

**FRAMEWORK REFERENCE NUMBER: SP-18-013**

**FRAMEWORK AGREEMENT**

**-between-**

**(1) THE SCOTTISH MINISTERS (THE “AUTHORITY”)**

**-and-**

**(2) BRIGHTWORK LTD (THE “CONTRACTOR”)**

**AND OTHER FRAMEWORK CONTRACTORS**

**-relating to the supply of-**

**TEMPORARY ADMINISTRATIVE, CATERING & MANUAL STAFF SERVICES  
-SOUTH REGION-**

**-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. Statement of Requirements
7. Price
8. Award Procedures
9. Management Arrangements
10. Official Secrets Acts

### **SECTION B**

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

### **SECTION C**

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

### **SECTION D**

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

### **SECTION E**

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

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

## **SCHEDULES**

Schedule 1	Statement of Requirements (including Schedule 1 – Annex A)
Schedule 2	Pricing Schedule
Schedule 3	Award Procedures (including Schedule 3 – Annex B)
Schedule 4	Management Arrangements and Service Levels
Schedule 5	Standard Terms Of Supply (incl. Schedule 5.1 - Data Protection)
Schedule 6	Parent Company Guarantee
Schedule 7	Transparency Reports and Contractor Sensitive Information
Schedule 8	Exit Management
Schedule 9	Data Protection
Schedule 10	Approved sub-contractors

**PREAMBLE:**

- ONE The Authority requires the supply of Services to Framework Public Bodies;
- TWO On 2 August 2018 the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number [2018/S 147-336787](#);
- THREE On 13 September 2018 the Contractor completed its ESPD;
- FOUR On 1 August 2018 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FIVE On 13 September 2018 the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Contractor amongst other Framework Contractors to supply the Services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- a Statement of Requirements setting out the Services that the Contractor has undertaken to provide, including within Schedule 4, Service Levels setting out particular levels of service that the Contractor has undertaken to meet;
  - a Pricing Schedule setting out details of the pricing of the Services;
  - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
  - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

## SECTION A

### 1. Definitions and Interpretation

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

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

**“Authority”** means the Scottish Ministers.

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

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

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

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

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

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

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

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

**“Contractor”** means Brightwork Ltd, 1st Floor, 193 Bath St, Glasgow G2 4HU. Registered company number SC296104

**“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 13 September 2018.

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

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

**“Exit Management Date”** means each of the following:

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

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

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

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

**“Framework Public Body or Bodies”** means the Scottish Ministers (including Agencies), Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross-border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, Scottish Fire & Rescue Service, the Scottish Police Authority, Scottish health boards or special health boards, all NHS Scotland, The Integrated Joint Boards established further to the Public Bodies (Joint Working) Act 2014, bodies registered as social landlords under the Housing (Scotland) Act 2001, Student Loans Company Limited, the Forestry Commission, the Commissioner of Northern Lighthouse operating as the Northern Lighthouse Board, Equality and Human Rights Commission, Business Stream Ltd, the Business Gateway National Unit at the Convention of Scottish Local Authorities, further or higher education institutions being fundable bodies within the meaning of section 6 of the further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than

half of those individuals, being appointed by one or more of the foregoing. In addition to the contracting authorities listed, the framework agreement will be available to charities entered on the Scottish Charity Register and voluntary organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

Information about Scottish Public Bodies is available at:

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

**"Framework Contractor"** means the Contractor...Brightwork Ltd.

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

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

**"ITT"** means the Authority's invitation to tender dated 1 August 2018.

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

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

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

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

(e) any requirements of any regulatory body,

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

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

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

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

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

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

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

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

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

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

**“Service Levels”** means the particular levels of service that the Contractor has undertaken to meet, and identified as service levels in the Statement of Requirements, and Schedule 4.

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

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

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

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

**“Tender”** means the tender submitted by the Contractor to the Authority in response to the ITT dated 13 September 2018.

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

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

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

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

- 1.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
- 1.2.2. words importing the masculine include the feminine and neuter;
- 1.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4. references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument or re-enacted;
- 1.2.5. references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- 1.2.6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and



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

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

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

## **3. Nature of this Agreement**

- 3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.
- 3.2. This Agreement is a multi-supplier framework agreement and the contractors that are party to it are the Framework Contractors. No other contractors are party to the Framework Agreement.
- 3.3. This Agreement is a multi-user framework agreement and the public bodies that are party to it are the Framework Public Bodies. No other public bodies are party to the Framework Agreement.
- 3.4. The Contractor acknowledges that it is not the exclusive supplier of the Services to 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 13 April 2019 (the "Commencement Date") to and including 12 April 2023, unless it is terminated earlier.
- 4.2. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

## **5. Break**

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

## **6. Statement of Requirements**

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

## **7. Price**

- 7.1 The Pricing Schedule sets out details of the pricing of the Services as at the Commencement Date.
- 7.2 The prices in the Pricing Schedule are not to be increased for the period of the Framework Agreement or for the period of any Call-Off Contract under the Agreement.
- 7.3 Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule. But nothing in this Framework Agreement prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.

## **8. Award Procedures**

- 8.1. The Award Procedures may be invoked by any Framework Public Body and Call-off Contracts may be entered into at any time during the period of the Framework Agreement.
- 8.2. But the Award Procedures may not be invoked and Call-off Contracts may not be entered into with the Contractor if:
  - 8.2.1. the period of the Framework Agreement has expired;
  - 8.2.2. the Contractor's interest in the Framework Agreement has been terminated; or
  - 8.2.3. the Contractor's appointment to provide Services to Framework Public Bodies has been suspended in accordance with clause 9.2 (Management Arrangements).
- 8.3. The Framework Public Bodies and the Contractor must comply with the Award Procedures and must establish each Call-off Contract without amendment to the Standard Terms of Supply.
- 8.4. The Contractor must maintain the capacity to enter into and perform Call-off Contracts Throughout the period of the Framework Agreement.

## **9. Management Arrangements**

- 9.1. The Management Arrangements set out the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Statement of Requirements, the Service Levels, the Award Procedures and the terms of this Framework Agreement.
- 9.2. The Authority may by notice to the Contractor suspend the Contractor's appointment to provide Services to Framework Public Bodies for a notified period of time:
  - 9.2.1. if the Authority becomes entitled to terminate this Framework Agreement under clause 42 (Termination Rights) or 43 (Termination on Insolvency or Change of Control); or
  - 9.2.2. in any other circumstance provided for in the Management Arrangements.
- 9.3. Suspension under clause 9.2 shall terminate upon cessation of all of any circumstances referred to in subclauses 9.2.1 and 9.2.2.
- 9.4. The Contractor must continue to perform existing Call-off Contracts during any period of suspension under clause 9.2.

## **10. Official Secrets Acts**

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

## **SECTION B**

### **11. Contractor's Status**

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

### **12. Notices**

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

12.1.1. given in writing;

12.1.2. addressed in accordance with clause 12.3; and

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

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

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

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

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

12.3.1. For the Authority:  
Scottish Government – Scottish Procurement & Commercial Directorate  
Area 3-A South  
Victoria Quay  
Edinburgh  
EH6 6QQ  
For the attention of: REDACTED  
Tel: REDACTED  
E-mail: REDACTED

12.3.2. For the Contractor:  
Brightwork Ltd,  
1st Floor,  
193 Bath St,  
Glasgow G2 4HU  
For the attention of: REDACTED  
Tel: REDACTED  
E-mail: Contractor e-mail address for notices: REDACTED

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

### **13. Recovery of Sums Due**

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

### **14. Data Protection**

- 14.1. The Contractor acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in connection with the Services under this Framework Agreement. For the purposes of any such Processing, Parties agree that the Contractor acts as the Data Processor and the Authority acts as the Data Controller.
- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Framework Agreement that may be required to ensure that both Parties meet all their obligations under the Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Contractor under the Data Protection Laws and the Contractor hereby agrees to comply with those obligations and duties.
- 14.3. The Contractor will, in conjunction with the Authority and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 14.4. The Contractor will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5. The Contractor must:
  - 14.5.1. process Personal Data only as necessary in accordance with obligations under the Framework Agreement and any written instructions given by the Authority (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Contractor is subject; in which case the Contractor must, unless prohibited by that law, inform the Authority of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under this Framework Agreement or as is required by the Law;
  - 14.5.2. subject to Clause 14.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Authority's prior written consent;
  - 14.5.3. take all reasonable steps to ensure the reliability and integrity of any Contractor Staff who have access to the Personal Data and ensure that the Contractor Staff:
    - (a) are aware of and comply with the Contractor's duties under this Clause;
    - (b) are subject to appropriate confidentiality undertakings with the Contractor or the relevant Sub-contractor;
    - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; and
    - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
  - 14.5.4. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or

disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.;

- 14.6. The Contractor shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Authority. In the case of general written authorisation, the Contractor must inform the Authority of any intended changes concerning the addition or replacement of any other sub-contractor and give the Authority an opportunity to object to such changes.
- 14.7. If the Contractor engages a sub-contractor for carrying out Processing activities on behalf of the Authority, the Contractor must ensure that same data protection obligations as set out in this Framework Agreement are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Contractor shall remain fully liable to the Authority for the performance of the sub-contractor's performance of the obligations.
- 14.8 The Contractor must provide to the Authority reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
- 14.9 The Service Provider must notify the Authority if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Framework Agreement; or
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;
- and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Authority from time to time.
- 14.10 Taking into account the nature of the Processing and the information available, the Contractor must assist the Authority in complying with the Authority's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
  - (b) notifying a Personal Data breach to the Authority without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
  - (c) assisting the Authority with communication of a personal data breach to a Data Subject;
  - (d) supporting the Authority with preparation of a data protection impact assessment;

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

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

14.12 The Contractor must:

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

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

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

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

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

## **15. Transparency and Freedom of Information**

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

- (a) provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that the Contractor receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request For Information and which is in the Contractor's possession or control. The information must be provided within 5 Working Days (or such other period as the Authority may reasonably specify) in the form that the Authority requires.

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

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

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

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

15.4.1 in certain circumstances without consulting the Contractor, or

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

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

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

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

(i) any information that the Authority determine is exempt from disclosure in accordance with the provisions of FOISA; and

(ii) Commercially Sensitive Information;

and if the Authority believes that publication of any element of the Transparency Information should be treated as Confidential Information the Authority may, in its discretion exclude such information from publication.

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

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

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

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

## **16. Authority Protected Information**

16.1 The Contractor must:

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

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

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

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

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

16.3 Clause 0 does not apply to the extent that:

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

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

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

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

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

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



## **17. Contractor Sensitive Information**

17.1 The Authority must:

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

and

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

17.2 Clause 17.1 does not apply to the extent that:

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

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

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

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

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

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

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

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

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

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

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

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

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

17.3.8 for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the

economy, efficiency and effectiveness with which the Authority has used its resources.

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

## **18. Audit and Records Management**

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

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

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

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

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

18.4 The Contractor shall, for the duration of the Framework Agreement, provide the Authority with all assistance requested by the Authority acting reasonably to assist the Authority in complying with its obligations under the Act and with the Authority's Records Management Plan where such compliance is in respect of records created or to be created by the Contractor on behalf of the Authority in terms of this Framework Agreement. This assistance will be at no cost to the Authority.

18.5 At the end of the Framework Agreement, the Contractor shall transfer the records in question to the Authority, such transfer to include full ownership of the records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the Authority. The Contractor shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Authority on the same terms.

18.6 If the Contractor shall become bankrupt (whether voluntarily or compulsorily), unable to pay its debts, insolvent or make arrangements with its creditors or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntarily or compulsorily), otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then immediately upon the occurrence of any of these events, the records which would, in terms of clause 18.5 fall to be offered to the Authority shall be deemed to be held on trust by the Contractor on behalf of the Authority. The Contractor shall thereafter, if and when so required by the Authority, transfer the records in question to the Authority, such transfer to be on the same terms as would apply to a transfer made in terms of clause 18.5.

## **19. Publicity**

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

## **SECTION C**

### **20. Key Individuals**

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

### **21. Offers of Employment**

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

### **22. Staff transfer at commencement**

- 22.1 The Parties agree that the commencement of the provision of the Services by the Contractor may involve a Relevant Transfer.
- 22.2 The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 22.3 The Contractor indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 22.2.

### **23. Information about Contractor Employees**

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

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

- 24.1 The Parties agree that the ceasing of the provision of the Services by the Contractor may involve a Relevant Transfer in respect of the Outgoing Employees.
- 24.2 The Contractor indemnifies the Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or any replacement Contractor may suffer as a result of or in connection with:
- 24.2.1 the provision of information pursuant to clause 23;
  - 24.2.2 any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
  - 24.2.3 any failure by the Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and
  - 24.2.4 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.
- 24.3 The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 24.4 The Contractor indemnifies the Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Authority or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 24.3.

## **25. Security**

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

## **SECTION D**

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

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

### **27. Specially Created Intellectual Property Rights**

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

### **28. Licences of Intellectual Property Rights**

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

### **29. Claims relating to Intellectual Property Rights**

- 29.1 The Contractor must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Framework Agreement and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 29.2 The Contractor must promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.

29.3 Where a claim to which this clause applies is made, the Contractor must, at its expense, use its best endeavours to:

29.3.1 modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or

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

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

### **30. Assignment and Change of Control**

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

30.2 The Contractor must notify the Authority:

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

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

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

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

(a) any Contracting Authority; or

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

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

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

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

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

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

- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof with the prior consent in writing of the Contractor.
- 30.6 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Framework Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Framework Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 31. Sub-Contracting**
- 31.1 The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 31.2 The Contractor may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 31.3 Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:
- 31.3.1 requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;
- 31.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;
- 31.3.3 requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Framework Agreement, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal ([www.publiccontractsscotland.gov.uk](http://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 (South region) 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**

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

## **SECTION E**

### **33. Warranties and Representations**

33.1 The Contractor warrants and represents that:

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

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

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

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

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



- 33.1.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 33.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- 33.1.8 as at the Commencement Date, all insurances that must be effected under the Standard Terms of Supply have been effected.

