National Heritage Memorial Fund

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Framework Agreement for Short Films



**D****ATED** 01/05/2017

**NATIONAL HERITAGE LOTTERY FUND**

**and**

**FRAMEWORK AGREEMENT**

Framework Agreement for Short Films

**(Agreement Ref: 192)**

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**BETWEEN:**

(1) The National Heritage Memorial Fund (NHMF) of 7, Holbein Place, London, SW1W 8NR, England (the “Fund”); AND

(2) ***[COMPANY’S NAME]*** which is a company registered in England, Scotland and Wales under company number ***[insert company no.***] and whose registered office is at ***[insert address]*** (the "**Supplier**").

**RECITALS:**

1. On 21st March 2017 the Fund issued an invitation to tender (the "Invitation to Tender") for the production of short films.
2. In response to the Invitation to Tender, the Supplier submitted a tender to the Fund on ***[insert date dd/mm/yyyy]*** (set out in Framework Schedule 20 (Tender)) (the “**Tender**”) through which it represented to the Fund that it is capable of delivering the Goods and/or Services in accordance with the Fund's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Fund in the Tender in relation to its competence, professionalism and ability to provide the Goods and/or Services in an efficient and cost effective manner.
3. On the basis of the Tender, the Fund selected the Supplier to enter into a framework agreement along with a number of other suppliers appointed to the Framework to provide the Goods and/or Services to the Fund from time to time on a call off basis in accordance with this Framework Agreement.
4. This Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Goods and/or Services which may be required by the Fund, the template terms and conditions for any Call Off Agreement which the Fund may enter into and the obligations of the Supplier during and after the Framework Period.
5. It is the Parties' intention that there will be no obligation for the Fund to award any Call Off Agreements under this Framework Agreement during the Framework Period.
6. PRELIMINARIES
7. DEFINITIONS AND INTERPRETATION
	1. Definitions
		1. In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Framework Schedule 1 (Definitions) or the relevant Framework Schedule in which that capitalised expression appears.
		2. If a capitalised expression does not have an interpretation in Framework Schedule 1 (Definitions) or the relevant Framework Schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
	2. Interpretation
		1. In this Framework Agreement, unless the context otherwise requires:
			1. the singular includes the plural and vice versa;
			2. reference to a gender includes the other gender and the neuter;
			3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
			4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
			5. the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
			6. references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
			7. references to “**representations**” shall be construed as references to present facts; to “**warranties**” as references to present and future facts; and to “**undertakings**” as references to obligations under this Framework Agreement;
			8. references to “**Clauses**” and “**Framework Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;
			9. any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and
			10. the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.
		2. Subject to Clauses 1.2.3 and 1.2.4, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:
			1. the Clauses and Framework Schedule 1 (Definitions);
			2. Framework Schedules 1 to 19 inclusive;
			3. Framework Schedule 20 (Tender).
		3. If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Agreement, the provisions of this Framework Agreement shall prevail over those of the Call Off Agreement save that:
			1. any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Agreement under Clause 4 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call –Off Terms); and
			2. subject to Clause 1.2.4, the Call Off Agreement shall prevail over Framework Schedule 20 (Tender).
		4. Where Framework Schedule 20 (Tender) contains provisions which are more favourable to the Fund in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Fund shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.
8. DUE DILIGENCE

The Supplier acknowledges that:

* + 1. the Fund has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Framework Agreement;
		2. it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
		3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Fund before the Framework Commencement Date) and has entered into this Framework Agreement in reliance on its own due diligence alone.
		4. it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
			1. misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere; and/or
			2. failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
1. SUPPLIER'S APPOINTMENT

The Fund hereby appoints the Supplier as a potential provider of the Goods and/or Services and the Supplier shall be eligible to be considered for the award of Call Off Agreements by the Fund and Other The Fund during the Framework Period.

In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Fund agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

1. SCOPE OF FRAMEWORK AGREEMENT

Without prejudice to Clause 39 (Third Party Rights), this Framework Agreement governs the relationship between the Fund and the Supplier in respect of the provision of the Goods and/or Services by the Supplier.

