

Competition & Markets Authority

Framework™ Software Rental Agreement

Framework JEGS Rental Agreement 2018 - 31052018

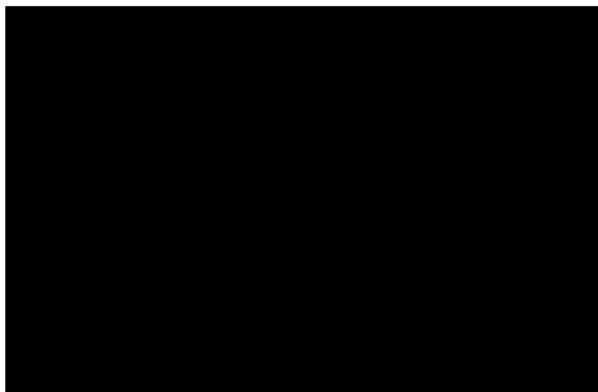


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Framework™ Software Rental Agreement

1. Introduction

This Rental Agreement (which includes the Schedules hereto) sets out the terms and conditions under which, in consideration of payment of the Fees referred to in Condition 4, **Towers Watson Limited**, whose registered office is at Watson House, London Road, Reigate, Surrey RH2 9PQ ("**WTW**") grants a licence (the "**Licence**") for the use of Framework Software (the "**Software**") with the functionality described in Schedule 2 to the organisation that WTW has agreed may become a licensee of the Software (the "**Client**"). These Terms and Conditions also govern the support of the Software to be provided by WTW. You ("**Client**") are entering into this Rental Agreement on the basis of these Conditions to the exclusion of any other terms and conditions set out or referred to in any document or other communication. The Rental Agreement shall be binding on the parties and their respective successors and permitted assignees. Upon signature of this Rental Agreement by the Client, any previous Rental Agreement for Framework Software entered into by the Client is hereby terminated, with the exception of Schedule 2 to the previous Rental Agreement which shall (together with any amendments to Schedule 2 that may have been agreed from time to time) be regarded as Schedule 2 to this Agreement.

2. Grant of Licence

2.1. The Licence

- 2.1.1. With respect to the Licence, WTW grants Client a non-exclusive and non-transferable Licence to use the Software for the term set out in Condition 5.1.
- 2.1.2. Client shall use the Software in machine-readable form for its own internal business purposes and on such hardware and operating system (the "**Hardware**") as may have been specified by WTW in the Framework Technical Specification. For the avoidance of doubt, the reference above to "internal business purposes" does not include use of the Software for the purpose of advising or otherwise for the benefit of a third party.
- 2.1.3. Client may make as many copies of the Software as are reasonably necessary solely for backup and archival purposes, provided that such copies include WTW's copyright and other proprietary rights notices and provided that their use is subject to these Conditions.
- 2.1.4. The Software may contain WTW's Global Job Model ("**GJM**") which is proprietary to WTW. Without limiting any of the provisions of this Rental Agreement, WTW has invested considerable resources in the development of the GJM. In the event that the Software does contain the GJM, the GJM should be made available within the Client's organisation only to those of its employees who need to make use of it for its intended purpose. The Client agrees not to make any portion of the GJM available to any third party, not even a third party working on its behalf, without WTW's prior written consent.

2.2. Limitations

Client may not and shall procure that its officers and employees shall not, except as expressly permitted by these Conditions or otherwise authorised by WTW in writing:

- 2.2.1. copy in whole or in part the Software (other than as reasonably required for back-up and archiving);
- 2.2.2. sell, transfer, sub-license, distribute, display or otherwise make available the Software or any copies to any third party including by way of bureau style services, outsourcing or remote telecommunications access;
- 2.2.3. save to the extent permitted by law, adapt, modify, translate, decompile, disassemble or otherwise reverse engineer the Software or any element of it; or
- 2.2.4. use the Software or any copies of it.

2.3. Supply of Product

WTW shall supply Client with one copy of the Software. WTW further agrees to provide Client with the information, otherwise only available by decompilation of the Software that is necessary to create interfaces between the Software and other programs lawfully used by Client. Client shall reimburse WTW's reasonable costs of providing such information and shall observe Condition 8 respecting the information.

2.4. Ownership

Ownership of all IPRs, including trade secrets, in the Software and any documents that may be provided by WTW from time to time (including without limitation all related specifications techniques know-how, methods, concepts and algorithms), and ownership of all copies of the Software and such documentation shall remain in WTW.

3. Support Services

3.1. Data Entry

If WTW agrees to enter any Client Data into the Software, Client bears responsibility for verifying promptly the completeness and accuracy of the entered data. The Client's sole and exclusive remedy for any failure by WTW to enter the data completely and accurately shall be to cause WTW to enter any missing data supplied to it by Client and to correct any inaccurate entries noted by Client. WTW's obligations are conditioned upon prompt notice, including a full copy of the accurate data, from Client.

3.2. Hosting

If Schedule 2 indicates that hosting services are to be provided by WTW then the hosting services shall be provided subject to the terms and conditions set out in Schedule 1 ("**Web Hosting Services**").

3.3. Implementation

WTW shall provide implementation services as set out in Schedule 2 ("**Implementation Services**").

