

**ITT SP-21-012**

**FRAMEWORK AGREEMENT**

**-between-**

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

**-and-**

**(2) Softcat Plc (THE “CONTRACTOR”)**

**-relating to the supply of-**

**TECHNOLOGY PERIPHERALS AND INFRASTRUCTURE**

**-for the benefit of-**

**THE SCOTTISH MINISTERS AND OTHER PUBLIC BODIES**

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**PREAMBLE:**

- ONE The Authority requires the supply of Goods and related services to Framework Public Bodies;
- TWO On 9 December 2021 the Authority's contract notice relating to the supply of Goods and related services was published in Find a Tender with reference number 2021/S 000-030614;
- THREE On 31 January 2022 the Contractor completed its SPD;
- FOUR On 9 December 2021 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Goods and related services;
- FIVE On 31 January 2022 the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Contractor to supply the Goods and related services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- a Specification setting out the Services that the Contractor has undertaken to provide including Service Levels setting out particular levels of service that the Contractor has undertaken to meet;
  - a Pricing Schedule setting out details of the pricing of the Goods and related services;
  - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
  - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

## SECTION A

### 1. Definitions and Interpretation

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

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

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

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

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

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

**“Breach of Security”** means the occurrence of:

(a) any unauthorised access to or use of the Goods, Services, the Authority’s premises, the sites used by the Contractor to provide the goods / Services, the Contractor’s System, the Contractor Solution, the Authority’s System (to the extent that it is under the control of the Contractor) and/or any IT, information or data (including the Confidential Information and the Data) used by the Authority and/or the Contractor in connection with this Framework; and/or

(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Data), including any copies of such information or data, used by the Authority and/or the Contractor in connection with this Contract, in either case as more particularly set out in the security requirements in Schedule 1a (Statement of Requirements) and Schedule 11 (Cyber Security);

**“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.

**“Complaint”** means any grievance made by a Framework Public Body in respect of the Contractor (or any sub-contractor as appropriate) not fulfilling its obligations under the terms of this Agreement or Call-off Contracts.

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

**“Contractor”** means Softcat Plc, Solar House, Fieldhouse Lane, Marlow, Buckinghamshire, United Kingdom, SL7 1LW, company number 02174990.

**“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.

**“Cost Price”** means the Price that suppliers pay for an item after any rebates or discounts, and exclusive of VAT

**“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.

**“Deliverables”** means reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other materials specially created for the Authority under the Framework Agreement;

**“eCommerce”** means electronic commerce and refers to the buying and selling of goods or services over the internet. In the context of this agreement it also means technology use to enable all aspects of the end-to-end Procurement process including sourcing and advertising, tender and evaluation, content management, electronic ordering, invoicing and payment.

**“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.

**“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.

**“Financial Distress Event”** means the occurrence of one or more of the following events:

- a) the Contractor’s or the relevant key Sub-contractor’s credit or Dun & Bradstreet rating (as applicable) drops one or more levels below the level set out in clause 47A (Financial Distress)
- b) the Contractor or a key Sub-contractor issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects;
- c) there is a public investigation into improper financial accounting and reporting, suspected fraud and/or any other impropriety of the Contractor or a key Sub-contractor;
- d) the Contractor or a key Sub-Contractor commits a material breach of covenants to its lenders;
- e) a key Sub-Contractor notifies the Authority that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- f) the commencement of any litigation against the Contractor or a key Sub-Contractor with respect to financial indebtedness; or
- g) any financial indebtedness of the Contractor or a key Sub-contractor becoming due as a result of an event of default which (in respect of this sub-section (g) only) the Authority reasonably believes could materially impact on the continued performance of the Services.

**“Financial Distress Event Remedial Plan”** means a plan provided by the Service Provider in accordance with clause 47A (Financial Distress) to remedy the potential adverse impact of the relevant Financial Distress Event on the continued performance of this Framework.

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

**"Framework Contractors"** means the Contractor

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

**"ITT"** means the Authority's invitation to tender dated 9 December 2021.

**"Key Performance Indicators (KPIs)"** means the standards for the Contractor's performance of its obligations under this Framework Agreement and each Call-off Contract set out in Schedule 1a (Statement of Requirements).

**"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 judgment 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.

**"Mark-up"** means the amount to be added to the cost price of each product group to cover the Contractor's overheads and profit.

**"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 Good and related services as at the Commencement Date set out in Schedule 2.

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



**“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 Specification.

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

**“SPD”** means the European Single Procurement Document completed by the Contractor and sent to the Authority on 31 January 2022.

**“Specification”** means the specification of the Good and related services that the Contractor has undertaken to provide set out in Schedule 1a.

**“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;
- 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.

**“Tender”** means the tender submitted by the Contractor to the Authority in response to the ITT dated 31 January 2022.

**“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.

**“Third country”** means a country or territory outside the United Kingdom.

**“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.

**“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.

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

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

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

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

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

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

**3. Nature of this Agreement**

- 3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.
- 3.2. This Agreement is a multi supplier framework agreement for Lot 2 and the contractors that are party to it are the framework contractors. No other Contractors are party to the Framework Agreement.
- 3.3. This Agreement is a multi-user framework agreement and the public bodies that are party to it are the Framework Public Bodies. No other public bodies are party to the Framework Agreement.
- 3.4. Save to the extent specifically provided for in this Agreement, the Contractor acknowledges that it is not the exclusive supplier of the Goods and related 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 16 May 2022 (the "Commencement Date") to and including 15 May 2024, unless it is terminated earlier or extended under Clause 4.2.
- 4.2. The Authority may, by giving notice to the Contractor, extend the period of the Framework Agreement to a date falling no later than four years from the Commencement Date. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.
- 4.3. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

**5. Break**

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

**6. Specification and Service Levels and Cyber Security Requirements**

- 6.1. The Specification sets out the Goods and related services that the Contractor has undertaken to provide. The Specification includes Service Levels setting out particular levels of service that the Contractor has undertaken to meet.
- 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 Goods and related services as at the Commencement Date.
- 7.2. The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule.
- 7.3. Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule. But nothing in this Framework Agreement prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.

**8. Award Procedures**

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

**9. Management Arrangements**

- 9.1. The Management Arrangements set out the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement.
- 9.2. The Authority may by notice to the Contractor suspend the Contractor's appointment to provide Goods and related 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**

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

### **SECTION B**

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

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

#### **12. Notices**

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

- 12.1.1. given in writing;

- 12.1.2. addressed in accordance with clause 12.3; and

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

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

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

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

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

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

- 12.3.2. For the Contractor:  
For the attention of: REDACTED  
Tel: REDACTED  
E-mail: REDACTED

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

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

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

**14. Data Protection**

- 14.1. The Contractor will, in conjunction with the Authority and in its own right and in respect of the Goods and related 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 Goods and related 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 in relation to the data described in Schedule 9.
- 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 Goods and related 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; or
  - 17.3.7. 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 Goods and related 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**
- 19.1. The Contractor must not make any press announcement or otherwise publicise the Framework Agreement in any way, except with the written consent of the Authority.

## **SECTION C**

### **20. Key Individuals**

- 20.1. The Contractor acknowledges that the Key Individuals are essential to the proper provision of the Goods and related services to the Authority.

- 20.2. The Key Individuals must not be released from providing the Goods and related 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 Goods and related 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 Goods and related services.
- 20.4. Any proposed replacement to a Key Individual is subject to the approval of the Authority. Subject to the Contractor's compliance with this clause, the Authority must not unreasonably withhold such approval.

## **21. Offers of Employment**

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

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

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

## **23. Information about 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 Goods and related services are organised or information about any employee who is wholly or mainly assigned to carrying out activities in provision of the Goods and related 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 Goods and related services by the Contractor does not involve a Relevant Transfer.

**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**

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

**27. Specially Created Intellectual Property Rights**

- 27.1. All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Framework Agreement belong to the Authority.
- 27.2. The Contractor assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 27.1. This 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 Goods and related services.
- 28.2. The Contractor grants to the Authority a perpetual, royalty-free, irrevocable and exclusive license to use all Intellectual Property Rights referred to in clause 27.1 above (Specially Created Intellectual Property Rights).
- 28.3. The Contractor must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Framework Agreement grants to the Authority a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Authority an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

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

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

**30. Assignment and Change of Control**

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

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

### **31. Sub-Contracting**

- 31.1. The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 31.2. The Contractor may not sub-contract its obligations under the Framework Agreement without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 31.3. Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:
- 31.3.1. requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of Goods and related services and the sub-contractor's invoice relates to such Goods and related services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;
  - 31.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;
  - 31.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Framework Agreement, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal ([www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and

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

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

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

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

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

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

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

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

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

#### **31A. Supply Chain Transparency and Protections**

##### **Knowledge of the supply chain**

31A.1. In performing its role as a reseller, the Contractor will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the "Contractor's Suppliers") prepare and maintain a written supplier code of conduct or supplier policy that addresses the following.

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

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

- 31A.2. The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers prepare and maintain appropriate policies and procedures to identify, manage and mitigate labour and human rights risks in their supply chains relevant to this Framework Agreement (the "Contractor Supply Chain").
- 31A.3. The Contractor will, within 20 Working Days of the Framework Commencement Date, provide the Authority with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the Contractor Supply Chain. The Contractor will notify the Authority of any changes as soon as reasonably practicable.
- 31A.4. The Authority will have the right to share with participating framework public bodies all information provided by the Contractor in relation to these Supply Chain Protection provisions.

#### **Supply chain working conditions**

- 31A.5. The Contractor will submit an annual written report to the Authority outlining the Contractor's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Contractor Supply Chain.
- 31A.6. The Contractor will take all reasonable steps to ensure that all Goods supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.
- 31A.7. In respect of the Contractor Supply Chain and the Contractor's Suppliers, the Contractor must ensure the following:
- 31A.7.1. forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;
  - 31A.7.2. child labour is not used in any stage of manufacturing or in the provision of Goods and related services or supplies;
  - 31A.7.3. workers do not undertake excessive working hours. For the purposes of this Framework Agreement, working hours must not exceed the maximum set by local law; a working week must not be more than 60 hours per week, including overtime, except in emergency or unusual situations and workers shall be allowed at least one day off every seven days;
  - 31A.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;
  - 31A.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;
  - 31A.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;
  - 31A.7.7. workers must not be subject to harassment or unlawful discrimination; and
  - 31A.7.8. workers must be provided with safe and healthy working conditions.

31A.8. In respect of the Contractor Supply Chain and the Contractor's Suppliers, the Contractor will use its reasonable endeavours to ensure the following:

31A.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;

31A.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**

31A.9. The Contractor will use its reasonable endeavours to require the Contractor's Suppliers to audit, evaluate and report in writing to the Contractor not less than once every twelve (12) months on performance against the Contractor's Suppliers' codes of conduct and or supplier policies and their policies on labour and human rights impacts in respect of the Contractor Supply Chain. The Contractor shall provide the Authority on request with a copy of any such reports in so far as they relate to the Contractor Supply Chain.

31A.10. The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers undertake a defined program of supply-chain audits. Audits must be undertaken by third party accredited certification bodies and independently verified. These audits must either include or be supplemented by external consultation and engagement with local labour unions or civil society organisations/NGOs, and off-site worker interviews to gain a more accurate understanding of working conditions. The Contractor shall provide the Authority on request with a copy of any such audits, and supplementary evidence where relevant, in its possession or control in so far as they relate to the Contractor Supply Chain.

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

31A.11. The Contractor will use its reasonable endeavours to ensure the outcomes of the Contractor's Suppliers supply-chain audits are subject to corrective actions by the Contractor's Suppliers in a timely manner. The Contractor shall provide the Authority on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to the Contractor Supply Chain.

31A.12. The Contractor will use its reasonable endeavours to actively engage with the Contractor Supply Chain to ensure continuous improvement in labour and human rights standards and supplier compliance with such standards.

31A.13. The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Contractor Supply Chain not less than once every twelve (12) months.

### **Measures to control the supply chain**

31A.14. The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers' sourcing policies address labour and human rights impacts during the extraction phase of production and include the use of conflict free smelters in accordance with the [Responsible Minerals Initiative](#). The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Contractor Supply Chain and provide the Authority on request with details.

31A.15. The Contractor will use its reasonable endeavours to ensure that the Contractor's Suppliers implement and adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as the same may be updated from time to time) and produce a publicly viewable annual summary of their due diligence and risk management measures consistent with this guidance.

31A.16. The Contractor will use its reasonable endeavours to provide the Authority on request with



evidence of direct and ongoing collaboration by the Contractor's Suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Contractor Supply Chain.

### **Supply chain contract termination**

- 31A.17. The Contractor will use its reasonable endeavours to ensure that all contracts in the Contractor Supply Chain give the Authority a right to terminate the sub-contract if the supplier fails to comply with legal obligations in the fields of environmental, social, labour or human rights law.

### **32. Amendment**

- 32.1. The Framework Agreement may be amended only by the written agreement of both Parties. Accordingly, the Contractor may not unilaterally amend the Framework Agreement.
- 32.2. Clause 7 (Price) makes special provision for the variation of the Pricing Schedule.

## **SECTION E**

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

- 33.1. The Contractor warrants and represents that:

- 33.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;
- 33.1.2. in entering the Framework Agreement, it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 33.1.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 33.1.4. as at the Commencement Date, all information contained in the SPD 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 £2,500,000 for any one occasion.
- 35.4. But neither Party excludes or limits liability to the other Party for:
- 35.4.1. death or personal injury caused by its negligence;
  - 35.4.2. misrepresentation;
  - 35.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

**36. Insurance**

- 36.1. The Contractor must effect and maintain with a reputable insurance company:
- 36.1.1. public liability insurance in the sum of not less than £2,500,000;
  - 36.1.2. professional indemnity insurance in the sum of not less than £1,000,000; and
  - 36.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.
- 36.2. Such insurance must be maintained for the duration of the Framework Agreement and for a minimum of 5 years following the expiry or termination of the Framework Agreement.
- 36.3. The Contractor must give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

**37. Dispute Resolution**

- 37.1. The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Framework Agreement, including any question regarding its existence, validity or termination, in accordance with the Management Arrangements.
- 37.2. Any dispute or difference arising out of or in connection with this Framework Agreement, including any question regarding its existence, validity or termination, which cannot be resolved

in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of arbitration shall be Scotland. The language used in the arbitral proceedings shall be English.

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

### **38. Severability**

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

### **39. Waiver and Cumulative Remedies**

- 39.1. Any failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Framework Agreement.
- 39.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 12 (notices).
- 39.3. The rights and remedies provided by this Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **40. Force Majeure**

- 40.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Framework Agreement to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of 3 months, either Party may terminate the Framework Agreement with immediate effect by notice.
- 40.2. Any delay or other failure by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by a Contractor Representative is only to be regarded as due to Force Majeure if that Contractor Representative is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 40.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 40.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 40.4. The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events.

### **41. Disruption**

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

- 41.3. In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Framework Agreement.
- 41.4. If the Contractor's proposals referred to in clause 41.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Authority may by notice terminate the Framework Agreement with immediate effect.

## **42. Termination Rights**

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

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

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

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

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

- 42.2.1. in accordance with any provision of the Schedules;

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

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

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

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

- 42.2.2.4. soliciting the Authority's employees;

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

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

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

- 42.2.2.8. carrying out publicity or marketing activities;

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

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

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

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

- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or
  - (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.
- 42.5. The Authority may also terminate the Framework Agreement in the event of a failure by the Contractor to comply in the performance of its obligations under the Framework Agreement with legal obligations in the fields of environmental, social or employment law.
- 43. Termination on Insolvency and Change of Control**
- 43.1. The Authority may terminate the Contractor's interest in the Framework Agreement with immediate effect by notice where in respect of the Contractor:
- 43.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 43.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 43.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
  - 43.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 43.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 43.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 43.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
  - 43.1.8. a debt relief order is entered into; or
  - 43.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.
- 43.2. The Authority may terminate the Contractor's interest in the Framework Agreement by notice with immediate effect within 6 months of:
- 43.2.1. being notified that a change of Control has occurred in accordance with clause 30 (Assignment and Change of Control); or
  - 43.2.2. where no such notification has been given, the date that the Authority becomes aware of the change of control.
- 43.3. But the Authority may not terminate the Contractor's interest in the Framework Agreement under clause 43.2 where approval of the change of control has been granted by notice by the Authority.

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

- 44.1. The Contractor shall perform its relevant Exit Management obligations as part of the Framework whether applicable on either the expiry or early termination of this Agreement.
- 44.2. The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Authority may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 37 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 44.3. A draft of the Exit Plan shall be produced by the Contractor and supplied to the Authority within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 44.3. 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.
- 44.4. The Contractor shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan which shall include:
  - 44.4.1. the activities required to enable the Authority to re-tender the Authority Requirements and/or the provision of the Goods and related services;
  - 44.4.2. the activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Goods and related services;
  - 44.4.3. details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;
  - 44.4.4. support for the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Authority, including prior to and during such transition period;
  - 44.4.5. the maintenance of a 'business as usual' environment for the Authority during the period when Exit Management obligations are applicable; and
  - 44.4.6. all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Goods and related services to either a Replacement Contractor or the Authority.
- 44.5. No amendment of the Exit Plan shall be made without prior written consent of the Authority.

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

- 45.1. The Contractor shall, in complying with all obligations incumbent upon it in terms of the Framework Agreement or any other contract with the Authority, comply in all respects with, and shall ensure that the Contractor's agents, employees and representatives whomsoever comply with the Law.
- 45.2. Without prejudice to the generality of sub-clause 1 above (general compliance with the Law provision), the Contractor must not unlawfully discriminate against any person in terms of the

Equality Act 2010 in its activities relating to the Framework Agreement or any other contract with the Authority.

- 45.3. The Contractor shall take all reasonable steps to ensure the observance of the provisions of sub-clause 1 above by all of their servants, employees, agents, consultants and sub-contractors.
- 45.4. If the cost to the Contractor of the performance of its obligations under the Framework Agreement shall be increased or reduced by reason of the making after the date of the Framework Agreement of any relevant Law that shall be applicable to the Framework Agreement the amount of such increase shall be borne by the Contractor.

**46. Offences**

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

**46A. Compliance With Anti-Slavery And Human Trafficking Laws**

- 46A.1. In performing its obligations under this Framework Agreement, the Contractor shall:
  - 46A.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;
  - 46A.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;
  - 46A.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;
  - 46A.1.4. notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;
  - 46A.1.5. maintain a complete set of records to trace the supply chain of all Goods and Goods and related services provided to the Authority; and
  - 46A.1.6. provide the Authority and its third party representatives access to such records.
- 46A.2. The Contractor represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 46A.3. The Contractor shall prepare and deliver to the Customer, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 46A.4. The Authority may terminate this Agreement with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of this clause.

#### **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.

#### **47A. Financial Distress**

- 47A.1 During the Term, the Contractor shall regularly monitor its own and each of its key Sub-contractors' credit ratings or (where used as proxies for credit ratings) Dun & Bradstreet rating, which at the Commencement Date are as follows:

<b>ORGANISATION</b>	<b>AGENCY</b>	<b>RATING</b>
Contractor	Dunn & Bradstreet	91

- 47A.2 During the Term, the Contractor shall not enter into a key Sub-contract, or extend the duration of a key Sub-contract if, at the time the key Sub-contract is entered into or extended, the relevant key Sub-contractor has:
- 47A.2.1 a credit rating that is lower than S&P "investment grade (BBB)" (or the equivalent credit rating level for another Rating Agency); or
- 47A.2.2 a Dun & Bradstreet Failure Score of 51 (lower than average risk) or more.
- 47A.3 The Contractor shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event (and in any event



ensure that such notification is made within ten (10) Working Days of the date on which the Contractor first becomes aware of the Financial Distress Event).

47A.4 If the Authority reasonably believes that the Financial Distress Event could adversely impact the performance of this Contract, at the request of the Authority the Contractor shall:

47A.4.1 (and shall procure that the relevant key Sub-contractors shall) meet with the Authority as soon as practicable to review the effect of the Financial Distress Event on the continued performance of this Contract;

47A.4.2 as soon as practicable and in any event within ten (10) Working Days (taking into account any discussions and any representations made pursuant to clause 47A.4.1), provide a draft Financial Distress Event Remedial Plan for approval by the Authority explaining how the Contractor and/or relevant key Sub-contractor will remedy the potential adverse impact of the Financial Distress Event on the continued performance of this Contract; and

47A.4.3 provide such financial information as the Authority may reasonably require to support clause 47A.4.2.

47A.5 The Contractor shall incorporate any reasonable comments provided by the Authority on the draft Financial Distress Event Remedial Plan and provide such number of revised drafts as may reasonably be required until the Authority has approved the Financial Distress Event Remedial Plan (which approval shall not be unreasonably withheld or delayed).