The Supplier acknowledges and agrees that:

* + 1. there is no obligation whatsoever on the Fund to invite or select the Supplier to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Framework Agreement and
		2. in entering into this Framework Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Fund in relation to the provision of the Goods and/or Services by the Supplier and that the Fund and Other The Fund are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods and/or services which are the same as or similar to the Goods and/or Services.
1. CALL OFF PROCEDURE

If the Fund decides to source any of the Goods and/or Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off Agreements for the Goods and/or Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).

The Supplier shall comply with the relevant provisions in Framework Schedule 5 (Call Off Procedure).

1. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that:

* + 1. it has full capacity and authority to enter into and to perform this Framework Agreement;
		2. this Framework Agreement is executed by its duly authorised representative;
		3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and
		4. its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

The Supplier represents and warrants that:

* + 1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
		2. it has obtained and will maintain all licences, authorisations, permits, necessary consents and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
		3. it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Fund before the Framework Commencement Date;
		4. its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
		5. as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to the PQQ (if applicable), its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
		6. as at the Framework Commencement Date, it has notified the Fund in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
		7. it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Fund which are necessaryfor the performance of the Supplier’s obligations under this Framework Agreement;
		8. it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Fund’s Confidential Information (held in electronic form) owned by or under the control of, or used by, the Fund.
		9. 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 this Framework Agreement;
		10. it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or 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;

for the duration of this Framework Agreement and any Call-Off Agreements and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Call Off Agreements, the Supplier shall not employ or offer employment to any staff of the Fund who has been associated with the procurement and/or provision of the Goods and/or Services without Approval or the prior written consent of the Fund which shall not be unreasonably withheld.

Each of the representations and warranties set out in Clauses 6.1 and 6.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.

If at any time a Party becomes aware that a representation or warranty given by it under Clauses 6.1 and 6.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Fund may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.

Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 6.1 and 6.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

1. DURATION OF FRAMEWORK AGREEMENT
2. FRAMEWORK PERIOD

This Framework Agreement shall take effect on the Framework Commencement Date and shall expire at the end of the third (3rd) Contract Year, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

This Framework Agreement shall take effect on the Framework Commencement Date and shall expire either:

* + 1. at the end of the Initial Framework Period; or
		2. where the Fund elects to extend the Initial Framework Period in accordance with Clause 7.23 below, at the end of the Extension Framework Period,
		3. unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

The Fund may extend the duration of this Framework Agreement for any period or periods up to a maximum of two (2) years in total from the expiry of the Initial Framework Period by giving the Supplier no less than three (3) Months' written notice.]

1. FRAMEWORK AGREEMENT PERFORMANCE
2. FRAMEWORK AGREEMENT PERFORMANCE

The Supplier shall perform its obligations under this Framework Agreement in accordance with:

* + 1. The requirements of this Framework Agreement, including Framework Schedule 8 (Framework Management);
		2. the terms and conditions of the respective Call Off Agreements;
		3. Good Industry Practice;
		4. all applicable Standards; and
		5. in compliance with all applicable Law.

The Supplier shall bring to the attention of the Fund, any conflict between any of the requirements of Clause 8.1 shall comply with the Fund's decision on the resolution of any such conflict.

1. KEY PERFORMANCE INDICATORS

The Supplier shall at all times during the Framework Period comply with the Key Performance Indicators and achieve the KPI Targets set out in Part B of Framework Schedule 1 (Goods and/or Services and Key Performance Indicators).

1. STANDARDS

The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Framework Agreement and any Call Off Agreement, including the Standards set out in Part A of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).

Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier’s provision, or the receipt by the Fund under a Call Off Agreement, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.

Where a new or emergent standard is to be developed or introduced by the Fund, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, under the Call Off Agreement, of the Goods and/or Services is explained to the Fund prior to the implementation of the new or emergent Standard.

Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

Where a standard, policy or document is referred to in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Fund and the Parties shall agree the impact of such change.

1. MINIMUM STANDARDS OF RELIABILITY

No Call Off Agreement with an anticipated contract value in excess of £20 million (excluding VAT) shall be awarded to the Supplier if it does not show that it meets the Minimum Standards of Reliability at the time of the proposed award of that Call Off Agreement.