3.4. Basic Support

For the purposes of this Agreement "Authorised Expert Users" shall mean such employee users in the Client, who shall number no more than the maximum number as agreed by WTW and the Client and set out in Schedule 2. Payment of the Rental Fee (as defined in Condition 4.1 below) will entitle the Client to Basic Support which will be comprised of WTW using all reasonable endeavours to provide the following assistance (at all times in the English language) to the Client's Authorised Expert Users in relation only to WTW's most recent release of the Software between the hours of 9.30 am and 4.30 pm (UK time) on the normal days of operation of WTW's UK offices for up to the maximum number of annual support hours as agreed by WTW and the Client and set out in Schedule 2:

- 3.4.1. telephone consultation with Authorised Expert Users to answer enquiries and resolve operating problems with the Software;
- 3.4.2. correction of any defect in the Software (as delivered and modified by WTW) which prevents it from performing substantially in accordance with the User Information, provided that one of Client's Authorised Expert Users reports the defect to WTW during the Support Period and in sufficient detail to enable WTW to recreate the defect; and
- 3.4.3. replacement of any media on which WTW supplies the Software to Client if such media fails to be free of defects in material or workmanship on the date of delivery.

3.4.4. New Releases

Basic Support will include all updates, enhancements and new releases for the Software which WTW makes available generally to its clients without charge during the Contract Period. WTW will not be required to develop any such updates, enhancements or new releases.

3.4.5. Support Services Changes

WTW may change the composition of Support Services, including Basic Support at any time upon at least ninety (90) days' notice to Client.

3.4.6. Performance Standards

3.4.6.1. Services

All Support Services rendered by WTW pursuant to these Conditions will be provided with reasonable care and skill. If WTW's performance of any Support Service task for Client fails to meet this standard, then WTW will perform such Support Service again at no extra charge to Client.

3.4.6.2. Exclusions

Support Services, including basic Support, will not include any services attributable to defects or problems arising from: any failure to use the Software in accordance with this Rental Agreement; any use of the Software with hardware or software not approved by WTW; any modification of the Software not approved by WTW; any defect in the Hardware or third-party programs; any use of the Software by untrained staff of the Client; or any failure to make appropriate backup copies of the Software or, where hosting services are being provided, of information inputted into the Software via the internet.

4. Fees

4.1. Fees

The Client agrees to pay WTW for such of: (1) the Licence and Support (the "**Rental Fee**"); (2) the Implementation Fee; (3) the Web Hosting Fee; (together the "**Fees**") at the times and in the amounts specified in Schedule 2. Invoices are payable by Client within thirty (30) days after receipt. The Fees shall be non-refundable, except as otherwise provided in these Conditions. Unless otherwise agreed by WTW and Client, The Fees shall be paid in WTW's local currency. If the Client wishes to increase the maximum number of concurrent users as set out in Schedule 2, and WTW agrees to such an increase then WTW shall increase the Rental Fee and the Web Hosting Fee (if applicable) in line with its standard fee scales. The Implementation Fee attracts an additional indirect expenses fee equal to 6.5% of the Implementation Fee to offset non-itemised expenses related to WTW's performance of such services, such as copying, telephone and facsimile services. In the event that the Implementation Fee is expressed as a fixed fee in Schedule 2, this is done so on the basis of the assumptions set out in Schedule 2 as to the time that implementation will take. In the event that the assumptions prove to be incorrect, for whatever reason, then WTW shall be entitled to charge for additional time engaged in implementation, based on WTW's then current hourly charging rates.

4.2. Taxes

The Fees are exclusive of VAT and all other sales, goods and services, use, withholding and other taxes, levies or duties that may be applicable thereon. If required by law WTW will charge VAT or any other sales related taxes in addition to the Fees. The Client shall be responsible for any import, customs or similar duties and charges that may be payable in relation to the provision of any Services or goods supplied to it by WTW. Therefore, in addition to any payment to WTW pursuant to this Agreement, the Client will pay to WTW an amount equal to any taxes, levies and duties, however designated or levied, domestic or foreign, including without limitation country, state, provincial and local sales and use taxes and goods and services tax, paid or payable by WTW plus interest and penalties, if any, exclusive, however, of any taxes that are based on the net income of WTW itself.

4.3. No Set-Off

All invoices shall be paid by Client in full without set-off, deduction or other withholding of any amount which may be due to Client under any other contract between the parties.

4.4. Late Payments

In the event that Client withholds any payment due to WTW beyond the due date for such payment, interest shall be payable on the unpaid amount from the due date for payment to the date of actual payment at the rate of interest of one per cent (1%) per month. In the event that any payment is more than 60 days overdue, WTW reserves the right to terminate web hosting services with 7 days written notice until such time as the overdue bill is paid in full with interest as outlined above.

4.5. Expenses

In relation to the provision of Implementation Services WTW shall be entitled to reimbursement, at cost, of direct expenses reasonably incurred by WTW, such as travel expenses and other disbursements.

