

FRAMEWORK REFERENCE NUMBER SP-19-035

FRAMEWORK AGREEMENT

-between-

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

-and-

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

-relating to the supply of-

**POSTAL SERVICES – LOT 2 –HYBRID, SCHEDULED/REGULAR BULK (PRINT AND POST)
AND DIGITAL MAIL SERVICES**

-for the benefit of-

THE SCOTTISH MINISTERS AND OTHER PUBLIC BODIES

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PREAMBLE:

- ONE The Authority requires the supply of Services to Framework Public Bodies;
- TWO On 29 December 2020 the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number 2020/S 252-638090;
- THREE On 24 February 2021 the Contractor completed its ESPD;
- FOUR On 29 December 2020 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FIVE On 24 February 2021 the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Contractor Critiqom Ltd to supply the Services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- a Statement of Requirements setting out the Services that the Contractor has undertaken to provide , including Service Levels setting out particular levels of service that the Contractor has undertaken to meet;
 - a Pricing Schedule setting out details of the pricing of the Services;
 - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
 - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

SECTION A

1. Definitions and Interpretation

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

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

“Authority” means the Scottish Ministers, acting through _____ ;

“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 Critiqom Ltd, Document House, Phoenix Crescent, Bellshill, ML4 3NJ, company registration number SC160484;

“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 UK 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.

“Employee Liabilities” means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory, or supervisory body and of implementing any requirements which may arise from such investigation) including:

- claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and
- compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees.

“Employee Liability Information” has the meaning given in TUPE.

“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 24 February 2021.

“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 11 Schedules.

"Framework Public Bodies" The framework agreement will be available for use by the Scottish Ministers (including Agencies), Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross-border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, bodies registered as social landlords under the Housing (Scotland) Act 2001, Scottish health boards or special health boards, Student Loans Company Limited, the Commissioner of Northern Lighthouse operating as the Northern Lighthouse Board, Scottish Futures Trust, Equality and Human Rights Commission, Business Stream Ltd, the Business Gateway National Unit at the Convention of Scottish Local Authorities, further or higher education institutions being fundable bodies within the meaning of section 6 of the further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by one or more of the foregoing. In addition to the contracting authorities listed, the framework agreement will be available to charities entered on the Scottish Charity Register and voluntary organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

Information about agencies of the Scottish Ministers, Scottish Non-Departmental Public Bodies and offices in the Scottish Administration which are not ministerial offices are listed at

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

Overview of the governance structure of public procurement for Scotland, including the Public Procurement Group.

<https://www.gov.scot/publications/public-procurement-governance/>

"Framework Contractors" means the Contractor.....

UK GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

"Incoming Employees" means individuals whose employment transfers to the Contractor on the commencement of the provision of the Services by operation of TUPE.

"Information Commissioner" means the Commissioner as set out in Part 5 of the Data Protection Act 2018.

“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 29 December 2020.

“Law” means (a) any applicable statute or proclamation or any delegated or subordinate legislation;

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

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

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

(e) any requirements of any regulatory body,

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

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

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

“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.

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

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

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

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

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

“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;

“Staffing Information” means such information as the Authority may request in an anonymised format or otherwise including:

- ages;
- dates of commencement of employment or engagement;
- gender;
- job or role descriptions and objectives of role;
- details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- the identity of the employer or relevant contracting party;
- their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;
- their wages, salaries and profit sharing arrangements as applicable;
- details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

- copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- any other Employee Liability Information.

“**Tender**” means the tender submitted by the Contractor to the Authority in response to the ITT dated 24 February 2021.

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

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

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

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

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

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

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

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

2. Condition Precedent: Requirement for Parent Company Guarantee

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

3. Nature of this Agreement

- 3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.
- 3.2. This Agreement is a single-supplier framework agreement and the contractor that is party to it is the Contractor. No other contractors are party to the Framework Agreement.
- 3.3. This Agreement is a multi-user framework agreement and the public bodies that are party to it are the Framework Public Bodies. No other public bodies are party to the Framework Agreement.
- 3.4. Save to the extent specifically provided for in this Agreement, the Contractor acknowledges that it is not the exclusive supplier of the 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 1 July 2021 (the "Commencement Date") to and including 30 June 2025 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 and Service Levels

- 6.1. 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.
- 6.2. The Contractor shall comply with Schedule 11 (Cyber Security Requirements).

7. Price

- 7.1. The Pricing Schedule sets out details of the pricing of the Services as at the Commencement Date. Prices are in £ pounds sterling and exclusive of VAT.
- 7.2. The Prices in Schedule 2 shall be the total Maximum Price for the stated Services i.e. to include any and all costs, overheads, setting up costs, account management, transport, central costs, technology, reporting, billing and profit. The list is not exhaustive.
- 7.3. The prices contained within the Pricing Schedule are fixed from commencement until the date at which the Royal Mail Access price increase takes effect. The Total Price per Item charged to Framework Public Bodies will be made up of two elements: "Access Price" and "Non Access Price". Any new price increase, following the price review, shall not exceed the published Royal Mail prices for the Access Price element of the pricing and shall not exceed the percentage increase or decrease in the most recent annual change in the Consumer Price Index (CPI) at the time of the Price Review and as published by the Office for National Statistics, for the Non Access Price Element of the pricing.
- 7.4. The Contractor may not unilaterally increase the prices in the Pricing Schedule, but nothing in the Framework Agreement/Call off Contract prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a particular Order.
- 7.5. For the duration of the Framework Agreement:
- The limits applied to qualify for high volume discounts will not increase;
 - Volume discounts will not be reduced but can be improved upon;
- 7.6. If at any time the Contractor is required by Law to vary the prices in the Pricing Schedule then the Contractor will provide [thirty days] written notice to the Authority, confirming the date on which the price changes will take effect. This clause is subject to the following conditions :
- 7.6.1. The price increase must be as a result of a determination by a Regulator and must be as a result of a change in wholesale prices or upstream costs; and
- 7.6.2. The notice of any price increase must include full disclosure of the determination; and
- 7.6.3. The Contractor must warrant that the revised prices are compatible with any obligations under the Competition Act 1998; and
- 7.6.4. The Authority reserves the right to terminate the framework agreement in accordance with clause 5 Break in the event of a price increase. Such termination will be subject to 3 months written notice of termination.
- 7.7. The price increase will take effect from the day after the expiry of the (thirty days) written notification of the price increase as referred to in clause 7.6 above.
- 7.8. Where it is found that the price increase was not as a result of a determination of a Regulator, the Authority exercises the option to break in accordance with 7.6.4, the Contractor will indemnify the Authority in respect of all costs associated of any reprocurement.

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:

The Scottish Government
Scottish Procurement and Property Directorate
150 Broomielaw, 5 Atlantic Quay
Glasgow
G2 8LU
Contact:

12.3.2. For the Contractor:

Critiqom Ltd
Document House
Phoenix Crescent
Bellshill
ML4 3NJ
Contact:

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

13. Recovery of Sums Due

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

14. Data Protection

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

- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Framework Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Parties under Data Protection Laws and the Parties agree to comply with those obligations and duties.
- 14.3. The Parties acknowledge that the Contractor may Process Personal Data in delivery of Services under a Call-off Contract under this Framework Agreement. For the purposes of any such Processing, Parties agree that the Contractor acts as the Data Processor and the Authority acts as the Data Controller.
- 14.4. The Contractor will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Contractor should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Transparency and Freedom of Information

- 15.1 The Contractor acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations. The Contractor shall:
- (a) provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that the Contractor receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request For Information and which is in the Contractor's possession or control. The information must be provided within 5 Working Days (or such other period as the Authority may reasonably specify) in the form that the Authority requires.
- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 15.2 If the Request for Information appears to be directed to information held by the Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.
- 15.3 If the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4 The Contractor acknowledges that the Authority may, acting in accordance with the Authority's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Framework Agreement:

- 15.4.1 in certain circumstances without consulting the Contractor, or
- 15.4.2 following consultation with the Contractor and having taken its views into account.
- 15.5 Where 15.4.1 applies the Authority must take reasonable steps, if practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 15.6 Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Authority must take reasonable steps, where practicable, to consult with the Contractor before disclosing it pursuant to a Request for Information.
- 15.7 The Contractor acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Contractor Sensitive Information. However, if the Authority believes that publication of any element of the Transparency Information should be treated as Contractor Sensitive Information the Authority may, in its discretion exclude such information from publication.
- 15.8 Notwithstanding any other provision of this Agreement, the Contractor hereby gives consent for the Authority to publish to the general public, the Transparency Information in its entirety. The Authority shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15.9 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information including the preparation of Transparency Reports.
- 15.10 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Contractor.
- 15.11 The Contractor agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Authority may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information, (subject to clause 17.3.3) publish such Information. The Contractor shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

16. Authority Protected Information

16.1. The Contractor must:

- 16.1.1. treat all Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;
- 16.1.2. only use the Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;
- 16.1.3. only disclose the Authority Protected Information to such Contractor Representatives that are directly involved in the performance of the Framework Agreement and need to know the information; and
- 16.1.4. not disclose any Authority Protected Information without the prior written consent of the Authority.

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

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

- 16.3.1. disclosure is required by law or by order of any competent court or tribunal;
- 16.3.2. information is in the possession of the Contractor without restriction as to its disclosure prior to its disclosure by the Authority;
- 16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- 16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
- 16.3.5. information is independently developed without access to the Authority Protected Information.

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

17. Contractor Sensitive Information

17.1. The Authority must:

- 17.1.1. treat all Contractor Sensitive Information as confidential and safeguard it accordingly; and
- 17.1.2. not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.

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

- 17.2.1. disclosure is required by law or by order of any competent court or tribunal;
- 17.2.2. information is in the possession of the Authority without restriction as to its disclosure prior to its disclosure by the Contractor;
- 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;

- 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
 - 17.2.5. information is independently developed without access to the Contractor Sensitive Information.
- 17.3. Nothing in this Framework Agreement prevents the Authority from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Framework Agreement:
- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, contractor or other person engaged by the Authority, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a Member of the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Framework Agreement; or
 - 17.3.8. for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 17.4. The Contractor consents to the publication of the Framework Agreement by the Authority, subject to such redactions as the Authority may decide to make. The Authority may consult with the Contractor to inform its decisions concerning redaction (for example to exclude any Contractor Sensitive Information) but any decisions taken by the Authority are final and conclusive.

18. Audit

- 18.1. The Contractor must retain and maintain until 5 years after the end of the Framework Agreement period full and accurate records of the Framework Agreement including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.2. The Contractor must on request, and without any charge to the Authority, afford the Authority, or the Authority's representatives, such access to those records as may reasonably be requested by the Authority in connection with the Framework Agreement.

19. Publicity

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

SECTION C

20. Key Individuals

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

21. Offers of Employment

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

22. Staff transfer at commencement

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

- 22.3. The Contractor indemnifies the transferor (as defined in TUPE) against all Employee 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 at any time by notice require the Contractor to disclose such information as the Authority may require to the Authority or at the direction of the Authority to any prospective Replacement Contractor relating to the manner in which the Services are organised or information about any employee who is wholly or mainly assigned to carrying out activities in provision of the Services whether employed by the Contractor or Affiliate of the Contractor or a sub-contractor ("**Assigned Employee**"). The information required by the Authority about Assigned Employees may include Employee Liability Information and/or Staffing Information.
- 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.
- 23.3. The Contractor warrants for the benefit of the Authority and any Replacement Contractor that all information provided pursuant to this clause shall be true and accurate in all material respects at the time of providing the information. The Authority may at any time require the Contractor to confirm whether information provided under this clause remains true and accurate in all material respects or ask it to provide updated information.
- 23.4. The Authority shall be permitted to use and disclose the information provided by the Contractor under this clause for the purpose of informing any prospective Replacement Contractor.

24. Staff transfer on expiry or termination

- 24.1. The Parties agree that the ceasing of the provision of the Services by the Contractor does not involve a Relevant Transfer.
- 24.2. The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 24.3. The Contractor shall comply and shall procure that each Affiliate of the Contractor and each sub-contractor shall comply with all of its obligations under TUPE and shall perform and discharge and procure that each Affiliate of the Contractor and each sub-contractor shall perform and discharge all its obligations in respect of all the Outgoing Employees arising in respect of the period up to (and including) the date of the Relevant Transfer.
- 24.4. The Contractor indemnifies the Authority and any Replacement Contractor against any and all Employee Liabilities which the Authority or any Replacement Contractor may suffer as a result of or in connection with:
- 24.4.1. the provision of information pursuant to clause 23;
 - 24.4.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) and whether made before, on or after the date of the Relevant Transfer arising directly or indirectly from any act, fault or omission of the Contractor or any Affiliate of the Contractor or any sub-contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 24.4.3. any failure by the Contractor or any Affiliate of the Contractor or any sub-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;

- 24.4.4. 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 Contractor or any Affiliate of the Contractor or any sub-contractor to comply with any legal obligation to such trade union, body or person;
- 24.4.5. any act or omission of the Contractor or any Affiliate of the Contractor or any sub-contractor whether occurring before, on or after the date of the Relevant Transfer or any other matter, event or circumstance occurring or having its origin on or before the date of the Relevant Transfer;
- 24.4.6. the breach or non-observance by the Contractor or any Affiliate of the Contractor or any sub-contractor occurring on or before the date of the Relevant Transfer of any collective agreement applicable to the Outgoing Employees or any custom or practice in respect of any Outgoing Employees that a Replacement Contractor is contractually obliged to honour;
- 24.4.7. any claim made by or in respect of any person employed by the Contractor or any Affiliate of the Contractor or any sub-contractor other than an Outgoing Employee for whom it is alleged the Authority or a Replacement Contractor may be liable by virtue of this Framework Agreement or TUPE.
- 24.5. 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).
- 24.6. 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 24.5.
- 24.7. The Contractor shall and shall procure that each Affiliate of the Contractor and each sub-contractor shall promptly provide to the Authority and any Replacement Contractor in writing such information as is necessary to enable the Authority and/or the Replacement Contractor to carry out their respective duties under regulation 13 of TUPE as the case may be.
- 24.8. The Contractor shall provide and shall procure that each Affiliate of the Contractor and each sub-contractor shall provide all reasonable co-operation and assistance to the Authority and any Replacement Contractor to ensure the smooth transfer of the Outgoing Employees including without prejudice to the foregoing generality providing sufficient information in advance of the date of the Relevant Transfer to ensure that all necessary payroll arrangements can be made to enable the Outgoing Employees to be paid as appropriate.
- 24.9. The Contractor warrants to the Authority that during the period of 6 months immediately prior to the expiry of the Framework Agreement it will not (and will ensure that any Affiliate of the Contractor and any sub-contractor will not) without the prior consent of the Authority:
- increase the total employment costs of the Assigned Employees in any material way;
 - amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including for the avoidance of doubt pay) of any Assigned Employee other than where such amendment or variation has previously

been agreed in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services;

- terminate or give notice to terminate the employment or engagement of any Assigned Employee other than in circumstances in which the termination is for reasons of misconduct or lack of capability;
- transfer away, remove, reduce or vary the involvement of any of the Assigned Employees from or in the provision of the Services other than where such transfer or removal:
 - was planned as part of the individual's career development;
 - takes place in the normal course of business; and
 - will not have any adverse impact upon the delivery of the Services by the Contractor provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services.
- recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services 6 months prior to the expiry of the Framework Agreement.

25. Security

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

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

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 all Intellectual Property Rights referred to in clause 27.1 above (Specially Created Intellectual Property Rights).
- 28.3. The Contractor must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Framework Agreement grants to the Authority a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Authority an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

29. Claims relating to Intellectual Property Rights

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

30. Assignment and Change of Control

- 30.1. The Contractor may not assign its interest in the Framework Agreement without the prior written consent of the Authority.
- 30.2. The Contractor must notify the Authority:
 - 30.2.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur;
 - 30.2.2. immediately following a change of Control that has occurred; and
 - 30.2.3. where it proposes to make any change to its sub-contractor named by the Contractor in its tender.
- 30.3. Subject to clause 30.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:
 - (a) any Contracting Authority; or

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

31. Sub-Contracting

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

respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;

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

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

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

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

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

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

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

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

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

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

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

32. **Amendment**

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

SECTION E

33. Warranties and Representations

The Contractor warrants and represents that:

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

34. Indemnity

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

35. Limitation of Liability

- 35.1. Neither Party is liable to the other Party under the Framework Agreement for any:
 - 35.1.1. loss of profits, business, revenue or goodwill; or
 - 35.1.2. indirect or consequential loss or damage.