47A.6 Following approval of any Financial Distress Event Remedial Plan pursuant to clause 47A.5, the Contractor shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Contract.

#### **48. Blacklisting**

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

#### **49. Conflicts of interest**

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

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

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

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

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

- 50.2. The termination of this Framework Agreement in accordance with clause 42 (Termination Rights) and/or clause 43 (Termination on Insolvency and Change of Control) or its expiry shall not affect the accrued rights of either party.
- 50.3. Following the service of a termination notice, the Contractor shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.
- 50.4. The following provisions survive the expiry or termination of this Framework Agreement
- 50.4.1. clause 1 (Definitions and Interpretation);
  - 50.4.2. clause 8 (Award Procedures);
  - 50.4.3. clause 10 (Official Secrets Acts);
  - 50.4.4. clause 13 (Recovery of Sums Due);
  - 50.4.5. clause 14 (Data Protection);
  - 50.4.6. clause 15 (Transparency and Freedom of Information);
  - 50.4.7. clause 16 (Authority Protected Information);
  - 50.4.8. clause 17 (Contractor Sensitive Information);
  - 50.4.9. clause 18 (Audit [and Records Management]);
  - 50.4.10. clause 19 (Publicity);
  - 50.4.11. clause 21 (Offers of Employment);
  - 50.4.12. clause 23 (Information about Contractor Employees);
  - 50.4.13. clause 26 (Parties pre-existing Intellectual Property Rights);
  - 50.4.14. clause 27 (Specially created Intellectual Property Rights);
  - 50.4.15. clause 28 (Licences of Intellectual Property Rights);
  - 50.4.16. clause 29 (Claims relating to Intellectual Property Rights);
  - 50.4.17. clause 33 (Warranties and Representations);
  - 50.4.18. clause 34 (Indemnity);
  - 50.4.19. clause 37 (Dispute Resolution Procedure);
  - 50.4.20. clause 39 (Waiver and Cumulative Remedies);
  - 50.4.21. clause 47 (Tax arrangements);
  - 50.4.22. this clause 50 (Consequences of Termination);
  - 50.4.23. clause 52 (Governing Law and Jurisdiction); and
  - 50.4.24. schedule 11, part 11, paragraph 1 (Contractor's Warranty).
- 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 Goods and related services previously performed by the Contractor under the Framework Agreement.

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 SPD 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**

52.1. 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 37 preceding pages together with the 11 Schedules annexed hereto are executed as follows:

**SIGNED** for and on behalf of the Scottish Ministers    **SIGNED** for and on behalf of the Contractor

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 22 pages comprise Schedule 1a to the Framework Agreement between The Scottish Ministers and Softcat Plc

## **SCHEDULE 1a - Statement of Requirements**

### **SECTION A - INTRODUCTION**

#### **1 Introduction**

- 1.1 The Scottish Ministers (the Authority) are establishing a Framework Agreement for the provision of Technology Peripherals and Infrastructure equipment. The Framework Agreement will comprise 2 Lots.
- 1.2 Lot 1 will be awarded to a single Contractor covering a complete range of transactional products and services in scope listed within a catalogue. Lot 2 will be awarded to a maximum of four (4) Contractors that can deliver a complete range of more complex products and services in scope on a project basis. During the term of the agreement, the anticipated total expenditure from Framework Public Bodies will be in excess of £50 million.
- 1.3 The key aims of the Framework Agreement are to:
  - Leverage the total Scottish public sector spend to attract best value to deliver a high level of performance and price competitiveness;
  - Provide an easy route to market for transactional products and associated services and a co-ordinated central point of contact for contract management;
  - Drive best value for money for more complex solutions through further competition
  - Increase the uptake of eCommerce and expand the capability through the adoption of cXML ordering and invoicing, resulting in increased transactional efficiencies for buyer and supplier;
  - Influence buying behaviour through consolidated ordering and delivery;
  - Help deliver tangible community benefits and Corporate Social Responsibility (CSR);
  - Maximise social, economic and environmental benefits to help deliver National outcomes, monitored through a Sustainability Balanced Scorecard;
  - Maintain a standard of Cyber Resilience including accreditation to Cyber Essentials Plus or equivalent standards within six months of award;
  - Provide the same level of service to all Framework Public Bodies, regardless of their size or geographical location;
  - Promote continuous improvement through innovative environmental and technology-related initiatives.
- 1.4 The Framework Agreement supports the Scottish Government's [National Performance Framework](#), and the [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'.
- 1.5 The Framework Agreement will be managed centrally by the Scottish Procurement and Property Directorate (SPPD) on behalf of the Authority. The Framework Agreement will form part of a wider portfolio of ICT Products Frameworks which are available to Framework Public Bodies, designed to support the Digital Public Services Strategy: [Realising Scotland's full potential in a digital world: a digital strategy for Scotland](#).
- 1.6 One of the drivers for this strategy is to ensure ICT is deployed in an energy-efficient and decarbonised manner which reduces the carbon footprint of Scottish public sector organisations and its supply chain. The [Green ICT Strategy](#) and [Climate Change Plan, including the target for net-zero emissions by 2045](#), support the Scottish Government's objective for [A Greener Scotland](#) and a [Circular Economy](#). Scottish public sector organisations will be encouraged to contribute to their own vision for a cost effective, sustainable and energy efficient ICT estate by purchasing through these National Frameworks.

- 1.7 The Contractor(s) will be required to minimise the environmental impacts of products and services delivered under the Framework Agreement, while supporting efforts to address the Climate Emergency, contribute in a meaningful way to the transition to a more circular economy including through the application of the waste hierarchy, provide relevant opportunities for community benefits, and provide assurance regarding fair work practices and respect for labour rights and working conditions in the supply chain.
- 1.8 The Contractor(s) will meet the requirements set out in this specification and ensure delivery of a high quality service to Framework Public Bodies using this agreement. The Contractor(s) 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.
- 1.9 The Contractor(s) will at all times adopt and apply industry best-practice in the performance of the Framework and fully participate in continuous improvement and other initiatives to ensure the long term success of the contractual relationship and that value received by Framework Public Bodies is demonstrably greater than could be achieved by sourcing the required goods and services elsewhere.
- 1.10 The Contractor(s) will work with the Authority and/or Framework Public Bodies to map the full end-to-end supply chain, identify and prioritise supply chain initiatives which drive down cost, and improve quality and efficiency, throughout the term of the framework.
- 1.11 To maximise use of the Framework Agreement, the Contractor(s) will be required to support the Authority in promoting the Framework Agreement across the Scottish public sector, at no additional cost. The Contractor(s) will actively promote the benefits of the Framework. This activity will be managed by the Contractor's Account Manager in conjunction with the Authority.
- 1.12 The previous IT Peripherals agreements have been successful in attracting significant levels of uptake, providing an easy route to market for both volume and high value requirements. The Scottish Ministers seek to establish a replacement Framework Agreement for the provision of Technology Peripherals and Infrastructure and associated services.
- 1.13 Past agreements have achieved value for money through improved pricing, product rationalisation, transactional efficiencies and consolidated delivery. The aim of this next framework is to build on these benefits and provide additional focus on attaining competitive acquisition costs without sacrificing flexibility and choice. The Framework will be divided into two Lots across 5 key product groups. More detail on the scope and requirements of each Lot can be found within this document. **eCommerce is fundamental to the continued success and uptake of this agreement.**
- 1.14 The Contractor(s) will be expected not only to meet the requirements established within this specification but also to ensure the delivery of a high quality service to the customers using this framework. The Contractor(s) will be expected to demonstrate the application and implementation of leading industry practices within internal and customer-facing processes. They will be expected to fully participate in continuous improvement and other initiatives to ensure the long term success of the contractual relationship and that value received by Framework Public Bodies is significantly and demonstrably greater than could be achieved by sourcing IT Peripherals elsewhere.
- 1.15 The use of this Framework is not mandated, therefore, in order to maximise the use of the Framework Agreement, the Contractor(s) will be required to support the Authority in promoting the Framework Agreement across the Scottish public sector, at no additional cost. The Contractor(s) will be required to actively demonstrate and sell the benefits of the Framework Agreement including cost, environmental, resource and operational efficiencies.

## 2 Product Range

- 2.1 The ICT Products portfolio comprises the following framework agreements:

### 3 Lotting Structure

- 3.1 The Technology Peripherals and Infrastructure Framework will be divided into two Lots in accordance with the table below.

Lot No.	Lot	No. of Suppliers
1	IT Hardware Catalogue	1
2	IT Infrastructure Projects	Maximum of 4

### 4 Product Scope

#### Lot 2 – IT Infrastructure Projects

- 4.1 Lot 2 requires the Successful Contractors to provide more complex hardware installations and integrations (including Audio-visual and Network Infrastructure Solutions). Suppliers must have the capability to offer the full range of commoditised IT Hardware products listed at section 4.1 above.
- 4.2 Projects may be delivered either directly or via third parties, and may include the design, supply, installation, maintenance, disposal of infrastructure hardware and all associated services and solutions including but not limited to;
- Data Connectivity including broadband, Ethernet, Fibre To The Cabinet (FTTC), G Fast, Ethernet Circuits
  - ISDN, PSTN
  - Security solutions, including but not limited to Firewalls, Anti-Virus and Virtual Private Network (VPN)
  - Disaster Recovery solutions including but not limited to back up solutions, replication and recovery software and/or services.
  - Local Area Networking (LAN) including but not limited to, switches, Wifi and cabling
  - Digital voice solutions, including but not limited to Voice over Internet Protocol (VOIP)
  - Teleconference and Videoconferencing solutions
  - Power Systems including UPS
  - Associated Hardware – including but not limited to routers, servers, associated accessories and connectivity requirements.
  - Associated Services – including the provision of technical specialists, training, helpdesk support, managed equipment rooms, survey, installation, maintenance and decommissioning.
- 4.3 The Contractor may be required to provide the project management, implementation, migration and knowledge transfer to the Contracting Authority staff.
- 4.4 Contractors must provide deliverables (e.g. project plans, outline solutions, recommendation reports etc.) as specified by the Contracting Authority during a mini competition.
- 4.5 The Contractor may be required to conduct a physical on-site survey in order to carry out further works.
- 4.6 The Contractor must have a robust error handling strategy for any installations or integrations being built or maintained, addressing any errors generated.

- 4.7 It is envisaged that as part of Lot 2 of this Framework Agreement, transformation projects are expected to be a core area of activity.
- 4.8 Deliverables may include: -
- a) Extended product warranties; support; upgrade and maintenance services associated with Goods purchased; hardware configuration; imaging devices (utilising Buyer' pre-owned or separately procured software licences where applicable); delivery to desk/server room; installation; consignment stocking and deliveries as required; project management of implementations e.g. estate refreshes; provision of management information reports to Buyers; technical support; on-site warranty repairs (as required); and loaning test devices.
  - b) Contractors must provide sales advice and support services if required.
  - c) Contractors must provide Buyers with technology roadmaps/future product direction and shall provide advice and guidance on avoidance of EOL issues, particularly for extended Call-Off Contracts where EOL issues may impact on technology roll-outs or other issues;
  - d) Contractors must have flexible logistics and delivery capability to service Buyers' requirements that fall outside office hours due to operational requirements.
  - e) Contractors must have the capability to provide committed volumes required for any single transaction within the Buyer stated timescales. Delivery may be direct to Buyers or to other parties to apply additional associated services such as for example, hardware configuration, imaging, delivery to desk/server room, installation, packaging removal or as specified by the Buyer as part of the Call-Off requirement.
  - f) Contractors must offer a range of warranties, subject to the Buyer's requirements, including but not limited to extended product warranties with processes in place to perform repairs under warranty and to expedite product returns and/or replacement.
  - g) Contractors must have effective processes in place for handling DOA (Dead on Arrival) issues and failures which includes issuing replacement Product prior to return of DOA item(s) back to the Supplier.
  - h) Contractors will provide custom-configured devices i.e. hardware devices configured to Buyer specifications, where required (dependent on sufficient volumes being procured).
  - i) Contractors must provide operating system licenses for the Goods supplied.
- 4.9 It is expected that, throughout the life of the Framework Agreement, the scope will evolve through continuous improvement to ensure that all Technology Peripherals and Infrastructure requirements, both current and future, can be met through this agreement e.g. Internet of Things (IoT) sensors &/or equipment.
- 4.10 Any product offered by the supplier at the time of submitting their bid must be available for a minimum of 12 months from the commencement of the agreement, the only exception to this will be in the event that the product is faulty and withdrawn from the market or superseded by a superior product. In the event that a product is discontinued, the supplier will be expected to source an equivalent product at no additional cost.
- 4.11 On request, Contractor(s) will be expected to provide Framework Public Bodies with assistance in identifying suitable products and/or solutions which meet their business requirements. Contractor(s) must provide a range of assistive technologies that have the specific function or have the ability to be modified for accessibility purposes (e.g. disabled access).
- 4.12 Under each Lot, all services and software associated with the deployment of the product groups detailed above are considered to be within scope of this framework. Services may include, but will not be limited to, the installation of Audio Visual equipment, desktop printers or networking



equipment; warehousing and bonded storage. Any requirements, including commercial terms, will be subject to agreement between Framework Public Bodies and the Contractor(s) and will be based on the rates submitted as part of the successful tender response.

- 4.13 It is recognised that in light of the current COVID-19 pandemic, 'normal' ways of undertaking working are changing, there is a greater demand for home working and conducting business activities outside the office environment. It is therefore important that Tenderers are able to provide service solutions that support new ways of conducting business.
- 4.14 The provision of hire equipment is covered in Schedule 5 (Call Off Terms & Schedules), however, if required, the supply and specific commercial terms will be subject to agreement between individual Framework Public Bodies and the Contractor(s).
- 4.15 For the avoidance of doubt, the scope does NOT cover the supply of Desktops and Monitors; Fixed and Mobile Workstations; Mobile and Web Based Client Devices; Computer Consumables such as paper, print cartridges, CD/DVD storage; Multi-Function Devices, Wide Format, 3D Printers or Very High Volume (VHV) Equipment of any specification.
- 4.16 The Authority does not guarantee any level of expenditure or demand for goods and/or services under the Framework. The marketing effort of the successful Contractor(s) will be a large factor in determining the success of the Framework Agreement.

## **5 Framework Start Date**

- 5.1 The framework agreement will commence on the Commencement Date.

## **6 Framework Duration**

- 6.1 The initial period of the Framework Agreement will be for two (2) years. There will be the option to extend the framework for up to two (2) additional twelve (12) month periods, at the sole discretion of the Scottish Ministers.

## **7 Access to the Framework Agreement**

- 7.1 The Framework Agreement will be available to all Scottish public sector and third sector bodies as defined in the Contract Notice and Framework terms and conditions.
- 7.2 Framework Public Bodies with contracts in place for the management of their client device estate may authorise a third-party service provider to act on their behalf in the procurement of devices under this Framework Agreement. Assets supplied under the Framework Agreement will remain the property of the Framework Public Body.

## **8 Framework Call-Off Arrangements**

- 8.1 Once the framework has been awarded, Framework Public Bodies will be able to call off orders under this framework under the process set out in the document "- Schedule 3 (Award and Ordering Procedures) - Technology Peripherals and Infrastructure" of the Framework Agreement.
- 8.2 Framework Public Bodies will identify the required Lot to be used on the following basis:
- Where the requirement is transactional and can be quantified within the Lot 1 Catalogue, the Direct Award Process can be used as set out in Schedule 3 of the Framework Agreement.
  - Where the requirement is more complex, the Framework Public Body may run a further competition using the Mini-Competition Process set out in Schedule 3 of the Framework Agreement.
- 8.3 Framework Public Bodies will select the period for their call off requirements. Call-off contracts can be awarded at any time up to and including the expiry date of the Framework Agreement.

8.4 Framework Public Bodies calling off from the Framework Agreement through a mini-competition may supplement the terms of the Call-Off Contract and Call-Off Conditions with additional or varied terms and conditions provided they do not involve any substantial modifications to the Call-Off Contract or Call-off Conditions.

8.5 All Call-Offs are to be on the basis of the specifications and pricing set out in Schedule 2 (Pricing) of the Framework Agreement, although further price competition is permitted in the case of a call off via a mini-competition or as otherwise agreed.

## **9 Implementation Period**

9.1 An implementation plan will be established jointly between the Contractor(s) and the Authority to enable the provision of Goods via a dedicated portal designed to meet the requirements of the Authority and Framework Public Bodies.

9.2 Prior to the establishment of the dedicated online portal the Contractor(s) will be expected to receive and process orders by email following award of the Framework Agreement.

## **10 Exit**

10.1 The Contractor(s) must have a robust Exit Plan when the Framework Agreement comes to the end of its duration. The Contractor(s) must produce and agree with the Authority, a robust Exit Plan detailing how the Contractor(s) will work with the Authority to ensure a smooth transition of service when the Framework Agreement comes to an end, or should the Framework be terminated by the Authority.

10.2 A draft of the Exit Plan shall be produced by the Contractor(s) and supplied to the Authority within three (3) months of the Commencement Date and shall include or address the matters specified in Clause 44.4 of the Framework Terms and Conditions.

## **SECTION B – STATEMENT OF REQUIREMENTS**

### **11 Service Delivery**

11.1 The Contractor(s) will provide the full range of goods and services as detailed in this document as per the Service Levels and Key Performance Indicators detailed in [Annex A](#) within this document. The levels of service must be consistent for every individual Framework Public Body irrespective of the value of their requirement or their location.

11.2 It is essential the Contractor(s) provides national coverage from Framework Commencement Date across the whole geography of Scotland within the agreed SLAs.

11.3 The Contractor(s) will provide full details of any sub-contractors and/or consortia members they intend to utilise in exercising their obligations under this Framework Agreement in the Qualification Envelope in PCS-Tender and in the document “Schedule 10 (Approved Sub-contractors) – Technology Peripherals and Infrastructure”. The Contractor(s) will have the direct contractual relationship with the Authority and Framework Public Bodies. The Contractor(s) is, therefore, responsible for monitoring and managing all performance including the KPIs under this Framework Agreement, whether service is delivered by the Contractor(s) or by a sub-contractor or consortia member.

11.4 The Contractor(s) may also be asked to provide information and work with the Authority and/or Framework Public Body(s) in respect to the following initiatives:

- The reduction/elimination of Consumer Single Use Plastic products;

- Waste reduction/management e.g. reduction in packaging materials including the reduction/elimination use of Consumer Single Use Plastic packaging;
- Carbon emission and carbon footprint reduction;
- Product rationalisation;
- Information, support and promotion of sustainable products;
- Choice comparison tool – standard vs sustainable product;
- Management reports to help corporate responsibility objectives;
- Advice on specific projects to reduce waste and carbon;
- Reduce, Reuse, Recycle;
- Carbon emission reporting on products;
- Recycling and disposal processes for various product groups.

11.5 The Authority is committed to reducing the environmental impact within this framework. As such, the Contractor(s) shall provide information on new and/or improved environmentally preferable products including amongst others consumer single use plastic when they become commercially available and promote their use under the Framework.

## **12 Buyer's Guide**

12.1 The Contractor(s) will be required to assist the Authority to support and achieve the benefits of the Technology Peripherals and Infrastructure Framework through the influencing of decision makers and users, on how cost can be reduced for the Framework Public Body. This will include, but not be limited to, the production of a Buyer's Guide. The Authority and the successful Contractor(s) will agree this final Buyer's Guide within two (2) weeks of Framework Award. As a minimum this will include:

- How to order
- Web portal details and "onboarding" process
- How product information can be accessed
- Account Management details
- Escalation processes
- Best Value and continuous improvement initiatives
- Associated services available
- Guidance on receipt and return of goods

## **13 Security of Supply**

13.1 The Contractor(s) will maintain security of supply through appropriate and comprehensive risk management of supply chain risks which are reasonably within their control and which may arise due to availability of components, environmental, social or other relevant factors so as to ensure, as much as is possible, security of supply of materials, products or equipment essential to the delivery of the required product/service. In managing risks associated with security of supply, the Contractor(s) will apply appropriate strategies in relation to supply chain management, sourcing, logistics and stock management.

## **14 Framework and Account Management**

14.1 Framework and Account management is critical to the successful implementation and running of the Framework Agreement.

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

14.3 Contractor(s) shall provide a named Account Manager(s) for all accounts, to pro-actively co-ordinate relevant orders and provide comprehensive support and links between the Contractor and Framework Public Body. The support must include pre, during and after sales support,

technical information and advice on all products. Contractor(s) should also provide contact details of a deputy Account Manager to cover periods of absence;

## **15 Framework and Contract Review Meetings**

- 15.1 The dedicated Framework Manager and/or Account Managers will be expected to attend regular review meetings with Scottish Procurement and/or Framework Public Bodies as required.
- 15.2 For Lot 2, successful Contractors must make their Framework Manager and/or members of their Account Management Team available on a monthly basis, at a pre-agreed time, to participate in a conference call with the Authority, the frequency of the meetings will be continually reviewed. The purpose of the conference call will be to address operational activities.