#### **34. Indemnity**

- 34.1 Without prejudice to any rights or remedies of the Authority, the Contractor will indemnify the Authority against any and all claims, proceedings, actions, damages, costs, expenses and any other loss and liabilities which may arise out of, or in consequence of, any Default of the Contractor, its agents and employees.
- 34.2 The Authority shall indemnify the Contractor in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Contractor acting in accordance with the Authority's specific written instructions. This indemnity provision shall not apply if the Contractor:-
- (a) acts on the Authority's specific written instructions but fails to notify the Authority in accordance with clause 14.12(c) of this Framework Agreement;
  - (b) fails to comply with any other obligation under the Framework Agreement.

#### **35. Limitation of Liability**

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

## **36. Insurance**

- 36.1 The Contractor must effect and maintain with a reputable insurance company:
- 36.1.1 public liability insurance in the sum of not less than £1 million per incident and unlimited in total;
  - 36.1.2 professional indemnity insurance in the sum of not less than £1 million per incident and unlimited in total; 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 30 days, 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 assignment for the benefit of, its creditors;
  - 43.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 43.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
  - 43.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 43.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 43.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 43.1.7 being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
  - 43.1.8 a debt relief order is entered into; or
  - 43.1.9 any event similar to those listed above occurs under the law of any other jurisdiction.
- 43.2 The Authority may terminate the Contractor's interest in the Framework Agreement by notice with immediate effect within 6 months of:
- 43.2.1 being notified that a change of Control has occurred in accordance with clause 30 (Assignment and Change of Control); or
  - 43.2.2 where no such notification has been given, the date that the Authority becomes aware of the change of control.
- 43.3 But the Authority may not terminate the Contractor's interest in the Framework Agreement under clause 43.2 where approval of the change of control has been granted by notice by the Authority.

#### **44. Exit Management**

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

- 44.1 The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Authority may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 37 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation,

the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

- 44.2 A draft of the Exit Plan shall be produced by the Contractor and supplied to the Authority within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 44.3. The Authority shall provide to the Contractor the Authority's comments on the plan within one (1) month of the Authority's receipt of the plan. The Contractor shall take into account the comments and suggestions of the Authority and shall issue the final version of the Exit Plan to the Authority within ten (10) Working Days of receipt of the Authority's comments.
- 44.3 The Contractor shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan which shall include:
- 44.3.1 the activities required to enable the Authority to re-tender the Authority Requirements and/or the provision of the Services;
  - 44.3.2 the activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Services;
  - 44.3.3 details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;
  - 44.3.4 support for the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Authority, including prior to and during such transition period;
  - 44.3.5 the maintenance of a 'business as usual' environment for the Authority during the period when Exit Management obligations are applicable; and
  - 44.3.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Authority.
- 44.4 No amendment of the Exit Plan shall be made without prior written consent of the Authority.

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

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

## **46. Offences**

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

## **47. Tax Arrangements**

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

## **48. Blacklisting**

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

## **49. Conflicts of interest**

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

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

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

## **50. Consequences of Expiry or Termination**

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

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

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

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

50.4.1 clause 1 (Definitions and Interpretation);

50.4.2 clause 8 (Award Procedures);

50.4.3 clause 10 (Official Secrets Acts);

50.4.4 clause 13 (Recovery of Sums Due);

50.4.5 clause 14 (Data Protection);

50.4.6 clause 15 (Transparency and Freedom of Information);

50.4.7 clause 16 (Authority Protected Information);

50.4.8 clause 17 (Contractor Sensitive Information);

50.4.9 clause 18 (Audit and Records Management);

50.4.10 clause 19 (Publicity);

50.4.11 clause 21 (Offers of Employment);

50.4.12 clause 23 (Information about Contractor Employees);

50.4.13 clause 26 (Parties pre-existing Intellectual Property Rights);

50.4.14 clause 27 (Specially created Intellectual Property Rights);

50.4.15 clause 28 (Licences of Intellectual Property Rights);

50.4.16 Clause 29 (Claims relating to Intellectual Property Rights);

50.4.17 clause 33 (Warranties and Representations);

50.4.18 clause 34 (Indemnity);



- 50.4.19 clause 37 (Dispute Resolution Procedure);
  - 50.4.20 clause 39 (Waiver and Cumulative Remedies);
  - 50.4.21 clause 47 (Tax arrangements);
  - 50.4.22 this clause 50 (Consequences of Termination); and
  - 50.4.23 clause 52 (Governing Law and Jurisdiction).
- 50.5 Immediately upon termination of the Framework Agreement for any reason whatsoever the Contractor shall render such reasonable assistance to the Authority or third party nominated by the Authority, if requested, as may be necessary to effect an orderly assumption by a Replacement Contractor of the Services previously performed by the Contractor under the Framework Agreement.
- 50.6 On expiry or termination of the Framework Agreement the Contractor must:
- 50.6.1 immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and
  - 50.6.2 destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession.
- 51. Entire Agreement**
- 51.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with herein. This Framework Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the ESPD or Tender or otherwise).
- 51.2 In the event of, and only to the extent of, any conflict between the clauses of this Framework Agreement, the Schedules and any document referred to in this Framework Agreement, the following order of precedence applies:
- 51.2.1 the clauses of this Framework Agreement;
  - 51.2.2 the Standard Terms of Supply;
  - 51.2.3 the other Schedules; and
  - 51.2.4 any other document referred to in the clauses of this Framework Agreement.

**52. Governing Law and Jurisdiction**

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

**IN WITNESS WHEREOF** these presents typewritten on this and the 33 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 Brightwork Ltd

At    REDACTED

At    REDACTED

On    29 April 2019

On    8 April 2019

Signature    REDACTED

Signature    REDACTED

Full name    REDACTED

Full name    REDACTED

Position    REDACTED

Position    REDACTED

Address    REDACTED

Address    REDACTED

**In the presence of**

**In the presence of**

Signature    REDACTED

Signature    REDACTED

Full name    REDACTED

Full name    REDACTED

Address    REDACTED

Address    REDACTED

This and the following 22 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd.

**SCHEDULE 1 – STATEMENT OF REQUIREMENTS**

**FRAMEWORK REFERENCE: SP-18-013**

**FRAMEWORK FOR THE PROVISION OF TEMPORARY ADMINISTRATIVE,  
CATERING & MANUAL STAFF SERVICES - SOUTH REGION**

**STATEMENT OF REQUIREMENTS**

## Objectives

The Scottish Procurement & Commercial Directorate (SPCD) of the Scottish Government delivers innovative strategies and supplier relationships that enable public sector organisations in Scotland to access the goods and services they commonly need at market leading prices and terms. We do this through pursuing opportunities for collaborative procurement, and the implementation of leading practices, whilst promoting the economic and sustainable development of the wider Scottish market place.

The objectives of this exercise are to deliver Best Value to Scottish Public Bodies and Scottish Third Sector Bodies while maximising opportunities for suppliers of all sizes and contributing to the Scottish Government's Purposes (more information available at <http://www.gov.scot/About/Performance/scotPerforms>).

The Provision of Temporary & Interim Staff Services has been identified as having particular relevance to "Participation". Improved labour market participation is a key driver of economic growth and working to increase the number of people in employment, in particular from groups that face barriers to entering the job market. Best Value is the most appropriate balance of cost of acquisition (including but not limited to price), service provision and quality. The link above provides more details on this area.

A Framework is defined as "an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the Framework Agreement applies".

A Framework Agreement does not bind any contracting authority to purchase goods, services or works. A contracting authority can decide to use the Framework Agreement if it represents value for money but if a contracting authority considers that the Framework Agreement does not provide value for money, it can choose to award a contract outside the Framework Agreement.

This Framework Agreement is not mandated for use by public sector organisations in Scotland, however contracting authorities will be encouraged by SPCD to utilise the Framework Agreement where it meets their requirements.

Scottish Public Bodies and Scottish Third Sector Bodies may look to migrate to the new Framework Agreement as and when they reach the conclusion of current contractual agreements.

## Statements of Requirements - Glossary of Terms

In this Statement of Requirements the following words have the meanings given to them as detailed below:

**“Account Manager”** – means a named individual who acts as a single point of contact for Framework Public Bodies for all operational queries and complaints relating to delivery of the Framework Agreement. The Account Manager will be held responsible to ensure that all requests are dealt with, to the Framework Public Bodies satisfaction, in a timely manner.

**“Employment Business”** – means as per the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003, an Employment Business is a business that offers contracts of employment to temporary workers, whose services are then temporarily offered on secondment to Framework Public Bodies.

**“Scottish Government Main (SGM)”** – means the collective main bargaining unit between the core Scottish Government Director Generals and those executive agencies covered by the same Terms and Conditions of employment.

**“Scottish Procurement & Commercial Directorate (SPCD)”** – means those responsible for facilitating User Intelligence Groups, National Category Forums and collaborative procurement exercises for goods and services classified as Category A and B following the review of public procurement in Scotland ([McClelland Report](#)).

**“Strategic Contract Manager”** – means the individual who will act on behalf of Framework Public Bodies, and serve as the sole point of contact, for all Framework contractual matters. The Strategic Contract Manager will take receipt of consolidated management information, and will facilitate Framework Agreement review meetings with the Contractor’s Contract Manager. They will monitor and ensure the satisfactory resolution of any strategic Framework contractual disputes or complaints and will work on an ongoing basis with Contractors and the Framework Public Bodies Contract Manager to confirm that consistent levels of service are delivered.

**“Framework Public Bodies Contract Manager”** – means the individual who takes operational responsibility for the day-to-day management of any contract under the Framework Agreement. Typically an HR Manager within the Framework Public Bodies organisation. The Framework Public Bodies Contract Manager – or nominated individual – will liaise directly with the Contractor for all Temporary and/or Interim Staff Service requirements including local management information. They will work with the Strategic Contract Manager and Human Resource colleagues across the Scottish public sector to monitor overall customer satisfaction, compliance with service levels and KPIs, continuous improvement and development of best practice.

**“Temporary Worker or Interim Worker”** – means the individual who is introduced by the Employment Business/Contractor, to render services to the Framework Public Bodies.

**“Assignment”** – means the period during which the temporary/interim worker is supplied to render services to the Framework Public Bodies.

Information about Scottish Public Bodies is available at:

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

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

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

## 1.1 Background

1.1.1 In 2005, the then Minister for Finance and Public Sector Reform requested that a review of public procurement in Scotland be undertaken. John F. McClelland CBE carried out this review and his report and recommendations were published in March 2006.

1.1.2 In April 2015, the Public Procurement Reform Board (PPRB) published "[Transforming Procurement, Accelerating Delivery](#)", a review of the second phase of public procurement reform 2010-2014. A summary is available [here](#).

1.1.3 The report recognised that the recommendations from John McClelland's 2006 [Review of Procurement in Scotland - Report and Recommendations](#) were now effectively business as usual, with future emphasis shifting to a new set of strategic objectives that underpin a more succinct vision for procurement in its third phase:

**"Delivering procurement that improves public services for a prosperous, fairer and more sustainable Scotland."**

1.1.4 The [Procurement Journey](#) is a feature of the review and its values are underpinned throughout this procurement process.

1.1.5 This Framework Agreement for the provision of Temporary Administrative, Catering & Manual Staff Services – South Region is the third generation of collaborative Temporary & Interim Staff Services Framework Agreements to be procured by Scottish Government.

1.1.6 This Framework Agreement for Temporary Administrative, Catering & Manual Staff Services – South Region is one of a number of Temporary and Interim Staff Service Framework Agreements to be collaboratively procured. Whilst the Framework Agreement will not be mandated across Framework Public Bodies, organisations within the Scottish public sector will be encouraged to use it by SPCD.

## 1.2 Overview of Requirements

1.2.1 The Authority does not guarantee that any or all of the Framework Public Bodies will opt to use this Framework Agreement for Temporary Administrative, Catering & Manual Staff Services – South Region requirements, nor does the Authority guarantee any volumes of usage or spend throughout the life of this Framework Agreement.

1.2.2 Framework Public Bodies have a number of means by which they can fill temporary vacancies, including internal methods such as flexible deployment of staff or external methods such as fixed term appointment or secondments. The preferred method will be determined by the Framework Public Bodies on a case-by-case basis. **Permanent recruitment, fixed term appointments and secondments are out with the scope of this Framework. Consultancy is also out of scope.**

1.2.3 The Framework Agreement will be for a maximum period of four years, commencing on 13 April 2019 and expiring on 12 April 2023.

### 1.3 Vision

1.3.1 Contractors must be capable of supplying suitably qualified temporary/interim workers covering a diverse range of skill sets that have been through the relevant disclosure/security processes. The Contractor must be able to provide coverage in the South Region (see Regional boundary map included at Annex A to this Schedule 1), with consistent levels of service for varied assignment types and terms as required by the Framework Public Bodies on a cost effective and best value basis. The Contractor must provide comprehensive management information at all stages throughout the process and to all participating Framework Public Bodies.

### 1.4 General Requirements

1.4.1 Assignments are routinely to single posts although there may on occasion be a requirement to source multiple candidates for a specific project. Such instances could include, but are not limited to, the need to source seasonal temporary or interim workers required for the tourist season at tourist venues.

1.4.2 The Contractor will be able to provide Temporary Administrative, Catering & Manual Staff Services – South Region workers at the Framework Public Bodies' premises as and when required. The Contractor must ensure sufficient numbers of pre cleared and suitably qualified candidates are available. No guarantee is given that temporary/interim workers will be required at any/all of these premises throughout the duration of the Framework Agreement. Full lists of premises will be provided by the Framework Public Bodies prior to their use of the Framework Agreement.

1.4.3 Temporary/interim workers should be suitably trained and experienced to perform the duties required of them. Temporary/interim workers must also be eligible to work in the United Kingdom. Once a request has been raised it is the responsibility of the Contractor to obtain all necessary information about the organisation, the team where the assignment will be and the role to help identify the most suitable temporary/interim worker with the right capabilities and behaviours.