- 35.2. But clause 35.1 does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Contractor.
- 35.3. The liability of either Party under the Framework Agreement for Defaults is limited to £1 million for any one 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.

36. Insurances

- 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.
 - 36.1.2. professional indemnity insurance in the sum of not less than £1 million; 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 6 months, either Party may terminate the Framework Agreement with immediate effect by notice.
- 40.2. Any delay or other failure by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by a Contractor Representative is only to be regarded as due to Force Majeure if that Contractor Representative is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 40.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 40.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 40.4. The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events.

41. Disruption

- 41.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.
- 41.2. The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Framework Agreement.
- 41.3. In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Framework Agreement.

41.4 If the Contractor's proposals referred to in clause 41.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Authority may by notice terminate the Framework Agreement with immediate effect.

42. Termination Rights

42.1. The Authority may terminate the Contractor's interest in the Framework Agreement by notice to the Contractor with immediate effect if the Contractor commits a Default and if:

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

42.1.2. the Default is not in the opinion of the Authority, capable of remedy; or

42.1.3. the Default is a material breach of the Framework Agreement.

42.2. The Authority may also terminate the Contractor's interest in the Framework Agreement:

42.2.1. in accordance with any provision of the Schedules;

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

42.2.2.1. entering, attending or occupying the Authority's premises;

42.2.2.2. making use of the Authority's property or information technology systems, or giving the Authority the use of the Contractor's property or information technology systems;

42.2.2.3. having dealings with the Authority's employees, Contractors, suppliers or contractors;

42.2.2.4. soliciting the Authority's employees;

42.2.2.5. making representations or giving professional advice to the Authority;

42.2.2.6. generating information for or giving information to the Authority;

42.2.2.7. receiving information from or holding information on behalf of the Authority; and

42.2.2.8. carrying out publicity or marketing activities;

42.2.3. where a Call-off Contract with the Contractor under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.

42.2.4. where, at any time before the term of the Framework Agreement, the Contractor or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that regulation.

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

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

(a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9)

(modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

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

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

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

43. Termination on Insolvency and Change of Control

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

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

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

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

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

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

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

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

43.1.8. a debt relief order is entered into; or

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

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

- 43.2.1. being notified that a change of Control has occurred in accordance with clause 30 (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);
 - 50.4.10. clause 19 (Publicity);
 - 50.4.11. clause 21 (Offers of Employment);
 - 50.4.12. clause 23 (Information about Contractor Employees);
 - 50.4.13. clause 26 (Parties pre-existing Intellectual Property Rights);
 - 50.4.14. clause 27 (Specially created Intellectual Property Rights);
 - 50.4.15. clause 28 (Licences of Intellectual Property Rights);
 - 50.4.16. clause 29 (Claims relating to Intellectual Property Rights);
 - 50.4.17. clause 33 (Warranties and Representations);
 - 50.4.18. clause 34 (Indemnity);
 - 50.4.19. clause 37 (Dispute Resolution Procedure);
 - 50.4.20. clause 39 (Waiver and Cumulative Remedies);
 - 50.4.21. clause 47 (Tax arrangements);
 - 50.4.22. this clause 50 (Consequences of Termination); and
 - 50.4.23. clause 52 (Governing Law and Jurisdiction).
- 50.5. Immediately upon termination of the Framework Agreement for any reason whatsoever the Contractor shall render such reasonable assistance to the Authority or third party nominated by the Authority, if requested, as may be necessary to effect an orderly

assumption by a Replacement Contractor of the Services previously performed by the Contractor under the Framework Agreement. The Contractor shall be entitled to charge for such termination services in accordance with the amount of costs, damage and loss incurred or suffered by the Authority as a result of termination which may be recovered by the Authority from the Contractor and shall include (but not be restricted to):

- 50.5.1 any additional operational and administrative costs and expenses incurred by the Authority by virtue of such termination of the Framework Agreement;
 - 50.5.2 the costs and expenses incurred by the Authority in providing, or procuring that another body provide the Framework Agreement Services on a Temporary basis until the completion of a re-tendering process; and
 - 50.5.3 the costs and expenses incurred by or on behalf of the Authority in performing the re-tendering process.
- 50.6. On expiry or termination of the Framework Agreement the Contractor must:
- 51.6.1 immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and
 - 51.6.2 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 35 preceding pages together with the 5 Schedules annexed hereto are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of Critiqom Ltd

At.....

At.....

On.....

On.....

Signature.....

Signature

Full name

Full name.....

Position

Position.....

Address.....

Address.....

In the presence of

In the presence of

Signature.....

Signature.....

Full name

Full name.....

Address.....

Address.....

This and the following 19 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and Critiqom Ltd

SCHEDULE 1 – STATEMENT OF REQUIREMENTS AND SERVICE LEVELS

GLOSSARY OF TERMS

“Account Manager” – 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 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

“The Authority” – The Authority refers to the Scottish Ministers (as represented by Scottish Procurement). The Authority will be responsible for the formulation and approval of the tender documents, award decisions and will act on behalf of the Framework Public Bodies on all matters of strategic framework management. The Strategic Framework Manager will take receipt of consolidated management information, and will facilitate framework review meetings with the Contractor’s Account Manager. They will monitor agreed service levels, ensure the satisfactory resolution of any strategic contractual disputes or complaints and will work on an on-going basis with the Framework Public Bodies’ Contract Manager to confirm that consistent levels of service are delivered.

“Scottish Procurement” – Scottish Procurement is responsible for facilitating User Intelligence Groups (UIGs) and collaborative procurement exercises for goods and services classified following the review of public procurement in Scotland ([McClelland Report](#)).

“Framework Public Body/Bodies” – The Framework Agreement will be available for use by the public bodies as listed in paragraph 1.5 (Overview of Requirements)

“Framework Public Body’s Contract Manager” – The individual who takes operational responsibility for the day-to-day management of the Contract; typically a Manager within the Framework Public Body’s organisation. The Framework Public Body’s Contract Manager – or nominated individual – will liaise directly with Contractor(s) for all Postal Services including local management information. They will work with the Strategic Framework Manager and Framework Public Bodies across the Scottish Public Sector to monitor overall customer satisfaction, continuous improvement and development of best practice.

“User Intelligence Group (UIG)” – Within the McClelland Report it was recommended that organisations establish UIG’s to help co-ordinate requirements and specifications so that procurement functions can rationalise the content of tenders and contracts to obtain best value. The UIG provides feedback to procurement on the services provided to the wider internal user community.

1 Overview of Requirements

- 1.1 Lot 2 of this Framework Agreement is for the provision of Hybrid, Scheduled Regular/Bulk (Print & Post) and Digital Mail services.
- 1.2 Framework Public Bodies reserve the right to choose to utilise some or all of the services provided in this Lot 2.
- 1.3 The Contractor will be expected not only to meet the requirements established within this Statement of Requirements but also to ensure the delivery of a high quality service to the Framework Public Bodies using this Framework. The Contractor will be expected to demonstrate that value received by the Framework Public Bodies is significantly and demonstrably greater than could be achieved by going elsewhere.
- 1.4 This Framework Agreement is aligned to the Scottish Government's National Performance Framework and National Outcomes, which articulate the Government's Purpose 'To focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth'.

<https://nationalperformance.gov.scot/>

- 1.5 The Framework Agreement will be available for use by the Scottish Ministers (including Agencies), Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross-border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, bodies registered as social landlords under the Housing (Scotland) Act 2001, Scottish health boards or special health boards, Student Loans Company Limited, the Commissioner of Northern Lighthouse operating as the Northern Lighthouse Board, Scottish Futures Trust, Equality and Human Rights Commission, Business Stream Ltd, the Business Gateway National Unit at the Convention of Scottish Local Authorities, further or higher education institutions being fundable bodies within the meaning of section 6 of the Further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by one or more of the foregoing. In addition to the contracting authorities listed, the Framework Agreement will be available to charities entered on the Scottish Charity Register and voluntary organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

Information about agencies of the Scottish Ministers, Scottish Non-Departmental Public Bodies and offices in the Scottish Administration which are not ministerial offices are listed at:

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

Overview of the governance structure of public procurement for Scotland, including the Public Procurement Group:

<https://www.gov.scot/publications/public-procurement-governance/>

- 1.6 The Framework Agreement will be managed centrally by the Scottish Procurement and Property Directorate (SPPD) on behalf of the Authority.

- 1.7 The purpose of this Schedule 1 - Statement of Requirements (SOR) is to provide a description of the Services that the Contractor shall be required to deliver to Framework Public Bodies under this Framework Agreement.
- 1.8 Any Services listed within this Schedule, but not listed in Framework Agreement Schedule 2 – Pricing Schedule, shall be provided free of charge.

2 Period of Framework

- 2.1 The Framework Agreement duration is for a period of 4 years or until it is sooner terminated by the Scottish Ministers.
- 2.2 The Framework Public Body reserves the right, if the Contractor is unable to fulfil its obligations under the Contract, to make a separate Contract(s) for the services specified and to reclaim any additional costs incurred.

3 Commencement of Full Operations

- 3.1 The Contractor will spend the time between the award date and the commencement date working with Framework Public Bodies to establish the necessary systems and processes. See paragraph 6 Implementation below.

4 Legislative Requirements

- 4.1 The Contractor shall assist the Authority and Framework Public Bodies in meeting their obligations in respect of any legislative requirements including but not limited to Equality Act 2010, Corporate Manslaughter Act and any other legislation which may be in force from time to time.

5 Use of Framework

- 5.1 The services shall be provided to the Authority, the Framework Public Bodies and other nominated individuals such as Consultants working on behalf of the Authority and the Framework Public Bodies.
- 5.2 The Contractor should note that the Framework/Contract(s) for all the Services are purely for business use. Under no circumstances should the employees of the Authority or Framework Public Bodies or other nominated individuals authorised by the Authority and/or the Framework Public Bodies utilise the services for private use, unless stipulated otherwise by the Framework Public Body.
- 5.3 Business use will include the purchase of Services which is paid for by the Framework Public Body.

6 Implementation

- 6.1 The Contractor shall:
 - 6.1.1 Provide and manage an implementation plan detailing all aspects of the Services. The Contractor's implementation plan shall include all main activities and timescales required for a successful implementation including:
 - Mobilisation, liaison and communication;
 - Project plan & implementation proposals;
 - Assessing & monitoring success;
 - Systems integration;
 - Capacity to gear up for Contract start.

- 6.1.2 Inform the Authority and Framework Public Body immediately if there are any actual or anticipated delays which are likely to threaten implementation on the agreed date.
- 6.1.3 Provide and manage a communications plan that shall be used throughout the implementation project, identifying the personnel, tools and key milestones involved including interaction with the Framework Public Body on a local/national/regional/global level maximising buy-in.
- 6.1.4 Provide information on any potential challenges with regard to labour law requirements relevant to this Framework/Contract.

7 Framework Operating Procedures

- 7.1 Contracts awarded under this Framework Agreement will be made by direct award.
- 7.2 The Contractor will not be guaranteed any business, and neither the Contractor nor any individual member of the Contractor's organisation/staff will be sole supplier of postal services to the Scottish Ministers. In particular, Scottish Ministers reserve the right to appoint services from outwith the Framework, in the event that they consider that sufficient or suitable expertise is not available from suppliers appointed to the Framework. In such circumstances, Framework Public Bodies will be required to undertake a separate procurement exercise in accordance and compliance with their own organisation's procurement and competition guidance and policies.
- 7.3 The Contractor will (unless advised otherwise) receive instructions directly from the Framework Public Bodies who choose to use the Framework Agreement, and will provide services directly to that Framework Public Body.

8 Scope of Requirements

- 8.1 The Authority requires the Contractor to provide comprehensive Postal Services to fulfil the current and evolving needs of the Framework Public Bodies.
- 8.2 There will be no minimum quantities applied for Framework Public Bodies who wish to access this Framework Agreement.
- 8.3 Framework Public Bodies that use the services being provided will require various electronic and digital postal services. These may reduce or increase in the duration of the Contract.
- 8.4 The Contractor will provide Framework Public Bodies with cost centre billing. The number of cost centres will vary for each Framework Public Body.
- 8.5 From the day of collection i.e. 'Day 1' (at or before the latest acceptance time) the Contractor will provide a service to Mainland Scotland to ensure delivery of mail on 'Day 2'. The service applies to all working days including Saturdays.
- 8.6 From the day of collection i.e. 'Day 1' (at or before the latest acceptance time) the Contractor will provide a service to all UK postcodes to ensure delivery of mail on either 'Day 3' or 'Day 4'. The service applies to all working days including Saturdays
- 8.7 As a minimum, 'Mainland Scotland' includes the following Postcode Areas – EH, TD, FK, KY, DD, PH, G, PA, ML, KA.
- 8.8 It is understood that the action of final delivery may be undertaken by a third party organisation. Management of this activity, however, will be the responsibility of the Contractor as a seamless desk to door process.
- 8.9 All envelopes utilised must be able to include a return address if requested by the Framework Public Body.

- 8.10 The Contractor shall identify areas open to improvement, report and regularly update the Framework Public Bodies on all areas.
- 8.11 The Contractor must be able to make use of barcode technology such as creating barcodes on relevant documentation and any follow up notices. The barcode must be readable. For example by Post Offices, PayPoints and Payzones.
- 8.12 Lot 2 - Hybrid Mail
- 8.12.1 The Contractor shall provide an off site hybrid mail service via a web-based or cloud hosted solution allowing a fully digital process up to the point of print.
- 8.12.2 The Contractor shall work with Framework Public Bodies (via their dedicated Account Manager – see paragraph 18.2) to understand their existing equipment and processes and provide innovative proposals to improve the solution offered.
- 8.12.3 The Contractor's solution must be capable of accommodating the requirements of the Framework Public Body.
- 8.12.4 Unless otherwise stipulated by the Framework Public Body during their call-off process, the Contractor must use products that meet the following criteria:
- Envelopes supplied for mailing systems that are manufactured from at least 60% recycled content and of the remaining content, any virgin fibre shall be sourced from a sustainably managed forest.
 - Protective (padded) envelopes non plastic type that are manufactured from 100% recycled filler materials.
 - Copier paper that is manufactured from 100% recycled material content.
 - Copier paper that is unbleached, totally chlorine-free (TCF) or elementary chlorine-free (ECF).
- 8.12.5 It is recognised that the solutions will vary and that whilst some solutions will be web-based solutions, others will require the provision of supporting software. Any such software or drivers should be tested and comply with the Framework Public Body's existing infrastructure, The proposals offered must comply with the Framework Public Body's data and cyber security requirements. Please follow the links which provide UK and Scottish Government guidance and details on cyber essentials:
[UK Government Overview of Cyber Essentials](#)
[A Cyber Resilience Strategy for Scotland](#)
- 8.12.6 Standard solutions will be supplied by the Contractor free of charge to the Framework Public Body. Where a Framework Public Body's IT system is not compatible with the standard solution the Contractor must highlight any additional costs for approval prior to any implementation.
- 8.12.7 The Contractor shall provide the Framework Public Body with full support, training and maintenance during the implementation to the solution and provide on-going support for the duration of the Contract agreement.
- 8.12.8 The solution will offer the flexibility to add new letter templates or amend old letter templates easily as and when required and at no extra cost.
- 8.12.9 The Contractor will ensure that all work through the Framework Agreement will be to a consistently high professional standard and to the Framework Public Body's satisfaction. Print must be clear throughout; registration must be accurate and colours and tints must be uniform and consistent throughout.

8.12.10 The Contractor shall provide the Framework Public Body with a minimum period of 3 months written notice prior to any upgrade being made to the systems involved in delivery of the services. This notification must include any applicable costs that will apply to the Framework Public Body.