## **16 Escalation**

- 16.1 First line management of operational issues will be undertaken between the Framework Public Body and their Account Manager. A clear issue management and escalation process will be established by the Contractor(s) in consultation with the Authority. This will include the operation of a dedicated and auditable escalations mailbox where escalations, complaints and issues raised by Framework Public Bodies can be recorded. All complaints and issues will be logged by the Contractor(s).
- 16.2 An 'issue' is defined as a failure to meet the requirements outlined in this Statement of Requirements. A 'complaint' is defined as a formal escalation in writing to the Contractor. A complaint shall be deemed to represent a service issue where:
- a) multiple complaints are received relating to the same element of the Service;
  - b) investigation of any one complaint gives reason to believe that such complaint relates to the manner in which the services are provided;
- 16.3 The Contractor shall advise the Authority within 24 hours of any complaint received. The Contractor will within 2 Working Days of receipt of a complaint, provide a full response or action plan detailing how the complaint will be resolved and the expected resolution date.
- 16.4 If a complaint is not resolved within the agreed timescales the Contractor will provide an update on progress on a regular basis. The Contractor should aim to resolve a complaint within 10 Working Days from the date it was recorded.
- 16.5 All complaints and their outcomes will be reported quarterly.
- 16.6 The Contractor(s) shall use reasonable endeavours to resolve any service issues as soon as possible. If the service issue cannot be resolved within 20 Working Days, or any other period agreed by the Authority and/or Framework Public Bodies, then the service issue shall be referred to the senior representatives set out in the table below:

Authority Senior Representative	Contractor Senior Representative
Head of Collaborative Procurement SPPD	[*]

## **17 Disputes**

- 17.1 In the case of any dispute between a Framework Public Body and a Contractor, the Contractor must continue to provide Goods and Associated Services in accordance with the Service Levels and KPIs detailed in this Statement of Requirements document to all other Framework Public Bodies unless the Contractor's appointment to provide Goods to Framework Public Bodies has been suspended or terminated by the Authority.

## **18 Communications**

- 18.1 The Authority will be the primary route for the communication of changes to the Framework Agreement. The Contractor(s) will, however, be expected to maintain regular dialogue with Framework Public Bodies. The Authority must authorise any publication relating to the framework, prior to distribution.
- 18.2 The Contractor(s) shall allow all relevant information relating to the framework to be published and distributed to Framework Public Bodies via the Authority's secure website. All Framework Public Bodies will be recommended to support the framework.

## **19 Management Information**

- 19.1 Contractor(s) will produce management information (including transactional data) in relation to the overall performance of the Framework Agreement. This information will be provided to the Authority on a quarterly basis, no later than 10 Working Days after the end of the previous quarter, unless agreed with the Authority otherwise. Reports must provide a sufficient level of detailed and accurate information, so as to enable Scottish Procurement to understand how each Framework Public Body is procuring devices under the Framework Agreement. The information and level of detail will be agreed between Scottish Procurement and the Contractor. This information will also be made available to individual Framework Public Body as required.
- 19.2 For Lot 2 the list below will be required on a monthly/quarterly basis, as a minimum:
- No. of mini competitions per month and successful awards (inc. Framework Public Body details, products, services, estimated contract value, etc.)
  - Organisation name and contact details
  - Contract information – dates, duration, estimated value
  - Details of products / services requested
  - Mini-competition weightings
- 19.3 The Contractor(s) shall submit the reports listed at Annex D in accordance with the timeframes listed in the reports table or as otherwise reasonably requested by Scottish Procurement and/or Framework Public Bodies.
- 19.4 The Contractor(s) will, as and when required by Scottish Procurement or the Framework Public Body, provide data and/or information to support the answering of freedom of information (FOISA) requests, First Minister Questions (FMQs), Parliamentary Questions (PQs) and Ministerial Correspondence Submissions (MCS). The Contractor(s) will provide this information within five (5) Working Days of the request to provide such information.
- 19.5 The Contractor(s) will hold and be able to make readily available to Scottish Procurement and/or Framework Public Bodies, the underlying and supporting data used to compile the various reports where requested.
- 19.6 The Contractor(s) will verify data integrity prior to reporting or making data or information available to Scottish Procurement and/or Framework Public Bodies.
- 19.7 Records must be retained and maintained for five (5) years and in accordance with the Framework Terms and Conditions.
- 19.8 All information should be provided electronically and be available in MS Excel format.
- 19.9 All Management Information requested by the Authority will be provided by the Contractor at no additional cost.

## **20 Product Quality**

- 20.1 The products supplied through the Framework Agreement must be genuine, fit for purpose, free of defects and be of a sufficient range to provide the Framework Public Body with flexibility and choice. The Authority reserves the right to sample any product to ensure fit for purpose or

equivalent quality. This will be provided at no cost and will be returned in a state fit for resale. If the sample is deemed not to be fit for purpose, the product must be removed from the offering and a substitute product of adequate quality must be supplied at no additional cost.

## **21 Warranties**

- 21.1 All products shall be fit for purpose and shall include as a minimum a 12-month warranty from the date of delivery. Where the manufacturer's warranty exceeds 12 months, this should be provided as standard.

## **22 Pricing**

- 22.1 Scottish public sector organisations purchase a wide range of ICT equipment to fulfil their business requirements. The items and brands detailed in the Product Group Listing within the document "Schedule 2 – Pricing Schedule – Basket of Goods" are provided as an illustrative representation of the types of products the Contractor(s) may expect Framework Public Bodies to purchase. While this is an accurate representation of historical demand and may not necessarily be indicative of manufacturers/products that will be purchased under this framework.
- 22.2 Framework pricing across both Lots will be based on a cost-plus pricing model, comprising cost prices for a basket of goods, percentage Mark-up in terms of supplier margin and delivery costs.
- 22.3 The percentage Mark-up submitted in the Pricing Schedule may vary between product groups but will be fixed for the duration of the framework agreement, unless improved upon through continuous improvement, product rationalisation and/or mini competition.
- 22.4 The cost prices submitted at tender must be representative of the prices at Framework Commencement Date. Contractor(s) must provide full visibility of all pricing arrangements issued to Framework Public Bodies.
- 22.5 The Contractors' cost price may fluctuate, however, the Contractor(s) must do everything within their ability to mitigate the impact of this in relation to framework value for money.
- 22.6 The Contractor(s) will be expected to demonstrate the competitiveness of their cost price within the marketplace. The ability to ensure Value for Money must be demonstrated to the Authority on a monthly and quarterly basis. The Contractor(s) will also be required to ensure that the framework prices are equal to or better than any promotional pricing available through their public facing website or alternative routes to market.

## **23 Consolidation**

- 23.1 The Contractor(s) will be expected to work with Framework Public Bodies to reduce the number and/or frequency of orders being placed and in turn reduce the number of deliveries over the duration of the framework. Unless otherwise agreed by the Framework Public Body, deliveries should be consolidated, i.e. where a device and accessories have been ordered together on a single Purchase Order, all items should arrive at the requested delivery location in one consignment.
- 23.2 The Contractor(s) may offer a range of financial incentives e.g. free of charge delivery for orders of a certain value/volume/weight.

## **24 Price Benchmarking**

- 24.1 The Contractor(s) will be expected to benchmark, review and improve, wherever possible, the framework pricing.
- 24.2
- 24.3 Scottish Procurement reserves the right to benchmark, or commission 3rd party benchmarking of the Contractor's product prices and delivery charges at any time in order to determine that they still represent best value for money for Framework Public Bodies.

## **25 Invoicing Processes**

- 25.1 Electronic invoicing is a minimum requirement. The Contractor(s) must also be capable of supplying consolidated invoices. Invoices must include VAT information, Purchase Order number and line details of the items being invoiced.
- 25.2 The Contractor(s) must comply with HMRC guidelines, these can be found at the following URL; (<https://www.gov.uk/vat-record-keeping/vat-invoices>).
- 25.3 Where electronic invoicing is not being used, the invoices will be sent to the email address specified. Where Framework Public Bodies cannot accept electronic invoices then hard copy invoices will be made available, these will be sent to an agreed address.
- 25.4 The Contractor(s) shall promote the option of providing electronic and/or consolidated invoices where possible to Framework Public Bodies.

## **26 Payment**

- 26.1 Standard terms and conditions of payment are 30 calendar days from receipt of invoice. It is anticipated that most payments will be made by BACS. The Contractor must issue all invoices within 6 month of delivery of the product(s) and any associated service(s).
- 26.2 The Contractor(s) will be expected to support the Scottish Government good practice with regards to payment of Contractors and sub-contractors. Where possible Framework Public Bodies will be encouraged to make prompt payment to Contractors, within 10 calendar days. There will be an expectation upon the Contractor(s) to use this timescale to make payment to their supply base.

## **27 Packaging**

- 27.1 The Contractor(s) will support a reduction in the use of packaging under the Framework Agreement. Any initiative to reduce the use of packaging must not hinder, limit or restrict the safe transit or delivery of devices or any other goods supplied under the framework and must comply with all relevant packaging and waste regulations.
- 27.2 This reduction in the use of packaging must minimise environmental impacts and support the application of the waste hierarchy through use of the following:
- sustainably sourced materials;
  - packaging containing a minimum of 60% recycled content;
  - re-usable packaging systems, such as unboxed palletised packaging;
  - recyclable materials and the avoidance of single-use plastics;
  - creative packaging design and innovative materials;
  - plastics not containing non-halogen polymers.
- 27.3 Items are to be packed by order, with individual orders packed and labelled separately. The Contractor(s) will be responsible for ensuring that all packaging is of adequate size and of substantial quality to prevent damage to the goods and with regard to the environment. Each delivery must be accompanied by a delivery note, in a plastic sleeve, containing the following information as a minimum:
- Name of person who placed the order;
  - Delivery Address;
  - Purchase Order Number;
  - Product Code and Description;
  - Product Quantity and details of goods/quantity to follow;
  - Serial Number (where available);
  - MAC Address (where available);
  - Quantity of parcels made up for each order.

- 27.4 The Contractor(s) will be responsible for the safe removal of packaging where additional service elements are required e.g., installation or if arranged prior to delivery by the Framework Public Body.
- 27.5 Minimisation of waste will be achieved through the principles of sustainably sourced materials as well as reduction, re-use and recycling methods, such as through the use of creative packaging design, innovative environmentally friendly materials, and re-usable packaging.
- 27.6 The Contractor(s) will adhere to all packaging and waste regulations where applicable and ensure that plastics used for product packaging do not contain halogen containing polymers. Packaging should contain recycled content, or, as an alternative, be sustainably sourced packaging.
- 27.7 All packaging must not contain any plant based material that was illegally sourced from its country of origin. The Contractor(s) will be expected to be able to verify legal sourcing of relevant materials.
- 27.8 All packaging components will be easily separable by hand into individual materials to facilitate recycling.
- 27.9 The Authority will develop with Contractors a Sustainability Balanced Scorecard to identify, measure and monitor key criteria with the purpose of demonstrating that the Framework Public Body's sustainable impact is minimised throughout the life of the framework. Contractors may also be asked to provide information and work with the Authority and/or Framework Public Body(s) in respect to the following initiatives:
- The reduction/elimination of Consumer Single Use Plastic products;
  - Waste reduction/management e.g. reduction in packaging materials including the reduction/elimination use of Consumer Single Use Plastic packaging;
  - Carbon emission and carbon footprint reduction;
  - Product rationalisation;
  - Information, support and promotion of sustainable products;
  - Management reports to help corporate responsibility objectives;
  - Advice on specific projects to reduce waste and carbon;
  - Reduce, Reuse, Recycle;
  - Carbon emission reporting on products;
  - Recycling and disposal processes for various product groups.

## **28 Delivery**

- 28.1 A full delivery service must be provided, which includes but is not limited to the following:
- Bulk delivery to stores – one bulk delivery to one central point.
  - Single location with multiple drops – one bulk delivery split across multiple locations within the same site, i.e. a school or hospital.
  - Multiple locations – one order with multiple site locations spread across a geographical area, e.g. a Local Authority or home addresses.
  - Call off – one bulk order to be held, in bonded storage, and called-off by the Framework Public Body as and when required;
- 28.2 Orders should be delivered on the agreed delivery day which should be not more than 5 Working Days for all General Peripheral products or 10 Working Days for all other orders from receipt of order. An additional 2 Working Days will be allowed for remote and island locations, unless otherwise agreed with the Framework Public Body.
- 28.3 No deliveries are to take place outside of the hours of 09:00 to 17:00 unless otherwise agreed. Restricted periods e.g. during lunch breaks may be imposed on deliveries to schools and other similar locations; the individual Framework Public Body would be expected to advise the Contractor(s) of any specific requirements. When making deliveries to schools, personnel must



report first to the school office and delivery vehicles may be driven through school playgrounds only on the approval and direction of an authorised person.

- 28.4 Typically, a signature will be required for each delivery made. Under no circumstances should goods be left outside the building.
- 28.5 In the event of a query, the Contractor(s) will be expected to provide proof of delivery, electronically if required, to the Framework Public Body.
- 28.6 No mechanical off-loading, lifting or moving equipment are supplied by the Framework Public Bodies. No assistance is available to the Contractor(s) for the purpose of off-loading and placing goods within the delivery location.

## **29 Delivery Locations**

- 29.1 The Framework Agreement will be available to Framework Public Bodies across Scotland. The Contractor(s) will be required to undertake deliveries throughout the whole of Scotland and must provide Framework Public Bodies with the same level and quality of service, irrespective of size or geographical location.
- 29.2 In response to COVID-19, there has been a requirement from some Framework Public Bodies for devices to be delivered to non-business locations. Where requested, Contractors must be able to arrange delivery to non-business locations and have in place robust processes to ensure devices are fully traceable and include proof of delivery by a nominated individual only.

## **30 Delivery Charges**

- 30.1 Standard delivery charges will be based on a 3-5 Working Day service, regardless of location (with the exception of remote and island locations where an additional 2 Working Days will be permitted).
- 30.2 The Contractor(s) will be required to provide a menu of delivery options and maximum charges which will also be made available under the framework.

## **31 Delivery Fleet**

- 31.1 The Contractor(s) and/or its delivery and logistics partners will maintain an efficient delivery fleet and minimise the environmental impact associated with the delivery of devices through efficient logistics, full load deliveries, effective driver training and low or zero emission fleet. The Contractor(s) will support measures to address the Climate emergency through fleet management and will monitor and report on the efficiency of the delivery fleet and implement measures to reduce the environmental impact over the term of the Framework Agreement. If delivery is sub-contracted, the Contractor(s), will monitor and report on behalf of the sub-contractor.

## **32 Returns and Collections**

- 32.1 The Contractor(s) should be notified within 5 Working Days of any Items ordered/delivered in error and must be returned in a state fit for resale. Items ordered in error may be subject to a restocking fee, which must not exceed 5% of the unit cost, and/or collection cost depending on the weight and/or dimensions of the product.
- 32.2 Items which are faulty or develop a fault will be covered by a minimum 12-month warranty or the manufacturer's warranty, whichever is greater. Framework Public Bodies will endeavour to ensure that the Goods are available for collection, unopened (if received in error) and in the same condition they were received. All damaged or incorrectly delivered items must be replaced by the Contractor(s) within 5 Working Days of receiving such notice from the Framework Public Body. The Contractor(s) must arrange for the immediate replacement and collection of the damaged items, at no cost to the Framework Public Body.

- 32.3 Framework Public Bodies will endeavour to notify the Contractor(s) of Goods which are faulty, received in a damaged state or delivered in error, within 5 Working Days of receipt. Sample and evaluation products can be supplied on a sale or return basis; Framework Public Bodies will be expected to return items in a state fit for re-sale.
- 32.4 The Contractor(s) will monitor and report to the Authority the level of returns and ensure compliance with the relevant key performance indicator. The Contractor(s) will be expected to monitor the level of returns and to work with Framework Public Bodies to reduce levels (excluding sample and evaluation products).

### **33 Order Queries**

- 33.1 Contractors must respond to customer queries in a timely manner or by the requested deadline; if a deadline cannot be achieved this must be advised as soon as possible to the requester;
- 33.2 The Contractor(s) must contact the requisitioned within 4 Working Hours of receipt of the order with any queries.

### **34 Help Desk**

- 34.1 The Contractor(s) will be required to operate their own helpdesk, with specified staff familiar with the account, to assist Framework Public Bodies with general and order enquiries, providing technical support. The Help Desk should operate between 09:00 and 17:00 Monday to Friday, excluding Scottish Bank Holidays, and should be adequately staffed during this period.

### **35 Security**

- 35.1 The Contractor(s) will undertake appropriate security and other checks, including Disclosure Scotland, necessary to ensure that their employees, agents, representatives, and sub-contractors are suitably screened to undertake deliveries and other visits to sensitive locations such as schools, hospitals and government buildings. Details of Disclosure Scotland requirements can be found at:

<https://www.mygov.scot/organisations/disclosure-scotland/>.

- 35.2 Framework Public Bodies may require differing levels of security clearance. The Contractor(s) must ensure they have a sufficient number of Baseline Personnel Security Standard (BPSS) security cleared qualified service engineers.
- 35.3 There will be no additional charge for the provision of security cleared personnel to the Authority and/or Framework Public Body.

### **36 Information Security**

- 36.1 Due to the sensitive nature of public sector data, there will be Framework Public Bodies whose IT policy dictates that, in the event of a fault, repair, end of life or lease, media (internal or removable) should not be removed from the premises. The Contractor(s) will have a procedure in place for the secure disposal and transport of internal or removable media e.g. the provision of defective media retention services at minimal costs to the Framework Public Body. Evidence of the steps taken by the Contractor(s) for the destruction of any media should be provided to the Framework Public Body along with a certificate as proof of destruction. The successful Contractor(s) will be responsible for promoting the benefits and availability of the media retention service.
- 36.2 Where the Contractor(s) processes Personal Data as a Data Processor for the Framework Public Body, the Contractor(s) must enter into a data processing agreement in the form set out in Schedule 9 (Model Contract regarding Data Protection Directive 95/46/EC) of the call-off document "Schedule 5 (Call off Terms and Schedules) - Technology Peripherals and Infrastructure".

- 36.3 The Contractor(s) must ensure that they are aligned to the principles of the Cyber Essential Plus scheme, or equivalent standard, and fully compliant within six (6) months of the Framework Commencement Date.
- 36.4 The Contractor(s) must ensure they are aligned to the [Government Security Policy Framework](#), and Framework Public Bodies may require Contractors to follow ISO 27001, or equivalent standards, to manage Information Security as part of a call off contract.

### **37 Environmental Policy/Products**

- 37.1 The Authority expects Contractor(s) to reduce their environmental impact during the Framework and to work with Framework Public Bodies to achieve this. The Contractor(s) will increase the sourcing and utilisation of components that reduce adverse effects on the environment, whilst ensuring no degradation to the product quality or performance.
- 37.2 The Contractor(s) will adhere to and fulfil all obligations relevant under the WEEE Directive and Restriction of Hazardous Substances (RoHS) guideline ensuring that all waste and end-of-life equipment and/or components which cannot be re-used are recycled avoiding waste to landfill.
- 37.3 The Contractor(s) will assist Framework Public Bodies to deliver circular economy outcomes through appropriate measures to extend the useful life of IT equipment through appropriate measures such as product design, take back of products (aligned with Framework Public Bodies replacement cycles), reuse of equipment and/or parts or re-conditioning and re-deployment of devices. The Contractor(s) will work with Framework Public Bodies to ensure they are aware of such options.

### **38 Energy Efficiency**

- 38.1 All products should meet or exceed the minimum energy efficiency standards relevant to the product group.

### **39 Environmental Standards**

- 39.1 The Contractor(s) will be required to maintain a standard of environmental protection, including, certification to ISO 14001/EMAS or equivalent standards, relevant to the delivery of this Framework Agreement. The Contractor(s) will also support carbon reporting to assist Framework Public Bodies meet their environmental performance targets.