1.4.4 For those temporary/interim workers being offered Framework Public Bodies may insist that they already hold a valid basic Disclosure Scotland certificate at the point their name is offered to the hiring line manager. The aim is to reduce the time taken to complete the BPSS checks. Where a suitable worker is identified but they do not hold a valid certificate the onus is on the Contractor to advise the hiring line manager and seek their view on whether to put that person forward. The final decision rests with the hiring line manager.

1.4.5 While the Framework Public Bodies will normally be able to give a number of days' notice of the need for temporary/interim workers, the Contractor must be able to deliver appropriately vetted and security cleared temporary/interim workers at **48 hours'** notice where necessary. Please note - this timescale does not include any internal security procedures carried out by the Framework Public Bodies. The Framework Public Bodies will endeavour to provide greater notice for specialist roles. Where requirements cannot be met through the Contractor's own resources, the Contractor can source temporary/interim workers through other consortia members or third party sub-contractors named as part of the Framework Agreement. With the expressed permission of SPCD, additional sub-contractors/other consortia members may be added through the lifetime of the Framework Agreement. The Contractor will be responsible for ensuring that cost, service levels and all contractual obligations with their sub-contractor/other consortia members, mirror those agreed as part of the direct contractual relationship with the Authority.

1.4.6 The Contractor will work with the Framework Public Bodies Contract Manager during Framework Agreement implementation to establish their authorisation procedures for requesting temporary/interim workers. The Contractor will provide temporary/interim workers only in response to requests from the Framework Public Bodies Contract Manager or nominated individuals. Requests to the Contractor from any other representative within that organisation should be redirected to the Framework Public Bodies Contract Manager. In some instances, the Framework Public Bodies may delegate this responsibility to line managers. The Contractor must only supply

temporary/interim workers following requests from hiring line managers, where they have been expressly advised they may do so by the Framework Public Bodies Contract Manager.

**1.4.7 All Framework Public Bodies using temporary/interim workers should be aware of The Agency Workers Regulations (AWRs) 2010 and revised IR35 rules and how these may affect the temporary/interim workers procured via this Framework Agreement. SPCD requires all Framework Contractors to work closely with each individual Framework Public Body to understand their requirements and to agree the most suitable solution for them regarding AWRs and IR35. It is the responsibility of Framework Public Bodies to undertake the IR35 test for each assignment they are filling, and to inform Framework Contractors of the outcome.**

Further guidance on IR35 can be found on the HMRC website at:

<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>

1.4.8 The Agency Workers Regulations (AWRs) give agency workers entitlement to the same or no less favourable treatment for basic employment and working conditions. This is usually subject to a qualifying period of 12 weeks in a particular assignment/role. However the Scottish Government has chosen to waive the qualifying requirements and so parity of basic terms which includes pay and holiday entitlement is applicable from the outset of an assignment. Accordingly, Scottish Government will not make use of the “pay between assignments” route (also known as the Swedish Derogation) which provides an exemption from the application of equivalent pay for agency workers. This approach may not be adopted by all Framework Public Bodies utilising this Framework Agreement and Framework Contractors must liaise closely with each individual organisation to ascertain/confirm individual policies and procedures in this regard. Further guidance on The Agency Workers Regulations (AWRs) can be found on the UK Government website at:

<https://www.gov.uk/government/publications/agency-workers-regulations-2010-guidance-for-recruiters>

1.4.9 The Contractor will provide suitable replacement temporary/interim workers to cover absence through holidays and sickness etc. of temporary/interim workers. Replacement temporary/interim workers must meet the same standards as those temporary/interim workers that they replace.

1.4.10 The workers supplied by the Contractor must remain at all times remunerated by the Employment Business/Contractor. Framework Public Bodies will have no responsibility for the direct payment of the temporary/interim worker fulfilling the temporary/interim assignment.

1.4.11 Under no circumstances should work be undertaken on a Framework Public Bodies premises, other than that for which temporary/interim workers have been appointed.

1.4.12 The Framework Public Bodies will pay for travel and subsistence at their standard rate when the temporary/interim worker is away from the office on official business. This excludes travel between the temporary/interim worker’s home and normal place of work or to any initial meeting with the hiring line manager as part of the Call-Off process. (Travel and subsistence will be paid on the basis of actual costs incurred only and on submission of receipts). **Travel and subsistence costs must not be included in daily or hourly rates or in overall charge rates.**

1.4.13 The Contractor must nominate a named Account Manager for each Framework Public Body, providing the Framework Public Bodies with their contact details. Account Managers may be assigned to more than one Framework Public Body. Account Managers must be contactable by phone and e-mail. The Contractor will provide details of an alternative contact to cover absence from the workplace for any reason.



1.4.14 Disaster Recovery – The Contractor shall establish and maintain methods for disaster recovery to ensure the Contractor’s ability to service the Framework Agreement throughout its life cycle.

## 1.5 Hours of Operation – Contractor

1.5.1 The Contractor will operate a Help Desk, staffed by workers familiar with the Framework Agreement and its Framework Public Bodies, to assist authorised contacts with orders and general queries. The Help Desk will operate between 8:30 am and 6.00 pm Monday to Friday and will be adequately staffed to handle all Framework Public Bodies’ queries during this period. The Contractor will also provide an out-of-hours contact to support any out-of-hours or emergency requirements.

## 1.6 Hours of Work

1.6.1 Full-time working hours will be determined by the Framework Public Bodies. Access to the Framework Public Bodies premises will generally be limited to the normal working hours. The actual hours to be worked by the Contractor’s temporary/interim workers will be agreed in advance of each assignment between the appropriate nominated individual within the Framework Public Bodies’ organisation and the Contractor. This may be varied by local line managers. Some assignments may require temporary/interim workers to work flexibly. Requirements in terms of flexibility will differ from assignment to assignment and Framework Public Body to Framework Public Body. This must always be discussed and agreed in advance between the Framework Public Body and the Contractor and reflected in the Call-Off Contract documentation. **The need for temporary/interim workers to work from home is not generally a requirement of assignments under this Framework.** However, if the Framework Public Body wishes to permit the temporary/interim worker to work from home on occasion, or for a specific reason, this must be discussed and agreed in advance with the Contractor to ensure all issues/implications/risks (e.g. IT equipment, access to systems, data protection, Health & Safety etc. – this list is not exhaustive) have been fully considered and any appropriate action taken. It is the responsibility of Framework Public Bodies to ensure they comply with their individual organisation’s internal policies and procedures regarding home working.

1.6.2 On occasion, there may be a requirement for temporary/interim workers to work out with the working hours agreed with the Framework Public Bodies, which may include weekends. Access to the Framework Public Bodies’ premises for such instances will be agreed as and when such occasions arise. Any hours worked beyond the agreed normal hours, at the discretion of the Framework Public Bodies’ organisation, *may* be considered overtime and if so, charges will be capped at the Framework Public Body’s standard overtime rates for that role type – i.e. not necessarily the day rate paid to the temporary/interim worker. Temporary/interim workers will be entitled to an increased rate of pay based on the standard pay rate agreed for that position. The Contractor will not be entitled to any increased rate of commission. Overtime charges must not include any Working Time Directive payments.

1.6.3 Some Framework Public Bodies will have a requirement for temporary/interim workers to perform shift work, which may include both night and weekend work. The Framework Public Bodies will notify the Contractor of this as and when required. The temporary/interim worker *may* be entitled to a supplementary shift allowance. The Contractor must liaise with the Framework Public Bodies during Framework Agreement implementation to establish under what circumstances a temporary/interim worker may be entitled to receive a shift allowance. On all occasions, the Contractor must establish the appropriate shift allowance payable to a temporary/interim worker with the Framework Public Bodies prior to the commencement of any assignment. The Contractor will not be entitled to any increased rate of commission.

## 1.7 Duration

1.7.1 Generally assignments *may* range in duration from a single day to 23 months. However, assignments may be permitted for longer periods. In those instances, 47 months is the Framework recommended maximum period for a temporary/interim assignment and the combined length of continuous placements should not exceed this. Whilst SG HR will actively apply this

principle in their Call-Off Contracts, some Framework Public Bodies may wish to apply their own policies in this regard and will make the Contractor aware of their policies and procedures at the Call-Off Contract stage. Any continuation beyond this period will be at the discretion of each Framework Public Body. However the Contractor will still be expected to report on each temporary/interim assignment duration as part of the comprehensive requirement for monthly/quarterly management information. This will include the monitoring of continuous placements, where an individual has worked for a body allied to the Framework Public Bodies without a sufficient break in service. An allied body might be, for example, another part of the Civil Service if the Framework Public Body is a Civil Service body. After a period of separate assignments amounting to 47 months, the worker must take a 26 week break before undertaking any new assignment with the Scottish Government. Whilst SG HR will actively apply this principle, some Framework Public Bodies may wish to apply their own policies in this regard and will make the Contractor aware of their policies and procedures at the Call-Off Contract stage.

1.7.2 Where an extension to the original Contract period is considered likely, this must be included from the outset as an option in the original Call-Off Contract. Extension periods should not exceed the original Contract duration. Individual Contracts cannot be extended where an optional extension is not included in the original Contract from the outset.

1.7.3 As part of the original Call-Off Contract, hiring line managers must include a notice period (notice to terminate an individual Contract) to which both parties will adhere (reciprocal). Generally notice periods should be not less than 5 working days in duration. In exceptional circumstances, notice periods may be less than 5 working days (e.g. where operational requirements dictate, or where performance, disciplinary or other issues arise and early termination may be required) but should be agreed between the Framework Public Body and the Contractor.

1.7.4 Contractors and Framework Public Bodies must ensure that where possible there is a sharing/transfer of knowledge by the temporary/interim worker throughout the period of the assignment. The Framework Public Body's hiring line manager must discuss and agree with the temporary/interim worker how this will be achieved for each assignment as appropriate.

## 1.8 Security

1.8.1 Due to the collaborative nature of this framework, different Framework Public Bodies require different security procedures to be carried out prior to an individual taking up any assignment. Additional costs, incurred as a result of carrying out the required security procedures, will not be borne by the Framework Public Bodies.

1.8.2 [Disclosure Scotland](#) is a service provided by Scottish Ministers to manage and operate the Disclosure service in Scotland as provided for in [Part V of the Police Act 1997](#). As a minimum requirement, all central government organisations and many other Scottish public bodies have a requirement for temporary/interim workers to have gone through Basic Disclosure **prior** to taking up assignment. Basic Disclosure provides a criminal convictions certificate showing details of unspent convictions under the Rehabilitation of Offenders Act 1974 or states that there are no such convictions. Where Basic Disclosure is required, The Framework Public Bodies must have sight of a valid original certificate **prior** to temporary/interim workers being allowed access to the Framework Public Bodies' premises. Disclosure certificates are valid for one year from the date of issue. Assignments commencing more than one year after the date of issue will require the temporary/interim applicant to repeat the relevant disclosure process.

1.8.3 Due to the sensitive nature of temporary/interim roles within some of the Framework Public Bodies, there may also be a requirement for temporary/interim workers to have Standard Disclosure. Standard Disclosure provides a criminal records certificate which displays records of both spent and unspent convictions. Although not all organisations will require Standard Disclosure, as an indication of volume, the main categories of occupations for which a Standard Disclosure may be required are:

- those involving regular contact with children and adults at risk;
- those involved in the administration of law;
- those applying for firearms, explosives and gaming licences;

- professional groups in health, pharmacy and law; or,
- senior managers in banking and financial services.

1.8.4 There may also be a limited requirement for Enhanced Disclosure or Protection of Vulnerable Groups (PVG) in some instances. In addition to the details provided in the Basic and Standard Disclosures, the Enhanced Disclosure provides an enhanced criminal records certificate which may contain non-conviction information which a Chief Officer or Chief Constable may choose to disclose if they believe it relevant to the position in question. Although the requirement for Enhanced Disclosure will be less frequent, as an indication of volume, these may be required for roles which involve the following:

- those who apply for work that regularly involves caring for, training, supervising or being in sole charge of children or adults at risk;
- applicants for various gaming and lottery licences;
- those seeking judicial appointment; or,
- Applicants for registration for child minding, day care and to act as foster parents or carers.

1.8.5 In addition to the Disclosure process, some of the Framework Public Bodies – in particular the Scottish Government – will require the Contractor to ensure that all **candidates** that are proposed to carry out work on the Framework Public Bodies' premises meet the Baseline Personnel Security Standard (BPSS). The BPSS comprises verification of the following 4 main elements:

- Identity
- Employment History (past 3 years)
- Nationality and Immigration Status
- Criminal Record ('unspent' convictions only – by means of the Basic Disclosure certificate)

1.8.6 Contractors wishing clarification of what is deemed as an acceptable form(s) of verification are referenced at [BPSS Guidance](#).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/677553/HMG\\_Baseline\\_Personnel\\_Security\\_Standard.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/677553/HMG_Baseline_Personnel_Security_Standard.pdf)

1.8.7 Where BPSS is required, all of the above checks **must have been completed prior** to temporary/interim workers being put forward for work with the Framework Public Bodies; however the Framework Public Bodies reserve the right to carry out additional and/or more in-depth checks where this is deemed necessary. The Contractor shall retain copies of the BPSS reports on file. The BPSS verification record and the appropriate Disclosure certificate shall be submitted to the Framework Public Bodies with the Contractor's recommendation. This recommendation should only be made once the Contractor is satisfied that the verification process has not identified any adverse information about the subject that would impact on their suitability for a position within the relevant Framework Public Body in accordance with the service provisions of this Framework Agreement.