8.13 Lot 2 - Scheduled/Regular Bulk Mail (Print & Post)

8.13.1 Scheduled/Regular Bulk mail is the production and delivery of planned or bulk mailings. It includes, but is not limited to:

- health screening service letters;
- generic health messaging;
- appointment letters and reminders;
- council tax notices and reminders;
- environmental waste campaigns and communications;
- rates notices;
- housing benefit notices;
- invoices;
- education campaign materials;
- accommodation and campus letters;
- bursary notices;
- prospectus packs.

As well as standard print and post bundles, some Framework Public Bodies will have requirements for specialised non standard bundles. Examples of some types of non standard bundles can be found within Annex A of this Schedule 1

This is achieved via the secure transfer of address and data files to an off-site mail production centre where the address/data files are used to create the mail item; the mail is then printed, sorted and passed for delivery to the final destination.

8.13.2 Unless otherwise stipulated by the Framework Public Body during their call-off process, the Contractor must use products that meet the following criteria:

- Envelopes supplied for mailing systems that are manufactured from at least 60% recycled content and of the remaining content, any virgin fibre shall be sourced from a sustainably managed forest.
- Protective (padded) envelopes non plastic type that are manufactured from 100% recycled filler materials.
- Copier paper that is manufactured from 100% recycled material content.
- Copier paper that is unbleached, totally chlorine-free (TCF) or elementary chlorine-free (ECF).

8.13.3 Framework Public Bodies will require access to samples of the documents before releasing the documents for delivery. The Contractor is required to indicate the format by providing evidence through proofs. Framework Public Bodies will agree an approval process which must be followed prior to issuing documents.

8.13.4 Framework Public Bodies and the Contractor will test all templates before proceeding with any print. All testing of new templates created and amendments to existing output templates must be completed by the Contractor and accepted by the Framework Public Body prior to the Contract operational date.

8.13.5 At implementation the Contractor will engage with each Framework Public Bodies' Information Communication Technology (ICT) department to ensure successful transfer of data including:

- Connection over IP networks;

- Encryption if over public networks;
- Compression/decompression utilities;
- Logging of incoming work;
- E-mail receipt of files;
- Cyber essentials;
- UK GDPR requirements;
- File/Data Retention.

8.13.6 The Contractor will ensure that all work through the Framework Agreement will be to a consistently high professional standard and to the Framework Public Body's satisfaction. Print must be clear throughout; registration must be accurate and colours and tints must be uniform and consistent throughout.

8.14 Lot 2 - Digital e Communications

8.14.1 In addition to Hybrid services, the Contractor shall provide additional and alternative options to physical print of mail items, including but not limited to:

- SMS (text messaging) communications;
- E-mail communications;
- Secure web-based communications.

8.14.2 The Contractor shall be able to provide a service whereby if an e-communication is not delivered, or remains unopened or unread by the recipient, a paper/physical mail item can be issued to the addressee.

8.14.3 If an e-communication is processed and then returned as 'undeliverable' or any other reason, then the Contractor shall endeavour to provide the Framework Public Body with as much information as possible as to why the e-communication has been returned and failed to deliver.

8.14.4 The Supplier shall not charge the Framework Public Body additional costs for handling and processing of mail items and e-communications which are returned and undelivered.

9 Down Stream Access (DSA)

9.1 The Authority accepts that Down Stream Access (DSA) may be a solution offered by the Contractor under this Framework Agreement. Where this is the case, the Contractor should be in possession of an access agreement with Royal Mail and if required to, be prepared to provide the Authority with evidence of this agreement. The Contractor shall convey and deliver to the relevant Royal Mail access point all mailing items collected by the Contractor from the Framework Public Body.

10 Advice

10.1 The Contractor will provide the necessary resource, where requested, to work with Framework Public Bodies to:

- carry out analysis of their current mail methods and processes;
- positively challenge the status quo in order to bring benefits and efficiencies to the Framework Public Body, and;
- work with and support the Framework Public Body through the period of implementation of any proposed changes.

10.2 Advice is required for each service provided, that it is appropriate for the immediate requirement and fits within a sound strategic direction for the Framework Public Body. Advice must, where appropriate, consider the Framework Public Bodies existing mail processes and organisational infrastructure and consider how to deal with existing legacy goods and/or services and processes effectively.

- 10.3 This resource and advice will be provided at no additional charge to the Framework Public Body. If the Contractor considers the advice request is over and above the nature of this intention, all applicable costs to the Framework Public Body should be advised before the work commences.

11 Quality

- 11.1 The Contractor shall have robust quality procedures and systems in place to ensure the successful delivery of the Services and shall:
- Prior to Commencement of Full Operations, devise and implement an approved Quality Assurance Plan covering the duration of the Framework(s)/Contract(s);
 - Ensure continuity of service when Framework Public Bodies join the Framework Agreements;
 - Implement and measure quality control procedures to assure Management Information (MI) Integrity;.
 - Measure and report on Service Levels;
 - Identify opportunities to improve Service Levels, indicating clearly any associated costs and quantifying value where possible;
 - Continually measure Framework Public Body satisfaction for example by the use of Framework Public Body and/or Authority satisfaction surveys with the frequency, content and format (e.g. online and/or hard copy) agreed with the Framework Public Body/Authority;
 - Continually strive to improve, automate and fully integrate their systems in order to avoid manual handling and increase the accuracy, level and quality of the Services.

12 Risk Management Plan and Processes

- 12.1 The Contractor shall continuously assess any risks against the Framework/Contract provision with the Authority and the Framework Public Body and shall share their risk management plan including Risk Register with the Authority and Framework Public Body as a minimum on a six monthly basis. This may include, as a minimum, the following, with exact reporting requirements to be agreed with individual Framework Public Bodies:

Identification of Risk;
Classification of Risk (likelihood, impact, risk category);
Control of Risk through Prevention/Detection/Mitigation/Elimination;
Review and Reporting of Risk.

13 Data Protection & Information Security

- 13.1 The data that the Contractor will handle under this Framework Agreement will be classed as Official 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:
[Scottish Procurement Policy Note 3/2014 - Implementing the new Government Information Security Classifications policy](#)
- 13.2 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.
- 13.3 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 Act 1998.

<https://www.gov.uk/data-protection/the-data-protection-act>

13.4 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. The Contractor as a minimum must have:

- Processes in place ensuring security of client data including processes for assessing future risks;
- 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;
- 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.

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

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

13.7 Any Sub-Contractors in relation to the Framework must comply with the clauses in this section. It is the responsibility of the Contractor to inform the Authority how their Sub-Contractors meet their obligations under clause 13.3 and 13.4.

14 Business Continuity Plans

14.1 The Contractor will maintain business continuity plans which will be implemented in the event of disruption of services, e.g. in times of high demand.

14.2 The Contractor shall provide a copy of the business continuity plans if requested by the Authority or the Framework Public Bodies.

15 Incident Reporting

15.1 As soon as the Contractor becomes aware, they 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.

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

- Mail items that cannot be traced following despatch;
- Any tracked item that has been delivered incorrectly;
- Any items that are found in public places;
- Any items that have been stolen whilst in the Contractors' possession;
- 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.

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

15.3 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.

- 15.4 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.
- 15.5 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.

16 Management Information (MI) Requirements

- 16.1 The Contractor will be required to produce MI in relation to the overall performance of the Framework Agreement for the Authority, and an individual MI report for each Framework Public Body. The Authority requires their information to be provided on a quarterly basis, 10 working days after the quarter end. Framework Public Bodies requirements to be agreed with Contractor based on their individual requirements.
- 16.2 The Contractor will be expected to provide as a minimum a suite of reports including but not limited to:
- Monthly, quarterly and yearly actual spend and saving;
 - Expenditure details including products purchased, date of invoice, financial code, cost centre, Framework Public Body. This shall be available on a line-by-line basis (transaction level) and/or at summary level, as required;
 - Volumes of types of mail purchased (eg Next Day Regional, simplex, duplex, colour/monochrome sheets used, additional insert and sheets, sort costs, text messages/e-mails issued);
 - Exception reports;
 - Service level reports;
 - Sustainability reports including details of sustainable products purchased and carbon emissions associated with uplift/delivery of the service;
 - Outstanding debt report by Framework Public Body;
 - Performance against service levels for prompt payment of Sub-Contractors.
- 16.3 All information should be provided electronically and will be available in an agreed format to enable the Authority and the Framework Public Bodies to manipulate the data as they require.
- 16.4 The Contractor will provide access to real time MI to both the Authority and the Framework Public Bodies along with the ability to analyse said information or in the event that this is not available the Contractor will provide requested MI within two working days. This is information required in addition to the standard quarterly information provided.

- 16.5 There will be no additional charges for any additional MI requirements requested.
- 16.6 Data and/or information to support the answering of freedom of information (FOISA) questions, First Minister Questions (FMQs), Parliamentary Questions (PQs) and Ministerial Correspondence Submission (MACCS) will be provided within 1 working day to the Framework Public Body, as and when required.
- 16.7 The Contractor will be expected to hold and to be able to make readily available to the Authority and the Framework Public Body historical data covering the entire period of the Framework.
- 16.8 In addition to Mland Reporting a full breakdown of costs will be provided for each individual letter pack printed and posted.

17 Benefits & Savings

- 17.1 The methodology and baseline for savings calculations will be agreed between the Authority and the Contractor during implementation.
- 17.2 The Contractor shall capture and provide MI to the Authority and the Framework Public Body on savings (both actual and missed) and provide on-going pro-active advice on how savings and efficiencies can be maximised.

18 Account management

- 18.1 The Contractor is required to provide a dedicated Strategic Account Manager who will be the main point of contact for the Authority. The Strategic Account Manager will:
- Attend bi-annual review meetings with the Authority, in person at the Authority's premises or other locations as determined by the Authority;
 - Attend regular catch-up meetings with the Authority, in person or by telephone/videoconference;
 - Resolve any on-going operational issues which have not been resolved by the Customer Help Desk or Account Manager(s) and therefore require escalation;
 - Ensure that the costs involved in delivering the Framework Agreement are as low as possible, whilst always meeting the required standards of service and quality. This should include regularly reviewing the supply chain to ensure that any Sub-Contractors used offer best value;
 - Pro-actively introduce initiatives to:
 - Create efficiencies in processes, e.g. reducing mail uplifts, format of mail;
 - Improve the environmental performance of the Contract.
- 18.2 The Contractor is also required to provide a dedicated Account Manager for every Framework Public Body using the Framework, if required by the Framework Public Body. The service to be provided will be agreed with each Framework Public Body and may include:
- regular review meetings, which may be in person at the Framework Public Bodies' premises, by video-conference, webinar or telephone;
 - Regular catch-up meetings/telephone calls to discuss current and on-going issues;
 - Work with the Framework Public Body's Contract Manager to resolve any on-going operational issues;
 - Work with the Framework Public Body's Contract Manager to pro-actively introduce initiatives to:
 - create efficiencies in processes e.g. reducing mail uplifts, format of mail
 - improve the environmental performance of the Contract.
- 18.3 It is expected that Framework Public Bodies will contact the Customer Helpdesk in the first instance to resolve any operational issues. The Account Manager will act as a point of

escalation to be contacted either by end users or by the Framework Public Body's Contract Manager should there be issues that the Customer Helpdesk has been unable to resolve.

- 18.4 Further details of the roles and responsibilities of the Contractor, Authority and Framework Public Bodies are provided in Schedule 4 – Management Arrangements.

19 Post Framework/Call-off Contract Expiry

- 19.1 The Contractor will continue to submit spend and performance information to the Contracting Authority until all open Orders under the Framework have expired.
- 19.2 When the Framework Agreement has expired the Framework Public Body will manage the Call-off Contract until expiry of the Call-off Contract.

20 Performance Management

- 20.1 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.
- 20.2 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.
- 20.3 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 of the 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.
- 20.4 Regular meetings, frequency to be advised by Framework Public Body, will be held between the Framework Public Bodies' Contract Manager and the Contractor's representative to review the performance of their Call-Off Contract(s) under this Framework Agreement against the agreed service levels as measured through Key Performance Indicators (KPIs). Reports will be provided by the Contractor to the Framework Public Bodies' Contract Manager at least 14 days prior to these meetings.
- 20.5 Performance review meetings will also be held 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.
- 20.6 The Authority will gather the outputs from contract management to review under the key performance areas detailed in the table below.

Area	Description
Provision of management reports	95% to be submitted within 10 working days of the month end
Report any incident affecting the delivery of	100% to be reported in writing to FPB within

the Service(s) to the Framework Public Body	24 hours of the incident being reported by telephone/e-mail
Prompt payment of Sub-Contractors and/or consortia members (if applicable). Maximum of 30 days from receipt of payment from Framework Public Bodies, 10 days target	100% within 30 days
Proposed upgrades to hybrid systems to be notified to Framework Public Bodies 3 months prior to implementation including any applicable costs	100% to be notified to Framework Public Body 3 months prior to implementation
Authority bi-annual review meetings	Summary of KPI reports to be provided to Authority at least 14 days prior to these meetings
Incident reporting – Feedback to be provided within 24 hours of the incident being reported by telephone/e-mail	Feedback to be provided for 95% of all incidents reported by telephone/e-mail

21 Complaints

- 21.1 The Contractor will record and ensure action is taken to resolve complaints and issues as well as take action to avoid future complaints and issues.
- 21.2 The Contractor will maintain written details of any complaints received and how they are handled and make these available to the specific Framework Public Body and Authority as requested. Where the Contractor becomes aware of an issue or pattern of events that would have a negative effect on one or more of the Framework Public Body, they should immediately notify the Authority to discuss corrective action.
- 21.3 Where a complaint is made directly to the Authority in relation to the Framework, the Authority will pass this information to the Contractor and Framework Public Body and if deemed necessary assist them in the complaint investigation.
- 21.4 Where a complaint is made or issue is raised directly to the Framework Public Body in relation to Framework Public Body Contract Management, the Framework Public Body will adhere to their own complaints policy and procedure.
- 21.5 The Authority Contract Manager may make recommendations to the Framework Public Body and instruct the Contractor to remedy identified problems. Such recommendations / instructions will be discussed with the Contractor and Framework Public Body and a timescale for remedy agreed. Should the recommendation impact on service delivery a framework amendment may be required.

22 Continuous Improvement

- 22.1 The Contractor will deliver continuous improvement in the services provided under this Framework Agreement, throughout the full duration of the Framework Agreement.
- 22.2 The Contractor shall identify areas open to improvement, report and regularly update the Framework Public Bodies on all areas.
- 22.3 The Contractor will positively promote and market the Framework Agreement to all relevant Public Bodies.
- 22.4 The Authority recognises continuous improvement as on-going quantitative improvements delivered for:

- Reduction in whole life costs to the Authority and Framework Public Bodies;
- Service quality enhancements including:
 - Reliability
 - Delivery method
 - Quality assurance
 - User satisfaction
 - Reviewing current processes and practices to ensure qualitative value for money and efficiencies are realised;
 - Assisting in change management where appropriate.

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

22.6 The Contractor shall work with each Framework Public Body, where required, to develop a solution which takes advantage of the following principles:

22.6.1 Cost Savings – The Contractor shall deliver significant cost savings to the Framework Public Bodies in the elimination or duplicated effort and by assisting in keeping all administration costs to a minimum, consistent with providing service excellence and assuring quality;

22.6.2 Savings – The Contractor shall deliver significant cashable savings. These savings can be delivered by removing unnecessary administrative tasks and/or the installation of an efficient solution.

22.7 Continuous improvement will be monitored by the Authority as part of the process for framework management and review.

23 Fair Work First

23.1 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 and workforce development, are diverse and is engaged in decision making. These factors are also important for workforce recruitment and retention, and thus continuity of service.