### **40 Social & Ethical Responsibility**

- 40.1 The Authority has included obligations within the contract conditions relating to supply-chain transparency, ethical working conditions and labour standards, which are relevant to the products/services to be delivered. These obligations reflect Scotland's commitment to economic, social and human rights as reflected in the International Labour Organisation ([ILO](#)) core conventions, the International Covenant on Economic, Social and Cultural Rights ([ICESR](#)), Scotland's National Action Plan for Human Rights ([SNAP](#)), the UN Sustainable Development Goals ([SDGs](#)) and the [Human Trafficking and Exploitation \(Scotland\) Act 2015](#) and the [Modern Slavery Act 2015](#).
- 40.2 The Contractor(s) will take all reasonable steps to ensure that all Goods supplied under this Framework Agreement reflect due regard to ethical sourcing and human rights, working conditions, human trafficking and exploitation / modern slavery, other exploitation and corruption. This includes all International Labour Organisation (ILO) core conventions that have been ratified by the country of their origin. The Contractor(s) promotes human rights including security of employment rights, equality of opportunity, prevention of corruption and fair trade within the supply chain in connection with this Framework Agreement.
- 40.3 The Contractor(s) will have a comprehensive system which demonstrates an on-going and systematic approach to identifying and managing risks relating to labour standards, working conditions and use of child labour in the supply chains relevant to the Framework Agreement.

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

- 40.4 The Contractor(s) will be required to demonstrate continual improvement in working conditions and labour standards, while enhancing policies and systems and, where relevant, work with the Authority during the term of the Framework Agreement to ensure compliance with new and emerging legislation.
- 40.5 The Contractor(s) will be required to have sustainability code of conduct and policies in place to support sustainability issues.

#### **41 Community Benefits**

- 41.1 The Authority is committed to contributing to the social, economic & environmental well-being of the people of Scotland. The Scottish Government's strategic objectives underpin its core purpose to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.
- 41.2 In delivering the Framework, the Contractor(s) will be responsible for taking into account social, economic and environmental factors designed to maximise the involvement of the wider community. The Contractor(s) will work with the Authority and Framework Public Bodies to maximise the value of Community Benefits delivered through the Framework including but not limited to:
- Targeted recruitment and training opportunities;
  - Educational benefits to communities, including working closely with educational institutions to provide work experience opportunities, work placements, and supporting other learning, skills, digital accessibility and career development initiatives.
  - Contribution to the delivery of community and charity projects and schemes
  - Provision of sub-contracting supply chain opportunities for SMEs, third sector social enterprises and supported businesses, including advertising sub-contracting opportunities on Contracts Finder.
- 41.3 The Contractor(s) will be required to report progress with regard to these matters as part of its reporting obligations

#### **42 Fair Work Practices**

- 42.1 The Scottish Public Sector is committed to the delivery of high quality public services, and recognises that this is critically dependent on a workforce which is well-rewarded, well-motivated, well-led, has access to appropriate opportunities for training and development, is diverse and inclusive, and can influence decision making. These factors are also important for workforce recruitment and retention, and thus continuity of service delivery.
- 42.2 Public bodies in Scotland are committed to applying [Fair Work First](#) in their own organisation and in publicly funded supply chains. [Fair Work First](#) is the Scottish Government's policy for driving good quality and fair work in Scotland. Through this approach, the Scottish Government, and its public sector partners, are asking bidders to describe how they are committed to adopting Fair Work First:
- appropriate channels for effective voice, such as trade union recognition
  - investment in workforce development
  - no inappropriate use of zero hours contracts
  - action to tackle the gender pay gap and create a more diverse and inclusive workplace
  - providing fair pay for workers (for example, [payment of the real Living Wage](#))

- offer flexible and family friendly working practices for all workers from day one of employment
- oppose the use of fire and rehire practices

42.3 In order to ensure the highest standards of service quality we expect suppliers to commit to adopting Fair Work First in the delivery of this contract as part of a fair and equitable employment and reward package as a route to progressing towards wider fair work practices set out in the [Fair Work Framework](#)

42.4 The Scottish Living Wage Accreditation Initiative and the Living Wage Foundation recognise and celebrate the responsible leadership shown by Living Wage Employers and support employers to incorporate the Living Wage into organisational structures long term. Suppliers are encouraged to obtain Living Wage Accreditation and to sign the [Scottish Business Pledge](#)

42.5 The Scottish Government recognises pay as a clear way that an employer can demonstrate a commitment to their workforce, helping tackle in-work poverty alongside wider Fair Work First criteria. **We therefore require any workers engaged in the delivery of this framework agreement, and any subsequent call off contract, to be paid at least the real Living Wage.** More information can be found at the link below:

<http://scottishlivingwage.org/>

<http://www.livingwage.org.uk/>

**The Contractor(s) must ensure that they will pay staff that are involved in the delivery of the framework agreement, and/or any subsequent call off contract, at least the real Living Wage.**

## ANNEX A

Key Performance Indicators (KPIs) and Service Levels will be utilised to monitor the performance of the framework on a quarterly basis. The Contractor(s) will be required to report against these KPIs in line with the Management Information requirements. The Authority reserves the right to conduct annual customer satisfaction reviews.

The tables below provide KPIs and expected performance targets against which the Contractors' performance will be measured throughout the duration of the Framework.

The Authority reserves the right to request further audit and validation of Management Information submissions during the Framework period.

Service Area (for both Lots unless stated otherwise)	Key Performance Indicator	Target Level
<b>Framework Utilisation</b>	Following initial migration increase the number of Framework Public Bodies utilising the framework.	To be mutually agreed
<b>Complaints</b>	Complaints acknowledged within 24 hours	100%
	Complaints resolved within 2 Working Days	98%
	Complaints resolved within 10 Working Days	100%
	Response metrics from the dedicated escalations mailbox will be provided as evidence to support this KPI	
<b>Continuous Improvement &amp; Innovation</b>	<p>Contractor(s) will work with the Scottish Procurement / Framework Public Bodies to map the full end-to-end supply chain and identify and prioritise supply chain initiatives throughout the life of the framework.</p> <p>In partnership we will drive down cost, improve the quality, efficiency, and/or contribute to the sustainability of that supply chain, including associated services under the terms of this framework.</p> <p>This is intended to include, but will not be restricted to:</p> <ul style="list-style-type: none"> <li>- Cost reduction initiatives</li> </ul>	<p>To be identified and agreed in partnership</p> <p>(i.e. At least X number of improvement initiatives introduced per annum)</p>

## Framework Agreement - Technology Peripherals and Infrastructure

	<ul style="list-style-type: none"> <li>- Supply chain efficiency initiatives</li> <li>- Demand management initiatives</li> <li>- Environmental initiatives</li> <li>- Technology or innovation related initiatives</li> <li>- Quality improvement initiatives.</li> <li>- Management Information quality and efficiency initiatives</li> <li>- Availability of on-line portal</li> </ul>	
<b>Management Information/KPI Reporting</b>	Contractor(s) to provide Management Information in electronic format (or make available online) to Scottish Procurement and a Framework Public Body (where requested).	As detailed in section 21 of this document, reports to be made available on the 10th Working Day (at the latest) following the end of the relevant quarter, in the format required by Scottish Procurement (with the exception of FOI, FMQ, PQ & MCS requests).
<b>Order Fulfilment</b>	Line fulfilment of 98% in 5 Working Days for General Peripherals and 10 Working Days for all other product groups.	98%
<b>Replacement of Faulty and/or Damaged, or Incorrectly Delivered Goods</b>	The number of faulty, damaged or delivered in error orders.	<p>99.5% of all products shipped to be free from defect and as specified in customer order.</p> <p>Faulty, damaged or delivered in error goods should be replaced within 48 hours.</p>
<b>Returns and Collections</b>	Returns and collections requested replaced or uplifted by the Contractor(s) within 5 Working Days of notification from the Framework Public Body.	99.5%
<b>Response Time to General Requests</b>	Response from Dedicated Account Management Team.	Up to 4 hour response
<b>Response Time for Order acknowledgements</b>	Response from Sales Order support Team to the Purchaser, acknowledging the Purchase Order.	4 hour response
<b>Payment</b>	Prompt payment of sub-contractors	100% within 30 calendar days. Where possible Framework Public Bodies will be encouraged to make prompt payment to Contractors, within 10 calendar days.

## Framework Agreement - Technology Peripherals and Infrastructure

<b>Sustainability</b>	<p>The Contractor(s) will work with Scottish Procurement and/or Framework Public Bodies to contribute to, and improve the sustainability of the supply chain.</p> <p>This is intended to include, but will not be restricted to:</p> <ul style="list-style-type: none"> <li>- Labour standards, working conditions and child labour within the supply chain: <ul style="list-style-type: none"> <li>- Setting policy, Objectives and Targets;</li> <li>- Providing names of suppliers within the supply chain and any changes;</li> <li>- Implementing Continual Improvement Programmes</li> <li>- Monitoring and Reporting performance;</li> <li>- Conducting Audits undertaken (against appropriate standards e.g. ETI Base Code, SEDEX or equivalent)</li> <li>- Undertaking Corrective Actions &amp; Review;</li> </ul> </li> <li>- Adopting Environmental initiatives, such as: <ul style="list-style-type: none"> <li>- Carbon reduction;</li> <li>- Circular economy outcomes, such as re-use or re-conditioning;</li> <li>- Packaging and waste minimisation</li> </ul> </li> <li>- Community benefits delivered as a result of this Framework Agreement</li> <li>- Policy and continual improvement programme regarding conflict minerals</li> </ul>	<b>To be identified and agreed in partnership.</b>
<b>Price Competitiveness</b>	The Contractor(s) must clearly demonstrate on a monthly basis that pricing applied is equal to or better than prices available elsewhere in the market.	100% of top 100 items by both value and volume sold in the previous quarter are equal to or better than pricing available elsewhere.
<b>Open Book Accounting</b>	On a quarterly basis, the Contractor(s) must detail to the Authority all costs associated with the delivery of the framework and demonstrate how those costs deliver value for money for the Scottish public sector.	Full details disclosed on cost prices, mark-up, associated services and delivery charges are equal to, or do not exceed, the actual costs incurred.





## Annex B – Reports

The Contractor(s) must be able to provide the following reports:

Report details (Both Lots unless stated)	Frequency
Supply chain Transparency & Sustainability balanced score card	Annually, as agreed with the Authority
Slavery and Human Trafficking	Annually, as agreed with the Authority
Benefit Tracker detail i.e. spend value per Framework Public Body.	10 Working Days after the end of each quarter, unless otherwise agreed with the Authority
Balanced Scorecard, including Performance against Key Performance Indicators and Community Benefits	10 Working Days after the end of each quarter, unless otherwise agreed with the Authority
Sustainability Report containing the following information. <ul style="list-style-type: none"> <li>• Future Supply Chain audit programme.</li> <li>• Outcome of supply chain audit activities including details of any corrective action plans put in place.</li> <li>• Progress against corrective action plans previously agreed</li> </ul>	Annually, as agreed with the Authority
Complaints and Outcomes Report	10 Working Days after the end of each quarter, unless otherwise agreed with the Authority
For Lot 2:	
Mini-competition opportunities published (organisation name, tender return date, Price : Quality ratio (PQR))	10 Working Days after the end of each quarter, unless otherwise agreed with the Authority

### **Annex C – Service Coverage**

The regions in the map below are referred to in the document “Schedule 1b (Technical Response) – Technology Peripherals and Infrastructure”. The successful Contractor(s) must provide the same level of support, maintenance and service, regardless of a Framework Public Body's size or geographical location. In order to support remote and off-shore areas in line with the required SLAs it may be necessary to utilise local arrangements.

This and the following 100 pages comprise Schedule 1b to the Framework Agreement between the Scottish Ministers and Softcat Plc

**SCHEDULE 1B – Technical Response**

REDACTED

This and the following 2 pages comprise Schedule 2 to the Framework Agreement between The Scottish Ministers and Softcat Plc

## **SCHEDULE 2 – Pricing Schedule**

### **1 Framework Pricing**

1.1 The prices applicable to the Framework Agreement are based on the Contractor's Cost Price per item plus the Mark-up percentage plus the appropriate delivery charge for the option selected by the Framework Public Body and/or any rate card if applicable as set out in this Schedule.

1.2 All framework prices quoted will be based on the methodology outlined in this Schedule and will be made available to all Framework Public Bodies.

1.3 All prices are in pounds Sterling (£) exclusive of VAT. Prices should represent value for money to the taxpayer throughout the term of this Framework Agreement. The prices are inclusive of all the requirements in the Framework Agreement and supporting Schedules.

### **2 Product Offering**

2.1 Throughout the term of the Framework Agreement, as products reach their end of life, the Contractor will transition contracted Goods to an equivalent or next generation product.

2.2 The Authority reserve the right to amend the product offering to complement contracted Goods, Services and associated software throughout the term of the Framework Agreement.

### **3 Price Mechanism**

3.1 The Cost Prices for the Basket of Goods for Lot 2 are the prices submitted by the Contractor at tender submission and represent the prices at Framework Commencement Date.

3.2 The Contractor shall have an ongoing obligation throughout the duration of the framework to secure new or improvements to the Cost Prices by reviewing and benchmarking their sources. These improvements/savings will be immediately reflected in this Framework.

3.3 The Mark-up percentage will comprise of all additional Contractor costs excluding delivery. The agreed percentage for each product category will remain fixed throughout the duration of the framework, unless reduced by the agreement of both Parties.

3.4 Delivery charges shall remain fixed for the duration of the framework, unless reduced by the agreement of both Parties.

3.5 Charges for delivery of Goods shall be at cost and exempt from the application of any uplift.

3.6 All Framework Prices shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

a) incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or

b) costs incurred prior to the commencement of any Call Off Contract.

3.7 Where it is appropriate for a Framework Public Body to procure services in order to identify appropriate solutions (e.g. site surveys, estate audits, etc.) the Contractor must charge no more than the rates specified in the "Rate Card" worksheet for each respective lot in the document "ITT – Schedule 2 – Pricing Schedule – Basket of Goods".

3.9 It is expected that high value, complex and/or solution based requirements will be subject to further competition. Framework Public Bodies reserve the right to hold a further mini competition

with all Contractors on the Framework Agreement to determine which Contractor offers best value for money, in terms of price and quality.

#### **4 Financial Options**

4.1 Financial options must provide the flexibility required by the Authority and/or Framework Public Body in meeting their budgetary and operational requirements, for example, leasing, capital purchasing or “as-a-Service” model. Any lease terms need not be co-terminus unless this is requested by the Framework Public Body.

#### **5 Promotional Pricing**

5.1 Special promotional pricing must be clearly identified and made available through the framework.

#### **6 Benchmarking**

6.1 Prices for Goods and Services under this Framework Contract shall be transparent and comparable to the Contractor's lowest available prices for comparable goods and services provided by the Contractor to the public sector through other commercial arrangements and that are supplied on comparable terms.

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

6.3 The Authority reserves the right to benchmark or commission third party benchmarking of the Contractor's overall price, Mark-up and delivery charges at any time in order to determine that they represent best value for money for Framework Public Bodies. The Contractor will be given the opportunity to review and improve the benchmarked prices.

6.4 Any benefits identified as a result of continuous improvement or as a consequence of any benchmarking to improve the framework price will be implemented by the Contractor (subject to relevant procurement regulations and the Framework Agreement) at no additional cost to the Framework Public Body.

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

#### **7 Product Listing**

7.1 The Framework Price and Product Group Listing is contained in the following file submitted via Public Contracts Scotland Tender on 31/01/22 and updated on 09/02/22

REVISED v2 Softcat\_Plc\_ITT – Schedule 2 – Pricing Schedule – Basket of Goods version 3 – January 21.xlsx

and are subject to the following correspondence/clarification:

a) Your message titled “Basket of Goods Clarification” submitted via the Public Contracts Scotland Tender message board on 09/02/2022 at 15:44.

2.2 These files are held on record and a summary is included below:

Product mark-up	Lot 2 – mark-up %
General Peripherals	REDACTED
Networking	REDACTED
Print	REDACTED
Audio-Visual	REDACTED
Storage	REDACTED

Servers	REDACTED
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Rate Card	Working Day	Out of Hours day Rate	Weekend Rates
Level 1: Follow	REDACTED	REDACTED	REDACTED
Level 2: Assist	REDACTED	REDACTED	REDACTED
Level 3: Apply	REDACTED	REDACTED	REDACTED
Level 4: Enable	REDACTED	REDACTED	REDACTED
Level 5: Ensure / Advise	REDACTED	REDACTED	REDACTED
Level 6: Initiate / Influence	REDACTED	REDACTED	REDACTED
Level 7: Set Strategy / Inspire	REDACTED	REDACTED	REDACTED

#### Delivery Charges

Weight per order	REDACTED	REDACTED
Up to 40 kg	REDACTED	REDACTED
Over 40 kg	REDACTED	REDACTED

Additional Delivery Options	REDACTED
Next Business Day Pre 10:30 - up to 20kg	REDACTED
Saturday Pre-Noon – up to 20 kgs	REDACTED
Offshore Islands - up to 20kg	REDACTED

This and the following 9 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and Softcat Plc

### **SCHEDULE 3 – Award Procedures**

#### **1. Award Procedures**

- 1.1. If a Framework Public Body has a requirement under this Framework Agreement, then it will award a call-off contract in accordance with the procedure in this Schedule and the requirements of the Regulations. All call-off contracts will be between the Framework Public Body and the Contractor.
- 1.2. All Call-off Contracts awarded through the Framework Agreement will be drawn up in accordance with Schedule 5 (Call Off Terms & Schedules). This will be amended to reflect the individual Framework Public Body (Purchaser), Contractor (Supplier), reference numbers, dates, etc. Specific requirements or variations will be recorded in the supporting Schedules, which may include details captured in the Order Form (see section 6). Where the Standard Terms of Supply schedules and/or Order Form have not been completed, the corresponding schedules from the Framework Agreement will apply.
- 1.3. Framework Public Bodies may award Call-off Contracts until the date of expiry of this Framework Agreement, which may run well beyond the duration of this Framework Agreement.
- 1.4. Framework Public Bodies can access the Framework Agreement by conducting a further Mini Competition with the Contractors on the Framework Agreement

#### **2. Ordering Procedures**

- 2.1. Where a Framework Public Body decides to source Goods through this Framework Agreement then it shall be entitled at any time during the Period to place an order for Goods by submitting a Purchase Order and/or Purchase Order Information to the Contractor in accordance with the procedures described in this Schedule 3 (Award and Ordering Procedures) and the requirements and guidance defined in the Supplier Catalogue
- 2.2. The Contractor must have an appropriate structure and process in place to manage quotations, new Purchase Orders and change requests from Framework Public Bodies.
- 2.3. The Contractor will be able to accept Purchase Orders in any format as agreed between the Authority, Framework Public Bodies and Contractor.
- 2.4. Where Framework Public Bodies utilise their own Purchase Order document it must clearly state the resulting purchase is under the Technology Peripherals and Infrastructure Framework (SP-21-012) and that the framework Call-Off Contract Terms and Conditions apply to the procurement.
- 2.5. In the event that a Framework Public Body makes an approach to the Contractor with a request for the supply of products and services which are the same as or similar to the Goods available on this Framework Agreement, the Contractor shall promptly and in any event within five (5) Working Days of the request by the Framework Public Body and before the supply of the equivalent products or services, inform such



Framework Public Body of the existence of this Framework Agreement and its ability to place orders for the Goods pursuant to it.

- 2.6. The Framework Public Body and Contractor(s) must work together to ensure that the full requirements have been clearly identified and will be reflected in the order raised by the Framework Public Body, either by the utilisation of Schedule 5 (Call Off Terms & Schedules) or completion of the Order Form (see section 6).
- 2.7. An order acknowledgement must be provided by the Contractor within 24 hours of an order being received from a Framework Public Body. Contractors must be able to provide this in electronic and paper format. Contractors must follow up with the Framework Public Body if additional clarification is required regarding the Goods, Services or associated Software ordered.

### **Lot 2: IT Infrastructure projects – Mini Competition**

- 2.8. Where the services required are not adequately identified within the Contractor's catalogue or requires more complex engagement, then the Framework Public Body should run a further competition using the Mini-Competition Process set out in this Schedule 3 document and in accordance with Schedule 5 (Call Off Terms & Schedules).
- 2.9. Framework Public Bodies reserve the right to hold a further mini competition with all of the Contractors on Lot 2 of the Framework Agreement to determine which Contractor offers best value for money, in terms of price and quality. It is anticipated that all high value, complex and solution based requirements will be subject to further competition
- 2.10. Contractors will take part in further competitions in accordance with this Schedule 3 (Award and Ordering Procedures) and there will be an expectation on Contractors to respond to all requests to participate.
- 2.11. Contractors will be required to maintain records of all mini competition requested under this Framework Agreement including details of the response, pricing and any awarded contracts. At the request of the Authority, Contractors will be required to report on the mini competition and subsequent awards as soon as applicable and as part of any review meetings. Contractors, upon request of the Authority, should also make available a copy of individual mini competition responses.
- 2.12. The Framework Public Body will develop a specification providing the relevant details to enable Contractors to respond. Framework Public Bodies will determine the most appropriate call off duration. Call-off contracts can be awarded at any time up to and including the expiry date of the Framework Agreement.
- 2.13. The Framework Public Body will invite all Framework Contractors to tender by issuing the specification to all Contractors on the Framework. This may be carried out using the Public Contracts Scotland system, or using other appropriate procurement processes.
- 2.14. The Framework Public Body will set a time limit for the receipt of the tenders, taking into account the complexity of the requirements, and keep each response received confidential until the expiry of the time limit.
- 2.15. The Framework Public Body must evaluate all responses submitted by the Contractors by applying the award criteria specified. The award criteria which can be

applied to further competitions will cover both cost and quality of service and will be stipulated in the mini competition tender documentation. Please note that the weightings and specific criteria will be determined by the Framework Public Body and this may vary from the framework award criteria/weightings as it is dependent on the specific requirement.