1.8.8 All temporary/interim workers or sub-contract staff or other Contractor representatives used to provide the services, or who require entry to any of the premises to provide the services, shall be subject to the appropriate security checks by the Contractor (appropriate security checks as determined by the Framework Public Bodies). The Contractor shall ensure that appropriate checks for each individual are undertaken, and shall maintain a register of the same (including any re-verification of immigration when interim/permission expiry checks are required or periodic re-checking of individuals by the Contractor) which may be examined by the Framework Public Bodies.

1.8.9 Where BPSS is required, no temporary/interim workers (or any sub-contract staff) of the Contractor, or other representative, shall work within any of the premises or provide services to the Framework Public Bodies until the Contractor has obtained BPSS approval for such an individual.

1.8.10 The Authority reserves the right to audit the Contractor's processes in achieving BPSS and other security checks (as determined by the Framework Public Bodies) either remotely or via a

site visit. The Contractor will be provided with **1 weeks'** notice of any such audit. Non-compliance to BPSS and other relevant security requirements, as detailed above, may result in the termination of the Framework Agreement.

1.8.11 This procedure is subject to any changes in the BPSS and other security checks (as determined by the Framework Public Bodies) throughout the duration of the Framework Agreement.

1.8.12 The Contractor will also be required to inform the Framework Public Bodies if any temporary/interim worker involved in delivering the services are charged with, or convicted of any offence during the period of their assignment, and, should it be necessary, arrange for the service to be provided by another temporary/interim worker.

1.8.13 Since the pre-employment vetting, security and nationality checks can take up to 3 weeks to complete, the Contractor **must** ensure the availability of a 'pool' of pre-cleared temporary/interim workers of sufficient size to meet the Authority's requirements. Although every effort will be made to give the Contractor notice of anticipated significant increases in expected demand, the number of temporary/interim workers available must be adequate to meet the reasonable demands of the Framework Public Bodies at any time.

1.8.14 The Contractor must liaise with the Framework Public Bodies, to establish and comply with any additional security procedures that require to be followed, in order that temporary/interim workers are able to access the Framework Public Bodies premises.

1.8.15 The Framework Public Bodies shall have the right to ask the Contractor to remove from its premises any temporary/interim workers they have supplied and will provide justification for any such request. The Contractor will maintain records of any temporary/interim workers they have supplied against which a Framework Public Bodies has raised a complaint, and ensure that those with active or unresolved complaints are not re-assigned to any position under this Framework Agreement, until the Framework Public Bodies is satisfied that the problem(s) or issues that gave rise to the original complaint have been addressed, and will not recur.

1.8.16 The Framework Public Bodies will notify their security department of any assignments that have been terminated by a line manager.

## **1.9 Data Protection & Information Security (where applicable)**

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

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

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

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

1.9.4 Contractors as a minimum must have:

- Processes in place ensuring security of client data including processes for assessing future risks;
- Acceptable Destruction policies and processes for deleting data;
- Procedures in place for Disaster Recovery Testing, including the dates, duration and frequency;

- Methods for the back-up of delivering services should an incident occur including manpower and access to equipment;
- Appropriate commercial licenses for software in place;
- Methods in place to mitigate against cyber-attack and crime using online technologies including processes relating to Boundary Firewalls and Internet Gateways, Secure Configuration, Access Control, Malware Protection and Patch Management

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

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

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

1.9.8 The Contractor will ensure access to protectively marked information is correctly managed and safeguarded.

1.9.9 The Contractor will not transfer data being handled under this Framework Agreement outside the European Economic Area.

1.9.10 The Data Protection Register is a register of data controllers held by the ICO and can be found at <https://ico.org.uk>.

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

1.9.12 The Contractor will enter a Data Controller/Data Processor contract prior to handling any data from those Framework Public Bodies that are included under the Scottish Government entry in the Data Protection Register held by the ICO.

1.9.13 A template Data Controller/Data Processor Model Contract that the Contractor will enter with Framework Public Bodies that are part of the Information Commissioner's Office (ICO) Data Protection Register Entry is included at Schedule 9 of the Standard Terms of Supply.

1.9.14 Other Framework Public Bodies that are not included under the Scottish Government entry in the Data Protection Register held by the ICO may also choose to use the template Data Controller/Data Processor Model Contract adapt the template for their own purposes or use a different Data Controller/Data Processor contract specific to their organisation. In these circumstances, the Contractor will enter into the necessary Data Controller/Data Processor contract with that Framework Public.

1.9.15 The Framework Public Body will have sole discretion to determine the Data Controller/Data Processor contract that the Contractor will enter with that Framework Public Body in order to comply with the relevant legislation.

1.9.16 The Authority or Framework Public Body may conduct an audit and or a site visit of the Contractor's premises to allow validation and the environment used to store the data shared with them.

1.9.17 The Contractor and their staff and sub-contractors must comply with the security requirements notified by each Framework Public Body which may include signature of a non-disclosure agreement or other measures as required.

## **1.10 Business Continuity Plans**

1.10.1 The Contractor will maintain business continuity plans which will be implemented in the event of disruption of services.

1.10.2 Contractor's business continuity plans will be shared with the Authority and Framework Public Bodies on request.

1.10.3 The Contractor will conduct a business continuity exercise with the Authority on an annual basis. This may be by workshop or meeting, or otherwise agreed format.

## **1.11 Incident Reporting**

1.11.1 As soon as the Contractor becomes aware, it shall immediately report any incident affecting the delivery of the Service(s) to the Framework Public Body. The Contractor will undertake an immediate investigation and will provide feedback in writing on findings, including corrective actions required and trends observed, to the Framework Public Body within 24 hours of the incident being reported by telephone/e-mail.

1.11.2 Serious incidents can be categorised as but not limited to:

- Any breach of security which may affect the security of data supplied by the Framework Public Body to the Contractor;
- Failure to deliver the required Services due to any type of service disruption

This list is indicative only and the Framework Public Body may provide for further categories of serious incidents at the Call-Off level.

1.11.3 The Contractor shall, in the event of a serious incident, provide from within Contractor's senior management, a single point of contact person within 1 hour of notification.

1.11.4 It shall be the responsibility of the contact person to pursue the investigation and mitigation of the incident to the satisfaction of the Framework Public Body and shall be required to provide progress updates to the Framework Public Body on request.

1.11.5 In addition to the above notification requirements, the Contractor shall have in place an effective and efficient incident handling procedure for dealing with security breaches in the provision of Service(s) to the Framework Public Body and these should be agreed by the Framework Public Body and Contractor in advance. As a minimum it must include but not be limited to:

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

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

## **1.12 Working on the Framework Public Bodies' Premises and Use of Equipment**

1.12.1 It is the responsibility of the Contractor to ensure that the temporary/interim worker and their line manager are aware of the requirements that have been pre-agreed between the Framework Public Body and the Contractor. On arrival at the Framework Public Bodies' premises on the first day of an assignment, temporary/interim workers and their line manager must be aware of the role of the line manager and that of the Contractor in any performance-related or disciplinary matters. The document must make it clear that any performance or disciplinary issues are to be raised with the Contractor who will then deal with the issue in a timely manner. Temporary/interim workers and their line manager must be aware of the contact details of the Contractor's Account Manager.

1.12.2 Accommodation, office furniture and equipment and consumables required for each individual assignment will be provided free of charge by the Framework Public Bodies, subject to the provision of office furniture and equipment etc. required as part of a reasonable adjustment for health and safety reasons (see 1.12.7). The Contractor shall be responsible for any loss or damage to the Framework Public Bodies' property arising from any misuse or lack of care by the Contractor's staff.

1.12.3 The Contractor will not be charged for the cost of the accommodation, fuel, utilities or other services. However, the Contractor will be expected to comply with the Framework Public Bodies' policies in respect of occupation and use of the premises and to be cost and environmentally conscious.

1.12.4 The Contractor's staff (including temporary/interim workers), when on the Framework Public Bodies' premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the conduct of personnel at the premises. The Framework Public Bodies may be able to provide the Contractor with a copy of its staff handbook on request, should the Contractor wish to see the terms and conditions the Framework Public Bodies apply to their own staff. Where a staff handbook is not available the Contractor should raise any queries relating to rules, regulations and requirements with the Framework Public Bodies' Contract Manager.

1.12.5 The Contractor shall be responsible for the observance by his staff of all relevant safety precautions including all precautions required to be taken by or under any Act of Parliament including any regulations or bye-laws of any local or other authority. The Contractor shall co-operate fully with the Framework Public Bodies to ensure the proper discharge of these duties.

1.12.6 Accidents involving the temporary/interim workers, which ordinarily require to be reported in accordance with the Health and Safety at Work Act 1974, shall be reported immediately to the nominated individual(s) within each Framework Public Body. The Contractor will establish each Framework Public Bodies' nominated individual(s) prior to providing any temporary/interim workers to the Framework Public Bodies.

1.12.7 The Contractor will carry out a pre-employment health questionnaire check with all prospective candidates and initial and/or further occupational health assessments where required, and make the Framework Public Bodies aware of any reasonable adjustments that are required to ensure the health, safety and convenience of temporary/interim workers. Where reasonable adjustments are required, costs will be met by the Framework Public Bodies, only where the adjustment is retained by the Framework Public Bodies at the end of the assignment i.e. seating, desks, desktop equipment. Where the result of the adjustment would be retained by the temporary/interim worker or Contractor at the end of the assignment, the Framework Public Bodies will not bear these costs. Whilst the Framework Public Bodies will make every effort to meet the requirement of reasonable adjustments, it may not be possible in all instances to put in place adjustments within the timescale available before temporary/interim workers are required to start. The Framework Public Bodies will also not be responsible for any cost associated with transport between the workers home and the normal place of work.

<b>1.13 Management Information Requirements</b>	<b>See SCHEDULE 4.</b>
<b>1.14 Complaints</b>	<b>See SCHEDULE 4.</b>
<b>1.15 Service Levels &amp; Framework Management</b>	<b>See SCHEDULE 4.</b>
<b>1.16 Supplier Relationship Management</b>	<b>See SCHEDULE 4.</b>
<b>1.17 Pricing, Invoicing &amp; Order Placement Procedures</b>	<b>See SCHEDULE 4.</b>

## **1.18 Continuous Improvement**

1.18.1 The Contractor will implement a system that delivers continuous improvement over the Framework Agreement period. 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 the Framework Public Bodies;
- quality (reliability, delivery, etc.);
- user satisfaction;
- specified contract service levels; and,
- the facilitation or promotion of best practice across the Framework Public Bodies.

Continuous improvement will be monitored by the Strategic Contract Manager in the 6 monthly performance reviews with the Contractor.

## **1.19 Employment by the Authority**

**1.19.1 The Authority does not view this Framework Agreement as a formal testing ground for potential staff recruitment/employment.** The Contractor must not give temporary/interim workers or candidates any expectation that a temporary/interim assignment through this Framework Agreement will lead to recruitment/employment with a Framework Public Body. However, it is recognised that the Contractor's temporary/interim workers or candidates may seek employment with a Framework Public Body.

1.19.2 The Conduct of Employment Agencies and Employment Businesses Regulations 2003 govern when a transfer fee, also known as a 'temp to perm' fee can be charged. Under Regulation 10 of these Regulations, a 'temp to perm' fee can only be charged where the temporary worker takes up a permanent job with the client (e.g. Framework Public Body) within either 14 weeks from the start of the assignment or within eight weeks after the end of the assignment, whichever is later. This means the client (e.g. Framework Public Body) may take on a temporary worker any time after eight weeks of the end of the assignment without paying a 'temp to perm' fee.

1.19.3 The contract between the Contractor and the client, (e.g. Framework Public Body) must include all transfer fees and conditions and be in accordance with the Pricing Schedule at Schedule 2. In summary, the Contractor can only charge a 'temp to perm' fee if all of the following apply:

- the contract with the client (e.g. Framework Public Body) gives them the option to extend the workers assignment;
- the client (e.g. Framework Public Body) doesn't take the option to extend the assignment;
- the client (e.g. Framework Public Body) gives the worker a permanent job less than 8 weeks after the end of their initial assignment – or less than 14 weeks after it started if that is later.

If the temporary worker has had more than one assignment with the client (e.g. Framework Public Body) and there were more than 42 days between assignments, the later assignment is treated as if it is the first one.

Please see links below for further information.

<https://www.gov.uk/employment-agencies-and-businesses/fees-to-hiring-companies-transfer-fees>  
<http://www.legislation.gov.uk/uksi/2003/3319/contents/made>



### Formula for calculating 'temp to perm' fees

1.19.4 The formula for calculating 'temp to perm' fees will be agreed for the Framework duration (and any Call-Off Contract awarded under this Framework Agreement), as part of the Framework Agreement terms and conditions. See the Pricing Schedule at Schedule 2.

## **1.20 Fair Work**

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

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

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

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

## **1.21 Sustainability & the Environment**

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

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

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

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

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

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

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

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

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

and

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

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

## **1.22 Added Value**

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

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

## **1.23 eCommerce (where applicable)**

1.23.1 The Scottish Government's eCommerce Shared Service brings together all the steps involved in doing business with the public sector in Scotland. It promotes improved capability across public procurement in Scotland, enables business to be conducted more simply, consistently and effectively and it plays a key strategic role in delivering and sustaining procurement benefits and best practices. The use of technology enables procurement processes to be streamlined and standardised, which supports the delivery of more effective contracts.

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

- PECOS P2P
- eInvoicing

1.23.3 Contractors should be aware that not all Scottish public sector bodies use these systems and that there is a variety of different P2P solutions in place. However, for the purpose of this ITT, Contractors will only be required to demonstrate their ability to support the solutions mentioned above.

1.23.4 Further information regarding the eCommerce Shared Service and in particular the solutions mentioned above can be found at:

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

1.23.5 Purchase orders will be raised as a non-catalogue or free text order.

1.23.6 To ensure that PO's provide an accurate description of the requirement and contain accurate pricing the following information will have to be made available to end-users when creating non-catalogue PO:

- The description of the product or service being requested;
- The Item number/code of the product or service being requested;
- The price of the products or services being requested;
- How changes to the order will be accommodated.