23.2 For example, the Scottish Government is committed to being a fair work employer, which includes:

- Implementation of 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 through support for learning and development, including for example Investors in People, a strong commitment to Modern Apprenticeships and the development of Scotland's young workforce including Investors in Young People;
- 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;
- providing stability of employment and hours of work, and avoiding exploitative employment practices, including for example no inappropriate use of zerohours contracts; that is, contracts which compel staff to make themselves available for work offered;
- supporting flexible working and support for family friendly working and wider work life balance, including through the Healthy Working Lives Award Programme;
- supporting genuine and progressive workforce engagement, including appropriate channels for effective voice and employee engagement, such as trade union recognition.

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

24 Sustainability

- 24.1 The [Procurement Reform \(Scotland\) Act 2014](#) builds on the work of Public Procurement in Scotland. It establishes laws about sustainable public procurement to maximise the social, environmental and economic benefits through effective and efficient procurement activity.
- 24.2 Smart use of procurement can play a key role in promoting jobs and growth, encouraging innovation, boosting training and apprenticeship opportunities and helping small and medium enterprises (SME's) third sector organisations and supported businesses to compete effectively for Contracts. This includes promoting equality and reducing inequality by targeting recruitment and training at particular priority groups to enter and progress in the labour market.
- 24.3 The [National Performance Framework](#) provides a clear vision for Scotland with broad measures of national wellbeing covering a range of economic, health, social and environmental outcomes, indicators and targets, which in turn support the [UN Sustainable Development Goals](#).
- 24.4 Scotland has adopted an approach 'to focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth'.
- 24.5 The Contractor shall support all requirements of the Framework Public Body's sustainability policies and obligations, including the Sustainable Procurement Duty to improve the economic, social and environmental wellbeing of the authority's area, in particular reducing inequality, facilitate the involvement of small and medium sized enterprises (SMEs), third sector bodies and supported businesses and promoting innovation.

<https://www.gov.scot/publications/guidance-under-procurement-reform-scotland-act-2014/>

- 24.6 The Contractor shall ensure that the services are performed in accordance with the Framework Public Body's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone-depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment. The Contractor should also contribute to the transition to a more circular economy.
- 24.7 The Contractor shall comply with all applicable environmental, social and labour laws and regulations for the duration of the Call-off Contract. The Contractor must promptly provide all such information regarding the environmental and social impact of the Call-off Contract within 20 working days from request by the Framework Public Body.

25 Added Value

- 25.1 The Contractor shall work with the Framework Public Bodies to implement a strategic approach to the management of mail costs within their own organisation.
- 25.2 The Contractor shall identify areas open to improvement, report and regularly update the Framework Public Bodies on all areas.
- 25.3 Advice is required for each service provided, that it is appropriate for the immediate requirement and fits within a sound strategic direction for the Framework Public Body. Advice must, where appropriate, consider the Framework Public Bodies existing mail processes and organisational infrastructure and consider how to deal with existing legacy goods and/or services and processes effectively.

26 Purchase-To-Pay (P2P) Requirements

- 26.1 There are a variety of different P2P solutions in place across the Scottish Public Sector. Information re the P2P systems will be communicated to the Contractor by the relevant Scottish public sector body.
- 26.2 A number of organisations do use the systems managed by the Scottish Government e Commerce Shared Service and further information regarding the eCommerce Shared Service and the solutions they manage can be found at:

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

26.3 Purchase Order (PO) Transmission Options

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

cXML

cXML PO is sent 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.

There is likely to be a charge to configure cXML ordering. In the case of PECOS the charge is £1,415 + VAT per connection for cXML PO transmission. This will cover all connections required across the Scottish Public sector organisations that use PECOS however this may not be the same position for cXML charges to other P2P systems. Any costs associated from other systems will be communicated to the Contractor by the relevant Scottish public sector body. If an established live connection already exists then the one-off charge is not applicable.

PDF e-mail

Orders can be sent to the Contractor by e-mail to a predetermined address with a PDF attachment.

Secure e-mail – Optional (only required where personal data is being transmitted through purchase orders)

PO's by secure e-mail are used when sending personal information i.e. interim manager's names, home addresses etc. There are no costs for this setup.

Paper / Phone /Fax purchase order

26.4 Invoice Options

There are a variety of options across the Scottish Public Sector for receiving invoices. Each Scottish public sector body will provide information to the Contractor in regards to the option(s) they prefer. The main options are listed below.

eInvoicing

The Contractor should note that for this Framework/Call-off Contract, eInvoicing may be offered as an option by the Contractor. This will ensure compliance with the EU eInvoicing Directive which came into force on 27 November 2018.

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

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

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

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

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

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

Please Note

Not every Public Sector Organisation is in a position to accept eInvoices so other options will still need to be offered.

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 electronic Procurement Card (ePC)

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 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 - Optional

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 body.

Invoices

Contractor issues a paper invoice for each order fulfilled or submits an e-mail with a PDF attachment of the invoice.

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

26.5 eCatalogue

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

A number of Scottish Public Sector organisations utilise the PECOS content management tool (PCM) to create and manage e catalogues. Further information can be accessed through the following link

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

26.6 The Contractor will provide Framework Public Bodies with cost centre billing. The number of cost centres will vary for each Framework Public Body.

26.7 The Contractor must have the ability to present invoices in arrears as per the frequency requirement for each Framework Public Body. The Contractor will liaise with each Framework Public Body to ascertain any specific requirements for their organisation and the precise format and frequency of invoices will be agreed between individual Framework Public Bodies and the Contractor following the award of the Call-off Contract. This may include, but is not limited to, consolidated invoicing or invoicing by cost centre. Each invoice submitted must clearly identify as a minimum, details relating to the Framework Public Body's order including but not limited to:

- purchase order number (where applicable);
- date;
- contact details (name, telephone number and e-mail address);
- description of Products/Services/ Job Number;
- detailed breakdown of cost;
- net cost;
- VAT rate (where applicable);
- gross cost;
- a billing schedule.

26.8 In the event that an invoice is queried/disputed or payment of an invoice is delayed for any reason, the Contractor and the Framework Public Body shall work together and undertake to resolve the issue within 5 working days of the dispute/delay having arisen. Where the issue is unresolved within this period of time, the issue shall be escalated by both parties to the Framework Manager and the Contractor's Account Manager respectively. In such circumstances, the Contractor agrees to continue to provide the required services for an agreed period (period to be agreed with the Framework Public Body at Call-off Contract commencement) and not to delay, disrupt or withdraw the service provision without prior discussion and written notification to the Framework Public Body and the Framework Manager.

27 Framework Transition

- 27.1 The Contractor will develop and agree with the Authority a Termination & Closure Plan for this Framework Agreement not later than six months after the commencement of this Framework Agreement.
- 27.2 The Termination & Closure 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 Call-off Contract or Framework Agreement for same or similar services.
- 27.3 The exit strategy will provide details of all procedures and activities necessary for a seamless transition of responsibility from the Contractor and from this Framework Agreement.
- 27.4 The exit strategy shall include a full review of the status of the Call-off 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.
- 27.5 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.
- 27.6 The Contractor and the Authority shall act in accordance with the exit strategy in the event of expiry, or early termination of this Framework Agreement.
- 27.7 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.
- 27.8 The Contractor will continue to submit spend and performance information to the Authority until all orders for services to be delivered under this Framework Agreement have been fulfilled.

Annex A to Schedule 1 – Examples of Non-Standard Scheduled/Regular Bulk Mail Bundles (Print & Post)

Some examples of Framework Public Bodies previous requirements are detailed below. Please note that this list is not exhaustive, is for information only and is no guarantee or indication of future requirements or volumes.

- Integral Labels

The production of personalised integral tear off labels as part of base stationary with a personalised barcode that is cross matched to personalised colour print document. Printed A4, folded and inserted into C5 personalised outer. Multiple label pages must be considered. Labels must be tamper proof, water proof and fully durable for all conditions.

Pack Contents

1 x Integral A4 label sheet printed mono duplex with personalised label for removal and application by end recipient
1 x Colour Duplex A4 sheet with personalised image
1 x C5 Envelope
1 x Postage

- Booklet

Full colour production of highly personalised report document with graphs and charts from XML data source to be finished to A4 booklet saddle stitched with square back finish, inserted into C4 envelope and posted.

42 pp A4 Booklet printed in Colour Duplex, saddle stitched with square back
1 x C4 envelope
1 x Postage

- Postal Fusion Packs (election packs)

Type 1

Outer envelope – 240mm x 162mm with Purple flashes on the edge and overprinted to face and flap
'B' return envelope – 220mm x 155mm with purple flashes on the edge and overprinted to face and flap
PVS (Postal voting Statement) and Ballot Paper – Single sheet with an A5 PVS, and a 210mm wide ballot paper separated by a perforation to allow the voter to detach. The width of the form is 210mm but the length is determined by the number of candidates.
Instruction to vote insert – A5 duplex sheets with written instruction for the voter on how to complete and return the pack

Type 2

Outer envelope – 240mm x 162mm with Purple flashes on the edge and overprinted to face and flap
'B' return envelope – 220mm x 155mm with purple flashes on the edge and overprinted to face and flap
PVS (Postal voting Statement) and Ballot Paper – Single sheet with an A5 PVS, and a 210mm wide ballot paper separated by a perforation to allow the voter to detach. The width of the form is 210mm but the length is determined by the amount of candidates. Instruction to vote insert is incorporated into the PVS/Ballot paper form to give a three-panel sheet with two perforations 148mm

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

SCHEDULE 2 - PRICING SCHEDULE

1. The Pricing Schedule sets out details of the pricing of the Services as at the Commencement Date. Prices are in £ pounds sterling and exclusive of VAT.
2. The Prices in Schedule 2 shall be the total Maximum Price for the stated Services i.e. to include any and all costs, overheads, setting up costs, account management, transport, central costs, technology, reporting, billing and profit. The list is not exhaustive.
3. The prices contained within the Pricing Schedule are fixed from commencement until the date at which the Royal Mail Access price increase takes effect. The Total Price per Item charged to Framework Public Bodies will be made up of two elements: "Access Price" and "Non Access Price". Any new price increase, following the price review, shall not exceed the published Royal Mail prices for the Access Price element of the pricing and shall not exceed the percentage increase or decrease in the most recent annual change in the Consumer Price Index (CPI) at the time of the Price Review and as published by the Office for National Statistics, for the Non Access Price Element of the pricing.
4. For the duration of the framework, hybrid access costs for both 1st class and 2nd class will be charged only at the published 2nd class rate.
5. The Contractor may not unilaterally increase the prices in the Pricing Schedule, but nothing in the Framework Agreement/Call off Contract prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a particular Order.
6. For the duration of the Framework Agreement:
 - The limits applied to qualify for high volume discounts will not increase;
 - Volume discounts will not be reduced but can be improved upon;
7. If at any time the Contractor is required by Law to vary the prices in the Pricing Schedule then the Contractor will provide [thirty days] written notice to the Authority, confirming the date on which the price changes will take effect. This clause is subject to the following conditions
 - 7.1 The price increase must be as a result of a determination by a Regulator and must be as a result of a change in wholesale prices or upstream costs; and
 - 7.2 The notice of any price increase must include full disclosure of the determination; and
 - 7.3 The Contractor must warrant that the revised prices are compatible with any obligations under the Competition Act 1998; and
 - 7.4 The Authority reserves the right to terminate the framework agreement in accordance with clause 5 Break in the event of a price increase. Such termination will be subject to 3 months written notice of termination.
8. The price increase will take effect from the day after the expiry of the (thirty days) written notification of the price increase as referred to in clause 6 above.
9. Where it is found that the price increase was not as a result of a determination of a Regulator, the Authority exercises the option to break in accordance with 6.4, the Contractor will indemnify the Authority in respect of all costs associated of any reprocurement.

HYBRID PRODUCTS	DETAIL	Total Price Per Item £	Details of prices of additional sheets (where applicable), any high volume discounts that apply or any additional comments on the product offered
Letter Mono Duplex	2c Business Mail Low Sort OCR or Mailmark Hybrid		
Letter Mono Simplex	2c Business Mail Low Sort OCR or Mailmark Hybrid		
Letter Colour Simplex	2c Business Mail Low Sort OCR or Mailmark Hybrid		
Letter Colour Duplex	2c Business Mail Low Sort OCR or Mailmark Hybrid		
Letter Mono Simplex	1C Business Mail Low Sort OCR		
Letter Mono Duplex	1C Business Mail Low Sort OCR		
Letter Colour Simplex	1C Business Mail Low Sort OCR		
Letter Colour Duplex	1C Business Mail Low Sort OCR		
Large Letter Mono Simplex	1C Business Mail Low Sort OCR		
Large Letter Mono Simplex	2C Business Mail Low Sort OCR		
International Letter Mono Simplex	1C Business Mail Low Sort OCR		
2nd Class - C5 Closed Face Envelope - Maximum 14 Sheets			
2nd Class - C5 Window Envelope - Maximum 14 Sheets			
Custom Outer Closed Face Envelope With Up To 1 Image and/or 1 Strapline - Mono			
Custom Outer Closed Face Envelope With Up To 1 Image and/or 1 Strapline - Colour			

Custom Outer Closed Face Envelope With 2 Images and/or 2 Straplins - Mono		
Custom Outer Closed Face Envelope With 2 Images and/or 2 Straplins - Colour		
2nd Class - C4 Envelope (15-70 Sheets) - Price per Sheet		
1st Class - C4 Envelope (15-70 Sheets) - Price per Seet		
Business Reply Envelope		
Do Not Redirect Envelope		
1st Class - A3 Folded Enclosed in C5 Outer		
1st Class - A3 Folded Enclosed in C4 Outer		
2nd Class - A3 Folded Enclosed in C5 Outer		
2nd Class - A3 Folded Enclosed in C4 Outer		
2nd Class - A5 Postcard		
A5 Postcard International		
2nd Class C5 Greeting Card		
C5 Greeting Card International		
Own Return Address to Face or Rear of Outer Envelope		
Recorded / Signed for		

SCHEDULED/REGULAR BULK (PRINT AND POST) PRODUCTS	Total Price Per Item £	Your Product Name / Description	Provide details of any high volume discounts that apply or any additional comments on the product offered
Bespoke Letter			
Letter Mono Simplex			
Letter Mono Duplex			
Large Letter Mono Duplex			
Letter Colour Simplex			
Letter Colour Duplex			
IER Form			
IER Letter excl Env		Print & return, no postage (excl Env)	
IER Form excl Env		Print & return, no postage (excl Env)	
STL 2nd Class			
IER Hef Bespoke			
Additional Insert			
Joint Valuation Board Letters			

DIGITAL MAIL PRODUCTS	PRICE - EACH £
SMS (UK)	
SMS (International)	
E Mail with attachment	
E Mail (no attachment)	
Secure e-delivery Option	

This page comprises Schedule 3 to the Framework Agreement between the Scottish Ministers and Critiqom Ltd

SCHEDULE 3 – AWARD PROCEDURES

1. Framework Public Bodies utilising the Framework Agreement must adhere to the following procedures when awarding a Call-Off Contract.
2. A Call-off Contract must be awarded prior to the expiry of the Framework. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

NB: Framework Public Bodies conducting a call-off for a “Duration contract” must use the contract exclusively for the scope of their stated requirement, subject to the Terms of Supply Clause 5 (Break).

3. The Framework Public Body shall give a Notice sent by electronic e-mail or fax to the Contractor which:
 - states/details the Service requirements;
 - seeks a quotation(s) against their specific Service requirements;
 - incorporates the Framework Agreement Terms and Conditions, including Schedule 5 – Standard Terms of Supply (terms and conditions for Call Off Contracts from this Framework Agreement).
4. The Contractor shall provide a response and a Fixed Price in accordance with Schedule 2 – Pricing Schedule (i.e. not subject to change) and send a Notice by electronic e-mail or fax to the Framework Public Body.
5. Subject to the Framework Public Body notifying the Contractor that their response has been accepted, and award its Services requirements by placing a Call-off Contract with the Framework Contractor in accordance with the following:
 - 5.1 Signed Standard Terms of Supply (Schedule 5)
 - 5.2 Statement of Requirements; (Schedule 5.1)
 - 5.3 charges payable for the Services requirements in accordance with the tender submitted by the successful Framework Contractor (Schedule 5.2)
 - 5.4 and any other relevant Schedules included in Schedule 5.
6. The Contractor acknowledges that each Framework Public Body is independently responsible for the conduct of its award of Call-off Contracts and Orders under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-
 - 6.1 the conduct of the Framework Public Body in relation to the Framework Agreement; or
 - 6.1 the performance or non-performance of any Call-off Contracts and Orders between the Contractor and the Framework Public Body entered into pursuant to the Framework Agreement.