5. Term and Termination

5.1. Term

This Rental Agreement comes into effect on the date specified in the Schedule 2 (the "**Commencement Date**") and shall continue until or unless terminated as set forth below. WTW or Client may terminate this Rental Agreement by giving not less than one month's notice provided that such notice shall not expire (and the agreement shall not terminate) until the end of the Initial Term which shall expire one year after the Commencement Date. If this Rental Agreement is not terminated at the end of the Initial Term it shall continue in full force and effect, until terminated by either party, for successive Renewal Terms of one year. Any such Renewal Term may be terminated at the end of the Renewal Term by either party giving to the other written notice of termination at least one month prior to the end of the Renewal Term. At the commencement of each Renewal Term thereafter, for as long as the Agreement continues, the combined Web Hosting Fees and the Rental Fees payable by the Client (such as may have been increased pursuant to Condition 4.1) shall increase by an amount being greater of: (i) 5% per annum; and (ii) an amount equal to the percentage increase in the UK National Statistics Average Earnings Index during the immediately preceding twelve month period. In the event that the UK National Statistics Average Earnings Index no longer exists at the relevant date then the most similar existing alternative index recognised by HM Government shall be used.

5.2. Rights and Obligations Upon Termination

5.2.1. Survival of Obligations

Following the termination of this Rental Agreement neither WTW nor Client shall have any further obligation or right with respect to the other party except for accrued rights of action and remedies and the obligations set out in Conditions 2, 4, 5, 6, 7, 8 and 9 inclusive.

5.2.2. Return of Property

Upon termination, each party shall return to the other party all property belonging to the other party then in its possession; and, in particular, Client shall return to WTW the Software and any documents provided to Client relating to the Software and all copies thereof, and any other materials incorporating any element of the Software or any documents relating to the Software, then in its possession.

6. Warranties and Indemnities

6.1. Performance of the Software

WTW warrants that:

- 6.1.1. when used on properly operating Hardware, the Software (and any updates, enhancements and new releases) will perform substantially in accordance with the User Information throughout the term of this Agreement;
- 6.1.2. all media on which the Software is supplied to Client will be free from defects in materials and workmanship on the date of delivery;
- 6.1.3. any disks containing the Software delivered to Client will be produced by WTW using methods which screen the disks with such commercially available anti-virus system as WTW may select from time to time.

However, WTW does not warrant that the Software will meet Client's requirements or that its performance will be uninterrupted or error-free and nor does WTW warrant that the Software will operate correctly or at all if the Client does not observe the requirements set out in the Framework Technical Specification.

6.2. Remedies

Upon receiving notice from Client of any defect or non-conformity to which Condition 6.1 applies, WTW will use all reasonable endeavours to correct such defect or non-conformity. Clients' notice must include sufficient information to re-create the defect or non-conformity.

If WTW fails within a reasonable time to correct any such defect or non-conformity, and it has a material adverse effect on the Software's performance, then the Client may, by giving to WTW 60 days' notice in writing, terminate the agreement and the client shall be refunded any pro-rata amount of the annual fee for the remainder of the year and shall not be required to pay any further fees to WTW. WTW shall have no obligation to correct any defect or non-conformity caused by any modification or use of the Software not authorised by WTW.

6.3. Limitations

Conditions 6.1 and 6.2 state the entire liability of WTW and the exclusive remedy of Client with respect to the quality or performance of the Software and the media on which the Software is supplied.

6.4. Disclaimer of Implied Warranties

Except as expressly stated in this Condition 6, all representations, warranties and conditions, whether express or implied by statute, common law or otherwise, including any implied terms of satisfactory quality or fitness for purpose or any implied term arising from a course of dealing or trade usage, are hereby excluded to the extent permitted by law.

6.5. Infringement Indemnity

- 6.5.1. Subject to Conditions 6.5.2, 6.5.3 and 6.5.4, WTW shall defend any action brought by any third party against Client (or against its employees and agents) based upon an allegation that the use by Client of the Software as delivered by WTW and as used in accordance with these Conditions, infringes any copyright or trade secret of the third party, and shall pay any amount required to be paid under any final judgement entered against Client or any settlement in connection with such an action.
- 6.5.2. In the event of any such action being made or threatened against Client, Client shall promptly notify WTW and WTW shall at its own expense conduct all negotiations for settlement of the same and shall control the response to and defence of such action. Client, its employees and agents, shall at the request of WTW afford all reasonable assistance for the purpose of contesting any such action and shall be repaid any reasonable expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of such action.
- 6.5.3. In the event that any such third party obtains an injunction restraining the use by Client of the Software or in the judgement of WTW becomes likely to prevail in any such action, WTW may either procure for Client the right to use the Software or functionally equivalent, non-infringing software or give Client a pro-rata refund of the Rental Fee and terminate the Rental Agreement. Any such termination shall be deemed to occur under Condition 5 above.
- 6.5.4. Condition 6 states the entire liability of WTW with respect to any claim of infringement of any copyright or trade secret against Client.