- 2.16. The Framework Public Body will not be obliged to award any Call-off Contract.
- 2.17. Where a Framework Public Body is unable to determine the information required to place an order the Framework Public Body shall be provided with a named Account Manager who will provide support including pre, during and after sales support, technical information and advice on all devices.
- 2.18. Framework Public Bodies calling off from the Framework Agreement through a mini-competition may supplement the terms of the Call-Off Contract and Call-Off Conditions with additional or varied terms and conditions as long as they do not involve any substantial modifications to the Call-Off Contract or Call-off Conditions.

### **3. Framework Mobilisation**

- 3.1. Immediately following confirmation of award, framework implementation meetings will take place between the Authority and the Contractor(s). During these meetings the Contractor(s) will be expected to support and develop the content of a Buyer's Guide and Supplier Catalogue. The Contractor(s) will also be expected to support the ratification of the pricing and provision of quotation methodology. The Contractor will ensure that the Account Manager or equivalent senior representative attends all Implementation Meetings. The Contractor's representative must be empowered to make decisions on behalf of the Contractor's organisation.

### **4. Purchase Order Information**

- 4.1. The minimum information to be provided at the time of placing an order is:
  - 4.1.1. Date of Purchase Order;
  - 4.1.2. Name of person placing the Purchase Order;
  - 4.1.3. Framework Public Body's Purchase Order Reference;
  - 4.1.4. The Goods to be supplied including quantity;
  - 4.1.5. Reference to the Framework Agreement and acceptance of the Call Off Terms and Conditions;
  - 4.1.6. Time(s) and dates(s) for the delivery of the Goods (taking into account the minimum periods of delivery);
  - 4.1.7. Premises to which the Goods are to be delivered including points (and whether special delivery requirements are required);
  - 4.1.8. Arrangement for invoicing; and
  - 4.1.9. Procurement Card number (if applicable).
- 4.2. If the Framework Public Body has not clearly quoted their reference number then the Contractor will clarify this with the Framework Public Body and may, as a last resort, reject any orders which are not deemed appropriate or compliant.
- 4.3. No excess charges will be levied on the Framework Public Body where their reference number has not been supplied or where the Framework Public Body's reference number is not used throughout the provisioning process by the Contractor.

4.4. If applicable, Framework Public Bodies may request in the order that, prior to delivery, the product settings are pre-loaded with appropriate software and fully tested.

4.5. It is the responsibility of the Contractor to ensure that all Goods, Services and associated Software are supplied at the correct prices.

## 5. eCommerce

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

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

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

- **Pecos** - PECOS P2P system provides a consistent interface to suppliers through standard order, receipt and invoice functionality. It enables business workflows and audited approval processes to be implemented to ensure compliance to procurement and finance guidelines.
- **Content Management** - Pecos Content Management (PCM) facilitates the upload, approval, distribution and on-going management of electronic content to support both collaborative contract arrangements and local contracts (where appropriate). The system ensures that content is provided to end users from the Contractors in the most efficient manner possible, with the correct pricing & product descriptions displayed. The main advantage to Contractors is that they are able to manage and provide their content once in a standard format which is easily validated and then published onto the purchase-to-pay systems of many public sector buying organisations. Contractors should be able to provide electronic catalogues (eCatalogues) to be used in PCM or to provide a "punch-out" capability to their own eCatalogues.
- **Ordering** - PECOS (Professional Electronic Commerce Online System) is the eOrdering system of choice for the Scottish public sector. It enables the generation and submission of orders using e-mail, and industry standard electronic protocols including EDI and cXML.
- **Payment** - a number of finance systems are used across the Scottish public sector, and when interfaced with PECOS or through their own integrated e-Ordering systems provide Contracting Authorities with a full Purchase to Pay (P2P) solution. Many systems also include functionality to receive and match invoices electronically (i.e. eInvoicing), manage low-value/high-volume transactions through Purchasing Cards (e.g. Electronic Procurement Card), consolidate multiple purchase orders into a single invoice and even remove the need for an invoice through self-billing on receipt of an approved purchase order.

5.4. The Contractor will be expected to provide an overview of their eCommerce capability within the Supplier Catalogue, and facilitate the provision of quotations if the

Framework Public Body is unable to determine the appropriate ordering information from the Contractor's web pages.

- 5.5. Where the Contractor is providing catalogue data or punch-out solution they must maintain price and product data in accordance with that agreed in the Framework, including any updates.
- 5.6. The Contractor is required to work with the Authority and the Framework Public Bodies in the promotion of process efficiencies. However due to the nature of this collaborative procurement, the Framework Public Bodies are at different stages of automation. Accordingly, the Contractor should still be able to provide 'traditional' forms of communication, such as, order via telephone and fax, paper timesheets and invoices.
- 5.7. The Contractor shall be required to work with the Authority and Framework Public Bodies to develop eInvoicing capability during the lifetime of the Framework Agreement.

## **6. Standard Terms of Supply Order Form**

- 6.1. The purpose of the Standard Terms of Supply Order Form (Order Form) is to provide the Framework Public Bodies with a structured format for capturing their Goods and Services.
- 6.2. The Order Form can be used for both direct award and mini competition, to ensure Contractor(s) are provided with the relevant information to process an order or respond to a mini competition request.
- 6.3. Contractor(s) can use the Order Form to respond to the Framework Public Body's requirements. The completed Order Form can be countersigned by both the Framework Public Body and Contractor to form the Contract document. **A copy of the Order Form can be found in [Annex A](#).**

**ANNEX A – Standard Terms of Supply Order Form**

An Order Form has been created to simplify the call-off procedure and substitute the need to complete and sign the Call Off Terms & Schedules (Schedule 5) contract agreement. **The Order Form can be used at the discretion of the Framework Public Body.**

All variables within the Standard Terms of Supply are captured in the tables below, and should be completed as appropriate for your specific requirements.

**By checking this box ☐ you are agreeing to abide by the Call Off Terms & Schedules (Schedule 5) for the Technology Peripherals and Infrastructure Framework Agreement (ref: SP-21-012) which can be found on the secure website.**

Numbers in brackets e.g. (10) refer to the relevant clause in the Standard Terms of Supply. Numbers in chevrons e.g. <F1> refer to the merge fields that would be updated if completing the Standard Terms of Supply.

**SECTION A – SHOULD BE COMPLETED BY THE PURCHASER****1. Ordering Procedure (check as appropriate)**

Ordering Procedure (check as appropriate)	
Direct Award	<input type="checkbox"/>
Mini Competition	<input type="checkbox"/>

Service Description	[Enter an overview of the Goods and Associated Services required]
Response Date	[For mini competition, enter the date Suppliers are required to respond to this request <F13>]
Award Criteria	[For mini competition, enter the details of any award criteria applied to this procurement e.g. price/quality ratio or for direct award, enter criteria used for achieving best value]

**2. Purchasers Details**

Framework Ref	SP-21-012
Contract/Order Reference	[Enter the Contract/Order Reference <F1> which should be quoted on all correspondence relating to this Contract]
Purchaser	[Enter your organisation name <F2>]
Purchaser Contact (13)	[Enter name of the Contact <F31> for any notices relating to this Contract]
Purchaser Address (13)	[Enter the address <F30> for any Notices relating to this Contract]
Purchaser Contact Details (13)	[Enter the telephone number <F32> fax number <F33> and e-mail address <F34> to be used for any Notices relating to this Contract]
Invoice Address	[Enter the address to which invoices must be sent, if different from the above]
Name and title (80)	[Enter name and title of the individual authorising the request and agreeing to abide by the Standard Terms of Supply]
Date (80)	[Date of the signature above]

### 3. Statement of Requirements and Key Performance Indicators (Schedule 1)

Statement Requirements of	<p>[Enter full details of the Goods, Services and associated Software required, which may include:</p> <ol style="list-style-type: none"> <li>1. details of any existing goods, services and/or software used</li> <li>2. any specific delivery requirements and date(s) or time(s)</li> <li>3. type of Goods required</li> <li>4. acceptance test criteria and/or test period</li> <li>5. milestones</li> </ol> <p>For a direct award, this should refer to the Goods, Services and associated Software in the Principal Catalogue</p> <p>For a mini competition this section should include all requirements that would be described in Schedule 1 (Statement of Requirements) if completing the Standard Terms of Supply</p> <p>Requirements can be expressed precisely i.e. reference to catalogue item or generally in terms of required outputs]</p>
Key Performance Indicators (KPIs)	[Enter the details of any specific KPIs where applicable.]
Premises	[Enter the details of all locations where the Goods and associated Services will be delivered, installed and any training carried out]
Nature of Contract - Financial Options (3)	[This should describe how the Goods and associated Services will be paid for e.g. purchase or lease <b>or</b> the purchase and lease <F22> including the lease period where applicable.]
Contract Period and Commencement (5)	[Enter details of the Contract period <F24 and 25> and the required Commencement Date <F23>]

### 6. Pricing (Schedule 2)

Estimated Contract Value	[The full estimated Contract value over the period should be entered here]
Price Variation (8)	[This should specify whether the Prices specified by the Supplier can or cannot be varied <F27> and/or increased <F28> for the period of the Contract]
Payment and Invoicing (15)	[Enter details of the invoice frequency <F40>]
Pricing Schedule	<p>[Specific details relating to the Pricing should be entered here. This could include:</p> <ol style="list-style-type: none"> <li>1. mechanism for price review and/or variation if applicable</li> <li>2. benchmarking]</li> </ol>

### 3. Award and Ordering Procedures (Schedule 3)

Award and Ordering Procedures	[Enter details of any specific eCommerce requirements where applicable]
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#### 4. Management Arrangements (Schedule 4)

Management Arrangements	[Enter details of any specific management arrangements, including Dispute Resolution, if applicable]
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#### 5. Exit Management (Schedule 8)

Exit Management (77)	[Enter details of any specific exit management arrangements, including the period given to the Supplier to provide the Exit Plan if different from the Standard Terms of Supply which states 'within 3 months']
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#### 6. Further Details

**Note: Changes to the standard values below should only be made when using the mini-competition ordering procedure. Where there is no change from the Standard Terms of Supply, the description "As per Standard Terms of Supply" should be added.**

Discovery or pre-award survey	[Entered the details of any planned discovery days or opportunities for pre-award site surveys]
Electronic Auction	[Enter specific details where there is an intention to utilise an eAuction during any part of the mini competition]
Working Hours (1)	[Entered details of the Working Hours if different from the framework – 0900 hours and 1700 hours]
Break (6)	[Enter details of any break period if different from the Standard Terms of Supply, namely:  6.1 The Purchaser may terminate the Contract at any time by giving not less than 3 months' notice to the Supplier]
Audit (21)	[Enter details of any Audit requirements, and specify a length records must be retained and maintained if different from the 5 years specified in the Standard Terms of Supply]
Staff Transfer (TUPE) (44/46)	[Enter details of any known TUPE implications at both commencement and expiry or termination  Where there are to be no TUPE implications the following statement should be entered here - The Parties agree that the commencement and/or ceasing of the provision of the Services by the Supplier does not involve a Relevant Transfer]
License of Intellectual Property (49)	[Enter details of any known Intellectual Property requirements where these are different to those specified in the Standard Terms of Supply]
Sub-Contracting Advertisement (53)	[Enter details of a specific geographic location where sub-contracting opportunities must be advertised in at least one newspaper if different from the framework – e.g. Scotland]
Limitation of Liability (69)	[Enter details of the liability limits if different from those specified in the Standard Terms of Supply, namely:  69.3 The liability of either Party under the Contract for Defaults is limited to £2,500,000 for any one incident.

	<i>NB: This could impact on the prices submitted by the Suppliers, and may result in prices higher than those agreed in the Framework Principal Catalogue.]</i>
Insurances (70)	<p>[Enter details of the insurance limits if different from those specified in the Standard Terms of Supply, or where Professional Indemnity Insurance is a requirement, namely:</p> <p>70.1.1 public liability insurance in the sum of not less than £2,500,000 for any one incident and unlimited in total;</p> <p>70.1.3 professional indemnity insurance, but only where requested in the Order Form and, at the level stipulated therein.</p> <p><i>NB: This could impact on the prices submitted by the Suppliers, and may result in prices higher than those agreed in the Framework Principal Catalogue.]</i></p>
Force Majeure (71)	[Entered details of the period allowed for Force Majeure, if different from the Standard Terms of Supply]

## SECTION B – SHOULD BE COMPLETED BY THE SUPPLIER

### 7. Supplier Details

Supplier	[Enter the Supplier name <F3>]
Supplier Contact (13)	[Enter name of the Contact <F36> for any notices relating to this Contract]
Supplier Address (13)	[Enter the address <F35> for any Notices relating to this Contract]
Supplier Contact Details (13)	[Enter the telephone number <F37> and e-mail address <F39> to be used for any Notices relating to this Contract]
Name and title (80)	[Enter name and title of the individual authorising the request and agreeing to abide by the Standard Terms of Supply]
Date (80)	[Date of the signature above]

### 8. Supplier Response to Requirements (Schedule 1)

Statement of Requirements	<p>[Suppliers response to the Purchasers Statement of Requirements in section A3, which should cover as a minimum:</p> <ol style="list-style-type: none"> <li>1. goods</li> <li>2. services</li> <li>3. associated software]</li> </ol>
Key Performance Indicators	[Suppliers response to the Purchasers Key Performance Indicators in section A3]
Key Individuals	[Suppliers should provide details of any Key Individuals relevant to the delivery of these requirements]



**4. Supplier Pricing (Schedule 2)**

Price	[Suppliers commercial response in order to deliver the Purchasers requirements]
Other supporting Pricing information	[Suppliers should provide details of any supporting pricing information, if applicable]

**5. Supplier Sensitive Information (Schedule 7)**

Sensitive Information (20)	[Suppliers Sensitive Information should be listed here]
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**6. Approved Sub-contractors**

Sub-contractors	<p>[Suppliers should name any sub-contractors used in delivering the Purchasers requirements.</p> <p>These must have been approved by the Authority as per clause 31 and Schedule 10 of the Framework Agreement ]</p>
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**SECTION C – TO BE COMPLETED BY BOTH PURCHASER AND SUPPLIER**

**IN WITNESS WHEREOF** these presents typewritten on this and the [[number of pages before this page]] preceding pages are executed as follows:

**SIGNED** for and on behalf of the [[Purchaser]]      **SIGNED** for and on behalf of [[Supplier]]

At.....

At.....

On.....

On.....

Signature.....

Signature.....

Full name .....

Full name.....

Position .....

Position.....

Address.....

Address.....

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

## **SCHEDULE 4 – Management Arrangements**

### **1 Introduction**

- 1.1 The successful delivery of this Framework Agreement will rely on the ability of the Contractor(s) and the Authority developing a strategic relationship immediately following framework award.
- 1.2 To achieve this, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information (MI), and the sharing of information between all Parties.
- 1.3 This Schedule outlines the general structures and management activities that should be followed during the Framework Period, both in terms of the Authority-Contractor relationship and the Contractor-Framework Public Body relationship.

### **2 Key Individuals**

- 2.1 The Contractor(s) and Authority will agree a number of Key Roles and Key Personnel and the Contractor(s) must ensure the continuity of Key Personnel throughout the Period of the Framework Agreement.
- 2.2 The Contractor is expected to identify and allocate a named dedicated Framework Manager resource for the framework.
- 2.3 The role of the Framework Manager will be to manage the overall Framework Agreement with the Authority and to ensure any contractual non-conformance is addressed. The Framework Manager will also be responsible for attending quarterly operational Governance Meetings with the Authority to feedback on consolidated Management Information and discuss opportunities for continuous improvement. They will be responsible for the management of the individual Call-offs and provide a Single Point of Contact (SPoC) for the Framework Public Bodies using the Framework Agreement.
- 2.4 On a mutually agreed basis the Framework Manager (or other appointed named deputy from the Contractor's organisation) will be required to meet with the Framework Public Bodies to ensure all their requirements are being met and to demonstrate the Contractor's ability to maintain, and improve delivery against KPIs throughout the Framework Agreement. The activities of the Framework Manager (and any other appointed named deputies) are fully inclusive within the costs provided in "ITT - Schedule 2 (Pricing) - Technology Peripherals and Infrastructure".
- 2.5 Where a Framework Public Body has an existing Account Manager in place with the Contractor, the Contractor should, where possible, offer the option of retaining this Account Manager.
- 2.6 The Contractor(s) will be required to produce and maintain an organisation chart for the Contract and Account Management structure for this Framework Agreement which details the escalation route for each of the areas. Clear escalation routes should be identified for the provision of Goods and achieving the KPIs within this Framework Agreement in line with the governance process.

### **3 Meetings**

- 3.1 It is the intention that an implementation meeting will be held with each successful Tenderer prior to the Framework Commencement Date in order to establish the Framework Management approach and agree the timetable for producing all Deliverables required for Framework Commencement.
- 3.2 Annual and/or quarterly Governance Meetings will be established between the Authority and the Contractor(s) and separately with Framework Public Bodies as required.
- 3.3 The purpose of the Governance Meetings will be to address operational issues such as achievement of Key Performance Indicators (KPIs), utilisation of the Framework Agreement, realisation of savings and benefits, and opportunities to market the Agreement more effectively. These will be attended by the Framework Manager and appointed representatives of the Authority and specific Contracting Authorities invited as appropriate.
- 3.4 The Account Team must be available on a weekly basis, at a pre-agreed time to participate in a conference call with the Authority. The purpose of the conference call will be to address operational issues.
- 3.5 In addition to regular meetings with the Authority, the Contractor(s) is expected to develop relationships and meet regularly with nominated individuals within each Framework Public Body to ensure that the level of service provided on a local basis is satisfactory.
- 3.6 Where specific problems are identified locally, the Contractor(s) will attempt to resolve such problems directly with the nominated individual within that organisation.
- 3.7 Where the Contractor(s) becomes aware of a trend that would have a negative effect on one or more of the Framework Public Bodies, they should immediately notify the Authority to discuss pre-emptive corrective action.

### **4 Management Information**

- 4.1 The Contractor is required to create and/or maintain a database with up to date and accurate information at all times in order to provide the Authority and/or the Framework Public Body with Management Information (MI) as requested. The information and level of detail will be agreed between the Authority and/or Framework Public Body and the Contractor. The Contractor will be required to develop and incorporate agreed requirements into the database at no cost to the Authority or Framework Public Body.
- 4.2 The Contractor(s) must provide a strategic view of the utilisation of the Framework Agreement and high level information on the Framework Public Bodies buying under the Framework. On a quarterly basis, this standard MI will be provided both to the Authority and, if the requested, to Framework Public Bodies. Reports should be submitted to the Authority within 10 Working Days of the end of each quarter, unless agreed with the Authority otherwise. The Authority and the Contractor(s) will look to develop and continuously improve the MI throughout the term of the Framework Agreement.

- 4.3 All MI should be made available in electronic and paper formats as requested by the Authority and/or the Framework Public Body. The format of the required management information will be agreed between each Party and the Contractor(s) at the implementation meeting.
- 4.4 Benefits tracking MI is used to report high-level spend and benefits realised (e.g. savings) across the whole of the Scottish public sector. Detailed transactional data MI is required at a sufficiently detailed, and accurate level so as to enable the Authority to understand how each Framework Public Body is procuring IT equipment under this framework.
- 4.5 The exact information and level of detail for the transactional data will be agreed between The Authority and Contractor(s) during the implementation meetings, but for example may include:
- Name of Framework Public Body
  - Sector
  - Location(s)
  - Type of products deployed
  - Details of upgrades / downgrades
  - Volume of business delivered by sub-contractors
  - Benefits realised by Framework Public Body, sectors and whole Scottish public sector
- 4.6 Where requested, the MI will also be made available to the individual Framework Public Bodies. Contractors will be required to hold, and to be able to make readily available to the Authority and Framework Public Bodies, a minimum of 24 months of historical data. Records must be retained and maintained for 5 years as per the Framework Terms and Conditions.
- 4.7 Throughout the term of the Framework Agreement, the Authority will liaise regularly with the Framework Public Bodies and where common problems are identified, it will be the responsibility of the Contractor(s) to liaise with the Authority to agree a satisfactory course of action.
- 4.8 The Contractor(s) is required to provide data and/or information to support the answering of freedom of information (FOISA) requests, First Minister Questions (PQs) and Ministerial Correspondence Submissions (MCS) within 5 Working Days, as and when required by the Authority or the Framework Public Body.
- 4.9 MI relating to the sustainability requirements will also be agreed during the implementation meetings.
- 4.10 There will be no additional costs for the MI or any additional information requirements requested. The Authority and the Contractor(s) will look to develop and continuously improve the MI throughout the term of the Framework Agreement.