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

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

1. Both the Framework Agreement and associated Call-off Contract activity are subject to Contract and Commercial Management which is carried out by the Authority, the Contractor and the Framework Public Body and is a requirement under both the Framework Agreement and Call-off Contracts. It consists of the mobilisation, management, transition and closure in relation to the Framework/Call-off Contract(s).
 2. The level of Framework Public Body Contract Management may differ depending on the value of the Call-off Contract and level of risk involved.
 3. The Authority shall be responsible for the Strategic Contract Management of the Framework Agreement and each Framework Public Body shall be responsible for their day to day contract management of Orders which form the Call-off Contract.
 4. The roles and responsibilities of the Contractor, Framework Public Body and Authority to deliver Framework and Call-off Contract Management are detailed below.
- 4.1 The Contractor's Roles & Responsibilities are as follows:
- Assisting with the development of the Framework/Call-off Contract management plan;
 - Providing Account Manager(s) to manage the Framework/Call-off Contract with the Authority and individual Framework Public Bodies;
 - The nominated Account Manager(s) shall communicate with the Framework Public Body and the Authority;
 - Launching the Framework/Call-off Contract to the Framework Public Body with the Authority;
 - Monitoring and reporting on the Framework Public Body spend under the Framework/Call-off Contract to the Authority on a Quarterly basis, including providing individual and consolidated spend information to the Authority as required;
 - Meeting, continually improving, monitoring and reporting on the Contractor performance under the Framework Agreement to the Authority on a bi-annual basis. Contractor must provide individual Framework Public Body and consolidated Framework Public Body performance management information to the Authority;
 - Working with each Framework Public Body to develop and agree specific requirements and format for tailored management information reports and further developing these reports where required;
 - Maintain, prepare and submit additional management information reports to each Framework Public Body tailored to meet their needs, showing only information that is relevant to that particular Framework Public Body. The format of the required information shall be agreed between the Framework Public Body and the Contractor;
 - Attending Framework/Call-off Contract management meetings as required with the

Authority/Framework Public Body;

- Resolving issues and complaints in line with timescales as indicated under Performance Management below;
- Supporting and enabling the Authority and/or the Framework Public Body to carry out amendments/extensions/reviews/audits/spot checks of the Framework/Call-off Contract as required;
- Supporting and enabling the transition and closure of the Framework/Call-off Contract as appropriate e.g. TUPE information;
- Providing feedback and input in the form of lessons learned into the Authority to enable continuous improvement;
- Working with the Framework Public Body and Authority as required to provide accurate and timely information relevant to freedom of information requests, parliamentary questions, ministerial correspondence and other requests for information within one working day. Expenditure related requests should represent the actual expenditure paid to date for the period requested by the Framework Public Body;
- Ensuring a member of each Contractor's Account Team is available by telephone to Framework Public Bodies by telephone within 4 hours;
- Adhere to the Invoicing Requirements detailed within the Statement of Requirements;
- Undertake a billing run, on a monthly basis, or as agreed with individual Framework Public Body. The date of the month to be agreed with each Framework Public Body,
- Provide a Debtor Report when requested;
- Engage at a Senior level in Contractor Relationship Management activity led by the Authority

4.2 The Framework Public Body Roles & Responsibilities are as follows:

- Assisting with the development of the Framework/Call-off Contract management plan;
- Providing a Contract Manager to support managing the Framework with the Authority and Contractor;
- Supporting/attending Framework/Call-off Contract launch events if required;
- Verifying spend under the Framework to the Authority on a Quarterly basis;
- Monitoring and reporting on the Contractor performance under the Framework to the Authority on Quarterly basis against the agreed performance management measures via a balanced scorecard or survey type mechanism;
- Working with the Contractor to develop and agree specific requirements and format for tailored management information reports;
- Ensuring resources are available to assist the Contractor in reviewing mail processes and to assist in implementing approved changes;
- Request, receive and review additional management information reports and provide feedback for any additional information to be included or further

development of format where required;

- Attending and contributing to User Intelligence Group (UIG) meetings run by the Authority;
- Attending and contributing to Framework/Call-off Contract management meetings;
- Resolving operational issues and complaints;
- Supporting the Authority in carrying out amendments, extensions, reviews, audits and spot checks of the Framework/Call-off Contract as required;
- Contributing to Framework/Call-off Contract amendments/extensions for the Authority to take forward;
- Supporting and enabling the transition and closure of the Framework/Call-off Contract;
- Providing feedback to the Authority and Contractor on resolving issues, risks and complaints as well as engaging in lessons learned and continuous improvement.
- Working with the Authority and Contractor as required to provide accurate and timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence;
- Working with the Contractor to agree specific requirements for Finance processes and day to day operational requirements.
- Support Contractor Relationship Management activity between the Contracting Authority and the Contractor if required.

4.3 The Authority's Roles & responsibilities are as follows:

- Preparing the Framework/Call-off Contract management plan;
- Preparing the Framework/Call-off Contract points of contact;
- Preparing and communicating Framework information to the Framework Public Body and the Contractor;
- Launching the Framework to the Framework Public Body with the Contractor;
- Facilitating the implementation of the Framework and ensuring implementation plans are followed;
- Receipting, reviewing, managing and reporting on the Framework Public Body spend under the Framework/Call-off Contract to senior management on a quarterly basis, including providing individual and consolidated spend information as required;
- Receipting, reviewing, managing (investigating score discrepancies), continuous development and reporting on the Contractor performance under the Framework/Call-off Contract to senior management on a bi-annually basis;
- Chairing User Intelligence Group Meetings
- Chairing Framework management meetings as required facilitating the way forward for issues, risks and actions;
- Supporting the resolution of issues and complaints in line with timescales as indicated under Performance Management, below;

- Carrying out reviews/amendments/extensions/audits/spot checks of the Framework/Call-off Contract with input from Framework Public Bodies as required;
- Managing the transition and closure of the Framework;
- Collating lessons learnt from the Framework Public Body and Contractor and feeding this into future procurements to enable continuous improvement;
- Working with the Framework Public Body and Contractor as required to provide accurate and timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence;
- Lead Contractor Relationship Management activity between the Authority and the Contractor and keep Framework Public Bodies informed as required.
- Framework & Commercial Management will be carried out by the Authority, the Contractor and Customer. It consists of the mobilisation, management, transition and closure in relation to the Contract content.

5. Post Framework/Contract Expiry

5.1 The Contractor will continue to submit spend and performance information to the Contracting Authority until all open Orders/Call-off Contracts under the Framework have expired.

5.2 When the Framework has expired the Framework Public Body will manage the Call-off Contract until expiry of the Call-off Contract.

6. Performance Management

6.1 For the purpose of Performance Monitoring of the Service, the Authority may apply a balance scorecard or user survey type mechanism.

6.2 The balanced scorecard or user survey mechanism allows for the overall performance of the Service to be monitored as opposed to the focus being placed on one particular area.

6.3 The balanced scorecard or user survey is a fair, open and transparent means of delivering the Authority's obligations to monitor and report on the performance of the Service.

6.4 As operated under the balance scorecard or survey mechanism, Performance Management consists of the monitoring, managing and communicating of the performance of Framework which may include the following performance measures:

Area	Description
Provision of management reports	95% to be submitted within 10 working days of the month end
Report any incident affecting the delivery of the Service(s) to the Framework Public Body	100% to be reported in writing to Framework Public Body within 24 hours of the incident being reported by telephone/email
Prompt payment of Sub-Contractors and/or consortia members (if applicable). Maximum of 30 days from receipt of payment from Framework Public Bodies, 10 days target	100% within 30 days
Proposed upgrades to hybrid systems to be notified to Framework Public Bodies 3 months prior to implementation including	100% to be notified to Framework Public Body 3 months prior to implementation

any applicable costs	
Incident reporting – Feedback to be provided within 24 hours of the incident being reported by telephone/email	Feedback to be provided for 95% of all incidents reported by telephone/email
Authority bi-annual review meetings	Summary of KPI reports to be provided to Authority at least 14 days prior to these meetings

- The Authority will monitor the outcome of the balanced scorecard or user survey process, consulting with Framework Public Bodies as they deem appropriate.

This and the following [] pages comprise Schedule 5 to the Framework Agreement between the (Purchasing Organisations Name) and Critiqom Ltd

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

CONTRACT REFERENCE NUMBER (Purchaser to enter)

SERVICES CONTRACT

-between-

(1) “THE PURCHASER (Purchaser to enter Organisation’s name)

-and-

(2) “CRITIQQOM LTD”

-relating to the supply of-

**POSTAL SERVICES – LOT 2 –HYBRID, SCHEDULED/REGULAR BULK (PRINT AND POST) AND
DIGITAL MAIL SERVICES**

SECTION A INTRODUCTORY PROVISIONS

1. Definitions and Interpretation
2. Condition Precedent
3. Nature of the Contract
4. Period
5. Break
6. Specification «F6: and Service Levels»
7. Pricing Schedule
8. Ordering Procedures and Management Arrangements

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

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

SECTION C PROVISION OF SERVICES

20. Provision of the Services
21. Deliverables and Milestones

SECTION D STAFF INVOLVED IN THE PROVISION OF SERVICES

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

SECTION E PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights
29. Specially Created Intellectual Property Rights
30. Licenses of Intellectual Property Rights
31. Claims relating to Intellectual Property Rights
32. Assignment
33. Change of Control
34. Sub-Contracting
- 34A. Supply Chain Transparency and Protections
35. Amendment

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

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

- 40. Service Provider's Equipment
- 41. Purchaser Property
- 42. Health and Safety etc.
- 43. Offences
- 43A. Compliance with Anti-Slavery and Human Trafficking Laws
- 44. Tax arrangements
- 45. Discrimination
- 46. Blacklisting
- 47. Sustainability etc.
- 48. Conflicts of Interest

SECTION G FINAL PROVISIONS

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

SCHEDULES

- Schedule 5.1 Specification and Service Levels
- Schedule 5.2 Pricing Schedule
- Schedule 5.3 Ordering Procedures
- Schedule 5.4 Management Arrangements
- Schedule 5.5 Key Individuals
- Schedule 5.6 Approved Sub-contractors
- Schedule 5.7 Transparency Reports and Service Provider Sensitive Information
- Schedule 5.8 NOT USED
- Schedule 5.9 Data Protection
- Schedule 5.10 Exit Management
- Schedule 5.11 Cyber Security Requirements

PREAMBLE:

ONE The Purchaser requires the provision of services;

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

THREE The Contract also includes:

- a Specification setting out the Services that the Service Provider has undertaken to provide including Service Levels setting out particular levels of service that the Service Provider has undertaken to meet»;
- a Pricing Schedule setting out details of the pricing of the Services;
- details of Key Individuals involved in the provision of the Services»;
- details of approved sub-contractors as at Contract award»;
- details of the Service Provider's information which is deemed to be Service Provider Sensitive Information»;
- Ordering Procedures prescribing the procedures for ordering particular Services; and
- Management Arrangements for the strategic management of the relationship between the Parties.

SUBSTANTIVE PROVISIONS:

SECTION A: INTRODUCTORY PROVISIONS

1. Definitions and Interpretation

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

“**Assignee**” has the meaning given in clause 32.2 (Assignment).

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

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

“**Contract**” means this Contract between the Parties consisting of clauses and (*INSERT NUMBER OF SCHEDULES*) Schedules.

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

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

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

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

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

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

“**Employee Liabilities**” means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory, or supervisory body and of implementing any requirements which may arise from such investigation) including:

- claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and
- compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees.

“**Employee Liability Information**” has the meaning given in TUPE.

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

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

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

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

“Exit Management Date” means each of the following:

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

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

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

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

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

“Incoming Employees” means individuals whose employment transfers to the Service Provider on the commencement of the provision of the Services by operation of TUPE. *(Purchaser to delete if it is clear that TUPE will not apply on the commencement of the provision of the Services)*

“Information Commissioner” means the Commissioner as set out in Part 5 of the Data Protection Act 2018.

“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.

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

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

“Law” means:

any applicable statute or proclamation or any delegated or subordinate legislation;

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

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

any applicable judgment of a relevant court of law which is a binding precedent in Scotland; and

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 Parties, including arrangements for monitoring of the Service Provider’s compliance with the Specification, the Service Levels, the Ordering Procedures and the terms of the Contract, set out in Schedule 5.4.

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

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

“Ordering Procedures” means the procedures for ordering particular Services set out at Schedule 5.3.

“Outgoing Employees” means individuals whose employment transfers from the Service Provider on the ceasing of the provision of the Services by the Service Provider by operation of TUPE (*Purchaser to delete if it is clear that TUPE will not apply on the ceasing of the provision of the Services*)

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

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

“Pricing Schedule” means the details of the pricing of the Services, set out in Schedule 5.2.

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

“Purchaser” means (*Purchaser to enter organisation’s name*)

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

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

- carries a protective marking such as “Official”, “Secret” or “Top Secret”; or

- is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

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

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

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

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

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

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

“**Service Provider**” means (*Purchaser to enter Service Provider legal name and details*).

“**Service Provider Representatives**” means all persons engaged by the Service Provider in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);
- its agents, Service Providers and carriers; and
- any sub-contractors of the Service Provider (whether approved under clause 34 (Sub-contracting) or otherwise) and any employees of and workers of any such sub-contractors wholly or mainly assigned to carrying out activities in provision of the Services under the Contract.

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

- is specified as Service Provider Sensitive Information in Schedule 5.7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and
- is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

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

“Specification” means the Purchaser’s general requirements for the provision of services [including Service Levels] set out in Schedule 5.1.

“Staffing Information” means such information as the Purchaser may request in an anonymised format or otherwise including:

- ages;
- dates of commencement of employment or engagement;
- sex;
- job or role descriptions and objectives of role;
- details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- the identity of the employer or relevant contracting party;
- their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;
- their wages, salaries and profit sharing arrangements as applicable;
- details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- any other Employee Liability Information.

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

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

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

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

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

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

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

2. Condition Precedent: Requirement for a Parent Company Guarantee

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

3. Nature of the Contract

- 3.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 3.2. Save to the extent specifically provided for in this Contract, the Service Provider acknowledges that it is not the exclusive Service Provider of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

Or

For the purposes of this call off contract the supplier is the exclusive provider of the services detailed in the specification.

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

4. Period

- 4.1. The period of the Contract is from and including (*Purchaser to insert commencement date*) (the "**Commencement Date**") to and including (*Purchaser to insert initial expiry date*), unless it is terminated earlier or extended under clause 4.2.

- 4.2. The Purchaser may, by giving notice to the Service Provider, extend the period of the Contract to a date falling no later than (*Purchaser to insert longest expiry date*). Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion. (*If not applicable, the Purchase should delete this clause*)

5. Break

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

6. Specification and Service Levels

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

7. Pricing Schedule

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

7.2. The prices in the Pricing Schedule are not to be increased for the period of the Contract. **or** The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule. (*Purchaser to delete as applicable*).

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

8. Ordering Procedures and Management Arrangements

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

8.2. The Parties must comply with the Ordering Procedures.

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

8.4. The Parties must comply with the Management Arrangements.

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

9. Service Provider's Status

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

10. Notices

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

10.1.1. given in writing;

10.1.2. addressed in accordance with clause 10.3; and

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

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

10.2.1. 2 Working Days after the day on which the letter was posted; or

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

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

10.3.1. For the Purchaser: *(Purchaser to enter organisation contact details)*

Purchaser address for notices:

For the attention of:

Tel: Purchaser phone number

Fax: Purchaser fax number for notices

E-mail: Purchaser e-mail address for notices

10.3.2. For the Service Provider: *(Purchaser to enter Service Provider details)*

Service Provider address for notices

For the attention of:

Tel: Service Provider phone number

Fax: Service Provider fax number for notices

E-mail: Service Provider e-mail address for notices

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

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

11. Price

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

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

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

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

12. Payment and Invoicing

- 12.1. The Purchaser must pay all sums due to the Service Provider within 30 days of receipt of a valid invoice.
- 12.2. The Service Provider must render invoices (*Purchaser to insert invoicing frequency*).
- 12.3. The Service Provider must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Services provided. The Service Provider must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.
- 12.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 12.5. Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by the Purchaser, the sums referred to in this clause must be properly invoiced by the Service Provider.
- 12.6. In this clause 12, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

13. Recovery of Sums Due

- 13.1. Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider to the Purchaser, the Purchaser may deduct that sum from any sum due to the Service Provider whether under the Contract or otherwise.
- 13.2. The Service Provider must make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Service Provider.