7. Limitation of Liability

- 7.1. Nothing in this Agreement shall exclude or in any way limit WTW's or its employees', actuaries', agents', subcontractors' and affiliates' (the "**Related Persons**") liability for fraud, or for death or personal injury caused by its or their negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.
- 7.2. WTW shall be liable for loss of or damage to the physical property of Client caused by WTW's or the Related Persons' negligence provided that, subject to Condition 7.1, WTW's total aggregate liability to the Client for such loss or damage shall not in any event exceed the greater of twenty thousand pounds (£20,000) or the total Rental Fees paid.
- 7.3. Subject to Conditions 7.1, 7.2 and 7.4, WTW's and the Related Persons' maximum aggregate liability to the Client under or in connection with this Agreement, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the greater of forty thousand pounds (£40,000) or the total Rental Fees paid.
- 7.4. Subject to Condition 7.1, neither WTW nor the Related Persons shall be liable under or in connection with this Agreement or any collateral contract, whether in contract, tort (including negligence) or otherwise, for any loss of income, loss of profits or loss of contracts, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising.
- 7.5. This Agreement sets forth the full extent of WTW's obligations and liabilities arising out of or in connection with this Agreement or any collateral contract, and there are no conditions, warranties, representations or terms, express or implied, that are binding on WTW except as specifically stated in this Agreement.
- 7.6. The exclusions and limitations of liability under this Condition 7 shall have effect in relation to both (i) any liability expressly provided for or contemplated under this Agreement and (ii) any liability arising or incurred by reason of the invalidity or unenforceability, in whole or in part, of any term or provision of this Agreement.
- 7.7. Subject to Condition 7.1 WTW accepts no liability to Client for damage or loss arising from infestation of the Software, the Hardware or any other hardware or software of Client by computer virus, bomb, worm or other corrupt computer code.

8. Confidentiality and Data Protection

- 8.1. Except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
 - 8.1.1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 8.1.2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 8.2. Condition 8.1 shall not apply to the extent that:
 - 8.2.1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Condition 10;

- 8.2.2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 8.2.3. such information was obtained from a third party without obligation of confidentiality;
- 8.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- 8.2.5. it is independently developed without access to the other party's Confidential Information.
- 8.3. WTW may only disclose the Client's Confidential Information to those WTW Personnel who are directly involved in the provision of the Software or the Web Hosting Services and who need to know the information, and shall ensure that such WTW Personnel are aware of and shall comply with these obligations as to confidentiality.
- 8.4. WTW shall not, and shall procure that WTW Personnel do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.
- 8.5. Nothing in this Agreement shall prevent the Client from disclosing WTW's Confidential Information:
 - 8.5.1. to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 8.5.2. to any consultant, contractor or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review provided that such consultant, contractor or other person does not offer services that compete with those of WTW;
 - 8.5.3. for the purpose of the examination and certification of the Client's accounts; or
 - 8.5.4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources

provided that the recipient shall not by virtue of such disclosure receive a license to use the Software or any of WTW's IPRs.
- 8.6. The Client shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom WTW's Confidential Information is disclosed pursuant to this Condition 8 is made aware of the Client's obligations of confidentiality.
- 8.7. Nothing in this Condition 8 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 8.8. The Client and WTW agree to comply with the terms of the WTW Data Processing Protocol under Schedule 3 ("Data Processing Protocol").

9. Miscellaneous

9.1. Waiver

No waiver of any of these Conditions shall be effective unless it is expressed to be a waiver in writing and communicated to the other party.

9.2. Law and Jurisdiction

- 9.2.1. This Rental Agreement shall be considered to be made in England and shall be interpreted in accordance with English Law.
- 9.2.2. The courts of England shall have exclusive jurisdiction over all disputes which may arise between the parties arising from the Rental Agreement, or from the use by Client of the Software.

9.3. Representations

By entering into this Rental Agreement, each party acknowledges that it shall not have relied on any prior representation, warranty or other assurance made by or on behalf of the other and each party waives all rights and remedies which but for these Conditions, might otherwise be available to it in respect of or of such representation, warranty or other assurance, provided that nothing in this Condition shall exclude or limit any liability for fraud.

9.4. Severability

If any provision of this Rental Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of these Conditions shall continue in full force and effect. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the contract, the parties shall immediately commence good faith negotiation to remedy such invalidity.

9.5. Service of Notices

All notices given pursuant to these Conditions shall be in writing and may be given by hand delivery, by deposit into the official post (registered first class or recorded delivery) or by deposit with overnight courier, postage prepaid, addressed to the respective party.

9.6. Change of Address

Either party may change the address to which notices from the other party must be sent by providing the other party with written notice of such change of address no less than thirty (30) days before such change of address is to become effective.

9.7. Amendments

No amendment to the provisions hereof, and no additional or substituted schedule, annexed or attachment hereto, shall be effective unless it is made in writing and is executed on behalf of both parties.

9.8. Assignment

The Client shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Rental Agreement or any part thereof to any contracting authority (as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993) (a "**Contracting Authority**") provided that any such assignment, novation or other disposal shall not increase the burden of WTW's obligations pursuant to this Rental Agreement and provided that the Client has first obtained WTW's consent in writing which shall not be unreasonably withheld or delayed. Subject to the above, this Rental Agreement (including, for the avoidance of doubt the Licence) is personal to Client. Client may not give, bargain, sell, assign, sublet or otherwise dispose any Licence or any part of a Licence without the previous consent in writing of WTW. WTW may assign this Rental Agreement or a part thereof to any affiliated company or to any third party acquiring substantially all of the business related to the Software.