1.23.7 Purchase Order (PO) Transmission Options

1.23.7.1 cXML

1.23.7.1.1 PECOS can issue a cXML PO directly to a Contractor's back office system. This allows the order to be automatically captured by the Contractor's system, thereby removing the need to manually enter the order and reducing potential errors.

1.23.7.1.2 There is a one-off charge to configure cXML ordering from PECOS but this will enable multiple PECOS user organisations to use the connection.

1.23.7.1.3 Contractors should note that other P2P solutions may also support cXML ordering and any costs associated will be communicated to the successful Contractor by the relevant Scottish public sector body.

1.23.7.2 PDF email

1.23.7.2.1 PECOS will send the Contractor an email to a predetermined address with a PDF attachment.

1.23.7.3 Invoice Options

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

#### 1.23.7.4 Invoicing

1.23.7.4.1 The Scottish Government is enabling eInvoicing capability across the Scottish public sector through PECOS P2P. To support this, Contractors will be required to submit their invoices and credit notes in a machine readable data format such as PDF or cXML.

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

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

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

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

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

1.23.7.4.6 If Contractors are unable to support eInvoicing, the following payment options should be considered:

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

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

Consolidated Electronic Invoice - Contractor submits a single invoice covering multiple purchase orders in an electronic file for an agreed period

of time. The format of the electronic file will have to be agreed between the Contractor and the relevant Scottish Public Sector Body.

Paper Invoice - Contractor issues a paper invoice for each order fulfilled

## **1.24 Framework Transition/Mobilisation**

1.24.1 The Contractor will develop and agree with the Authority a Termination & Exit Plan for this Framework Agreement not later than six months after the commencement date of this Framework Agreement.

1.24.2 The Termination & Exit Plan will ensure smooth transition of work, documents and information to the Authority, or any subsequent third party nominated by the Authority at the Framework Agreement expiry date, date of termination or during the mobilisation of any future Contract or Framework Agreement for same or similar services.

1.24.3 The Exit Plan will provide details of all procedures and activities necessary for a seamless transition of responsibility from the Contractor and from this Framework Agreement.

1.24.4 The Exit Plan shall include a full review of the status of the Contract and shall provide practical guidance and steps to be taken by both the Authority and the Contractor to ensure that costs and disruption to both the Authority and Framework Public Bodies are minimised.

1.24.5 The Contractor shall ensure that any material provided by, or paid for by the Authority, is returned within 14 calendar days of the Framework Agreement expiry date or date of termination.

1.24.6 The Contractor and the Authority shall act in accordance with the Exit Plan in the event of expiry, or early termination of this Framework Agreement.

1.24.7 The Authority's role is transferred to any Framework Public Body that places an order prior to the Framework Agreement expiry date or date of termination for services to be delivered under this Framework Agreement at a date after the Framework Agreement expiry date or date of termination at the Framework Agreement expiry date or date of termination.

1.24.8 The Contractor will continue to submit spend and performance information to the Authority until all Call-Off Contracts for services to be delivered under this Framework Agreement have been fulfilled.

## **1.25 Assignments/Roles and Specific Requirements**

1.25.1 The following roles are based on the duties performed by permanent staff and that where temporary/interim workers are required, the specific duties of individual assignments/roles may vary. A permanent member of staff will be on hand to give advice and guidance where necessary.

1.25.2 The Authority recognises the variety of purpose of all Framework Public Bodies, and accordingly requires that the Contractor works with the nominated individual within each Framework Public Body to clearly define requirements on a case-by-case basis. While we consider that the majority of requirements for temporary/interim workers may fall under one of the assignment/role types listed below, there may be occasions where an assignment does not fit under one of the role titles listed. In this instance, the Contractor must work with the Framework Public Bodies to agree a defined role.

1.25.3 Example Assignment/Role Types:

This list is based on existing framework management information for the last 12 months and provides an indication of the most frequently requested role types. This **is not** an exhaustive list of all roles requested in the last 12 months and **is not** an indication or guarantee of the role types required under the new Framework Agreement. Requirements will change over the life of the new

Framework Agreement and the Contractor must work with the Strategic Contract Manager to ensure the Framework Agreement meets the evolving needs of the Framework Public Bodies.

Catering Assistant/Cleaner
Administrator/Clerical/Admissions
Hospitality/Hospitality Rep
Application Processor
Chef
Front Desk/Receptionist/Telephonist
Waiting Staff/Bar Staff
Land & Environmental Operative
Refuse Loaders/Drivers
Porter
Kitchen Assistant/Kitchen Porter
Warehouse Operator/Operatives
Personal Assistant/Secretarial/Secretary
Driver/Forklift
HGV Driver/HGV Mechanic/LGV Driver
Housekeeper
Customer Services Assistant/Customer Services Support Staff
Processing Operative
Information Officer
Events/Events Assistant
Executive Assistant/Executive Officer
Finance Assistant/Finance Officer/Payroll Administrator
Support Officer/Support Services
Call Handler
Store Person/Assistant
HR Admin/Assistant
Registration Officer/Assistant/Registry Assistant
Data Entry/Data Processor
Janitor
Domestic
Clearance Operative
Art Manual / Worker
Retail Assistant
Visit Assistant
Leisure Attendant
Mailroom/Mailroom Operative
Official Reporter
Grounds Keeper/Seasonal Gardener
Payroll
Escort
Barista

1.25.4 The Contractor will provide a comprehensive service to the Framework Public Bodies. This will include sourcing, selecting, screening and referencing all temporary/interim workers.

1.25.5 All potential temporary/interim workers must be screened against the following criteria:

1.25.5.1 A minimum of 2 references must be checked. These should be relevant to the assignment/role and be the most recent places of employment. These must be written references which must be validated by the Contractor.

1.25.5.2 Validate all relevant qualifications and skills relevant to the temporary role/interim they will be carrying out.

1.25.5.3 English fluency – speaking, reading and writing.

1.25.5.4 Basic office skills relevant to the particular role. The Contractor will test these and provide these results at the point of presenting the temporary workers skills/experience to the Authority.

1.25.5.5 Where required, the minimum Disclosure Scotland (or equivalent) check to be carried out in line with organisations policies, at the cost to the Contractor or the temporary/interim worker. Where appropriate a fully enhanced Disclosure Scotland certificate may be requested.

1.25.5.6 Proof of identity.

1.25.5.7 Proof of eligibility to work in the UK.

1.25.5.8 All relevant confidentiality agreements to be signed.

1.25.6 The Contractor will check with the Framework Public Bodies if the temporary/interim worker has reported on the first day of the assignment.

1.25.7 The Contractor will provide a temporary/interim worker within 48 hours of receipt of the request.

1.25.8 The Contractor will deal with performance issues, lateness, absence, sickness and holiday requests of the temporary/interim worker and then advise the Framework Public Body organisation.

1.25.9 The Contractor will offer to provide a replacement temporary/interim worker in times of absence, sickness or holidays of the temporary/interim worker.

1.25.10 The Contractor will provide all temporary/interim workers with a document which states the that absence, performance and holiday procedures and responsibilities lie between the temporary/interim worker and the Contractor, and are not the responsibility of the Framework Public Bodies.

## **SCHEDULE 1 – ANNEX A - REGIONAL BOUNDARY MAP**

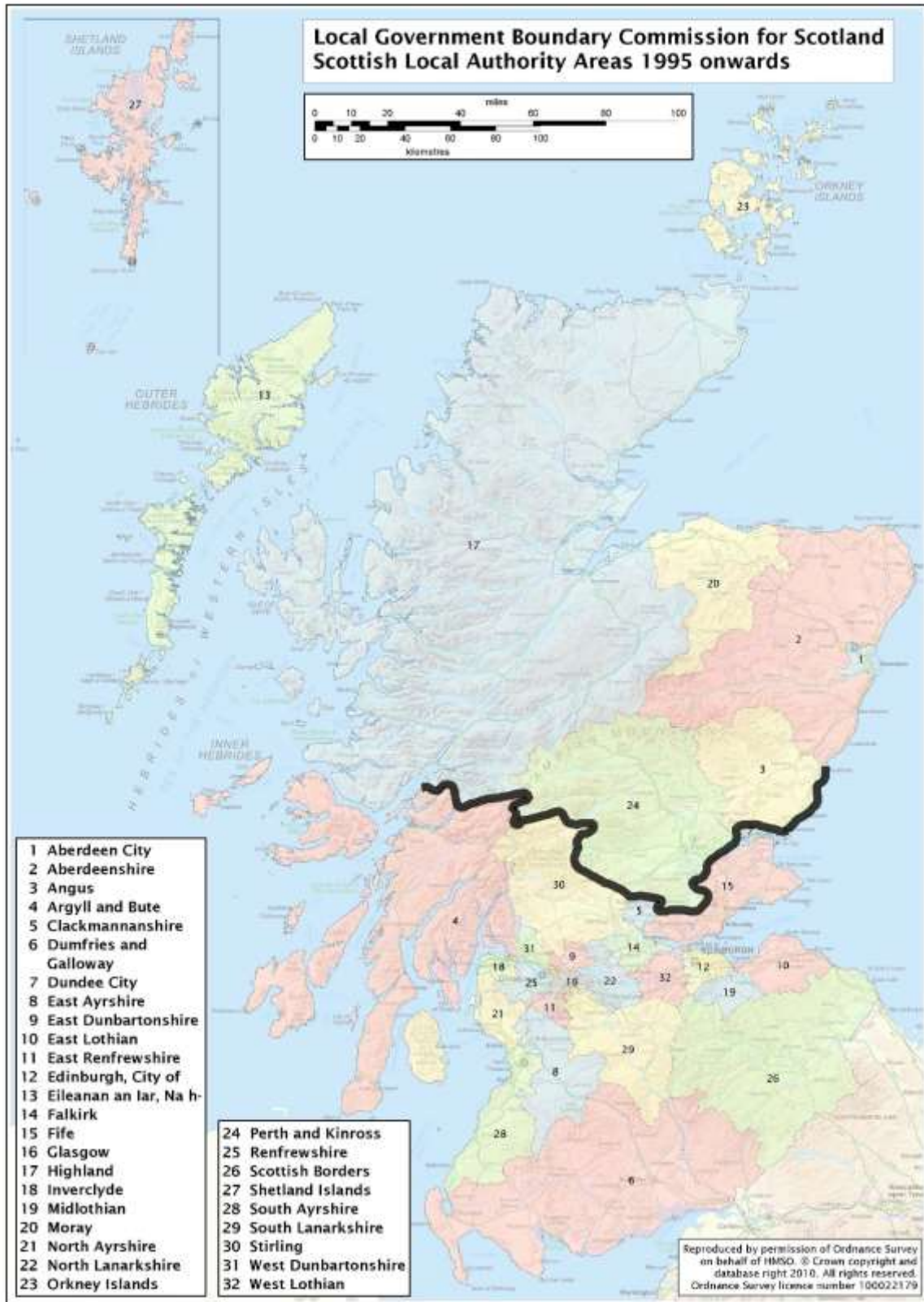
North Region includes geographical regions based on the following Scottish Local Authority Areas:

- Aberdeen City
- Aberdeenshire
- Angus
- Highland
- Moray
- Orkney Islands
- Outer Hebrides (Eileanan an Iar, Na h-)
- Perth & Kinross
- Shetland Islands

South Region includes geographical regions based on the following Scottish Local Authority Areas:

- Argyll & Bute
- Clackmannanshire
- Dumfries & Galloway
- Dundee City
- East Ayrshire
- East Dunbartonshire
- East Lothian
- East Renfrewshire
- Edinburgh, City of
- Falkirk
- Fife
- Glasgow
- Inverclyde
- Midlothian
- North Ayrshire
- North Lanarkshire
- Renfrewshire
- Scottish Borders
- South Ayrshire
- South Lanarkshire
- Stirling
- West Dunbartonshire
- West Lothian





This and the following page comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd.