## **5 Communication & Marketing**

- 5.1 The Authority will be the primary route for the communication of changes to the Framework Agreement. Contractors will however be expected to maintain regular dialogue with the Framework Public Bodies. The Authority must authorise any publication relating to the Framework, prior to distribution. This includes publications via social media.

5.2 The Contractor will allow all relevant information relating to the Framework to be published and distributed to Framework Public Bodies via the Authority's secure website.

5.3 All Framework Public Bodies will be strongly encouraged to support the Framework.

## **6 Continuous Improvement**

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

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

6.2 Continuous improvement will be discussed with the Authority and Contractor(s) at the designated Governance meetings.

## **7 Complaints**

7.1 First line management of operational issues will be undertaken between the Framework Public Body and their Account Manager.

7.2 Complaints of any nature relating to the performance of the Framework Agreement must be acknowledged by the Contractor(s) within 24 hours of any complaint received. The Contractor(s) is required to maintain a full record of all Complaints raised, the escalation within its own organisation, any response provided and the resolution status. The Contractor(s) will provide details of all Complaints and their resolution in the quarterly Management Information returns.

7.3 The Contractor(s) will operate a clear written protocol, as approved by the Authority, for handling Complaints timely and effectively. In the case of any dispute between a Framework Public Body and the Contractor, KPIs are to be maintained during such a dispute.

## **8 Framework Performance**

8.1 The Contractor(s) will complete a balanced scorecard for submission to the Authority on a quarterly basis. The Contractor(s) and Authority will utilise the balanced scorecard to formally monitor and review all aspects of the Framework Agreement's performance at the quarterly Governance meeting, including

- Key Performance Indicators
- Economic Development
- Environmental Benefits
- Community Benefits
- Risks and Issues

- 8.2 The Authority will seek stakeholder input to validate the accuracy of the balance scored submission.
- 8.3 The Authority will work with the Contractor(s) to resolve all performance issues.
- 8.4 Poor performance or the failure to rectify persistent issues may lead to the suspension of the Contractor's appointment to provide Goods to Framework Public Bodies for a notified period of time.
- 8.5 Where specific problems are identified locally, the Contractor will attempt to resolve such problems directly with the nominated individual within that Framework Public Body.
- 8.6 Where the Contractor becomes aware of a trend that would have a negative effect on one or more of the Framework Public Bodies, they should immediately notify the Authority to discuss pre-emptive corrective action.
- 8.7 Throughout the term of the Framework Agreement, the Authority will liaise regularly with the Framework Public Bodies and where common problems are identified, it will be the responsibility of the Contractor to liaise with the Authority to agree a satisfactory course of action.

This and the following 56 pages comprise Schedule 5 to the Framework Agreement between the Scottish Ministers and Softcat Plc

**SCHEDULE 5 – Standard Terms Of Supply**

**SUPPLY OF GOODS CONTRACT**

**-between-**

**(1) THE SCOTTISH MINISTERS «F2: ACTING THROUGH...» (THE “PURCHASER”)**

**-and-**

**(2) Softcat Plc (THE “SUPPLIER”)**

**-relating to the supply of-**

**Technology Peripherals and Infrastructure**

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**PREAMBLE**

- ONE The Purchaser requires the supply of Goods;
- TWO On «F9: date contract notice published» the Purchaser's contract notice relating to the Goods was published in Find a Tender with reference number «F10: FTS reference number»;
- THREE On «F11: date SPD completed» the Supplier completed its SPD;
- FOUR On «F12: date ITT issued» the Purchaser issued its ITT to potential suppliers (including the Supplier) in respect of the supply of Goods;
- FIVE On «F13: date Tender submitted» the Supplier submitted its Tender;
- SIX On the basis of the Tender, the Purchaser has selected the Supplier to supply the Goods under the Contract;
- SEVEN The Contract establishes standard terms of supply for the supply «F13A: and hire» of Goods;
- EIGHT The Contract also includes:
1. a Statement of Requirements setting out the Purchaser's general requirements for the supply of Goods «F14: , including Key Performance Indicators»;
  2. a Catalogue and Pricing Schedule setting out the catalogue of Goods to be supplied and details of the pricing of the Goods;
  3. «F15: details of the Supplier's information which is deemed to be Supplier Sensitive Information»;
  4. Ordering Procedures prescribing the procedures for ordering particular Goods; and
  5. 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 42.2 (Assignment).

**"Award Procedures" or "Ordering Procedures"** means the procedures for entering into Call-off Contracts set out at Schedule 3 to the Contract (Award Procedures).

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

**"Breach of Security"** means the occurrence of:

- (a) (a) any unauthorised access to or use of the Goods, Services, the Purchaser's premises, the sites used by the Supplier to provide the goods / Services, the Supplier's System, the Supplier Solution, the Purchaser's System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Data) used by the Purchaser and/or the Supplier in connection with this Contract; and/or
- (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Data), including any copies of such information or data, used by the Purchaser and/or the Supplier in connection with this Contract, in either case as more particularly set out in the security requirements in Schedule 1 (Specification and Service Levels) and Schedule 10 (Cyber Security Requirements);

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

**"Commencement Date"** has the meaning given in clause 5.1 (Period).

**"Completion Date"** means the completion date set out in the Purchase Order.

**"Complaint"** means any grievance made by a Contract Public Body in respect of the Supplier (or any sub-contractor as appropriate) not fulfilling its obligations under the terms of this Agreement or Call-off Contracts.

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

**"Contract Year"** means:

- (a) a period of twelve (12) months commencing on the Commencement Date; or
- (b) thereafter a period of twelve (12) months commencing on each anniversary of the Commencement Date; provided that the final Contract Year shall end on the expiry or termination of the Term.

**“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.

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

- (a) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- (b) reduced integrity of an information system, data or electronic communications network;
- (c) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- (d) disruption or change of the operation (including, but not limited to, takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- (e) unauthorised changes to firmware, software or hardware;
- (f) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- (g) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- (h) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- (i) 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 this Contract;

**“Cyber Security Requirements”** means the Purchaser’s requirements in connection with cyber security as set out in Schedule 10 (Cyber Security Requirements)

**“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.

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

**“Data Subject Access Request”** has the meaning given in the Data Protection Laws.

**“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.

**“Deliverables”** means reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other materials specially created for the Purchaser under the Contract.

**“eCommerce”** means electronic commerce and refers to the buying and selling of goods or services over the internet. In the context of this agreement it also means technology use to enable all aspects of the end-to-end Procurement process including sourcing and advertising, tender and evaluation, content management, electronic ordering, invoicing and payment.

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

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

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

**“Exit Plan”** means the exit management plan developed by the Supplier and approved by the Purchaser in accordance with Clause 67 (Exit Management).

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

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

**“Financial Distress Event”** means the occurrence of one or more of the following events:

- (a) the Supplier’s or the relevant Key Sub-contractor’s credit or Dun & Bradstreet rating (as applicable) drops one or more levels below the level set out in clause 55 (Financial Distress) of this Contract.
- (b) the Supplier or a Key Sub-contractor issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects;
- (c) there is a public investigation into improper financial accounting and reporting, suspected fraud and/or any other impropriety of the Supplier or a Key Sub-contractor;
- (d) the Supplier or a Key Sub-Contractor commits a material breach of covenants to its lenders;
- (e) a Key Sub-Contractor notifies the Purchaser that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) the commencement of any litigation against the Supplier or a key Sub-Contractor with respect to financial indebtedness; or
- (g) any financial indebtedness of the Supplier or a Key Sub-contractor becoming due as a result of an event of default which (in respect of this sub-section (g) only) the Purchaser reasonably believes could materially impact on the continued performance of the Services.

**“Financial Distress Event Remedial Plan”** means a plan provided by the Supplier in accordance with clause 55 (Financial Distress) of the Contract to remedy the potential adverse

adverse impact of the relevant Financial Distress Event on the continued performance of this Contract.

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

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

**“Goods”** means the products and associated services as are to be supplied by the Supplier to Purchaser as summarised in Schedule 1 (Specification and Service Levels) and set out in Schedule 2 (Pricing Schedule).

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

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

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

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

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

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

(b) any enforceable community right forming part of retained EU law within the meaning of the European Union (Withdrawal) Act 2018;

(c) any applicable guidance, direction, determination or regulations with which the Authority and/or the Supplier 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 Parties, including arrangements for monitoring of the Supplier’s

compliance with the Statement of Requirements, «F18: the Key Performance Indicators», the Ordering Procedures and the terms of the Contract, set out in Schedule 4.

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

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

**“Party”** means either of the Purchaser or the Supplier.

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

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

**“Purchaser”** means the Scottish Ministers acting through < >

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

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

**“Replacement Supplier”** means any third party supplier appointed to supply the Goods by the Purchaser from time to time;

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

**“Schedule”** means a schedule annexed to the Contract.

**“SPD”** means the Single Procurement Document completed by the Supplier and sent to the Purchaser on «F11: date SPD completed».

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

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

**“Supplier”** means «F20: Supplier legal name and details».

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

- its employees and workers (including persons employed by a third party but working for and under the control of the Supplier);
- its agents, suppliers and carriers; and
- any sub-contractors of the Supplier (whether approved under clause [44](#) (Sub-contracting) or otherwise).

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

- «F21: is specified as Supplier Sensitive Information in Schedule 6 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and»
- is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

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

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

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

“**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.

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

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

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

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

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



- 2.1. It shall be a condition of this Contract that, if required by the Purchaser, the Supplier shall deliver a validly executed parent company guarantee in the form set out in Schedule 7 to this Contract. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Purchaser. The parties acknowledge that if this condition has not been fulfilled any performance of this Contract by the Supplier shall be at the risk of the Supplier and the Purchaser shall not be liable for and the Supplier irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Supplier has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Purchaser shall have the right to terminate the Contract by notice in writing to the Supplier.

### **3. Nature of the Contract**

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

### **4. Purchaser's Obligations**

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

### **5. Period**

- 5.1. The period of the Contract is from and including «F23 commencement date» (the "Commencement Date") to and including «F24 initial expiry date», unless it is terminated earlier or extended under clause 4.2.
- 5.2. The Purchaser may, by giving notice to the Supplier, extend the period of the Contract to a date falling no later than «F25 insert longstop expiry date». Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

### **6. Break**

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

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

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

### **8. Catalogue and Pricing Schedule**

- 8.1. The Catalogue and Pricing Schedule sets out details of:
- 8.1.1. the Goods that are to be supplied under the Contract; and

8.1.2. the pricing of those Goods.

- 8.2. «F27: The list of Goods in the Catalogue and Pricing Schedule is not to be varied for the period of the Contract. or The list of Goods in the Catalogue and Pricing Schedule may be varied in accordance with the arrangements set out in the Catalogue and Pricing Schedule.»
- 8.3. «F28: The prices in the Catalogue and Pricing Schedule are not to be increased for the period of the Contract. or The prices in the Catalogue and Pricing Schedule may be varied in accordance with the arrangements set out in the Catalogue and Pricing Schedule.»
- 8.4. Accordingly, the Supplier may not unilaterally increase the prices in the Catalogue and Pricing Schedule. But nothing in the Contract prevents the Supplier from improving on the prices in the Catalogue and Pricing Schedule for the purposes of a particular Order.
- 8.5. The Catalogue may be varied by substitution or by addition of a product, or products, provided such product is, or products are, similar to the product/ products originally listed in the Catalogue. Any such substitution or addition requires the Purchaser's prior written approval.

## **9. Ordering Procedures and Management Arrangements**

- 9.1. The Ordering Procedures may be invoked by the Purchaser at any time during the period of the Contract.
- 9.2. The Parties must comply with the Ordering Procedures.
- 9.3. The Supplier must maintain the capacity to supply Goods throughout the period of the Contract.
- 9.4. The Parties must comply with the Management Arrangements.

## **10. Official Secrets Acts**

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

## **SECTION B: GENERAL PROVISIONS**

### **11. Supplier's Status**

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

### **12. Notices**

- 12.1. Any notice or other communication which is to be given by a Party to the other under the Contract must be:
  - 12.1.1. 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 after the communication was sent, 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 Purchaser:

«F30: Purchaser address for notices»

For the attention of: «F31: Purchaser individual contact for notices»

Tel: «F32: Purchaser phone number»

Fax: «F33: Purchaser fax number for notices»

E-mail: «F34: Purchaser e-mail address for notices»

12.3.2. For the Supplier:

«F35: Supplier address for notices»

For the attention of: «F36: Supplier individual contact for notices»

Tel: «F37: Supplier phone number»

Fax: «F38: Supplier fax number for notices»

E-mail: «F39: Supplier e-mail address for notices»

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

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

### **13. Price**

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

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

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

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

13.2.1. providing documentation in accordance with clause 23.2.5 (Supply of Goods);

13.2.2. packaging and labelling the Goods in accordance with clause 25 (Packaging and Labelling); or

13.2.3. the cost of installing the Goods or providing training in accordance with clause 29 (Installation and Training).

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

### **14. Payment and Invoicing**

- 14.1. The Purchaser must pay all sums due to the Supplier within 30 days of receipt of a valid invoice or 30 days of the date of delivery of the Goods, whichever is the later.
- 14.2. The Supplier must render invoices «F40: insert invoicing frequency».
- 14.3. The Supplier must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Goods supplied. The Supplier must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.
- 14.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 14.5. Interest is payable by the Purchaser on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 14.6. In this clause 14, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

## **15. Recovery of Sums Due**

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

## **16. Data Protection**

- 16.1. The Supplier acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in performance of the Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.
- 16.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 16 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 16.3. The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 16.4. The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 16.5. The Supplier must:
  - 16.5.1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside

the United Kingdom unless required to do so by law or Regulatory Body to which the Supplier is subject; in which case the Supplier must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;

- 16.5.2. subject to clause 16.5.1 only process or otherwise transfer any Personal Data in or to any country outside the United Kingdom with the Purchaser's prior written consent;
- 16.5.3. take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representatives:
  - (a) are aware of and comply with the Supplier's duties under this Clause;
  - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
  - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
  - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 16.5.4. implement appropriate technical and organisational measures including those set in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.;
- 16.6. The Supplier shall not engage a sub-contractor to carry out Processing in performance of the Contract without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 16.7. If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 16.8. The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
- 16.9. The Supplier must notify the Purchaser if it:
  - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - (d) receives any communication from the Supervisory Authority or any other

regulatory authority in connection with Personal Data processed under this Contract;  
or

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

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

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

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

16.11. At the termination or expiry of the Contract the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless law to which the Supplier is subject requires storage of the Personal Data.

16.12. The Supplier must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this clause 16;
- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 16 and contribute as is reasonable to those audits and inspections;
- (c) inform the Purchaser if, in its opinion, an instruction from the Purchaser infringes any obligation under the Data Protection Laws.

- 16.13. The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
- 16.14. If requested, the Supplier must make such records referred to clause 16.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 16.15. Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 16.12 (b) with minimum disruption to the Supplier's day to day business
- 16.16. 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 Supplier should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

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

- 17.1. The Supplier acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations. The Supplier shall:
- a. provide all necessary assistance and cooperation as the Purchaser may reasonably request to enable the Purchaser to comply with its obligations under FOISA and Environmental Information Regulations;
  - b. transfer to the Purchaser all Requests for Information relating to this Agreement that the Supplier receives as soon as practicable and in any event within 2 Working Days of receipt;
  - c. provide the Purchaser with a copy of all information held on behalf of the Purchaser which is requested in a Request For Information and which is in the Supplier's possession or control. The information must be provided within 5 Working Days (or such other period as the Purchaser may reasonably specify) in the form that the Purchaser requires.
  - d. not respond directly to a Request For Information addressed to the Purchaser unless authorised in writing to do so by the Purchaser.
- 17.2. If the Request for Information appears to be directed to information held by the Purchaser, the Supplier must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.
- 17.3. If the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 17.4. The Supplier acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Supplier or the Contract:
- 17.4.1 in certain circumstances without consulting the Supplier, or

- 17.4.2 following consultation with the Supplier and having taken its views into account.
- 17.5. Where 17.4.1 applies the Purchaser must take reasonable steps, if practicable, to give the Supplier advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 17.6. Where a Request for Information concerns Supplier Sensitive Information specified in Schedule 6 Part 1 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Supplier before disclosing it pursuant to a Request for Information.
- 17.7. The Supplier acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Supplier Sensitive Information. However, if the Purchaser believes that publication of any element of the Transparency Information should be treated as Supplier Sensitive Information the Purchaser may, in its discretion exclude such information from publication.
- 17.8. Notwithstanding any other provision of this Agreement, the Supplier hereby gives consent for the Purchaser to publish to the general public, the Transparency Information in its entirety. The Purchaser shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 17.9. The Supplier shall assist and co-operate with the Purchaser to enable the Purchaser to publish the Transparency Information including the preparation of Transparency Reports.
- 17.10. The Purchaser shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 17.11. The Supplier agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Purchaser upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Purchaser may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 19.3.3) publish such Information. The Supplier shall provide to the Purchaser within 5 working days (or such other period as the Purchaser may reasonably specify) any such Information requested by the Purchaser.

## **18. Purchaser Protected Information**

### **18.1. The Supplier must:**

- 18.1.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
- 18.1.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;
- 18.1.3. only disclose the Purchaser Protected Information to such Supplier Representatives that are directly involved in the performance of the Contract and need to know the information; and
- 18.1.4. not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.



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

18.3. Clause 18.1 does not apply to the extent that:

- 18.3.1. disclosure is required by law or by order of any competent court or tribunal;
- 18.3.2. information is in the possession of the Supplier without restriction as to its disclosure prior to its disclosure by the Purchaser;
- 18.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- 18.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 18.3.5. information is independently developed without access to the Purchaser Protected Information.

18.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Supplier is a material breach for the purposes of clause 65.1.3 (Termination Rights).

## **19. Supplier Sensitive Information**

19.1. The Purchaser must:

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

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

- 19.2.1. disclosure is required by law or by order of any competent court or tribunal;
- 19.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Supplier;
- 19.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- 19.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 19.2.5. information is independently developed without access to the Supplier Sensitive Information.

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

- 19.3.1. pursuant to a Request for Information concerning the information (see clause 17 (Transparency and Freedom of Information));
- 19.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;

- 19.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
  - 19.3.4. to any consultant, Supplier or other person engaged by the Purchaser, for example to conduct a gateway review;
  - 19.3.5. in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
  - 19.3.6. for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 19.4. The Supplier consents to the publication of the Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser may consult with the Supplier to inform its decisions concerning redaction (for example to exclude any Supplier Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

## **20. Audit**

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

## **21. Publicity**

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

## **22. Security**

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

## **SECTION C: SUPPLY TERMS**

### **23. Supply of Goods**

- 23.1. The Supplier must supply and where required install Goods:
  - i. in accordance with the Statement of Requirements, «F6: the Key Performance Indicators,» the Catalogue and Pricing Schedule and the Ordering Procedures; and

- ii. in accordance with the particular requirements of each Order.

23.2. The Goods must be:

- 23.2.1. designed and constructed so as to be safe and without risk to the health or safety of those using them when installed and properly used;
- 23.2.2. to the satisfaction of the Purchaser acting reasonably;
- 23.2.3. fit and sufficient for the purposes for which such goods are ordinarily used (having regard to the manufacturer's published specifications);
- 23.2.4. fit and sufficient for any particular purposes set out in the Statement of Requirements or otherwise made known to the Supplier by the Purchaser; and
- 23.2.5. accompanied by all documentation (such as instructions, manuals and guides) that are normally supplied by the manufacturer or supplier of the Goods or are otherwise necessary to make use of the Goods.

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

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

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

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

**24. Delivery and Non-Delivery**

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

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

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

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

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

24.6. The point of delivery is:

- 24.6.1. when the Goods are removed from the transporting vehicle at the Purchaser's premises, in cases where the Goods are delivered by the Supplier; and
- 24.6.2. when the Goods are loaded on the Purchaser's vehicle, in cases where the Goods are collected by the Purchaser.