9.9. Force Majeure

Neither party shall be liable for delay or failure to perform any of its contractual obligations under this Rental Agreement insofar as the performance of such obligation is prevented by a force majeure event which is beyond its reasonable control. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such force majeure event. However, if any such event prevents either party from performing all of its obligations hereunder for a period in excess of six (6) months, either party may terminate this Rental Agreement upon notice to the other.

10. Freedom of Information

- 10.1. WTW acknowledges that the Client is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations. WTW shall and shall procure that its Sub-contractors shall (subject to clause 10.6):
 - 10.1.1. transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 10.1.2. provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
 - 10.1.3. provide the Client with a copy of all Information held on behalf of the Client that is (a) in WTW's possession or under its control and (b) relevant to the Request, in the form that the Client requires within five Working Days (or such other period as the Client may reasonably specify) of the Client's request.
- 10.2. The Client shall pay WTW's reasonable charges in responding to requests for Information under this Condition 10.
- 10.3. The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement (other than clause 10.6) whether any Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 10.4. Subject to clause 10.6, in no event shall WTW respond directly to a Request for Information unless expressly authorised to do so by the Client.
- 10.5. WTW shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time. Any such inspection must be conducted at mutually convenient times and locations and in a manner that does not disrupt WTW's business operations provided that the Client shall pay WTW's reasonable charges based on its then current hourly rate for complying with its obligations under this clause 10.
- 10.6. The Client agrees that the WTW Commercially Sensitive Information is confidential and a trade secret within the meanings of sections 41 and 43 of FOIA. In the event that there is a serious likelihood that such information needs to be disclosed, the Client shall notify WTW in writing promptly and shall secure for WTW the right to make appropriate and suitable representations as to why there should be no such disclosure.

11. Security Requirements

WTW shall comply, and shall procure the compliance by WTW Personnel, with WTW's security policy

12. Malicious Software

- 12.1. WTW shall, as an enduring obligation throughout the term of this Agreement, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from affecting the Software.
- 12.2. Notwithstanding Condition 12.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Software and the Web Hosting Services to their desired operating efficiency.

12.3. Any cost arising out of the actions of the parties taken in compliance with the provisions of Condition 12.2 shall be borne by the parties as follows:

12.3.1. by WTW where the Malicious Software originates from the Software, the Web Hosting Services or the Client Data (whilst the Client Data was under the control of WTW); and

12.3.2. by the Client if the Malicious Software originates from the Client's software or the Client Data (whilst the Client Data was under the control of the Client).

13. Definitions

In this Agreement and the schedules:

"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 common Control with, that body corporate from time to time.

"Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

"Client Data" means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are either supplied to WTW by or on behalf of the Client or which WTW is required to generate, process, store or transmit pursuant to this Agreement, or (b) any Personal Data for which the Client is the Data Controller.

"Contracting Authority" means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Client.

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise);

"Crown Body" means any department, office or agency of the Crown.

"Data Controller", **"Data Processor"**, **"Data Subject"**, **"Personal Data"** and **"Processing"** shall have the meanings given in the General Data Protection Regulation (Regulation (EU) 2016/679) ("**GDPR**").

"Data Protection Legislation" means the Data Protection Act 1998 (as subsequently amended), the GDPR, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.

"Information" has the meaning given in section 84 of the FOIA.

"IPRs" means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information, (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction.

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Software or the Web Hosting Services but excluding know how already in WTW's or the Client's possession before this Agreement.

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

"Malicious Software" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Client.

"Request for Information" means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

"Sub-contract" means any contract or agreement or proposed contract or agreement between WTW and any third party whereby that third party agrees to provide to WTW the Services or any part thereof or facilities or services necessary for

the provision of the Software or the Web Hosting Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.

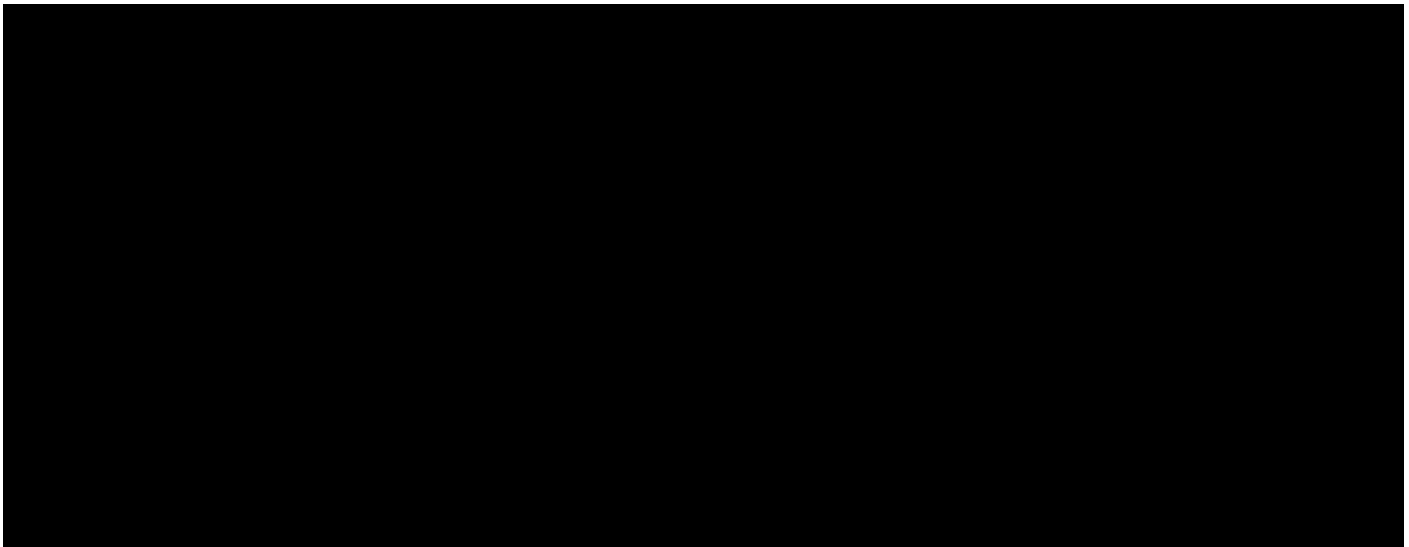
"Sub-contractor" means the third party with whom WTW enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents.