## SCHEDULE 2 - PRICING SCHEDULE

### Framework Agreement for the Provision of Temp Admin, Catering & Manual Staff Services – South Region

<b>Contractor: Brightwork Ltd</b>	<b>Year 1 13 April 2019 to 12 April 2020</b>	<b>Year 2 13 April 2020 to 12 April 2021</b>	<b>Year 3 13 April 2021 to 12 April 2022</b>	<b>Year 4 13 April 2022 to 12 April 2023</b>
<b>Assignment/Role Type</b>	Commission rate per hour excluding VAT	Commission rate per hour excluding VAT	Commission rate per hour excluding VAT	Commission rate per hour excluding VAT
Catering Assistant/Cleaner	REDACTED	REDACTED	REDACTED	REDACTED
Administrator/Clerical/Admissions	REDACTED	REDACTED	REDACTED	REDACTED
Hospitality/Hospitality Rep	REDACTED	REDACTED	REDACTED	REDACTED
Application Processor	REDACTED	REDACTED	REDACTED	REDACTED
Chef	REDACTED	REDACTED	REDACTED	REDACTED
Front Desk/Receptionist/Telephonist	REDACTED	REDACTED	REDACTED	REDACTED
Waiting Staff/Bar Staff	REDACTED	REDACTED	REDACTED	REDACTED
Land & Environmental Operative	REDACTED	REDACTED	REDACTED	REDACTED
Refuse Loaders/Drivers	REDACTED	REDACTED	REDACTED	REDACTED
Porter	REDACTED	REDACTED	REDACTED	REDACTED
Kitchen Assistant/Kitchen Porter	REDACTED	REDACTED	REDACTED	REDACTED
Warehouse Operator/Operatives	REDACTED	REDACTED	REDACTED	REDACTED
Personal Assistant/Secretarial/Secretary	REDACTED	REDACTED	REDACTED	REDACTED
Driver/Forklift	REDACTED	REDACTED	REDACTED	REDACTED
HGV Driver/HGV Mechanic/LGV Driver	REDACTED	REDACTED	REDACTED	REDACTED
Housekeeper	REDACTED	REDACTED	REDACTED	REDACTED
Customer Services Assistant/Customer Services Support Staff	REDACTED	REDACTED	REDACTED	REDACTED
Processing Operative	REDACTED	REDACTED	REDACTED	REDACTED
Information Officer	REDACTED	REDACTED	REDACTED	REDACTED
Events/Events Assistant	REDACTED	REDACTED	REDACTED	REDACTED
Executive Assistant/Executive Officer	REDACTED	REDACTED	REDACTED	REDACTED
Finance Assistant/Finance Officer/Payroll Administrator	REDACTED	REDACTED	REDACTED	REDACTED
Support Officer/Support Services	REDACTED	REDACTED	REDACTED	REDACTED
Call Handler	REDACTED	REDACTED	REDACTED	REDACTED
Store Person/Assistant	REDACTED	REDACTED	REDACTED	REDACTED
HR Admin/Assistant	REDACTED	REDACTED	REDACTED	REDACTED
Registration Officer/Assistant/Registry Assistant	REDACTED	REDACTED	REDACTED	REDACTED
Data Entry/Data Processor	REDACTED	REDACTED	REDACTED	REDACTED
Janitor	REDACTED	REDACTED	REDACTED	REDACTED
Domestic	REDACTED	REDACTED	REDACTED	REDACTED
Clearance Operative	REDACTED	REDACTED	REDACTED	REDACTED
Art Manual / Worker	REDACTED	REDACTED	REDACTED	REDACTED
Retail Assistant	REDACTED	REDACTED	REDACTED	REDACTED
Visit Assistant	REDACTED	REDACTED	REDACTED	REDACTED
Leisure Attendant	REDACTED	REDACTED	REDACTED	REDACTED
Mailroom/Mailroom Operative	REDACTED	REDACTED	REDACTED	REDACTED
Official Reporter	REDACTED	REDACTED	REDACTED	REDACTED
Grounds Keeper/Seasonal Gardner	REDACTED	REDACTED	REDACTED	REDACTED
Payroll	REDACTED	REDACTED	REDACTED	REDACTED
Escort	REDACTED	REDACTED	REDACTED	REDACTED
Barista	REDACTED	REDACTED	REDACTED	REDACTED

All commission rates are fixed for the duration of the Framework Agreement and for the length of any individual Call-Off Contract under the Framework.

### Assignment/Role Types

Many different categories of temporary admin, catering and/or manual assignments/roles will be required. This pricing schedule contains examples of the types of roles that *may* be required. These examples will be used as grades to which similar or equivalent roles will be matched by the Framework Public Body in consultation with the Contractor.

Contractors must understand that the assignments/roles and volumes will vary depending on the requirements of the individual Framework Public Body.

### Hourly Pay Rates

Hourly pay rates are not included as part of this Pricing Schedule. However, hourly pay rates must be discussed and agreed with the Framework Public Body for each individual assignment/role, taking into account all current employment legislation and in compliance where appropriate, with the Agency Workers Regulations 2010. Where overtime rates are paid as standard in an industry and the Framework Public Body agrees to pay overtime rates, the Contractor will be required to pay the overtime rate in line with buying organisation's policies for permanent workers.

### Living Wage

The Scottish Government is committed to supporting the Scottish Living Wage (currently set at £8.75 per hour) in its public sector pay policy for the duration of this parliament [2016-21]. The Agency Workers Regulations 2010 require equal pay for agency workers doing the same or similar work to that of permanent employees. Where public sector pay policy applies this means agency workers will be receiving an hourly rate of pay at or above the Scottish Living Wage. Framework Public Bodies that do not fall within the public sector pay policy remit will be required to consider their own position with regards to payment of the Scottish Living Wage.

### Transfer or Temp to Permanent Fees

The Authority does not view this Framework Agreement as a formal testing ground for potential staff employment. The Contractor must not give temporary workers or candidates any expectation that a temporary/interim assignment through this Framework Agreement will lead to employment with a Framework Public Body. However, it is recognised that the Contractor's temporary workers or candidates may seek employment with a Framework Public Body.

The Conduct of Employment Agencies and Employment Businesses Regulations 2003 govern when a transfer fee, also known as a 'temp to perm' fee can be charged. See paragraph 19. of Schedule 1 - Statement of Requirements for more details.

It is understood that the Conduct of Employment Agencies and Employment Businesses Regulations 2003 may not apply to all agency staff and that it is reasonable to expect a transfer fee in certain circumstances.

The Contractor can only charge a 'temp to perm' fee if all of the following apply:

- the contract with the client (e.g. Framework Public Body) gives them the option to extend the worker's assignment;
- the client (e.g. Framework Public Body) doesn't take the option to extend the assignment;
- the client (e.g. Framework Public Body) gives the worker a permanent job less than 8 weeks after the end of their initial assignment – or less than 14 weeks after it started if that is later.

If the temporary worker has had more than one assignment with the client (e.g. Framework Public Body) and there were more than 42 days between assignments, the later assignment is treated as if it is the first one.

Where applicable, the Call-Off Contract between the Contractor and the Framework Public Body must include all transfer fees and conditions and be in accordance with the formula for charging 'Temp to Perm' fees in this Pricing Schedule – see Table below.

ONE OFF PERCENTAGE FEE - % BASED ON FIRST YEAR'S BASIC ANNUAL SALARY FOR THE ASSIGNMENT/ROLE	REDACTED
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The formula is fixed for the duration of the Framework Agreement and all Call-Off Contracts awarded under this Framework Agreement.

This and the following 8 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd

## **SCHEDULE 3 – AWARD PROCEDURES**

### **3.1 Direct Award Ranked Solution or Mini Competition**

3.1.1 Call-off Contracts may be awarded under this Framework in one of two ways:

- by the direct award ranked solution, or
- by mini-competition (inviting all Framework Contractors).

3.1.2 Each Framework Public Body will decide on a case by case basis for each individual assignment, which award method (direct award ranked solution or mini competition), is likely to offer best overall value for money and achieve the desired result in terms of assignment fulfilment.

#### **Direct Award Ranked Solution**

3.1.3 Where the Framework Public Body's requirements are met in full by the terms set out in the Framework Agreement, and the direct award ranked solution is deemed most suitable, the Framework Public Body will go to the 1<sup>st</sup> ranked Framework Contractor in the first instance. If, for any reason, the 1<sup>st</sup> ranked Framework Contractor cannot meet the requirements at that time, the Framework Public Body will go to the 2<sup>nd</sup> ranked Framework Contractor, and so on. The following process should be followed:

3.1.3.1 The Framework Public Body shall complete Part A of the Order Form and send it to the 1<sup>st</sup> ranked Framework Contractor.

3.1.3.2 The Framework Public Body shall ensure that the date and time for the receipt of a response from the 1<sup>st</sup> ranked Framework Contractor takes into account factors such as the skill set required of the temporary worker and the time needed to send in a response.

3.1.3.3 If the 1<sup>st</sup> ranked Framework Contractor is able to supply the Services, they shall complete Part B of the Order Form and send it to the Framework Public Body on or before the last date for the receipt of the response. Framework Contractors who are unable to supply the Services being sought, must inform the Framework Public Body and provide the reasons as to their inability to supply.

3.1.3.4 On or after the last date for the receipt of the response, the Framework Public Body shall evaluate the response submitted by the 1<sup>st</sup> ranked Framework Contractor.

3.1.3.5 If only one CV is requested by the Framework Public Body, the Framework Public Body shall evaluate the proposal/CV submitted against the assignment skills, qualifications and/or requirements as set out in Part A of the Order Form. If the proposal/CV meets the requirements of the assignment, the Framework Public Body can proceed to enter into a Call-Off Contract with the 1<sup>st</sup> ranked Framework Contractor. Where the proposal/CV does not meet the assignment requirements, the Framework Public body may request additional CVs from the 1<sup>st</sup> ranked Framework Contractor or move to the 2<sup>nd</sup> ranked Framework Contractor, where the 1<sup>st</sup> ranked Framework Contractor is unable to provide additional CVs to meet requirements.

3.1.3.6 Where more than one CV is requested by the Framework Public from the 1<sup>st</sup> ranked Framework Contractor, the award criteria to be used must be made clear to the 1<sup>st</sup> ranked Framework Contractor in Part A of the Order Form and prior to receipt of the proposal/CV (e.g. details of the price/quality ratio to be used and how the CVs will be evaluated – see the process as described in paragraph 5.1.5.5 below).

3.1.3.7 As part of the evaluation process, the Framework Public Body must also provide timely, constructive feedback to each Framework Contractor for each unsuccessful candidate put forward for each assignment.

3.1.3.8 If the 1<sup>st</sup> ranked Framework Contractor is unable to supply the Services, the process as described above should be followed with the 2<sup>nd</sup> ranked Framework Contractor and so on.

### **Mini Competition Process (to include all Framework Contractors)**

3.1.4 Where not all of the terms are set out in the Framework Agreement, or for example where a skills/qualifications shortage for a particular assignment is considered likely, where skills/qualifications are specialist or niche, or where it is considered that competition between Framework Contractors may achieve best overall value for money, Framework Public Bodies may run a mini-competition amongst all Framework Contractors. Under a mini-competition process, the Call-Off Contract will be placed with the Framework Contractor who has submitted the most economically advantageous tender in accordance with the mini-competition award criteria. The award criteria to be used in the mini competition must be made clear to all Framework Contractors prior to the mini-competition (e.g. details of the price/quality ratio to be used and how the proposals/CVs will be evaluated).

3.1.5 When a mini competition amongst all of the Framework Contractors is undertaken, a Price/Quality Ratio must be set, e.g. Price 40%, Quality 60% (ratio to be decided by the Framework Public Body). The following rules will then apply to the competition between the Framework Contractors:

3.1.5.1 The Framework Public Body shall complete Part A of the Order Form and send it to all Framework Contractors.

3.1.5.2 The Framework Public Body shall ensure that the date and time for the receipt of responses from the Framework Contractors takes into account factors such as the skill set required of the temporary worker and the time needed to send in responses.

3.1.5.3 Each Framework Contractor able to supply the Services shall complete Part B of the Order Form and send it to the Framework Public Body on or before the last date for the receipt of responses. Framework Contractors who are unable to supply the Services being sought, must inform the Framework Public Body in a timely manner and provide the reasons as to their inability to supply.

3.1.5.4 On or after the last date for the receipt of responses, the Framework Public Body shall evaluate all responses submitted by the Framework Contractors and, by application of the evaluation criteria and the weightings specified in Part A of the Order Form, select a single Framework Contractor to supply the Services.

3.1.5.5 Analysis of proposals/CVs must follow the Price/Quality Ratio chosen and specific evaluation criteria detailed below:

- Quality - match with essential quality requirements (e.g. key skills, competencies, experience, relevant qualifications etc.) and any desirable qualities. (Weighting XX%)

- Price - proposed charge rate, to include a full breakdown (rate per hour/day, incl commission, excl. VAT,) (Weighting XX%)

The following criteria should be used to justify the scores awarded:

0 = Unacceptable. Candidate in no way meets requirements.

1 = Marginal. Candidate partially meets requirements.

2 = Acceptable. Candidate meets requirements.

3 = Exceeds. Candidate exceeds requirements.

4 = Exceptional. Candidate is exceptional and likely to add value.

3.1.5.6 The evaluation criteria allow for flexibility regarding the composition of percentage weightings allocated against the criteria shown above. The mini competition should be conducted on the basis of the criteria listed above and on the same, or, if necessary, more precisely formulated terms. Where a Framework Public Body wishes to introduce additional terms for evaluation, full details must be provided in the invitation document to Framework Contractors. The results of the Price/Quality ratio will reveal who has offered the most economically advantageous tender i.e. scoring the highest mark.

3.1.5.7 If required and as set out in Part A of the Order Form, the Framework Public Body may require to meet with proposed temporary workers. (NOTE: This is not a recruitment exercise and any meeting should not constitute a formal interview or incorporate any kind of test/assessment process. This is a contract for services with the Framework Contractor). Subject to the Framework Public Body notifying the successful Framework Contractor that their response has been accepted, the Service Contract shall be formed on the Commencement Date set out in the formal Purchase Order Form. The Framework Public Body shall give Notice of the name of the successful Framework Contractor to all other Framework Contractors in respect of whom a response was received.

3.1.5.8 The Framework Public Body shall at all times treat Framework Contractors equally and without discrimination and act in a transparent and proportionate manner. As part of the mini competition process, the Framework Public Body must also provide timely, constructive feedback to all Framework Contractors for each unsuccessful candidate put forward for each assignment.

3.1.6 Prior to using this Framework, Framework Public Bodies must contact the Framework Contractor contacts listed and arrange a meeting to discuss their individual organisational requirements prior to the first Call-Off Contract being placed. At these initial meetings Framework Public Bodies should advise the Framework Contractors of the following requirements for their own organisation:

- Typical Assignments/Roles;
- Timeframes of temporary staff requirements;
- HR policies, (including AWRs and living wage etc.);
- Security and Background check and Disclosure levels required;
- List of individuals who can place orders;
- Ordering procedures;
- Payroll and Invoicing procedures; and
- Management information required (type and frequency);
- Any other requirements, specific to their particular organisation.

This list is not exhaustive.

3.1.7 Framework Public Bodies and Framework Contractors should agree the following:

- Start date from when users will start placing Call-Off Contracts;
- Details of Account Manager within the Framework Contractor and the main contact within the Framework Public Body organisation; and
- Escalation procedures for both parties.

This list is not exhaustive.

### **3.2 Placing a formal Purchase Order (following the direct award ranked solution or mini competition process)**

3.2.1 The Framework Public Body shall issue a formal Purchase Order by electronic e-mail or electronic tender/order system (e.g. Public Contracts Scotland) to the Framework Contractor which:

3.2.1.1 states/details the Service requirements, including the Call-Off Contract value/prices;

3.2.1.2 includes details of the duration of the Call-Off Contract (Contract period) and any potential option to extend the Call-Off Contract (where an extension is considered likely);

3.2.1.3 includes the agreed notice period for termination of the Call-Off Contract;

3.2.1.4 incorporates or references the Framework Agreement Terms and Conditions, including Schedule 5 - Standard Terms of Supply (i.e. terms and conditions for the Call-Off Contract under this Framework Agreement).