14. Data Protection

- 14.1. The Service Provider acknowledges that Personal Data described in the scope of Schedule 5.9 (Data Protection) may be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Service Provider acts as the Data Processor and the Purchaser acts as the Data Controller.
- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Service Provider under Data Protection Laws and the Service Provider hereby agrees to comply with those obligations and duties.
- 14.3. The Service Provider will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 14.4. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5. The Service Provider must:

- 14.5.1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;
- 14.5.2. subject to clause 14.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
- 14.5.3. take all reasonable steps to ensure the reliability and integrity of any Service Provider Representatives who have access to the Personal Data and ensure that the Service Provider Representatives:
 - (a) are aware of and comply with the Service Provider's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with the Service Provider or the relevant Sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 14.5.4. implement appropriate technical and organisational measures including those in accordance with Article 32 of the UK GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 14.6. The Service Provider shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Service Provider must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 14.7. If the Service Provider engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Service Provider must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 14.8. The Service Provider must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR.
- 14.9. The Service Provider must notify the Purchaser if it:
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;

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

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

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

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

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

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

14.12 The Service Provider must:

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

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

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

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

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

15. Transparency and Freedom of Information

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

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

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

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

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

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

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

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

15.4.1 in certain circumstances without consulting the Service Provider, or

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

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

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

15.7 The Service Provider acknowledges that Transparency Reports and the content of this Contract including any Amendments, agreed from time to time, (together the "Transparency

Information”) are not Service Provider Sensitive Information. However, if the Purchaser believes that publication of any element of the Transparency Information should be treated as Service Provider Sensitive Information the Purchaser may, in its discretion exclude such information from publication.

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

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

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

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

16. Purchaser Protected Information

16.1. The Service Provider must:

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

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

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

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

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

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

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

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

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

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

- 16.3.5. information is independently developed without access to the Purchaser Protected Information.
- 16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

17. Service Provider Sensitive Information

- 17.1. The Purchaser must:
 - 17.1.1. treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2. not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- 17.2. Clause 17.1 does not apply to the extent that:
 - 17.2.1. disclosure is required by law or by order of any competent court or tribunal;
 - 17.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;
 - 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 17.2.5. information is independently developed without access to the Service Provider Sensitive Information.
- 17.3. Nothing in this Contract prevents the Purchaser from disclosing any Service Provider Sensitive Information or any other information concerning the Service Provider or the Contract:
 - 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, Service Provider or other person engaged by the Purchaser, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Contract; or

- 17.3.8. for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 17.4. The Service Provider consents to the publication of the Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser may consult with the Service Provider to inform its decisions concerning redaction (for example to exclude any Service Provider Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

18. Audit

- 18.1. The Service Provider must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.2. The Service Provider must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser's representatives, such access to those records as may reasonably be requested by the Purchaser in connection with the Contract.]

OR *(Purchaser - There are 2 options for the Audit/Audit and Records Management clause. You need to delete one. The first is for contracts where records management is not an integral part of the service. The second option is where this is a key element, such as contracts for administration of loans or grants. Regarding the first 18.1 and the second 18.2, you will need to consider whether 5 years is long enough each time regarding EU funded contracts.*

18. Audit and Records Management

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

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

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

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

or any form of execution levied upon its assets, then immediately upon the occurrence of any of these events, the records which would, in terms of clause 18.5 fall to be offered to the Purchaser shall be deemed to be held on trust by the Service Provider on behalf of the Purchaser. The Service Provider shall thereafter, if and when so required by the Purchaser, transfer the records in question to the Purchaser, such transfer to be on the same terms as would apply to a transfer made in terms of clause 18.5.]

19. Publicity

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

SECTION C: PROVISION OF SERVICES

20. Provision of the Services

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

21. Deliverables and Milestones

- 21.1. The Service Provider must provide the Services, including any Deliverables:
 - 21.1.1. at the date(s), time(s) and location(s) required by the Purchaser; and
 - 21.1.2. in good time to meet any Milestones required by the Purchaser.
- 21.2. When the Service Provider believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.
- 21.3. The Purchaser may thereafter by notice to the Service Provider:
 - 21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or
 - 21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.

- 21.4. Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, the Service Provider must at its expense immediately rectify or remedy any defects and/or delays.
- 21.5. Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.
- 21.6. Whether the defect or delay is due to the Purchaser or not, the Service Provider shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

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

23. Offers of Employment

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

24. Staff transfer at commencement

- 24.1. The Parties agree that the commencement of the provision of the Services by the Service Provider does not involve a Relevant Transfer.

[Purchaser – if it is clear that TUPE will not apply on the commencement of the provision of the Services, retain this condition and delete the other conditions 24.2 to 24.4. If TUPE may apply, delete this condition and retain the other conditions 24.2 to 24.4].

- 24.2. The Parties agree that the commencement of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Incoming Employees.
- 24.3. The Service Provider is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 24.4. The Service Provider indemnifies the transferor (as defined in TUPE) against all Employee Liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 24.3.

25. Information about employees

- 25.1. The Purchaser may at any time by notice require the Service Provider to disclose such information as the Purchaser may require to the Purchaser or at the direction of the Purchaser to any prospective Replacement Service Provider relating to the manner in which the Services are organised or about any employee who is wholly mainly assigned to carrying out activities in provision of the Services, whether employed by the Service Provider or Service Provider Representatives ("Assigned Employee"). The information required by the Purchaser about Assigned Employees may include Employee Liability Information and/or Staffing Information.
- 25.2. The Service Provider must disclose by notice all such information as is required by the Purchaser under clause 25.1, within such reasonable period specified by the Purchaser. The Service Provider acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not Personal Data.
- 25.3. The Service Provider warrants for the benefit of the Purchaser and any Replacement Service Provider that all information provided pursuant to this clause shall be true and accurate in all material respects at the time of providing the information. The Purchaser may at any time require the Service Provider to confirm whether information provided under this clause remains true and accurate in all material respects or ask it to provide updated information.
- 25.4. The Purchaser shall be permitted to use and disclose all of the information provided by the Service Provider under this clause for the purpose of rendering the Services and/or inviting bids from any prospective Replacement Service Provider.

26. Staff transfer on expiry or termination

- 26.1. The Parties agree that the ceasing of the provision of the Services by the Service Provider does not involve a Relevant Transfer.

Please include optional clause 26.1 (and delete the other clauses) if it is clear that there will be no TUPE transfer of staff to the Purchaser or to a replacement service provider on expiry or termination of the Contract.

- 26.2. The Parties Agree that the ceasing of the provision of the Services by the Service Provider may constitute a relevant Transfer in respect of the Outgoing Employees.
- 26.3. The Service Provider shall comply, and shall procure that each Service Provider Representative shall comply, with all of its obligations under TUPE and shall perform and discharge, and procure that each Service Provider Representative shall perform and discharge all of its obligations in respect of all the Outgoing Employees arising in respect of the period up to (and including) the date of the Relevant Transfer.
- 26.4. The Service Provider indemnifies the Purchaser and any Replacement Service Provider against any and all Employee Liabilities which the Purchaser or any Replacement Service Provider may suffer as a result of or in connection with:

- 26.4.1. the provision of information pursuant to clause 25;
 - 26.4.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) and whether made before, on or after the date of the Relevant Transfer arising directly or indirectly from any act, fault or omission of the Service Provider or any Service Provider Representative in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 26.4.3. any failure by the Service Provider or any Service Provider Representative to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any replacement service provider to comply with its obligations under regulation 13 of TUPE; and
 - 26.4.4. 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 Service Provider or any Service Provider Representative to comply with any legal obligation to such trade union, body or person.
 - 26.4.5. any act or omission of the Service Provider or any Service Provider Representative whether occurring before, on or after the date of the Relevant Transfer or any other matter, event or circumstance occurring or having its origin on or before the date of the Relevant Transfer.
 - 26.4.6. the breach or non-observance by the Service Provider or any Service Provider Representative occurring on or before the date of the Relevant Transfer of any collective agreement applicable to the Outgoing Employees or any custom or practice in respect of any Outgoing Employees that a Replacement Service Provider is contractually bound to honour.
 - 26.4.7. any claim made by or in respect of any person employed by the Service Provider or any Service Provider Representative other than an Outgoing Employee for whom it is alleged the Purchaser or a Replacement Service Provider may be liable by virtue of this Contract or TUPE.
- 26.5. The Service Provider is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
 - 26.6. The Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or replacement service provider may incur in respect of the emoluments and outgoings referred to in clause 26.5.
 - 26.7. The Service Provider shall, and shall procure that each Service Provider Representative shall, promptly provide to the Purchaser and any Replacement Service Provider, in writing such information as is necessary to enable the Purchaser and/or the Replacement Service Provider to carry out their respective duties under regulation 13 of TUPE, as the case may be.
 - 26.8. The Service Provider shall provide, and shall procure that each Service Provider Representative shall provide, all reasonable cooperation and assistance to the Purchaser and any Replacement Service Provider to ensure the smooth transfer of the Outgoing Employees including, without prejudice to the foregoing generality, providing sufficient information in advance of the date of the Relevant Transfer to ensure that all necessary payroll arrangements can be made to enable the Outgoing Employees to be paid as appropriate.

26.9. The Service Provider warrants to the Purchaser that during the period of 6 months immediately prior to the expiry of the Contract it will not (and will ensure that any Service Provider Representatives will not) without the prior consent of the Purchaser:

- increase the total employment costs of the Assigned Employees [in any material way];
- amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Assigned Employee other than where such amendment or variation has previously been agreed in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services;
- terminate or give notice to terminate the employment or engagement of any Assigned Employee, other than in circumstances in which the termination is for reasons of misconduct or lack of capability;
- transfer away, remove, reduce or vary the involvement of any of the Assigned Employees from or in the provision of the Services other than where such transfer or removal:
 - was planned as part of the individual's career development;
 - takes place in the normal course of business; and
 - will not have any adverse impact upon the delivery of the Services by the Service Provider, provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;
- recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services 6 months prior expiry of the Contract.

27. Security

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

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

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

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

29. Specially Created Intellectual Property Rights

29.1. All Intellectual Property Rights «F56: in Deliverables and» and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Service Provider on behalf of the Purchaser for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract belong to the Purchaser.

29.2. The Service Provider assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1. This 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 Service Provider. The Service Provider must execute all documentation necessary to effect this assignment.

Guidance notes: This clause gives IPR in specially created Contract materials to the Purchaser. IPR in Deliverables can

either be in Crown ownership, or a sufficiently wide license under clause 30 may be more appropriate – these clauses should be tailored accordingly. If a license is expressed to be given in clause 30, then there will be no transfer of ownership under this clause.

30. Licences of Intellectual Property Rights

- 30.1. The Service Provider grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Purchaser reasonably requires in order to enjoy the benefit of the Services.
- 30.2. The Service Provider grants to the Purchaser a perpetual, royalty-free, irrevocable and exclusive license to use all Intellectual Property Rights referred to in clause 29.1 above (Specially Created Intellectual Property Rights).
- 30.3. The Service Provider must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Purchaser an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

Guidance notes: This clause gives the Purchaser licenses to use Service Provider and third party IPR as may be required to enjoy the benefit of the Services.

Clause 30.1 gives the Purchaser a licence to use certain IPR which the Service Provider already owns prior to the start of the contract. This is also sometimes called the pre-existing IPR. The Purchaser has no automatic right to use that IPR. If that pre-existing IPR is needed in connection with the Services, this clause ensures that the Purchaser is appropriately licensed to make use of it for the purposes of the Services.

Clause 30.2 is optional. It is intended to cover a scenario where parties agree that any new IPR created in the course of the contract is to be owned by Service Provider instead of the Purchaser. If the Service Provider owns the new IPR then this licence provision is required in order to ensure the Purchaser can also use it. However if the Purchaser is to own the new IPR then this optional clause should be deleted.

31. Claims relating to Intellectual Property Rights

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

32. Assignment

- 32.1. The Service Provider may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.
- 32.2. Notwithstanding clause 32.1, the Service Provider may assign to another person (an "**Assignee**") the right to receive the price due to the Service Provider under the Contract subject to:
- 32.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and
- 32.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.
- 32.3. The Service Provider must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 32.4. Subject to clause 32.6, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Purchaser; or
- (c) any private sector body which substantially performs the functions of the Purchaser,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.
- 32.5. Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Purchaser.
- 32.6. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Purchaser such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Purchaser in clauses 57 (Termination Rights) and 58 (Termination on Insolvency and Change of Control) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Service Provider.
- 32.7. The Purchaser may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

33. Change of Control

The Service Provider must notify the Purchaser:

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

34. Sub-Contracting

- 34.1. The Purchaser approves the appointment of the sub-contractors specified in Schedule 5.6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 34.2. The Service Provider may not sub-contract its obligations under the Contract to other sub-contractors without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall be responsible for the acts and omissions of its sub-Service Providers as though they are its own.
- 34.3. Where the Service Provider enters into a sub-contract the Service Provider must ensure that a provision is included which:
 - 34.3.1. requires payment to be made of all sums due by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Service Provider in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Service Provider is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Service Provider, payment must be made to the sub-contractor without deduction;
 - 34.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser;
 - 34.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Contract, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 34.3.4. is in the same terms as that set out in this clause 34.3 (including for the avoidance of doubt this clause 34.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and sub-contractor as the case may be.
- 34.4. The Service Provider shall also include in every sub-contract:
 - 34.4.1. a right for the Service Provider to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 57.3 occur; and
 - 34.4.2. a requirement that the sub-contractor includes a provision having the same effect as 33.4.1 in any sub-contract which it awards.

In this clause 33.4, 'sub-contract' means a contract between two or more service providers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

- 34.5. Where requested by the Purchaser, copies of any sub-contract must be sent by the Service Provider to the Purchaser as soon as reasonably practicable.
- 34.6. Where the Service Provider proposes to enter into a sub-contract it must:
- 34.6.1. advertise its intention to do so in at least one trade journal, [at least one newspaper circulating in [refer to locality]] and the Public Contracts Scotland Portal; and
- 34.6.2. follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

35. Supply Chain Transparency and Protections

Knowledge of the supply chain

- 35.1. In performing its role as a reseller, the Service Provider will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the "Service Provider's Suppliers") prepare and maintain a written supplier code of conduct or supplier policy that addresses the following.
- child labour,
 - forced labour,
 - working hours,
 - wages,
 - discrimination,
 - health and safety,
 - freedom of association,
 - collective bargaining,
 - disciplinary practices,
 - humane treatment of workers,
 - training,
 - engagement with NGOs, and
 - worker grievance procedures .
- The Service Provider will provide the Purchaser with a copy of the Service Provider's suppliers codes of conduct or supplier policies on request.
- 35.2. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers prepare and maintain appropriate policies and procedures to identify, manage and mitigate labour and human rights risks in their supply chains relevant to this Contract (the "Service Provider Supply Chain").
- 35.3. The Service Provider will, within 20 Working Days of the Contract Commencement Date, provide the Purchaser with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the Service Provider Supply Chain. The Service Provider will notify the Purchaser of any changes as soon as reasonably practicable.
- 35.4. Not used.