24.7. The Purchaser is not required to accept:

24.7.1. Goods supplied earlier than the required date and time for delivery; or

24.7.2. delivery by instalments.

24.8. Where the Goods are not delivered to the Purchaser at the due date and time for delivery or have been damaged in transit, the Purchaser may give notice to the Supplier of that fact and may require the Supplier at its expense to deliver substitute Goods or repair the Goods within the timescales specified by the Purchaser.

## **25. Packaging and Labelling**

25.1. The Supplier must ensure that all packaging is of adequate size and of suitable quality to prevent damage to the Goods. The Goods must be packed in a proper manner.

25.2. «F28A: Packaging must be marked with or The Goods must be accompanied by a delivery note stating»:

25.2.1. the name of the contents;

25.2.2. the net, gross and tare weights; and

25.2.3. appropriate Contract and Order references.

25.3. All containers of fragile or hazardous Goods must bear prominent and adequate warnings.

25.4. It is agreed that packaging materials are not to be returned to the Supplier.

## **26. Acceptance and Rejection**

26.1. The Purchaser is deemed to have accepted the Goods only if it expressly states the same in writing or fails to reject the Goods in accordance with clause 26.3.

26.2. Accordingly, the issue by the Purchaser of a receipt note for the Goods does not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Purchaser's acceptance of them.

26.3. The Purchaser may by notice to the Supplier within a reasonable time after delivery of the Goods reject any of the Goods which fail to conform to the requirements of the Contract or meet the particular requirements of the Order (for example, where an excess quantity of Goods has been delivered).

26.4. If the Purchaser rejects any of the Goods pursuant to clause 26.3 the Purchaser may either:

26.4.1. have such Goods promptly, and in any event within 5 Working Days, removed and replaced by the Supplier at the Supplier's expense with Goods which conform in all respects with the requirements of the Contract, and due delivery is not deemed to have taken place until such replacement has occurred; or

26.4.2. obtain a refund (if payment for any Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Purchaser in obtaining other Goods in replacement provided that the Purchaser uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

26.5. In the case of excess Goods, the Purchaser may:

26.5.1. have the excess Goods removed in accordance with clause 26.4.1; and

26.5.2. obtain payment of any costs incurred by it as a result of over-delivery (such as any costs of moving or storing the excess Goods).

## **27. Return and Refund**

27.1. The Purchaser may by notice to the Supplier within a reasonable time after delivery of the Goods return any of the Goods where the Goods to be returned are in a re-saleable condition. Returned Goods must be removed promptly at the Supplier's expense, within 5 Working Days.

27.2. If the Purchaser has paid any part of the price due in respect of any returned Goods, the Purchaser is entitled to obtain a refund from the Supplier.

27.3. The Purchaser must, if requested by the Supplier, give reasons for returning the Goods.

## **28. Risk and Ownership**

28.1. Risk in the Goods passes to the Purchaser at the time of delivery, except that risk in any excess Goods referred to in clause 266 (Acceptance and Rejection) remains with the Supplier unless they are accepted by the Purchaser.

28.2. Risk in any Goods rejected or returned in accordance with clauses 26 (Acceptance and Rejection) or 277 (Return and Refund) is with the Supplier.

28.3. Ownership in the Goods passes to the Purchaser at the time of delivery.

## **29. Installation and Training**

29.1. The Supplier must carry out any installation work required by the Supplier at the date(s), time(s) and location(s) required by the Purchaser. The Supplier must not begin any work without the approval of the Purchaser.

29.2. When the Supplier believes acting reasonably that it has completed any installation works it must notify the Purchaser. The Purchaser may thereafter inspect the installation work and, by notice to the Supplier:

29.2.1. accept the installation works; or

29.2.2. providing reasons, reject the installation works.

29.3. Where the Purchaser rejects installation works in accordance with clause 29.2.2 the Supplier must immediately rectify or remedy any defects.

29.4. The Supplier must carry out any out any training required by the Supplier at the date(s), time(s) and location(s) required by the Purchaser.

29.5. The Supplier is deemed to have inspected the premises at which the installation will take place so as to have understood the nature and extent of the installation to be carried out and is deemed to be satisfied in relation to all matters connected with the installation and the location. The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

## **30. Guarantee**

- 30.1. The Supplier guarantees the Goods for «F28B: guarantee period» from the date of delivery against defects in design, materials or workmanship.
- 30.2. Where a defect in any of the Goods arises under proper and normal use by the Purchaser during the warranty period, and the Purchaser gives notice of that fact to the Supplier, the Supplier must promptly invoke the warranty process specific to the Goods as specified in Schedule 1 (Statement of Requirements and KPIs).

## **SECTION D: HIRE TERMS**

### **31. Hire of Goods**

- 31.1. For each Order for the hire of Goods, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures:
- 31.1.1. the provisions of Section C apply, except clauses 28.3 (Risk and Ownership) and 30 (Guarantee); and
  - 31.1.2. the provisions of this Section D apply.
- 31.2. The hire period agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' notice by the Purchaser.

### **32. Purchaser's Rights**

- 32.1. The Purchaser has the right to quiet possession of the hired Goods, and the hired Goods shall not be encumbered by any form of security.
- 32.2. Where a defect in any of the hired Goods arises under proper and normal use by the Purchaser the Supplier must, at its expense and without delay:
- 32.2.1. repair the defective Goods; or
  - 32.2.2. remove the defective Goods and replace them with non-defective Goods of the same type and upon the same terms as the original hired Goods.

### **33. Purchaser's Obligations in respect of hired Goods**

- 33.1. The Purchaser must make reasonable efforts to:
- 33.1.1. keep the hired Goods in a good and serviceable condition but no betterment by the Purchaser is required; and
  - 33.1.2. use them in accordance with any documentation provided by the Supplier.
- 33.2. The Purchaser must not, without the written consent of the Supplier (such consent not to be unreasonably withheld or delayed):
- 33.2.1. modify or replace the hired Goods except in accordance with Clause 355 (Upgrades, Downgrades and Improvements);
  - 33.2.2. use the hired Goods as security for a loan or other obligation;
  - 33.2.3. sell, or attempt to sell or part with possession of the hired Goods;
  - 33.2.4. allow anyone to obtain a lien over, or right to retain, the hired Goods;

- 33.2.5. move the hired Goods from the Purchaser's premises except where it is necessary to do so for the purposes of maintaining or repairing the hired Goods.

**34. Ownership of hired Goods**

- 34.1. Ownership in the Goods remains with the Purchaser throughout the hire period agreed in accordance with the Ordering Procedures.
- 34.2. The Ordering Procedures apply to any proposal during the hire period that any of the hired Goods be purchased by the Purchaser.

**35. Upgrades, Downgrades and Improvements**

- 35.1. The Supplier must provide support and guidance to the Purchaser in determining the most effective and efficient way of using the hired Goods to meet the Purchaser's requirements, including by bringing to the Purchaser's attention possible upgrades, downgrades and improvements that the Supplier is able to provide (including the replacement of component parts or the installation of new software).
- 35.2. The Ordering Procedures apply to any proposal during the hire period for upgrades, downgrades or improvements to the hired Goods.

**36. End of the hire period**

- 36.1. As soon as practicable upon, and in any event within 5 Working Days of, expiry of the hire period the Supplier must, at its expense, collect the hired Goods from the Purchaser.
- 36.2. On or before the date of collection by the Supplier the Purchaser must, at its expense, ensure that the hired Goods are in the same working order and condition as when delivered or installed, subject to due allowance being made for wear and tear that would cost not more than £«F29: wear and tear allowance» in aggregate to repair.
- 36.3. In the event that the Purchaser is unable to make any of the hired Goods available for collection by the Supplier, the Purchaser must pay to the Supplier the residual value of the Goods, calculated in accordance with the Catalogue and Pricing Schedule.
- 36.4. This clause 366 does not apply to the extent that the Parties agree that any of the hired Goods are to be purchased by the Purchaser.

**37. Special pricing provision**

- 37.1. The Purchaser is not liable to pay any hire charges or other recurrent or automated charges in respect of periods prior to or after the hire period.

**SECTION E: INTELLECTUAL PROPERTY AND GOVERNANCE**

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

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

**39. Specially Created Intellectual Property Rights**

- 39.1. All Intellectual Property Rights in any reports, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material

prepared by or for the Supplier on behalf of the Purchaser for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract belong to the Purchaser.

- 39.2. The Supplier assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 27.1. This 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 Supplier. The Supplier must execute all documentation necessary to effect this assignment.

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

- 40.1. The Supplier grants to the Purchaser a non-exclusive, non-transferable, fully paid up, royalty free licence to use any software which is an integral part of the Goods.
- 40.2. To the extent that such software belongs to, or is subject to rights of, a third party, the Supplier must ensure the grant to the Purchaser of an equally extensive licence to use the software.

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

- 41.1. The Supplier must not infringe any Intellectual Property Rights of any third party in supplying the Goods or otherwise performing its obligations under the Contract and must ensure that the possession and use of the Goods does not infringe such Intellectual Property Rights.
- 41.2. The Supplier must not without the consent of the Purchaser make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Purchaser or the Supplier in connection with the performance of its obligations under the Contract.

#### **42. Assignment**

- 42.1. The Supplier may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.
- 42.2. Notwithstanding clause 42.1, the Supplier may assign to another person (an "Assignee") the right to receive the price due to the Supplier under the Contract subject to:
- 42.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and
  - 42.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.
- 42.3. The Supplier must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 42.4. Subject to clause 42.6, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Purchaser; or
  - (c) any private sector body which substantially performs the functions of the Purchaser,



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

- 42.5. Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 42.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Purchaser.
- 42.6. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 42.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Purchaser such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):
- (a) the rights of termination of the Purchaser in clauses 65 (Termination Rights) and 66 (Termination on Insolvency and Change of Control) shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.
- 42.7. The Purchaser may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

#### **43. Change of Control**

- 43.1. The Supplier must notify the Purchaser:

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

43.1.2. immediately following a change of Control that has occurred.

#### **44. Sub-Contracting**

- 44.1. «F41: The Purchaser approves the appointment of the sub-contractors specified in Schedule 5 (Approved Sub-Contractors) in respect of the obligations specified in that Schedule.»
- 44.2. The Supplier may not sub-contract its obligations under the Contract «F42: to other sub-Suppliers» without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract. The Supplier shall be responsible for the acts and omissions of its sub-Suppliers as though they are its own.
- 44.3. Where the Supplier enters into a sub-contract the Supplier must ensure that a provision is included which:
- 44.3.1. requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Goods and the sub-contractor's invoice relates to such Goods then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a

breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

44.3.2. 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;

44.3.3. 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](http://www.publiccontractsscotland.gov.uk)) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and

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

44.4. The Supplier shall also include in every sub-contract:

44.4.1. a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds) specified in clause 65.3 occur; and

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

In this clause 44.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

44.5. Where requested by the Purchaser, copies of any sub-contract must be sent by the Supplier to the Purchaser as soon as reasonably practicable.

44.6. Where the Supplier proposes to enter into a sub-contract it must:

44.6.1. advertise its intention to do so in at least one trade journal, at least one newspaper circulating in the locality in which the Goods are to be delivered and in the Public Contracts Scotland Portal; and

44.6.2. 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.

#### **44A. Supply Chain Transparency and Protections**

##### **Knowledge of the supply chain**

44A.1. In performing its role as a reseller, the Supplier will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the "Supplier'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 Supplier will provide the Purchaser with a copy of the Supplier's codes of conduct or supplier policies on request.

44A.2. The Supplier will use its reasonable endeavours to ensure that the Supplier prepares and maintains appropriate policies and procedures to identify, manage and mitigate labour and human rights risks in their supply chains relevant to this Contract (the "Supplier Supply Chain").

44A.3. The Supplier 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 Supplier's Supply Chain. The Supplier will notify the Purchaser of any changes as soon as reasonably practicable.

44A.4. Not used.

#### **Supply chain working conditions**

44A.5. The Supplier will submit an annual written report to the Purchaser outlining the Supplier's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Supplier Supply Chain.

44A.6. The Supplier 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.

44A.7. In respect of the Supplier Supply Chain and the Supplier's Suppliers, the Supplier must ensure the following:

44A.7.1. forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;

44A.7.2. child labour is not used in any stage of manufacturing or in the provision of services or supplies;

44A.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;

44A.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;

44A.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;

44A.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;

44A.7.7. workers must not be subject to harassment or unlawful discrimination; and

44A.7.8. workers must be provided with safe and healthy working conditions.

44A.8. In respect of the Supplier's Supply Chain and the Supplier's Suppliers, the Supplier will use its reasonable endeavours to ensure the following:

44A.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;

44A.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**

44A.9. The Supplier will use its reasonable endeavours to require the Suppliers to audit, evaluate and report in writing to the Supplier not less than once every twelve (12) months on performance against the Supplier's codes of conduct and or supplier policies and their policies on labour and human rights impacts in respect of the Supplier Supply Chain. The Supplier shall provide the Purchaser on request with a copy of any such reports in so far as they relate to the Supplier Supply Chain.

44A.10. The Supplier will use its reasonable endeavours to ensure that the Supplier'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 Supplier 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 Supplier Supply Chain.

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

44A.11. The Supplier will use its reasonable endeavours to ensure the outcomes of the Supplier's Suppliers supply-chain audits are subject to corrective actions by the Supplier's Suppliers in a timely manner. The Supplier 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 Supplier Supply Chain.

- 44A.12. The Supplier will use its reasonable endeavours to actively engage with the Supplier Supply Chain to ensure continuous improvement in labour and human rights standards and supplier compliance with such standards.
- 44A.13. The Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Supplier Supply Chain not less than once every twelve (12) months.

**Measures to control the supply chain**

- 44A.14. The Supplier will use its reasonable endeavours to ensure that the Supplier'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 Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Supplier Supply Chain and provide the Purchaser on request with details.
- 44A.15. The Supplier will use its reasonable endeavours to ensure that the Supplier'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.
- 44A.16. The Supplier will use its reasonable endeavours to provide the Purchaser on request with evidence of direct and ongoing collaboration by the Supplier's Suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Supplier Supply Chain.

**Supply chain contract termination**

- 44A.17. The Supplier will use its reasonable endeavours to ensure that all contracts in the Supplier 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.

**45. Amendment**

- 45.1. The Contract may be amended only by the written agreement of both Parties. Accordingly, the Supplier may not unilaterally amend the Contract.
- 45.2. «F44: Clause 8 (Catalogue and Pricing Schedule) makes special provision for the variation of the Catalogue and Pricing Schedule.»

**SECTION F: SUPPLIER CONDUCT REQUIREMENTS**

**46. Compliance with the Law etc.**

- 46.1. In supplying the Goods and otherwise when performing the Contract, the Supplier must comply in all respects with:
- 46.1.1. all applicable law; and
  - 46.1.2. any applicable requirements of regulatory bodies; and
  - 46.1.3. Good Industry Practice.

**47. Supplier's responsibility for staff etc.**

- 47.1. The Supplier is responsible for the acts and omissions of all Supplier Representatives relating to the Contract as though such acts and omissions are the Supplier's own.
- 47.2. The Supplier must ensure that all Supplier Representatives:
  - 47.2.1. are appropriately experienced, skilled, qualified and trained;
  - 47.2.2. carry out their activities connected with the Contract all with due skill, care and diligence; and
  - 47.2.3. obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

#### **48. Access to the Purchaser's premises**

- 48.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 48.2. The Supplier must comply with the Purchaser's policies concerning:
  - 48.2.1. Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Supplier from time to time; and
  - 48.2.2. conduct and security whilst on the Purchaser's premises.
- 48.3. At the Purchaser's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 48.4. The Supplier must ensure that any individual Supplier Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Supplier acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 48.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Supplier Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 48.6. The Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Supplier Representative whose admission or continued presence would, in the reasonable opinion of the Purchaser, be undesirable.
- 48.7. The Purchaser must provide reasonable advice and assistance to the Supplier to facilitate the Supplier's compliance with this clause.
- 48.8. All decisions of the Purchaser under this clause are final and conclusive.

#### **49. Supplier's Equipment**

- 49.1. The Supplier must provide all Equipment necessary to perform any required activities on the Purchaser's premises or otherwise necessary for the supply of Goods.

49.2. But the Supplier must not, without the Purchaser's approval:

49.2.1. bring Equipment onto the Purchaser's premises; or

49.2.2. leave Equipment on the premises.

49.3. Any Equipment brought onto the Purchaser's premises:

49.3.1. remains the property of the Supplier; and

49.3.2. is at the Supplier's own risk and the Purchaser has no liability for any loss of or damage to the Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Purchaser's Default.

49.4. The Supplier must keep all Equipment brought onto the Purchaser's premises in a safe, serviceable and clean condition. The Purchaser may at any time require the Supplier to remove from the Purchaser's premises any Equipment which in the reasonable opinion of the Purchaser is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Supplier's expense as soon as reasonably practicable.

49.5. On completion of any required activities on the Purchaser's premises or at the end of a Working Day (as appropriate) the Supplier must at its own expense:

49.6. remove all Equipment; and

49.7. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Supplier's activities.

49.8. The Supplier is solely responsible for making good any damage to the Purchaser's premises or any objects contained therein, other than wear and tear, which is caused by the Supplier.

## **50. Health and Safety etc.**

50.1. While on the Purchaser's premises, the Supplier must comply with the Purchaser's policies concerning health and safety and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.

50.2. The Supplier must immediately inform the Purchaser in the event of any incident occurring in the performance of its obligations under the Contract on the Purchaser's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The Supplier must then promptly notify the Purchaser of that fact.

50.3. The Purchaser must promptly notify the Supplier of any health and safety hazards which may exist or arise at the Purchaser's premises and which may affect the Supplier in the performance of its obligations under the Contract.

50.4. The Supplier must promptly make available its statutory health and safety policy statement to the Purchaser on request.

## **51. Offences**

51.1. The Supplier must not commit or attempt to commit any offence:

51.1.1. under the Bribery Act 2010;

51.1.2. of fraud, uttering, theft, embezzlement or reset at common law; or

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

51.2. Breach of clause 46.1 is a material breach for the purposes of clause 65.1.3 (Termination Rights).

**51A. Compliance with Anti-Slavery and Human Trafficking Laws**

51A.1. In performing its obligations under this Contract, the Supplier shall:

51A.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;

51A.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;

51A.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;

51A.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 Agreement;

51A.1.5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser; and

51A.1.6. provide the Purchaser and its third party representatives access to such records.

51A.2 The Supplier 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.

51A.3. The Supplier 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.

51A.4. The Purchaser may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause.

**52. Tax arrangements**

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

52.2. Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security



Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

- 52.3. The Purchaser may, at any time during the term of this contract, request the Supplier to provide information which demonstrates how the Supplier complies with sub-clauses 52.1 and 52.2 above or why those clauses do not apply to it.
- 52.4. A request under sub-clause 52.3 above may specify the information which the Supplier must provide and the period within which that information must be provided.
- 52.5. The Purchaser may supply any information which it receives under clause 52 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 52.6. The Supplier shall take all reasonable steps to ensure the observance of the provisions of this clause 52 by all of their servants, employees, agents, consultants and sub-contractors.
- 52.7. Where the Supplier enters into any contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Supplier must ensure that a provision is included which is in the same terms as this clause 52 subject only to modification to refer to the correct designation of the equivalent party as the Supplier.

### **53. Discrimination**

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

### **54. Blacklisting**

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

### **55. Financial Distress**

- 55.1. The Purchaser shall be entitled to terminate this Contract with immediate effect by written notice to the Supplier if:
- 55.1.1 the Supplier fails to notify the Purchaser of a Financial Distress Event in accordance with clause 55 (Financial Distress); and/or
- 55.1.2 the Parties fail to agree a Financial Distress Event Remedial Plan in accordance with clause 55 (Financial Distress); and/or
- 55.1.3 the Supplier fails to comply with the terms of the Financial Distress Event Remedial Plan in accordance with clause 55 (Financial Distress).
- 55.2. During the Term, the Supplier shall regularly monitor its own and each of its Key Sub-Suppliers' credit ratings or (where used as proxies for credit ratings) Dun & Bradstreet rating, which at the Commencement Date are as follows:

ORGANISATION	AGENCY	RATING

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

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

55.3.2 a Dun & Bradstreet Failure Score of 50 (lower than average risk) or more.

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

55.5. If the Purchaser reasonably believes that the Financial Distress Event could adversely impact the performance of this Contract, at the request of the Purchaser the Service Provider shall:

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

55.5.2 as soon as practicable and in any event within ten (10) Working Days (taking into account any discussions and any representations made pursuant to clause 55 (Financial Distress), provide a draft Financial Distress Event Remedial Plan for approval by the Purchaser explaining how the Supplier and/or relevant Key Sub-contractor will remedy the potential adverse impact of the Financial Distress Event on the continued performance of this Contract; and

55.5.3 provide such financial information as the Purchaser may reasonably require to support clause 55 (Financial Distress).