"WTW Commercially Sensitive Information" means all and any of the JEGS questionnaire, JEGS methodology, the JEGS scoring algorithms and Software computer code.

"WTW Personnel" means all employees, agents, consultants and contractors of WTW and/or of any Sub-contractor.

"Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales.

Accepted and agreed by:



Schedule 1 (“Web Hosting Services”)

These Terms shall apply between WTW and the Client in relation to the hosting by WTW of the Software and the Client's data on a Web Site at a Uniform Resource Locator to be agreed that shall be accessible by the Client. Capitalised words in these Hosting Terms (other than in the paragraph headings) shall have the meanings ascribed to them in the Software Rental Agreement.

1. SERVICES

WTW agrees to provide the Client with Web Hosting Services on the terms described herein. WTW agrees to place the Software on a computer server owned or operated by WTW and to permit the Client to access the Software via a web page interface (“Website”), to allow the Client to store information on and retrieve information from the Website, as permitted by the Software.

2. FEES

The Client agrees to pay to the company the fees specified in Schedule 2 for the Web Hosting Services (“Web Hosting Fees”). Invoices for Web Hosting Services are due upon receipt. Any charge or portion of charge outstanding 30 days after the date of the invoice will be subject to a late charge of one percent (1%) per month for each month that the payment remains outstanding, beginning on the date of the invoice. Web Hosting Fees are quoted net of VAT.

3. TERM

The provision of Web Hosting Services shall commence on the Web Hosting Commencement Date and shall terminate automatically when the Software Rental Agreement is terminated. Otherwise, Client may terminate these Hosting Terms immediately upon written notice to WTW if WTW has failed to perform any material obligation set out in these Hosting Terms and has not, where the failure to perform any such material obligation is capable of remedy, remedied such failure within thirty (30) days after receipt of written notice from the Client particularising such failure in sufficient detail to enable WTW to identify any such breach and to take the necessary steps to remedy it. After termination of Web Hosting Services

WTW shall, if the Client so requests, provide a copy of the Client's data to the Client and facilitate any transfer of the Software and associated Client data to another hosting service provider in which case the Client agrees to pay WTW's reasonable charges for the time engaged by WTW in facilitating any transfer of the Software and in providing a copy of such data. WTW and the Client shall negotiate in good faith the format and means by which such data shall be provided to the Client.

4. CLIENT RESPONSIBILITIES

The Client shall be solely responsible for the accuracy and content of any information provided by the Client to WTW. The Client agrees to use the Web Hosting Services in a manner consistent with any and all applicable laws and regulations.

5. WTW'S WARRANTIES

5.1. WTW warrants from the date that the Website is made available to the Client the coding of such Website shall be reasonably HTML-compliant. Notwithstanding the foregoing, the sole and exclusive remedy for a breach of the warranties contained in this Clause 5 shall be that WTW shall replace the non-conforming coding to make such Website reasonably HTML compliant. The Client acknowledges that HTML is an industry standard that contains some ambiguous provisions and that it does not completely address all issues associated with the coding of the Website accessible via the World Wide Web. The Client also acknowledges that HTML is a standard that will be amended from time to time and that not all 'browsers' used by the Client to access the World Wide Web implement HTML in the same way. The Client acknowledges that WTW tests the Software only on Internet Explorer 5.5 and above (in industry standard form) and on Netscape 6 and above (in industry standard form) and WTW does not warrant that the Software will operate adequately or at all on browsers on which WTW does not test the Software. Variations in HTML coding associated with ambiguities or revisions to the HTML standard or variations among World Wide Web browsers shall not be the basis for a claim of breach of WTW's warranties under this Agreement. The warranties described in this Clause 5.1 are subject to the limitations of liability described in Condition 7 of the Software Rental Agreement. WTW will provide all services with reasonable care and skill. Except as provided in this Clause 5.1, WTW does not make any express or implied warranties with respect to any services or products as may be provided under this Agreement, including but not restricted to the implied warranties of merchantability and fitness for a particular purpose.

