose interim mitigation measures to vulnerabilities in it's System known to be exploitable where a security patch is not immediately available;

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

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

3.5 If the Contractor is unlikely to be able to mitigate the vulnerability within a timely manner under paragraph 5, the Contractor shall immediately notify the Authority.