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

55.7. Following approval of any Financial Distress Event Remedial Plan pursuant to clause 55 (Financial Distress) the Supplier shall implement the plan in accordance with its terms and review the plan on a regular basis and assess whether it remains adequate and up to date so as to ensure the continued performance of this Contract.

## **56. Conflicts of interest**

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

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

56.3. Breach of this clause by the Supplier is a material breach for the purposes of clause 65.1.3 (Termination Rights).

## **SECTION G: FINAL PROVISIONS**

### **57. Warranties and Representations**

The Supplier warrants and represents that:

- 57.1. 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;
- 57.2. in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud of uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 57.3. 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;
- 57.4. as at the Commencement Date, all information contained in the SPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract;
- 57.5. 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;
- 57.6. 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;
- 57.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 57.8. 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;
- 57.9. in the 3 years prior to the Commencement Date:
  - 57.9.1. 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;
  - 57.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

- 57.10. 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;
- 57.11. 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;
- 57.12. 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;
- 57.13. it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser; and
- 57.14. there are no actual or potential conflicts between the interests of the Supplier and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract.

**58. Indemnity**

- 58.1. The Supplier will indemnify the Purchaser against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Supplier.
- 58.2. The Purchaser shall indemnify the Supplier in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Supplier acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Supplier:
  - (a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with clause 16.12(c) of this Contract;
  - (b) fails to comply with any other obligation under the Contract.

**59. Limitation of Liability**

- 59.1. Neither Party is liable to the other Party under the Contract for any:
  - 59.1.1. loss of profits, business, revenue or goodwill; or
  - 59.1.2. indirect or consequential loss or damage.
- 59.2. But clause 59.1 does not exclude any liability of the Supplier for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Supplier.
- 59.3. The «F45: limiter (if required)» liability of either Party under the Contract for Defaults «F46: limiter (if required)» is limited to «F47: liability cap» «F48: limiter (if required)».
- 59.4. But neither Party excludes or limits liability to the other Party for:
  - 59.4.1. death or personal injury caused by its negligence;
  - 59.4.2. misrepresentation;

59.4.3. 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

59.5. For any breach of obligations under the Data Protection Laws directly caused by the Supplier, the parties agree an additional separate cap of £2,500,000 for any one occasion.

## **60. Insurances**

60.1. The Supplier must effect and maintain with a reputable insurance company:

60.1.1. public liability insurance in the sum of not less than «F49: PLI insurance sum» «F50: limiter»;

60.1.2. professional indemnity insurance in the sum of not less than «F51: PLI insurance sum» «F52: limiter»; and

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

60.2. 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.

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

## **61. Force Majeure**

61.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of «F53: Force Majeure longstop», either Party may terminate the Contract with immediate effect by notice.

61.2. Any delay or other failure by the Supplier in performing its obligations under the Contract which results from any failure or delay by a Supplier Representative is only to be regarded as due to Force Majeure if that Supplier Representative is itself impeded by Force Majeure from complying with an obligation to the Supplier.

61.3. 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.

61.4. The only events that afford relief for failure or delay under the Contract are Force Majeure events.

## **62. Dispute Resolution**

62.1. The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Contract including any variation regarding its existence, validity or termination «F54: in accordance with the Management Arrangements».

62.2. 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.

62.3. Any arbitration under clause 62.2 is subject to the Arbitration (Scotland) Act 2010.

### **63. Severability**

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

### **64. Waiver and Cumulative Remedies**

64.1. 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.

64.2. 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).

64.3. A waiver of any Default is not a waiver of any subsequent Default.

64.4. 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.

### **65. Termination Rights**

65.1. The Purchaser may terminate the Contract by notice to the Supplier with immediate effect if the Supplier commits a Default and:

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

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

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

65.2. «F55: The Purchaser may also terminate the Contract in accordance with any provisions of the Schedules.»

65.3. 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; or

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

65.4. The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of its obligations under the Contract with legal obligations in the fields of environmental, social or employment law.

65.5. The Purchaser may also terminate the Contract where, at any time before the term of the Contract, the Supplier 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.

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

66.1. The Purchaser may terminate the Contract with immediate effect by notice where in respect of the Supplier:

66.1.1. 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;

66.1.2. 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);

66.1.3. 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;

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

66.1.5. 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;

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

66.1.7. 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;

66.1.8. a debt relief order is entered into; or

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

66.2. The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:

66.2.1. being notified that a change of Control has occurred in accordance with clause 43.1.2 (Change of Control); or

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

66.3. But the Purchaser may not terminate the Contract under clause 43.2 where approval of the change of control has been granted by notice by the Purchaser.

**67. Exit Management**

- 67.1. The Supplier shall perform its relevant Exit Management obligations as part of the Contract whether applicable on either the expiry or early termination of this Contract.
- 67.2. The Supplier agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Supplier agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 62 (Dispute Resolution). If a court of competent jurisdiction finds that the Supplier has breached (or attempted or threatened to breach) any such obligation, the Supplier agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Supplier shall not oppose the entry of an appropriate order compelling performance by the Supplier and restraining the Supplier from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 67.3. A draft of the Exit Plan shall be produced by the Supplier and supplied to the Purchaser within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 67.3. The Purchaser shall provide to the Supplier the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The Supplier shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Purchaser's comments.
- 67.4. The Supplier shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
- 67.4.1. the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Contract;
  - 67.4.2. the activities necessary to support any Replacement Supplier or the Purchaser in carrying out any necessary due diligence relating to all or part of the Contract;
  - 67.4.3. details of the Exit Management to be provided by the Supplier prior to the Exit Management Date;
  - 67.4.4. support for the Replacement Supplier or the Purchaser during their preparation of any relevant plan for the transition of any System to the Replacement Supplier or Purchaser, including prior to and during such transition period;
  - 67.4.5. the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and
  - 67.4.6. all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Contract to either a Replacement Supplier or the Purchaser.
- 67.5. No amendment of the Exit Plan shall be made without prior written consent of the Purchaser.

**68. Consequences of Expiry or Termination**

- 68.1. Where the Purchaser terminates the Contract under clause 65 (Termination Rights) and makes other arrangements for the supply of Goods, the Supplier indemnifies the Purchaser against all costs incurred in making those arrangements.
- 68.2. Except as provided for in clauses 58 (General Indemnity), 50.1 (Consequences of Expiry or Termination) and «F56: and the Management Arrangements», no indemnity is given or special



payment is to be made by either Party to the other Party on expiry or termination of the Contract.

68.3. On expiry or termination of the Contract the Supplier must:

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

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

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

68.4.1. clause 1 (Definitions and Interpretation);

68.4.2. clause 10 (Official Secrets Acts);

68.4.3. clause 13 (Recovery of Sums Due);

68.4.4. clause 14 (Data Protection);

68.4.5. clause 17 (Transparency and Freedom of Information);

68.4.6. clause 16 (Purchaser Protected Information);

68.4.7. clause 17 (Supplier Sensitive Information);

68.4.8. clause 20 (Audit);

68.4.9. clause 21 (Publicity)

68.4.10. clause 26 (Acceptance and Rejection);

68.4.11. clause 27 (Return and Refund);

68.4.12. clause 30 (Guarantee);

68.4.13. clause 38 (Parties' pre-existing Intellectual Property Rights);

68.4.14. clause 39 (Specially Created Intellectual Property Rights);

68.4.15. clause 40 (Licenses of Intellectual Property Rights);

68.4.16. clause 29 (Claims relating to Intellectual Property Rights);

68.4.17. clause 49 (Supplier's Equipment);

68.4.18. clause 52 (Tax arrangements);

68.4.19. [clause 55 (Sustainability etc.)]

68.4.20. clause 57 (Warranties and Representations);

68.4.21. clause 58 (Indemnity);

68.4.22. clause 59 (Limitation of Liability);

68.4.23. clause 60 (Insurances);

68.4.24. clause 62 (Dispute Resolution Procedure);

- 68.4.25. clause 63 (Severability);
  - 68.4.26. clause 64 (Waiver and Cumulative Remedies);
  - 68.4.27. this clause 68; and
  - 68.4.28. clause 70 (Governing Law and Jurisdiction).
  - 68.4.29. Schedule 10, paragraph 1 (Supplier's Warranty).
- 68.5. «F56A: If a Judicial Order is made, the provisions of the Management Arrangements referring to that possibility apply.»

## **69. Entire Agreement**

- 69.1. 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 SPD or Tender or otherwise).
- 69.2. 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:
- 69.2.1. the clauses of the Contract;
  - 69.2.2. the Schedules; and
  - 69.2.3. any other document referred to in the Contract

## **70. Governing Law and Jurisdiction**

70.1. The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 62 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

**IN WITNESS WHEREOF** these presents typewritten on this and the «F57: number of pages before this page» preceding pages together with the «F16: number of Schedules» Schedules annexed are executed as follows:

**SIGNED** for and on behalf of the Purchaser

**SIGNED** for and on behalf of «F3: Supplier name...»

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 [ ] pages comprise Schedule 1 to the foregoing Contract between the Purchaser and «F3: Supplier name»

**SCHEDULE 1 – STATEMENT OF REQUIREMENTS «F6: AND KEY PERFORMANCE INDICATORS»**

This and the following [ ] pages comprise Schedule 2 to the foregoing Contract between the Purchaser and «F3: Supplier name»

**SCHEDULE 2 - CATALOGUE AND PRICING SCHEDULE**

This and the following [ ] pages comprise Schedule 3 to the foregoing Contract between the Purchaser and «F3: Supplier name»

**SCHEDULE 3 – ORDERING PROCEDURES**

This and the following [ ] pages comprise Schedule 4 to the foregoing Contract between the Purchaser and «F3: Supplier name»

**SCHEDULE 4 – MANAGEMENT ARRANGEMENTS**

This and the following [ ] pages comprise Schedule 5 to the foregoing Contract between the Purchaser and «F3: Supplier name»

**SCHEDULE 5 – APPROVED SUB-CONTRACTORS**

<b>approved Sub-Contractor(s)</b>	<b>Relevant obligations</b>
1. e.g. Subco Limited (SC123456)	Deliveries to the Northern Isles
2.	



This and the following [ ] pages comprise Schedule 6 to the Contract Agreement between the Scottish Ministers and «F3: Supplier name»

## **SCHEDULE 6 – TRANSPARENCY REPORTS AND SUPPLIER 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)**

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

### **SUPPLIER SENSITIVE INFORMATION**

<b>Type of information specified as Supplier Sensitive Information</b>	<b>Reason why information is sensitive</b>	<b>Duration of sensitivity</b>

This and the following [ ] pages comprise Schedule 7 to the Contract Agreement between the Scottish Ministers and «F3: Supplier name»

## **SCHEDULE 7 – PARENT COMPANY GUARANTEE**

1. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number [ ]) and having our Registered Office at [ ] refer to the Contract concluded between the Scottish Ministers and [insert name of Supplier], 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 Contract") and in security of the Company's obligations thereunder guarantee the same in the following manner:-

1.1 We guarantee that the Company shall perform all its obligations contained in the Contract.

1.2 If the Company shall in any respect fail to perform its obligations under the Contract or shall commit any breach thereof, we undertake, on demand by the Scottish Ministers, to perform or to take whatever steps may be necessary to achieve performance of said obligations under the Contract and shall indemnify and keep indemnified the Scottish Ministers against any loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Company.

1.3 Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:

1.3.1 any waiver or forbearance by the Scottish Ministers of or in respect of any of the Company's obligations under the Contract whether as to payment, time, performance or otherwise howsoever, or by any failure by the Scottish Ministers to enforce the Contract or this instrument, or

1.3.2 any alteration to, addition to or deletion from the Contract or the scope of the obligations to be performed under the Contract, or

1.3.3 any change in the relationship between ourselves and the Company; or

1.3.4 the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,

and our guarantee and undertakings shall continue in force until all the Company's obligations under the Contract and all our obligations hereunder have been duly performed.

2. This Guarantee shall be construed and take effect in accordance with Scots Law.

3. Our obligations under this Guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.

4. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this Guarantee.

5. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.

6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
8. All notices and other communications required or permitted to be given in terms of this Contract, or any proceedings relating to it, shall be in writing and will be sufficiently served:
  - 8.1 if delivered by hand; or
  - 8.2 if sent by fax; or
  - 8.3 if sent by prepaid recorded or special delivery post; or
  - 8.4 if sent by email

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

9. Any such notice or communication shall be deemed to have been served,
  - 9.1 if delivered by hand, on the date of delivery;
  - 9.2 if sent by fax, 4 working hours after the time at which the fax was sent;
  - 9.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
  - 9.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,

provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

For the purposes of this Clause 9:

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

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

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice

or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served:

IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

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

At.....

On.....

Signature.....

Full name .....

Position .....

Address.....

.....

In the presence of

Signature.....

Full name .....

Address.....

.....

This and the following [ ] pages comprise Schedule 8 to the Contract Agreement between the Scottish Ministers and «F3: Supplier name»

## **SCHEDULE 8 – Exit Strategy**

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

The Supplier shall carry out services necessary to allow Purchaser to undertake the competitive re-bid of a Contract, or to take over the provision of the Services itself. These services cover:

[ ].

### **2. Assistance with termination**

The Exit Plan shall be produced and delivered by the Supplier to the Purchaser in accordance with the steps defined in clause 67.2.

The Supplier shall throughout the period of the Contract, maintain and continuously update the Exit Plan which shall include the contents listed in clause 67.4.

### **3. Post termination**

In accordance with clause 53 (Consequences of Expiry or Termination), following the termination of the Contract the Supplier shall return to the Purchaser all Purchaser Property and Purchaser Protected Information in the Supplier's possession and destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession, and a duly authorised officer of the Supplier shall certify that this has been done.

This and the following [ ] pages comprise Schedule 9 to the Contract Agreement between the Scottish Ministers and «F3: Supplier name»

## **SCHEDULE 9 – DATA PROTECTION**

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

This Schedule includes certain details of the Processing of Personal Data in connection with the supply of Goods under this Contract:

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

The subject matter and duration of the Processing of Personal Data are [insert description here].

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

[Include description here]

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

[Include list of data types here]

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

[Include categories of data subjects here]

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

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

This and the following 3 pages comprise Schedule 10 to the Contract Agreement between the Scottish Ministers and [Supplier name]

## **SCHEDULE 10 - 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:

- (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 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 31. Information Security of Schedule 1 (Statement of Requirements);

### **1. SUPPLIER’S WARRANTY**

The Supplier 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 (including in respect of any certification or accreditation).

### **2. SUPPLIER’S OBLIGATIONS**

2.1 The SUPPLIER 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 10; 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 Supplier shall notify the Purchaser promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.

### **3 CYBER SECURITY INCIDENTS**

- 3.1 The SUPPLIER 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 Supplier shall provide the Purchaser with a written notification setting out the details required under this paragraph 3 promptly and in any case within twelve (12) hours from the initial notification.
- 3.2 Following a Cyber Security Incident, the SUPPLIER 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.

### **4 INFORMATION AND AUDIT**

- 4.1 Promptly upon request, the Supplier shall provide to the Purchaser such information and records in connection with the Supplier's obligations under this Schedule 10 as the Purchaser may request.
- 4.2 The Supplier 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 Suppliers and/or any sub-contractor's compliance with its obligations under this Schedule 10.
- 4.3 The Supplier 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 Supplier, any associated or group company and any sub-contractor and, where such premises and/or equipment are outwith the control of the Supplier, 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 Supplier 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 10 by the Supplier and/or sub-contractor, in which case the Supplier shall reimburse the Purchaser on demand for all the Purchaser's reasonable costs and expenses incurred in conducting the audit].

## **5 BREACH OF CYBER SECURITY REQUIREMENTS**

- 5.1 A breach of this Schedule 10 by the Supplier is a material breach for the purposes of clause 57.1.3 (Termination Rights).
- 5.2 If the Supplier fails to comply with the provisions of this Schedule 10, the Purchaser may take any action it considers appropriate or necessary (and the Supplier shall comply with the Purchaser's requests in this respect), including:
  - (a) suspending the whole or any part of the Supplier'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 Supplier 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.

This and the following 2 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and Softcat Plc

#### **SCHEDULE 6 – Parent Company Guarantee**

1. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number [ ]) and having our Registered Office at [ ] refer to the Framework Agreement concluded between the Scottish Ministers and [insert name of contractor], a company incorporated under the Companies Acts (Company number [ ]) and having its Registered Office at [ ] ("the Company") of which we are the ultimate holding company, for the provision [*specify nature of goods or services*] ("the Framework Agreement") and in security of the Company's obligations thereunder guarantee the same in the following manner:-
  - 1.1 We guarantee that the Company shall perform all its obligations contained in the Framework Agreement.
  - 2.1 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.
  - 3.1 Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:
    1. 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
    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
    3. any change in the relationship between ourselves and the Company; or
    4. the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,and our guarantee and undertakings shall continue in force until all the Company's obligations under the Framework Agreement and all our obligations hereunder have been duly performed.
2. This Guarantee shall be construed and take effect in accordance with Scots Law.
3. Our obligations under this Guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.
4. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this Guarantee.

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

- 1.1 if delivered by hand; or
- 2.1 if sent by fax; or
- 3.1 if sent by prepaid recorded or special delivery post; or
- 4.1 if sent by email

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

9. Any such notice or communication shall be deemed to have been served,
  - 1.1 if delivered by hand, on the date of delivery;
  - 2.1 if sent by fax, 4 Working Hours after the time at which the fax was sent;
  - 3.1 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
  - 4.1 if sent by electronic mail, 4 Working Hours after the time at which the email was sent,
  - 5.1 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.
  - 6.1 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 [3] 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 and the following 2 pages comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and Softcat Plc

## **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)**

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

### **CONTRACTOR SENSITIVE INFORMATION**

<b>Type of information specified as Contractor Sensitive Information</b>	<b>Reason why information is sensitive</b>	<b>Duration of sensitivity</b>
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED

This page comprise Schedule 8 to the Framework Agreement between the Scottish Ministers and Softcat Plc

## **SCHEDULE 8 – Exit Management**

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

- 1.1. The Contractor shall carry out services necessary to allow the Authority to undertake the competitive re-bid of a framework agreement, or to take over the provision of the Services itself. These services cover:
- 1.2. reasonable efforts to assist with providing information to the Authority as part of the Exit Plan and/or in any tender process conducted for the provision of a replacement Framework;
- 1.3. reasonable cooperation with any potential provider of the replacement Framework. The Contractor shall promptly provide such potential providers with all information and data reasonably required by them in the context of the replacement Framework requirements which they are to provide.

### **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 of the Framework Terms and Conditions.
- 2.2. The Contractor shall throughout the period of the Framework Agreement, maintain and continuously update the Exit Plan which shall include the contents listed in clause 44.4 of the Framework Terms and Conditions.

### **3. Post termination**

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

This page comprise Schedule 9 to the Framework Agreement between the Scottish Ministers and Softcat Plc

## **SCHEDULE 9 – Data Protection**

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

This Schedule includes certain details of the Processing of Personal Data in connection with the supply of Goods under this Contract:

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

The subject matter and duration of the Processing of Personal Data are [insert description here].

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

[Include description here]

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

[Include list of data types here]

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

[Include categories of data subjects here]

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

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

This page comprise Schedule 10 to the Framework Agreement between the Scottish Ministers and Softcat Plc

**SCHEDULE 10 – Approved Sub-contractors**

1. Details of any approved Sub-contractors should be added to in the table below:

Approved Sub-contractor	Relevant obligations
1. 1. N/A at this stage Softcat are not using sub-contractors to share any relevant obligations of the framework. Were we do, Softcat conduct an ESPD with each sub-contractor, and will provide this to Scottish Government for review and approval, and add them into this schedule	
2.	
3.	



This and the following 2 pages comprise Schedule 11 to the Framework Agreement between the Scottish Ministers and Softcat Plc

## **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:

- 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 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 35 - Information Security of Schedule 1a (Statement of Requirements and KPIs);

**“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.

### **1. 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**

- 4.1 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.

### **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 promptly and in any case within twelve (12) hours from the initial notification.

- 3.2. Following a Cyber Security Incident, the Contractor 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 Authority 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 Authority in the circumstances, including complying with any additional security measures deemed appropriate by 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:

- (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 Framework Agreement; or
- (c) 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:

- (a) all data and/or records requested by the Authority;
- (b) 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

- (c) 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:

- (a) suspending the whole or any part of the Contractor's obligations under the Framework Agreement;
- (b) 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;
- (c) 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
- (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 Framework Agreement.