3.2.1.5 incorporates any other Contract specific requirements.

3.2.2 The format of any such Purchase Order may vary between Framework Public Bodies. Framework Public Bodies may issue a formal Purchase Order through an electronic tender/order system or may use their own order templates.

3.2.3 A Call-Off Contract must be awarded prior to the expiry of the Framework Agreement. The period of a Call-Off Contract may continue notwithstanding that the Framework Agreement has expired or been terminated. However, Call-Off Contracts cannot be awarded after the expiry of the Framework Agreement.

### Schedule 3 – Annex B – Template Order Form

*[To be completed by the Framework Public Body with the temp/interim requirement. This template may be amended as appropriate in order to suit each Framework Public Body's organisational/formatting style].*

Your ref:

Our ref:

Date:

**FRAMEWORK AGREEMENT TITLE:** *(enter Framework Title here)*

Dear Sir/Madam

You are hereby invited by *[insert name of Framework Public Body]* to provide proposals (including CVs) for the provision of *[insert title of assignment]* detailed in Part A below, to be called-off from the Scottish Procurement Collaborative Framework Agreement for the provision of *[enter Framework Title here]*. You are required to provide proposals and accompanying CVs for up to *[insert the maximum number]* candidates. Award will be made on the basis of award criteria of *[X per cent]* Quality of Candidate and *[X per cent]* Price.

1. Your proposal must be in accordance with this letter and Part A & B attached.
2. It is your responsibility to obtain at your own expense any additional information necessary for the preparation of your proposal, and you will be responsible for any expenses incurred by you during the response process.
3. If your proposal does not comply with all the requirements of this letter it may not be considered.
4. The declaration included in this letter must be completed and submitted along with your proposal by *[insert time, day and date]*.
5. Enquiries regarding this request should be addressed to *[insert Framework Public Body's customer contact details]*.

Yours faithfully

*[Insert Framework Public Body Contact name, address, phone number and e-mail]*



**Part A - Statement of Requirements** (to be completed by the Framework Public Body with the temp/interim requirement).

Framework Public Body Name	
Date	
Contact Name (Hiring Line Manager)	
Contact Telephone Number (Hiring Line Manager)	
Contact E-mail Address (Hiring Line Manager)	
Ranked Solution or Mini Competition Process	<i>[Framework Public Body to confirm which process is being used]</i>
Criteria Weighting (e.g. 40 per cent cost, 60 per cent Quality of Candidate)	
Title of Assignment to be filled	
Assignment Description	
Quantity	<i>[for example, One temp/interim worker - as appropriate]</i>
Normal Place of Work	<i>[Location - address]</i>
Any Travel Required	<i>[Insert details of travel requirements, if applicable. In particular if travel by car is required]</i>
Essential Skills, Competences, Relevant Qualifications and previous Experience (where appropriate)	
Desirable Skills (where appropriate)	
Required Level of Security Clearance/ Background check	<i>[Each Framework Public Body must insert their own requirements]</i>
Call-Off Contract period/duration (including any optional extension where required)	<i>[for example, 01 May 2019 – 31 July 2019 with an option to extend for an additional 4 week period]</i>

Proposed date for meetings with temporary candidates (if applicable)	<i>[Insert proposed date when any meeting with temporary candidate is likely to take place and where – NOTE: <u>this is not a formal interview and should not be treated as such. No formal interview techniques or assessments/tests should be undertaken]</u></i>
Management Information requirements (where required)	<i>[Insert proposed management information required, format, frequency and date due]</i>
Invoicing procedures/requirements	<i>[Insert details of Framework Public Body's invoicing procedures/requirements, e.g. weekly in arrears, electronically, hard copy etc. ]</i>
HR procedures	<i>[Insert details of Framework Public Body's specific HR policies and procedures relevant to the assignment]</i>
Deadline for submission of responses (and CV's)	

**Part B: Framework Contractor Response** (To be completed by Framework Contractor(s) putting forward the temp/interim candidate(s))

Details	Framework Contractor Response		
Number of CV's enclosed			
Framework Contractor Contact Name			
Framework Contractor Contact Telephone Number			
Framework Contractor Contact e-mail address			
	Temporary Candidate A	Temporary Candidate B	Temporary Candidate C
Is the temporary candidate available to start on the date indicated in Part A?			
Is the temporary candidate available for the full duration of the temp/interim assignment as indicated in Part A?			
Does the temporary candidate match the appropriate skills, competences, experience and qualifications?			
Does the temporary candidate have the appropriate security clearance?			
State PAYE or Ltd Company Contractor			
Can the temporary candidate work at the normal place of work/location; and travel (where required) as indicated in Part A?			
Temporary Candidate Hourly Pay Rate (£)			
Hourly Pay Rate (£) – <b>a full breakdown is required</b>  Including Tax, National Insurance (NI), Working Time Regulation (WTR) Rate (£) and anything else as appropriate.			
Commission Rate per Hour (£) - in accordance with Framework Agreement rates			

<b>Total Hourly Charge Rate (excluding VAT) (£)</b>			
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In addition please see enclosed CV for each temporary candidate being put forward for the assignment. As a minimum, CV's should contain details in response to the essential and desirable criteria noted in Part A.

**Notes for Framework Contractors**

Where a mini competition between Framework Contractors is being undertaken, the Framework Public Body shall award the Call-Off Contract to the Framework Contractor which has submitted the most economically advantageous proposal, on the basis of the mini competition award criteria as stated in Part A.

**Declaration**

**I confirm that the proposal submitted for this Call-Off Contract requirement will be governed by the terms and conditions of the Scottish Procurement Collaborative Framework Agreement for the provision of Temporary Admin, Catering & Manual Staff Services – South Region.**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This and the following 3 pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd

## **SCHEDULE 4 – MANAGEMENT ARRANGEMENTS AND SERVICE LEVELS**

### **Management Information Requirements**

4.1 The Contractor shall maintain appropriate management information systems and will prepare and submit monthly reports to the Framework Public Bodies' Contract Manager. Such reports shall be tailored, in agreement with the Framework Public Bodies' Contract Manager, to show only information that is relevant to that particular Framework Public Body. A quarterly report which consolidates information for all Framework Public Bodies shall be submitted to the Authority's Strategic Contract Manager. Reports should be submitted to the Framework Public Bodies' Contract Manager within 14 working days of the end of each month. Such management information shall include, as a minimum, the following details:

- Organisation;
- Department;
- Framework Public Bodies' Contact;
- Named Assignment/Role
- Framework Public Bodies' Job Grade (if applicable);
- Start Date;
- End Date;
- Time in post;
- Hourly or Daily Pay Rate;
- Hours Worked;
- Cumulative Pay;
- Reason for temp/interim worker being used (e.g. maternity leave);
- Reason temp/interim worker left assignment
- Quantity of management complaints
- Reasons for management complaints
- Quantity of escalations
- Quantity and percentage of posts not filled within agreed Service Level Agreements (SLAs)
- Reasons for any failure to meet SLAs
- Detailed figures regarding Key Performance Indicators (explained in clause 4.13)

4.2 The Contractor will agree the exact content, format and style for the Management Information Report with the Authority during the mobilisation phase of this Agreement. However, the Framework Public Bodies may be allowed to add to this list of requirements and the Contractor will adjust content, format and style for the monthly reports as required and on request by the Framework Public Bodies' Contract Manager throughout the duration of this Framework Agreement.

4.3 The Framework Public Bodies may encourage the use of innovative practices, which may include but will not be restricted to, dashboard style reporting, security protected online management information systems, or processes which support sustainable development and the Scottish Ministers' 'Greener Scotland' strategic objective.

4.4 The Contractor is expected to work with the Authority and/or Framework Public Bodies, when required, to provide information relevant to Freedom of Information requests, Parliamentary Questions or Ministerial Correspondence.

4.5 At the end of each assignment, the Contractor will provide the Framework Public Bodies' line management with a standard exit report for completion on the performance of the Contractor's staff. The aspects covered by a standard exit report form shall be agreed between each Framework Public Bodies and the Contractor at the commencement of the Framework Agreement. The Contractor shall seek to ensure that exit reports are completed on all assignments and are returned to the Framework Public Bodies within one month of the end of the assignment. The Contractor should collate all exit reports, and be able to summarise key trends on a 6 monthly basis. Where recurring problems are identified earlier, the Contractor should inform the Framework

Public Bodies" Contract Manager and agree steps to resolve the matter Review meetings with the Authority's Strategic Contract Manager should focus on continuous improvements and the development of best practice across all Framework Public Bodies.

4.6 The Contractor will carry out a biannual survey of Framework Public Bodies' to gauge levels of satisfaction with the Framework Agreement. Survey findings should be shared with both Framework Public Bodies Contract Managers and the Authority's Strategic Contract Manager and should be used as a basis from which to ensure continuous improvement, address any concerns that are identified and highlight successes and best practice.

### **Complaints**

4.7 Complaints of any nature surrounding 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.

4.8 The Contractor shall operate a clear written protocol, as approved by the Authority, for handling complaints timeously and effectively.

### **Service Levels and Framework Management**

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

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

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

4.12 Regular (at least quarterly) meetings will be held between the Framework Public Bodies' Contract Manager and the Contractor's representative to review the performance of their contract(s) under this Framework Agreement against the agreed service levels as measured through Key Performance Indicators (KPIs). Quarterly reports will be provided by the Contractor to the Framework Public Bodies' Contract Manager at least 14 days prior to these meetings.

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

Service Criteria	Target
• Supply of security cleared temporary staff	97% within 48 hours of request
• Supply of security cleared temporary staff	100% within 5 working days of request
• Temporary Staff Suitability (have the skills to perform the required duties)	99% to be suitable for the work in any one month period (to be measured across all Framework Public Bodies)
• Provision of management reports	90% to be submitted within 14 working days of the month end
• Line management complaints (Complaints to be escalated and resolved as per agreed procedure)	97% of placements to have no complaint left unresolved (for whatsoever reason) over any one month period.
• Invoices presented on time, accurate and in the correct format (containing all required information)	99% of invoices to be accurate in any one month period (measured across all Framework Public Bodies)
• Complaints received regarding late arrival/non-attendance of temporary staff	97% of all assignments to have no complaints regarding late arrival/non-attendance (measured across all Framework Public Bodies)
• Prompt payment of sub-contractors and/or consortia members (if applicable). Maximum of 30 from receipt of payment from Framework Public Bodies, 10 days target.	100% within 30 days.

4.14 Performance against agreed service levels must be available for the Framework Agreement as a whole, but also broken down by Framework Public Bodies and geographic area.

### Supplier Relationship Management

4.15 Supplier Relationship Management (SRM) is a two-way process to continually improve the performance of both the buying organisation and the supply organisation and hence be mutually beneficial. It is not the same as, or intended to replace contract management. Supplier Relationship Management meetings will be held as is considered necessary. It is envisaged that this will be on an annual basis.

4.16 The Authority will chair an introductory Supplier Relationship Management meeting shortly after this Framework Agreement is awarded and representatives from the Contractor Senior Management Team will attend. This meeting will introduce the Contractor to the Authority's vision and definition of Supplier Relationship Management and a Supplier Relationship Management Strategy will be agreed. Further Supplier Relationship Management meetings will be chaired by the Authority and the Contractor's Senior Manager will attend. The Authority may choose to invite key customers to these meetings.

4.17 The Authority will gather the outputs from contract management to review under the five Supplier Relationship Management areas detailed in the table below.

Ref	Area	Description
1.	Relationship Management	Developing and managing relationships to support the delivery Supplier Relationship Management
2.	Performance & Risk Management	Developing, supporting and managing performance and risk of key supplier/s and the supply chain for continuous improvements
3.	Strategic Value Management	Communication, alignment and delivery of objectives that are strategic to the Authority and Collaborative Partners
4.	Capability & Efficiencies Management	Understanding the Contractor capability and seeking internal and external efficiencies

		through the streamlining of people, processes and/or systems
5.	Financial Value & Demand Management	Pricing data analysis, and cost segmentation (e.g. open book costing) and ensuring specifications represent what is “needed” rather than what is “wished for”

4.18 Outputs from Supplier Relationship Management will include minutes of discussion points and actions for the way forward to deliver continuous improvement.

### **Pricing/Invoicing/Order Placement Procedures**

4.19 Hourly or daily pay rates must be discussed and agreed with the Framework Public Body for each individual assignment, taking into account all current employment legislation and in compliance where appropriate, with the Agency Workers Regulations 2010, IR35 legislation etc. At Call-Off Contract stage, a full breakdown of the pay rate must be provided, including where appropriate Tax, National Insurance, Working Time Regulations and any other pay elements which make up the pay rate charged. Travel & Subsistence costs must not be included in the pay rate or overall charge rate. See Schedule 1 - Statement of Requirements for details on Travel & Subsistence where this is applicable. Where overtime rates are paid as standard in an industry and the Client agrees to pay overtime rates, suppliers will be required to pay the overtime rate in line with buying organisation's policies for permanent workers. Commission rates must be applied in accordance with the agreed commission rates for the Framework Agreement. Payment will be made for days on which the Contractor's Temporary Staff work for the Framework Public Bodies only.

4.20 The Contractor must have the ability to present invoices **either weekly or monthly in arrears** as per the requirement of each Framework Public Bodies. At the commencement of the Agreement, the Contractor will liaise with each Framework Public Bodies' Contract Manager to ascertain any specific requirements of their organisation. This may include, but is not limited to consolidated invoicing or invoicing by cost centre. Invoices must clearly identify the cost centre or purchase order number – where applicable – and show the name(s) of staff provided, days or hours charged as applicable, the rate(s) charged and the name of the individual that signed-off or authorised the individual's timesheet. The Framework Public Bodies shall not be responsible for any delay in payment of the invoice where the invoice does not contain the agreed information required by the Framework Public Bodies.