Supply chain working conditions

- 35.5. The Service Provider will submit an annual written report to the Purchaser outlining the Service Provider's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Service Provider Supply Chain.
- 35.6. The Service Provider will take all reasonable steps to ensure that all Goods supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.
- 35.7. In respect of the Service Provider Supply Chain and the Service Provider's Suppliers, the Service Provider must ensure the following:
- 35.7.1. forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;
 - 35.7.2. child labour is not used in any stage of manufacturing or in the provision of services or supplies;
 - 35.7.3. workers do not undertake excessive working hours. For the purposes of this Contract, working hours must not exceed the maximum set by local law; a working week must not be more than 60 hours per week, including overtime, except in emergency or unusual situations and workers shall be allowed at least one day off every seven days;
 - 35.7.4. compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits; in compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates; that deductions from wages as a disciplinary measure shall not be permitted; that for each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed; and that all use of temporary, dispatch and outsourced labour will comply with local laws;
 - 35.7.5. all workers must have the right to form and join trade unions, of their own choosing, to bargain collectively and to engage in peaceful assembly and the right of workers to refrain from such activities must be respected;
 - 35.7.6. workers must not be subject to any harsh or inhumane treatment, including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be the threat of any such treatment;
 - 35.7.7. workers must not be subject to harassment or unlawful discrimination; and
 - 35.7.8. workers must be provided with safe and healthy working conditions.
- 35.8. In respect of the Service Provider Supply Chain and the Service Provider's Suppliers, the Service Provider will use its reasonable endeavours to ensure the following:
- 35.8.1. compliance with all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;
 - 35.8.2. implementation of an appropriate (e.g. anonymous) whistleblowing policy which encourages openness and ensures support and protection from detrimental treatment for workers which raise genuine concerns.

Managing risks in the supply

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

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

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

- 35.11. The Service Provider will use its reasonable endeavours to ensure the outcomes of the Service Provider's Suppliers supply-chain audits are subject to corrective actions by the Service Provider's Suppliers in a timely manner. The Service Provider shall provide the Purchaser on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to the Service Provider Supply Chain .
- 35.12. The Service Provider will use its reasonable endeavours to actively engage with the Service Provider Supply Chain to ensure continuous improvement in labour and human rights standards and supplier compliance with such standards .
- 35.13. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Service Provider Supply Chain not less than once every twelve (12) months .

Measures to control the supply chain

- 35.14. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers' sourcing policies address labour and human rights impacts during the extraction phase of production and include the use of conflict free smelters in accordance with the Responsible Minerals Initiative. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Service Provider Supply Chain and provide the Purchaser on request with details.
- 35.15. The Service Provider will use its reasonable endeavours to ensure that the Service Provider's Suppliers implement and adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as the same may be updated from time to time) and produce a publicly viewable annual summary of their due diligence and risk management measures consistent with this guidance.
- 35.16. The Service Provider will use its reasonable endeavours to provide the Purchaser on request with evidence of direct and ongoing collaboration by the Service Provider's Suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Service Provider Supply Chain.

Supply chain contract termination

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

36. Amendment

- 36.1. The Contract may be amended only by the written agreement of both Parties. Accordingly, the Service Provider may not unilaterally amend the Contract.
- 36.2. Clause 7 (Pricing Schedule) makes special provision for the variation of the Pricing Schedule.

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

37. Compliance with the Law etc.

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

- 37.1. all applicable law;
- 37.2. any applicable requirements of regulatory bodies;
- 37.3. Good Industry Practice; and
- 37.4. Schedule 5.11 (Cyber Security Requirements).

38. Official Secrets Acts

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

39. Service Provider's responsibility for staff etc.

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

40. Access to the Purchaser's premises

- 40.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Service Provider from time to time is on a non-exclusive licence basis free of charge. The Service Provider must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 40.2. The Service Provider must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 40.3. At the Purchaser's written request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 40.4. The Service Provider must ensure that any individual Service Provider Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Service Provider acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 40.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Service Provider Representatives for the purposes of

meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.

- 40.6. The Purchaser may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 40.7. The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.
- 40.8. All decisions of the Purchaser under this clause are final and conclusive.

41. Service Provider's Equipment

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

42. Purchaser Property

- 42.1. Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.
- 42.2. The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:
 - 42.2.1. keep the Purchaser Property in good order and condition (excluding wear and tear);

- 42.2.2. comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
 - 42.2.3. use any Purchaser Property solely in connection with the Contract and for no other purpose; and
 - 42.2.4. store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.
- 42.3. The Purchaser Property is deemed for the purposes of clause 41.2.1 to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Purchaser otherwise within 5 Working Days of receipt.
- 42.4. The Service Provider must not:
- 42.4.1. modify or replace the Purchaser Property;
 - 42.4.2. use the Purchaser Property as security for a loan or other obligation;
 - 42.4.3. sell, or attempt to sell or part with possession of the Purchaser Property; or
 - 42.4.4. allow anyone to obtain a lien over, or right to retain, the Purchaser Property.
- 42.5. The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.
- 42.6. The Service Provider undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Service Provider must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

43. Health and Safety etc.

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

44. Offences

- 44.1. The Service Provider must not commit or attempt to commit any offence:
 - 44.1.1. under the Bribery Act 2010;
 - 44.1.2. of fraud, uttering, or embezzlement at common law; or
 - 44.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

- 44.2. Breach of clause 43.1 is a material breach for the purposes of clause 57.1.3 (Termination Rights).

45. Compliance with Anti-Slavery and Human Trafficking Laws

- 45.1. In performing its obligations under this Contract, the Service Provider shall:
- 45.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
 - 45.1.2. not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 45.1.3. include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause;
 - 45.1.4. notify the Purchaser as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract;
 - 45.1.5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser; and
 - 45.1.6. provide the Purchaser and its third party representatives access to such records.
- 45.2. The Service Provider represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 45.3. The Service Provider shall prepare and deliver to the Customer, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 45.4. The Purchaser may terminate this Contract with immediate effect by giving written notice to the Service Provider if the Service Provider commits a breach of this clause.

46. Tax Arrangements

- 46.1. Where the Service Provider is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 46.2. Where the Service Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 46.3. The Purchaser may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.
- 46.4. A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 46.5. The Purchaser may supply any information which it receives under clause 44 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

- 46.6. The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.
- 46.7. Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

47. Discrimination

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

48. Blacklisting

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

49. Sustainability

The Service Provider should propose measures to deliver any sustainable benefits as follows: (*Purchaser to complete as appropriate*):

50. Conflicts of interest

- 50.1. The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under the Contract.
- 50.2. The Service Provider must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 50.3. Breach of this clause by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

SECTION G FINAL PROVISIONS

51. Warranties and Representations

The Service Provider warrants and represents that:

- 51.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- 51.2. in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 51.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;

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

52. Indemnity

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

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

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

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

53. Limitation of Liability

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

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

53.1.2. indirect or consequential loss or damage.

53.2. But clause 52.1 does not exclude any liability of the Service Provider for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Service Provider.

53.3. The limiter (if required) liability of either Party under the Contract for Defaults limiter (if required) is limited to liability cap limiter (if required).

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

53.4.1. death or personal injury caused by its negligence;

53.4.2. misrepresentation;

53.4.3. 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

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

54. Insurances

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

54.1.1. public liability insurance in the sum of not less than £X (*Purchaser to insert value*);

54.1.2. professional indemnity insurance in the sum of not less than £X (*Purchaser to insert value*); and

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

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

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

55. Force Majeure

55.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform

its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 20 Working Days, either Party may terminate the Contract with immediate effect by notice.

- 55.2. Any delay or other failure by the Service Provider in performing its obligations under the Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 55.3. 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 54.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 55.4. The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

56. Dispute Resolution

- 56.1. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 56.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 56.3. Any arbitration under clause 55.2 is subject to the Arbitration (Scotland) Act 2010.

57. Severability

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

58. Waiver and Cumulative Remedies

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

59. Termination Rights

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

- 59.1.1. the Service Provider has not remedied the Default to the satisfaction of the Purchaser within 20 Working Days, or such other period as may be specified by the Purchaser, after issue of a notice specifying the Default and requesting it to be remedied;
 - 59.1.2. the Default is not in the opinion of the Purchaser, capable of remedy; or
 - 59.1.3. the Default is a material breach of the Contract.
- 59.2. The Purchaser may also terminate the Contract in accordance with any provisions of the Schedules.
- 59.3. The Purchaser may terminate the Contract in the event that:
- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
 - (b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
 - (c) the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

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

- 59.4. The Purchaser may also terminate the Contract in the event of a failure by the Service Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.
- 59.5. The Purchaser may also terminate the Contract where, at any time before the term of the Contract, the Service Provider or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits an offence referred to in paragraph (1) of that regulation.

60. Termination on Insolvency and Change of Control

- 60.1. The Service Provider shall notify in writing immediately, and the Purchaser may terminate the Contract with immediate effect by notice, where in respect of the Service Provider:
- 60.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
 - 60.1.2. 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);
 - 60.1.3. 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;
 - 60.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 60.1.5. 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;

- 60.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 60.1.7. 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;
 - 60.1.8. a debt relief order is entered into; or
 - 60.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.
- 60.2. The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:
- 60.2.1. being notified that a change of Control has occurred in accordance with clause 33.2 (Change of Control); or
 - 60.2.2. where no such notification has been given, the date that the Purchaser becomes aware of the change of control.
- 60.3. But the Purchaser may not terminate the Contract under clause 58.2 where approval of the change of control has been granted by notice by the Purchaser.

61. Exit Management

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

- 61.1. The Service Provider agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Service Provider agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 54 (Dispute Resolution). If a court of competent jurisdiction finds that the Service Provider has breached (or attempted or threatened to breach) any such obligation, the Service Provider agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Service Provider shall not oppose the entry of an appropriate order compelling performance by the Service Provider and restraining the Service Provider from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 61.2. A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 59.3. The Purchaser shall provide to the Service Provider the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The Service Provider shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Purchaser's comments.
- 61.3. The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
 - 61.3.1. the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;
 - 61.3.2. the activities necessary to support any Replacement Service Provider or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;
 - 61.3.3. details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;
 - 61.3.4. support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;

- 61.3.5. the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and
 - 61.3.6. all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Service Provider or the Purchaser.
- 61.4. No amendment of the Exit Plan shall be made without prior written consent of the Purchaser.

62. Consequences of Expiry or Termination

- 62.1. Where the Purchaser terminates the Contract under clause 58 (Termination Rights) and makes other arrangements for the provision of services, the Service Provider indemnifies the Purchaser against all costs incurred in making those arrangements.
- 62.2. Where the Purchaser terminates the Contract under clause 5 (Break), the Purchaser indemnifies the Service Provider against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).
- 62.3. Any indemnity given by the Purchaser under clause Where the Purchaser terminates the Contract under clause 5 (Break), the Purchaser indemnifies the Service Provider against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit). is subject to the Service Provider:
 - 62.3.1. taking all reasonable steps to mitigate its loss;
 - 62.3.2. taking all reasonable steps to recover its losses under any insurance policies held by it; and
 - 62.3.3. submitting a fully itemised and costed list of losses which it seeks to recover from the Purchaser together with supporting evidence.
- 62.4. Except as provided for in clauses 50 (General Indemnity), 61.1 and 61.2 and the Management Arrangements, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.
- 62.5. On expiry or termination of the Contract the Service Provider must:
 - 62.5.1. immediately return to the Purchaser all Purchaser Property and Purchaser Protected Information in its possession; and
 - 62.5.2. destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.
- 62.6. The following provisions survive the expiry or termination of the Contract:
 - 62.6.1. clause 1 (Definitions and Interpretation);
 - 62.6.2. clause 13 (Recovery of Sums Due);
 - 62.6.3. clause 14 (Data Protection);
 - 62.6.4. clause 15 (Transparency and Freedom of Information);
 - 62.6.5. clause 16 (Purchaser Protected Information);
 - 62.6.6. clause 17 (Service Provider Sensitive Information);
 - 62.6.7. clause 18 (Audit [and Records Management]);
 - 62.6.8. clause 19 (Publicity);
 - 62.6.9. clause 23 (Offers of Employment);
 - 62.6.10. clause 25 (Information about Service Provider Employees);
 - 62.6.11. clause 26 (Staff transfer on expiry or termination);
 - 62.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);
 - 62.6.13. clause 29 (Specially Created Intellectual Property Rights);
 - 62.6.14. clause 30 (Licences of Intellectual Property Rights);
 - 62.6.15. clause 31 (Claims relating to Intellectual Property Rights);
 - 62.6.16. clause 38 (Official Secrets Acts);

- 62.6.17. clause 41 (Service Provider's Equipment);
- 62.6.18. clause 42 (Purchaser Property);
- 62.6.19. clause 46 (Tax arrangements);
- 62.6.20. [clause 49 (Sustainability)];
- 62.6.21. clause 51 (Warranties and Representations);
- 62.6.22. clause 52 (Indemnity);
- 62.6.23. clause 53 (Limitation of Liability);
- 62.6.24. clause 54 (Insurances);
- 62.6.25. clause 56 (Dispute Resolution);
- 62.6.26. clause 58 (Waiver and Cumulative Remedies);
- 62.6.27. this clause 62;
- 62.6.28. clause 64 (Governing Law and Jurisdiction); and
- 62.6.29. paragraph 2 (Service Provider's Warranty) of Schedule 5.11 (Cyber Security Requirements).

Drafting note: Schedule 5.11 **is optional and may be included in the Contract at the discretion of the Purchaser.** If Schedule 5.11 is not used, clause 62.6.29 should be deleted.

- 62.7. If a Judicial Order is made, the provisions of the Management Arrangements referring to that possibility apply.
- 62.8. Immediately upon termination of the Contract for any reason whatsoever the Service Provider shall render such reasonable assistance to the Purchaser or third party nominated by the Purchaser, if requested, as may be necessary to effect an orderly assumption by a Replacement Service Provider of the Services previously performed by the Service Provider under the Contract. The Service Provider shall be entitled to charge for such termination services in accordance with [DN: *ref some sort of method of calculating the price*].

63. Entire Agreement

- 63.1. The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the Tender or otherwise).
- 63.2. In the event of, and only to the extent of, any conflict between the clauses of the Contract, the Schedules and any document referred to in the Contract, the following order of precedence applies:
 - 63.2.1. the clauses of the Contract;
 - 63.2.2. the Schedules; and
 - 63.2.3. any other document referred to in the Contract.

64. Governing Law and Jurisdiction

The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 56 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and *the (Purchaser to insert number of pages before this page)* preceding pages together with the *(Purchaser to insert number of Schedules)* Schedules annexed are executed as follows:

SIGNED for and on behalf of (enter organisation)

At.....

On.....

Signature.....

Full name

Position

Address.....

SIGNED for and on behalf of Critiqom Ltd

At.....

On.....

Signature.....

Full name.....

Position.....

Address.....

In the presence of

Signature.....

Full name

Address.....

In the presence of

Signature.....

Full name.....

Address.....

This and the following [] pages comprise Schedule 5.1 to the foregoing Contract between (*Purchaser to insert name of Organisation*) and (*Purchaser to insert name of Service Provider*)

SCHEDULE 5.1 – SPECIFICATION AND SERVICE LEVELS

The Purchaser must complete Schedule 5.1 to include specific details of their own requirements and any additional Service Levels which are not already covered under Schedule 1 of the Framework Agreement.

This and the following [] pages comprise Schedule 5.2 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.2 - PRICING SCHEDULE

The Purchaser must complete Schedule 5.2 to include specific details of their own requirements and any additional pricing elements which are not already covered under Schedule 2. – Pricing Schedule, of the Framework Agreement.

This and the following [] pages comprise Schedule 5.3 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.3 – ORDERING PROCEDURES

[Purchaser to state the ordering procedures or state that the Schedule is “Not Used”]

This and the following [] pages comprise Schedule 5.4 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.4 – MANAGEMENT ARRANGEMENTS

Purchaser to delete if not applicable. Purchaser should only update Schedule 5.4 if there are any additional Management Arrangement requirements which are not laid down in Schedule 4 of the Framework Agreement. Or the Purchaser may add 'Refer to Schedule 4 of the Framework Agreement.