5.2. WTW will use commercially reasonable efforts to make the website available to the Client 24 hours per day, seven days per week. The Client acknowledges the need for routine maintenance and error correction may result in down time. Where reasonably practicable, WTW shall carry out maintenance to the website outside of the hours of 8am to 8pm (UK time).

6. OWNERSHIP

Ownership of all IPRs, including trade secrets, in the Website shall remain vested in WTW. The Client shall retain ownership of any and all data input into the Website.

7. DATA PROTECTION

7.1. In circumstances where the Client passes Personal Data to WTW in relation to this Agreement, WTW is the Data Processor and the Client is the Data Controller. As Data Controller, the Client confirms that it has obtained all necessary consents for lawful processing, prior to passing the Personal Data to WTW. WTW shall use its

reasonable efforts to assist the Client to comply with its obligations as Data Controller under Data Protection Legislation, subject to the payment by the Client of WTW's reasonable professional charges for the time engaged by WTW's staff in so doing, including but not limited to the following:

- 7.1.1. Notifying the Client within five working days if it receives:
 - a) A request from a Data Subject to have access to that person's Personal Data; or
 - b) A complaint or request relating to the Client's obligations under the Data Protection Legislation.
- 7.1.2. Providing the Client with full details of any complaint or request relating to the Client's obligations under the Data Protection Legislation.
- 7.1.3. Complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's reasonable instructions.
- 7.1.4. Providing the Client with any Personal Data WTW holds in relation to a Data Subject within the timescales reasonably required by the Client.
- 7.1.5. Providing the Client with any information relating to the complaint or request reasonably requested by the Client.
- 7.2. The Client and WTW agree to comply with the terms of the WTW Data Processing Protocol under Schedule 3 ("Data Processing Protocol").

8. Client Data

- 8.1. WTW shall not delete or remove any proprietary notices contained within or relating to the Client Data.
- 8.2. WTW shall not store, copy, disclose, or use the Client Data except as necessary for the performance by WTW of its obligations under this Agreement and for compliance with WTW's Records Management Policy or as otherwise expressly authorised in writing by the Client.
- 8.3. To the extent that Client Data is held and/or processed by WTW, WTW shall supply that Client Data to the Client as requested by the Client during the term of this Agreement.
- 8.4. WTW shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.
- 8.5. WTW shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with its Business Continuity and Disaster Recovery Plan. WTW shall ensure that such back-ups are available to the Client at all times upon request.
- 8.6. WTW shall ensure that any system on which WTW holds any Client Data, including back-up data, is a secure system that complies with WTW's data security policy.
- 8.7. If the Client Data is corrupted, lost or sufficiently degraded during the term of this Agreement as a result of WTW's default so as to be unusable, the Client may require WTW (at WTW's expense) to restore or procure the restoration of Client Data to the extent and in accordance with the requirements specified in WTW's Business Continuity and Disaster Recovery Plan and WTW shall do so as soon as practicable and in any event within 5 business days.
- 8.8. If at any time WTW suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then WTW shall notify the Client promptly and inform the Client of the remedial action WTW proposes to take.

Schedule 2 (“Implementation Services”)

General Information

[REDACTED]

[REDACTED]

		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	■	
[REDACTED]	[REDACTED]		■
[REDACTED]	[REDACTED]		■
[REDACTED]	[REDACTED]		■

Rental and Hosting

[REDACTED]

Implementation

Client-specific set-up (including quality assurance/testing):	Setup and testing for a single database based on the standard JEGS methodology. No set-up expected in subsequent years.
Data conversion from previous system:	Towers Watson will migrate all existing data from a single database (as is, without any changes) into a single database using the new web-based tool.
Training services:	Not provided as part of this contract. Beamans provide, both JEGS methodology and software courses and can be contacted on 01622 741560 for any training needs. Access to the JEGS software is granted upon confirmation that at least one of the system users has been trained on the current JEGS methodology.
Onsite installation services:	Not applicable.
Other services:	Not applicable.
Implementation fees (excluding VAT) and date(s) paid:	None.

Schedule 3 ("Data Processing Protocol")

This Data Processing Protocol (the "**Protocol**") explains how Willis Towers Watson handles personal data on behalf of its clients, customers or licensees ("**Client**").

The Protocol forms part of any agreement in place between Willis Towers Watson and Client which expressly refers to it (the "**Agreement**"). Where this Protocol uses terms which are defined in the General Data Protection Regulation (Regulation (EU) 2016/679) (the "**Regulation**"), then the definitions set out in that Regulation shall apply.

Data Processing

With respect to personal data processed by Willis Towers Watson on Client's behalf (see Annex 1), Willis Towers Watson will comply with the following requirements:

Limitations on Use. Willis Towers Watson will process personal data only to deliver the relevant service, as instructed in writing by Client from time to time, or as otherwise required by law.

Confidentiality. Willis Towers Watson will hold personal data in confidence and require Willis Towers Watson personnel who will process personal data to protect all personal data in accordance with the requirements of this Protocol.

Information Security Program. Willis Towers Watson will maintain a written information security program that contains appropriate administrative, technical and physical safeguards to protect personal data against anticipated threats or hazards to its security, confidentiality or integrity.