4.21 The Scottish public sector is implementing e-commerce solutions. Please refer to paragraph 23. eCommerce, of the Statement of Requirements at Schedule 1.

4.22 The Contractor is required to work with Framework Public Bodies and the Authority's Strategic Contract Manager in the promotion of process efficiencies. These could include but are not limited to: online ordering; electronic or web-based timesheets; electronic consolidated invoices; and other innovations suggested by the Contractor. However due to the nature of this collaborative framework, the Framework Public Bodies will be at different stages of automation. Accordingly, the Contractor should still be able to provide 'traditional' forms of communication, such as, order via telephone and facsimile, paper timesheets and invoices.



This and the following 15 pages comprise Schedule 5 to the Framework Agreement between the the Purchaser and Brightwork Ltd

## **SCHEDULE 5 – STANDARD TERMS OF SUPPLY**

### **PREAMBLE**

- ONE The Purchaser requires the supply of Temporary and/or Interim Staff Services as detailed in the Purchase Order.
- TWO These Standard Terms of Supply will govern all Call-Off Contracts awarded under this Framework Agreement, and in accordance with the call off procedures detailed in Schedule 3 of the Framework Agreement.

### **1. DEFINITIONS**

In these Conditions:

“Contract” means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these Conditions and other documents (or parts thereof) specified in the Purchase Order;

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

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

“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.

“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 all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Supplier;

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

“Premises” means the location where the Services are to be performed, as specified in the Purchase Order;

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

“Purchase Order” means the document setting out the Purchaser’s requirements for the Contract;

“Purchaser” means the framework public body calling of from the framework agreement.

‘Services’ means the services to be provided as specified in the Purchase Order

‘Supervisory Authority’ has the meaning given in the Data Protection Laws; and

“Supplier” means the person, firm or company to whom the Contract is issued.

## **2. CHANGE TO CONTRACT REQUIREMENTS**

- 2.1 The Purchaser may order any variation to any part of the Services that for any other reason shall in the Purchaser’s opinion be desirable
- 2.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 2.3 Where any such variation of the Services made in accordance with Condition 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Purchaser’s opinion, appropriate and reasonable in the circumstances.

## **3. INSPECTION OF PREMISES AND NATURE OF SERVICES**

- 3.1 The Supplier is deemed to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.
- 3.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

## **4. SECURITY AND ACCESS TO THE PURCHASER’S PREMISES**

- 4.1 Any access to the Purchaser’s premises which the Purchaser may grant the Supplier or representatives is 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.
- 4.2 The Supplier must comply with the Purchaser’s policies concerning Baseline Personnel Security Standard checks, or any such other security requirements as notified by the Purchaser in the Purchase Order.
- 4.3 The Supplier must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.
- 4.4 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.

- 4.5 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.
- 4.6 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.
- 4.7 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 opinion of the Purchaser acting reasonably, be undesirable.
- 4.8 The Purchaser must provide advice and assistance acting reasonably to the Supplier to facilitate the Supplier's compliance with this Condition.
- 4.9 All decisions of the Purchaser under this Condition are final and conclusive.
- 4.10 Breach of this Condition by the Supplier is a material breach for the purposes of condition 19.2 (Termination).

In this Condition 4 the following terms have the meanings given to them below:

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

'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 Condition 21 (Assignment and sub-contracting) or otherwise).

## **5. SUPPLIER'S STATUS & PUBLICITY**

- 5.1 In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:
  - 5.1.1 the Supplier shall not (and shall procure that the Supplier's agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser, and
  - 5.1.2 nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff or agents.
- 5.2 The Supplier must not make any press announcement or otherwise publicise the Contract in any way, except with the written consent of the Purchaser.

## **6. SUPPLIER'S PERSONNEL, EMPLOYEES AND REPRESENTATIVES**

- 6.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 6.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 6.3 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 6.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.
- 6.5 The Purchaser may by notice require the Supplier to disclose such information as the Purchaser may require relating to those of the Supplier's employees carrying out activities under or connected with the Contract.
- 6.6 The Supplier must disclose by notice all such information as is required by the Purchaser under clause 6.5, within such reasonable period specified by the Purchaser. The Supplier 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.
- 6.7 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.
- 6.8 The Supplier must ensure that all Supplier representatives:
- 6.8.1 are appropriately experienced, skilled, qualified and trained;
  - 6.8.2 carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and
  - 6.8.3 obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

## **7. NOT USED**

## **8. HEALTH AND SAFETY**

The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally. The Supplier shall indemnify the Purchaser and the Crown against all actions, suits,

claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

## **9. TIME OF PERFORMANCE**

The Supplier shall begin performing the Services on the date stated in the Purchase Order and shall complete the Services by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

## **10. PRICE & PAYMENT**

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

10.1.1 the price due in accordance with the Pricing Schedule and the Ordering Procedures;  
and

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

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

10.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.

10.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

10.5 Notwithstanding Condition 21 (Assignment and sub-contracting) of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 20 (Recovery of sums due) of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price 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 shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

## **11. FREE-ISSUE MATERIALS**

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier, or the Supplier's representative, such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's servants, agents or sub-contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

## **12. AUDIT**

- 12.1 The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.
- 12.2 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **13. CORRUPT GIFTS OR PAYMENTS**

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

## **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by 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 are hereby assigned to and shall vest in the Crown absolutely.
- 14.2 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.
- 14.3 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. The Supplier shall indemnify the Purchaser against all actions, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition 14.3.
- 14.4 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **15. INDEMNITY AND INSURANCE**

- 15.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall indemnify the Purchaser and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier.
- 15.2 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 Condition 28.11(c) of this Contract;

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

- 15.3 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 15.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser, the Crown or any servant or agent of the Crown) the indemnity contained in Condition 15.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser, the Crown or any servant or agent of the Crown.
- 15.4 The Supplier shall have in force and shall require any sub-Contractor to have in force:
- (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and
  - (b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.
- 15.5 The policy or policies of insurance referred to in Condition 15.4 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

## **16. 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.

## **17. 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 Condition is a material default which shall entitle the Purchaser to terminate the Contract

## **18. OFFICIAL SECRETS ACT, CONFIDENTIALITY, AND ACCESS TO GOVERNMENT INFORMATION**

- 18.1 The Supplier undertakes to abide and procure that the Supplier's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.
- 18.2 The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 18.3 All information related to the Contract will be treated as commercial in confidence by the parties except that:
- (a) The Supplier may disclose any information as required by law or judicial order to be disclosed.
  - (b) The Purchaser may disclose any information as required by law or judicial order to be disclosed. Further, the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract to the Scottish or 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 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, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Contract.

- 18.4 The provisions of this Condition 18 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **19. TERMINATION**

- 19.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or
- (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
- (c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

- 19.2 On the occurrence of any of the events described in Condition 19.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

- 19.3 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.

- 19.4 The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law.
- 19.5 In addition to the Purchaser's rights of termination under Condition 19.2, 19.3 and 19.4, the Purchaser shall be entitled to terminate this Contract by giving notice in writing in accordance with the period of notice set out in the Purchase Order.
- 19.6 Termination under Condition 19.2, 19.3, 19.4 or 19.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 12(Audit), 14 (Intellectual Property Rights), 18 (Official Secrets Acts, etc.), 27 (TUPE) and 28 (Data Protection).

## **20. TAX AND RECOVERY OF SUMS DUE**

- 20.1 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.
- 20.2 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.
- 20.3 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 20.1 and 20.2 above or why those clauses do not apply to it.
- 20.4 A request under sub-clause 20.3 above may specify the information which the Supplier must provide and the period within which that information must be provided.
- 20.5 The Purchaser may supply any information which it receives under clause 20 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.
- 20.6 The Supplier shall take all reasonable steps to ensure the observance of the provisions of this clause 20 by all of their servants, employees, agents, consultants and sub-contractors.
- 20.7 Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause 20 subject only to modification to refer to the correct designation of the equivalent party as the Supplier.

- 28.8 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract with the Purchaser.

## **21. ASSIGNATION, SUB-CONTRACTING AND CHANGE OF CONTROL**

- 21.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions.
- 21.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser immediately it is issued.
- 21.3 Where the Supplier enters into a sub-contract must ensure that a provision is included which:
- 21.3.1 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 Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the 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;
  - 21.3.2 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; and
  - 21.3.3 in the same terms as that set out in this Condition 21.3 (including for the avoidance of doubt this Condition 21.3.3) 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.
- 21.4 The Supplier shall also include in every sub-contract:
- 21.4.1 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 Condition 19.3 occur; and
  - 21.4.2 a requirement that the sub-contractor includes a provision having the same effect as 21.4.1 above in any sub-contract which it awards.

In this Condition 21.4, '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.

- 21.5 The Supplier must notify the Purchaser:
- 21.5.1 whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and
  - 21.5.2 immediately following a change of Control that has occurred.

## **22. NOTICES**

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, tele message facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

## **23. COMPLIANCE WITH THE LAW ETC.**

23.1 In providing the Services and otherwise when performing the Contract, the Supplier must comply in all respects with, and shall ensure that its agents, employees and representatives comply in all respects with:

23.1.1 all applicable law;

23.1.2 any applicable requirements of regulatory bodies; and

23.1.3 Good Industry Practice.

In this Condition, '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.

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

## **24. DISPUTE RESOLUTION**

24.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

24.2 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 good faith, 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.

24.3 Any arbitration under 24.2 is subject to the Arbitration (Scotland) Act 2010.

## **25. HEADINGS**

The headings to Conditions shall not affect their interpretation.

## **26. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the

taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

## **27. TUPE**

- 27.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Contract; (b) transfer to another supplier on the expiry of the Contract.
- 27.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:
- (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
  - (b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
  - (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
  - (d) details of pensions entitlements, if any.
- 27.3 The Supplier shall permit the Purchaser to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will cooperate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 27.4 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Condition.
- 27.5 In the event that the information provided by the Supplier in accordance with this Condition becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.
- 27.6 The provisions of this Condition 27 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **28. DATA PROTECTION**

- 28.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) may be Processed in connection with the Services under this 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.

- 28.2 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 Condition 28 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.
- 28.4 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 28.4 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.
- 28.5 The Supplier must:
- 28.5.1 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;
  - 28.5.2 subject to Condition 28.5.1 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;
  - 28.5.3 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
    - (a) are aware of and comply with the Supplier's duties under this Condition;
    - (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.
  - 28.5.4 implement appropriate technical and organisational measures 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.
- 28.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the 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.

- 28.7 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.
- 28.8 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. 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.
- 28.9 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.
- 28.10 At the end of the provision of Services relating to processing 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.
- 28.11 The Supplier must:
- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Condition 28;

- (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 Condition 28 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.
- 28.12 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
- 28.13 If requested, the Supplier must make such records referred to Condition 28.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 28.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 28.14 with minimum disruption to the Supplier's day to day business.

## **29. FREEDOM OF INFORMATION (FOISA)**

- 29.1 The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Purchaser to enable the Purchaser to comply with FOISA and the Environmental Information Regulations.
- 29.2 If the Service Provider receives a Request for Information the Service Provider must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Purchaser, the Service Provider must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.
- 29.3 Where the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 29.4 The Service Provider acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60 of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Service Provider or the Contract:
- 29.4.1 in certain circumstances without consulting the Service Provider, or
  - 29.4.2 following consultation with the Service Provider and having taken its views into account.
- 29.5 Where clause 29.4.1 applies the Purchaser must take reasonable steps, where practicable, to give the Service Provider advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Service Provider after such disclosure.

## **SCHEDULE 5.1 (Data Protection)**

***Note: Schedule 5.1 should be agreed and completed by the Framework Public Body (Purchaser) and the Supplier if any processing of personal data is required.***

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 Services:

### ***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 28 of the Contract.



This and the following 2 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd

## **SCHEDULE 6 – PARENT COMPANY GUARANTEE**

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

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

8.1 if delivered by hand; or

8.2 if sent by fax; or

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

8.4 if sent by email

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

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

9.6 For the purposes of this Clause 9:

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

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

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect

the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

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

At.....

On.....

Signature.....

Full name .....

Position .....

Address.....

.....

In the presence of .....

Signature.....

Full name .....

Address.....

.....

This page comprises Schedule 7 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd

**SCHEDULE 7 – TRANSPARENCY REPORTS AND CONTRACTOR SENSITIVE INFORMATION**

**Part 1- Transparency Reports**

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

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

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

**CONTRACTOR SENSITIVE INFORMATION**

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

This page comprises Schedule 8 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd

## **SCHEDULE 8 – EXIT STRATEGY**

### **1. Contract re-tender and re-negotiation**

The Contractor shall carry out services necessary to allow Authority to undertake the competitive re-bid of a Framework Agreement, or to take over the provision of the Services itself. These services cover:

The Provision of Temporary Admin, Catering & Manual Staff Services – South Region.

### **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 Expiry or 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 Brightwork Ltd

## **SCHEDULE 9 – DATA PROTECTION**

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

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

#### ***Subject matter and duration of the Processing of Personal Data***

The subject matter and duration of the Processing of Personal Data are:

[include description here]

#### ***The nature and purpose of the Processing of Personal Data***

[Include description here]

#### ***The types of Personal Data to be Processed***

[Include list of data types here]

#### ***The categories of Data Subject to whom Personal Data relates***

[Include categories of data subjects here]

#### ***The obligations and rights of the Authority***

The obligations and rights of the Authority as the Data Controller are set out in Clause 14 of the Framework Agreement.

This page comprises Schedule 10 to the Framework Agreement between the Scottish Ministers and Brightwork Ltd

**SCHEDULE 10 – APPROVED SUB-CONTRACTORS**

**approved Sub-contractors**

**Relevant obligations**

1. e.g. Subco Limited (SC123456)

e.g. high risk consultancy services

2.