This and the following [] pages comprise Schedule 5.5 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.5 – KEY INDIVIDUALS

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

[Purchaser to delete if not applicable. Purchase should complete Schedule 5.5 if there are any Key Individuals specific to their requirement].

This and the following [] pages comprise Schedule 5.6 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.6 – APPROVED SUB-CONTRACTORS

approved Sub-Service Provider(s)	Relevant obligations
1. e.g. Subco Limited (SC123456)	e.g. high risk consultancy services
2.	

[Purchaser to delete if not applicable. Purchaser should only update Schedule 5.6 if there are any additional approved Sub-Contractors for their requirements which are not listed under Schedule 10 of the Framework Agreement. Or the Purchaser may add 'Refer to Schedule 10 of the Framework Agreement].

This and the following [] pages comprise Schedule 5.7 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.7 – TRANSPARENCY REPORTS AND SERVICE PROVIDER SENSITIVE INFORMATION

Part 1- Transparency Reports

The Purchaser will routinely publish information in relation to the Contract. This information will be released in Transparency Reports. An **example** of the type and frequency of the information is as follows:

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

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

Part 2

SERVICE PROVIDER SENSITIVE INFORMATION

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

Guidance notes: Please delete this Schedule if it is not possible to identify this information.

This and the following [] pages comprise Schedule 5.8 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.8 – NOT USED

This and the following [] pages comprise Schedule 5.9 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.9 – DATA PROTECTION

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

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

Subject matter and duration of the Processing of Personal Data

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

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

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

This and the following [] pages comprise Schedule 5.10 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

SCHEDULE 5.10 – EXIT MANAGEMENT

This and the following [] pages comprise Schedule 5.11 to the foregoing Contract between (Purchaser to insert name of Organisation) and (Purchaser to insert name of Service Provider)

PURCHASER TO DELETE/INSERT ANY ADDITIONAL CYBER REQUIREMENTS AS APPLICABLE

SCHEDULE 5.11 – CYBER SECURITY REQUIREMENTS

Guidance notes: Text in red requires to be amended/updated by the Purchaser to reflect the specific circumstances of the Contract

Definitions

The defined terms used in this Schedule 5.11 shall have the following meanings:

“**Cyber Security Incident**” means anything, event, act or omission which gives, or may give, rise to:

- (i) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- (ii) reduced integrity of an information system, data or electronic communications network;
- (iii) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- (iv) disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- (v) unauthorised changes to firmware, software or hardware;
- (vi) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- (vii) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- (viii) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- (ix) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the UK GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy

in connection with the Services and/or the Contract;

- (a) “**Cyber Security Requirements**” means the Purchaser’s requirements in connection with cyber security as set out in **Section A (Cyber Security Requirements)** of the Annex to this Schedule 5.11, and **[the Specification]**;

1. SERVICE PROVIDER’S WARRANTY

The Service Provider warrants and undertakes that it shall meet and comply with the Cyber Security Requirements in connection with the provision of the Services and the Contract **as stated in the Framework Agreement and in this Schedule 5.11** (including in respect of any certification or accreditation).

2. SERVICE PROVIDER’S OBLIGATIONS

- 2.1 The Service Provider shall implement and maintain all security measures:

- (a) as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
- (b) to enable it to discharge its obligations under **the Framework Agreement and this Schedule 5.11;** and
- (c) to ensure there are no Cyber Security Incidents

in all cases to the Purchaser's reasonable satisfaction and in accordance with Good Industry Practice.

- 2.2 The Service Provider shall notify the Purchaser promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.
- 2.3 The Service Provider shall assist the Purchaser to comply with any applicable cyber security requirements, codes, policies and practices in connection with the Services and/or the Contract.

Guidance notes: the Purchaser should consider whether paragraph 2.3 should be included in the contract.

3 CYBER SECURITY INCIDENTS

- 3.1 The Service Provider shall notify the Purchaser immediately as soon as it knows or believes that a Cyber Security Incident has or may have taken place and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by the Purchaser. Where such initial notification is not in writing, then the Service Provider shall provide the Purchaser with a written notification setting out the details required under this paragraph 3.1 promptly and in any case within **[twelve (12)]** hours from the initial notification.

Guidance notes: In paragraph 3.1, the Purchaser should consider (taking into account any obligation it may have to notify any cyber security incident) the time period within which it requires written notification of a cyber security incident.

- 3.2 Following a Cyber Security Incident, the Service Provider shall:
 - (a) use its best endeavours to mitigate the impact of the Cyber Security Incident;
 - (b) investigate the Cyber Security Incident completely and promptly, and shall keep the Purchaser fully informed of the progress and findings of its investigation;
 - (c) where required to do so, inform any applicable regulator of the Cyber Security Incident; and
 - (d) take any action deemed necessary by the Purchaser in the circumstances, including complying with any additional security measures deemed appropriate by the Purchaser.
- 3.3 **The Service Provider shall perform its obligations under this paragraph 3 at no additional charge to the Purchaser, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the Purchaser.**

Guidance notes: the Purchaser should consider whether paragraph 3.3 should be included in the Contract.

4 INFORMATION AND AUDIT

- 4.1 Promptly upon request, the Service Provider shall provide to the Purchaser such information and records in connection with the Service Provider's obligations under this Schedule 5.11 as the Purchaser may request.
- 4.2 The Service Provider agrees (and procures that its sub-contractors agree) that the Purchaser, its agents and its representatives may conduct such audits as are considered necessary by the Purchaser acting reasonably, including for the following purposes:

- (a) to ascertain the impact of any Cyber Security Incident;
 - (b) to review and verify the integrity, confidentiality and security of any data relating to the Contract; or
 - (c) to review the Service Providers and/or any sub-contractor's compliance with its obligations under this Schedule 5.11.
- 4.3 The Service Provider shall (and shall ensure that any sub-contractor shall) provide the Purchaser, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including:
- (a) all data and/or records requested by the Purchaser;
 - (b) access to any relevant premises and to any equipment owned/controlled by the Service Provider, any associated or group company and any sub-contractor and, where such premises and/or equipment are outwith the control of the Service Provider, shall secure sufficient rights of access for the Purchaser, its agents and representatives as are necessary to allow audits to take place; and
 - (c) access to any relevant individuals.
- 4.4 The Purchaser shall use its reasonable endeavours to:
- (a) provide at least [10 days'] notice of its intention to conduct an audit (but is not obliged to do so); and
 - (b) ensure that the conduct of each audit does not unreasonably disrupt the Service Provider and/or sub-contractor or delay the performance of the Contract.
- 4.5 The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 4 [unless an audit identifies a breach of the terms of this Schedule 5.11 by the Service Provider and/or sub-contractor, in which case the Service Provider shall reimburse the Purchaser on demand for all the Purchaser's reasonable costs and expenses incurred in conducting the audit].

Guidance notes: The Service Provider may not be able to facilitate an audit of its sub-contractors in all cases, (for example, this may not be possible if the Service Provider is using some major public cloud providers). In such circumstances, the Purchaser should consider carefully its requirements with regard to assurance.

5 BREACH OF CYBER SECURITY REQUIREMENTS

- 5.1 A breach of this Schedule 5.11 by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).
- 5.2 If the Service Provider fails to comply with the provisions of this Schedule 5.11, the Purchaser may take any action it considers appropriate or necessary (and the Service Provider shall comply with the Purchaser's requests in this respect), including:
- (a) suspending the whole or any part of the Service Provider's obligations under the Contract;
 - (b) requiring that specific sub-contractors connected with such breach be removed from their involvement with the Services and the Contract and cease to have any access to the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Contract;

- (c) requesting the Service Provider return and/or arrange the evidenced secure and permanent destruction of the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Contract; and
- (d) implementing additional or alternative measures, both technical and organisational, to protect and secure the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Contract.

ANNEX
CYBER SECURITY REQUIREMENTS (Delete as applicable)

The cyber security requirements applicable to the Contract are set out in the Framework Agreement and any additional requirements are set out in this Annex. Section A (*Cyber Security Requirements*) includes the Purchaser's additional requirements in connection with cyber security.

Section A: Cyber Security Requirements

Overview of any additional requirements over and above those set out in the framework agreement:

Insert as applicable

The Service Provider shall meet the following requirements over and above those set out in the framework agreement:

Insert as applicable

This and the following X pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and Critiqom Ltd

SCHEDULE 6 – NOT USED - PARENT COMPANY GUARANTEE

7. 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:-
- 7.1 We guarantee that the Company shall perform all its obligations contained in the Framework Agreement.
- 7.2 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.
- 7.3 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:
- 7.3.1 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
- 7.3.2 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
- 7.3.3 any change in the relationship between ourselves and the Company; or
- 7.3.4 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.
8. This Guarantee shall be construed and take effect in accordance with Scots Law.
9. 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.
10. 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.

11. 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.
12. 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.
13. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
14. 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:
 - 14.1 if delivered by hand; or
 - 14.2 if sent by fax; or
 - 14.3 if sent by prepaid recorded or special delivery post; or
 - 14.4 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]

15. Any such notice or communication shall be deemed to have been served,
 - 15.1 if delivered by hand, on the date of delivery;
 - 15.2 if sent by fax, 4 working hours after the time at which the fax was sent;
 - 15.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
 - 15.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,
 - 15.5 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.
 - 15.6 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 Critiqom 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
Contract			Only Once
<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

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.

2. Assistance with termination

2.1 The Exit Plan shall be produced and delivered by the Contractor to the Authority in accordance with the steps defined in clause 44.2.

2.2 The Contractor shall throughout the period of the Framework Agreement, maintain and continuously update the Exit Plan which shall include the contents listed in clause 44.3.

3. Post termination

In accordance with clause 50 (Consequences of termination), following the termination of the Framework Agreement the Contractor shall return to the Authority all Authority Property and Authority Protected Information in the Contractor's possession and destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession, and a duly authorised officer of the Contractor shall certify that this has been done.

This and the following X pages comprise Schedule 9 to the Framework Agreement between the Scottish Ministers and Critiqom Ltd

SCHEDULE 9 – DATA PROTECTION - NOT USED

Guidance notes: This schedule is only required in the event that data is processed in connection with the framework. Otherwise, Not Used.

This pages comprises Schedule 10 to the Framework Agreement between the Scottish Ministers and Critiqom Ltd

SCHEDULE 10 – NOT USED - APPROVED SUB-CONTRACTORS

approved Sub-contractors

Relevant obligations

1.

2.

This and the following 3 pages comprise Schedule 11 to the Framework Agreement between the Scottish Ministers and Critiqom Ltd

SCHEDULE 11 - CYBER SECURITY REQUIREMENTS

Definitions

The defined terms used in this Schedule 11 shall have the following meanings:

“Cyber Security Incident” means any thing, event, act or omission which gives, or may give, rise to:

- (x) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- (xi) reduced integrity of an information system, data or electronic communications network;
- (xii) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- (xiii) disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- (xiv) unauthorised changes to firmware, software or hardware;
- (xv) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- (xvi) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- (xvii) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- (xviii) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the UK GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy

in connection with the Services and/or the Framework Agreement;

“Cyber Security Requirements” means the Authority’s requirements in connection with cyber security as set out in Section A (*Cyber Security Requirements*) of the Annex to this Schedule 11, and the Specification;

“Good Industry Practice” in relation to any undertaking and any circumstances, means the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances.

3. CONTRACTOR’S WARRANTY

- 1.1. The Contractor warrants and undertakes that it shall meet and comply with the Cyber Security Requirements in connection with the provision of the Services and the Framework Agreement (including in respect of any certification or accreditation).

2. CONTRACTOR’S OBLIGATIONS

- 2.1. The Contractor shall implement and maintain all security measures:
 - (a) as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
 - (b) to enable it to discharge its obligations under this Schedule 11; and

- (c) to ensure there are no Cyber Security Incidents

in all cases to the Authority's reasonable satisfaction and in accordance with Good Industry Practice.

- 2.2. The Contractor shall notify the Authority promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.
- 2.3. The Contractor shall assist the Authority to comply with any applicable cyber security requirements, codes, policies and practices in connection with the Services and/or the Framework Agreement.

3. CYBER SECURITY INCIDENTS

- 3.1. The Contractor shall notify the Authority immediately as soon as it knows or believes that a Cyber Security Incident has or may have taken place and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by the Authority. Where such initial notification is not in writing, then the Contractor shall provide the Authority with a written notification setting out the details required under this paragraph 3.1 promptly and in any case within twelve 12 hours from the initial notification.
- 3.2. Following a Cyber Security Incident, the Contractor shall:
 - (e) use its best endeavours to mitigate the impact of the Cyber Security Incident;
 - (f) investigate the Cyber Security Incident completely and promptly, and shall keep the Authority fully informed of the progress and findings of its investigation;
 - (g) where required to do so, inform any applicable regulator of the Cyber Security Incident; and
 - (h) take any action deemed necessary by the Authority in the circumstances, including complying with any additional security measures deemed appropriate by the Authority.
- 3.3. The Contractor shall perform its obligations under this paragraph 3 at no additional charge to the Authority, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the Authority.

4. INFORMATION AND AUDIT

- 4.1. Promptly upon request, the Contractor shall provide to the Authority such information and records in connection with the Contractor's obligations under this Schedule 11 as the Authority may request.
- 4.2. The Contractor agrees (and procures that its sub-contractors agree) that the Authority, its agents and its representatives may conduct such audits as are considered necessary by the Authority acting reasonably, including for the following purposes:
 - (d) to ascertain the impact of any Cyber Security Incident;
 - (e) to review and verify the integrity, confidentiality and security of any data relating to the Framework Agreement; or
 - (f) to review the Contractor's and/or any sub-contractor's compliance with its obligations under this Schedule 11.

- 4.3. The Contractor shall (and shall ensure that any sub-contractor shall) provide the Authority, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including:
- (d) all data and/or records requested by the Authority;
 - (e) access to any relevant premises and to any equipment owned/controlled by the Contractor, any associated or group company and any sub-contractor and, where such premises and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Authority, its agents and representatives as are necessary to allow audits to take place; and
 - (f) access to any relevant individuals.
- 4.4. The Authority shall use its reasonable endeavours to:
- (a) provide at least [10 days'] notice of its intention to conduct an audit (but is not obliged to do so); and
 - (b) ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or sub-contractor or delay the performance of the Framework Agreement.
- 4.5. The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 4 [unless an audit identifies a breach of the terms of this Schedule 11 by the Contractor and/or sub-contractor, in which case the Contractor shall reimburse the Authority on demand for all the Authority's reasonable costs and expenses incurred in conducting the audit.]

5. BREACH OF CYBER SECURITY REQUIREMENTS

- 5.1. A breach of this Schedule 11 by the Contractor is a material breach for the purposes of clause 42 (Termination Rights).
- 5.2. If the Contractor fails to comply with the provisions of this Schedule 11, the Authority may take any action it considers appropriate or necessary (and the Contractor shall comply with the Authority's requests in this respect), including:
- (e) suspending the whole or any part of the Contractor's obligations under the Framework Agreement;
 - (f) requiring that specific sub-contractors connected with such breach be removed from their involvement with the Services and this Agreement and cease to have any access to the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement;
 - (g) requesting the Contractor return and/or arrange the evidenced secure and permanent destruction of the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement; and
 - (h) implementing additional or alternative measures, both technical and organisational, to protect and secure the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement.

CYBER SECURITY REQUIREMENTS

The cyber security requirements applicable to the Framework Agreement are set out in this Annex. Section A (*Cyber Security Requirements*) includes the Authority's requirements in connection with cyber security

Section A: Cyber Security Requirements

The Contractor shall meet the following requirements:

The data that the Contractor will handle under this framework agreement will be classed as Official 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:

Scottish Procurement Policy Note 3/2014 - Implementing the new Government Information Security Classifications policy

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.

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 Act 1998.

<https://www.gov.uk/data-protection/the-data-protection-act>

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. Contractors as a minimum must have:

- Processes in place ensuring security of client data including processes for assessing future risks;
- 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;
- 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;

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

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

Any Sub-Contractors in relation to the Framework must comply with the clauses in this section. It is the responsibility of the Contractor to inform the Authority how their sub-contractors meet their obligations under clause 13.3 and 13.4.