Assistance. Willis Towers Watson will:

- i. Taking into account the nature of the processing and in so far as is possible, implement technical and organizational measures to assist Client in fulfilling its obligation to respond to any requests from individuals exercising their rights under Chapter III of the Regulation;
- ii. Taking into account the nature of the processing and the information available to Willis Towers Watson, assist Client in complying with Client's obligations to implement appropriate security measures, to notify personal data breaches to supervisory authorities and to individuals and to conduct data protection impact assessments and consult with supervisory authorities in relation to data protection impact assessments where required; and
- iii. Make available to Client all information which Client reasonably requests to assist Client in demonstrating that the obligations set out in Article 28 of the Regulation relating to the appointment of processors have been met and allow for and contributes to audits conducted by Client or another auditor nominated by Client.

Willis Towers Watson may charge a reasonable fee for all such assistance described above, save where assistance was required directly as a result of Willis Towers Watson's own acts or omissions, in which case such assistance will be at Willis Towers Watson's expense. Client shall provide Willis Towers Watson with thirty (30) days advance notice of any audit request; may not engage in an audit which would compromise confidentiality obligations to any other clients and customers of Willis Towers Watson and, if it wishes to nominate another auditor to undertake the audit, shall ensure that the auditor enters into a confidentiality agreement with Willis Towers Watson in such form as Willis Towers Watson shall reasonably require.

Security Incident. Willis Towers Watson will without undue delay notify Client whenever Willis Towers Watson reasonably believes that there has been a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data processed by Willis Towers Watson in the context of this Protocol ("**Security Incident**"). After providing notice, Willis Towers Watson will investigate the Security Incident, take necessary steps to eliminate or contain the impact of the Security Incident and keep Client advised of the status of the Security Incident and all related matters.

Return or Disposal. Client may instruct Willis Towers Watson to delete or return personal data at the end of the period during which Willis Towers Watson will process such Client personal data, as specified in Annex 1.

Subprocessing

Client understands that Willis Towers Watson may use sub processors to provide the services under the Agreement. These will be listed and agreed in the specific Agreement Client has entered into with Willis Towers Watson if applicable. Willis Towers Watson shall remain primarily responsible for the performance of its obligations under this Protocol and shall ensure that its agreements with such sub processors are at least as restrictive as this Protocol. Willis Towers Watson may change or add sub processors from time to time upon giving reasonable notice in writing to Client so that Client may express an objection, on reasonable grounds, to the proposed change.

Anonymized and Pseudonymised Data

Client acknowledges that the services include pseudonymisation and anonymization for the purpose of aggregate reporting and (trends) research, and agrees that Willis Towers Watson may use pseudonymised and anonymized data for its own business purposes, and Willis Towers Watson will comply with all applicable data protection laws in respect of such processing.

Data Transfers

Client confirms that Willis Towers Watson may transfer personal data to its affiliates and sub processors inside and outside the European Economic Area (EEA) for purposes of support and back-up. Willis Towers Watson has established safeguards to protect personal data transferred to countries outside the EEA, including appropriate contractual protections.

Annex 1 - Description of processing of personal data

1. Subject Matter, Nature and Purpose

All processing activities (including the collection, organization and analysis of personal data) as are reasonably required to facilitate or support the provision of the services described under the Agreement.

2. Duration of processing of personal data

Willis Towers Watson will process the personal data for as long as it provides services to Client and will hold the personal data in archive after that date to the extent necessary for legitimate business purposes.

3. Categories of individuals:

The data subjects may include individuals named in any policy or scheme in respect of which Willis Towers Watson is engaged to provide its services and/or individuals that are beneficiaries of, or have made claims under, or are otherwise involved in, any such policy or scheme. Most commonly the data subjects will include: (1) employees, contractors or other workers of the Client ("**Workers**") and/or their family members, representatives or others connected with Workers; (2) past, existing or prospective clients of the Client, and/or their employees or other individuals connected with them, and/or their family members, representatives or others connected with them; and/or (3) past, existing or prospective complainants or claimants in connection with any insurance policy, and/or their family members, representatives or others connected with them.

4. Types of personal data:

The services under the Agreement may involve the processing of the following types of personal data:

- names and contact information;
- demographic information (such as gender, age, date of birth, marital status, nationality, education/work histories, academic/professional qualifications, employment details, hobbies, family composition, and dependents);
- personal identification documentation and related information such as passport numbers and employee identification numbers;
- financial and payment data such as bank account numbers and transaction information;
- information related to the provision of the services, such as policy information and claims information, including information relating to incidents giving rise to claims and related losses;
- records of communications and CCTV footage; and
- human resources data, such as job title and role; benefits and compensation information; dependent/beneficiary information; educational, academic and professional qualifications information; emergency contact information; and performance management information.

5. Types of special categories of data referred to in Article 9 of the Regulation:

The personal data processed by Willis Towers Watson may include the following special categories of personal data: personal characteristics and circumstances of sensitive nature such as racial or ethnic origin, sex life, mental and physical health, genetic information, details of injuries, medication/treatment received, political or religious beliefs, labour union affiliation, and criminal records, fines and other like judicial records.