The Fund shall assess the Supplier’s compliance with the Minimum Standards of Reliability:

* + 1. upon the request of the Fund; or
		2. otherwise, whenever it considers (in its absolute discretion) that it is appropriate to do so.

In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Clause 11.2, the Fund shall so notify the Supplier and may invoke any rights it might have under this Framework Agreement in respect of a material breach of this Framework Agreement.

1. CONTINUOUS IMPROVEMENT

The Supplier shall at all times during the Framework Period comply with its obligations to continually improve the Goods and/or Services and the manner in which it provides the Goods and/or Services as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking).

1. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT

The Supplier shall perform all its obligations under all Call Off Agreements entered into with the Fund:

* + 1. in accordance with the requirements of this Framework Agreement;
		2. in accordance with the terms and conditions of the respective Call Off Agreements.

The Supplier shall draw any conflict in the application of any of the requirements of Clauses 13.1.1 and 13.1.2 to the attention of the Fund and shall comply with the Fund's decision on the resolution of any such conflict.

1. FRAMEWORK AGREEMENT GOVERNANCE
2. FRAMEWORK AGREEMENT MANAGEMENT

The Parties shall manage this Framework Agreement in accordance with Framework Schedule 8 (Framework Management).

1. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

The Supplier shall keep and maintain, until the later of:

* + 1. seven (7) years after the date of termination or expiry of this Framework Agreement; or
		2. seven (7) years after the date of termination or expiry of the last Call-Off Agreement to expire or terminate; or
		3. such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of this Framework Agreement, including the Call-Off Agreements, the Goods and/or Services provided and the amounts paid by the Fund under the Call-Off Agreement.

The Supplier shall keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law.

The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier’s obligations under this Framework Agreement, including for the following purposes to:

* + 1. verify the accuracy of the Charges and any other amounts payable by a The Fund under a Call Off Agreement (including proposed or actual variations to them in accordance with this Framework Agreement);
		2. verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
		3. verify the Open Book Data;
		4. verify the Supplier’s and each Sub-Contractor’s compliance with the applicable Law;
		5. identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Fund shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
		6. identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
		7. obtain such information as is necessary to fulfil the Fund’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
		8. review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
		9. carry out the Fund’s internal and statutory audits and to prepare, examine and/or certify the Fund's annual and interim reports and accounts;
		10. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Fund has used its resources;
		11. verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;
		12. review any MI Reports and/or other records relating to the Supplier’s performance of the Services and to verify that these reflect the Supplier’s own internal reports and records;
		13. review the integrity, confidentiality and security of the Fund’s Personal Data; and/or
		14. receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier’s practice is consistent with the Government’s transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.

The Fund shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services pursuant to the Call Off Agreements, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Fund.

Subject to the Fund's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

* + 1. all information within the scope of the Audit requested by the Auditor;
		2. reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services; and
		3. access to the Supplier Personnel.

If an Audit reveals that:

* + 1. a material Default has been committed by the Supplier;

then the Fund shall be entitled to terminate this Framework Agreement.

The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause.

1. CHANGE
	1. Variation Procedure
		1. Subject to the provisions of this Clause 16 and, in respect of any change to the Framework Prices, subject to the provisions of Framework Schedule 3 (Framework Prices and Charging Structure), the Fund may request a variation to this Framework Agreement provided that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation**".
		2. The Fund may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a Variation by completing and sending the Variation Form as set out in Framework Schedule 19 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.
		3. The Supplier shall respond to the Fund’s request pursuant to Clause 16.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Fund having regard to the nature of the proposed Variation.
		4. In the event that:
			1. the Supplier is unable to agree to or provide the Variation
			2. the Fund may:
				1. agree to continue to perform its obligations under this Framework Agreement without the Variation; or
				2. terminate this Framework Agreement with immediate effect.
	2. Legislative Change
		1. The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to increase the Framework Prices as the result of:
			1. a General Change in Law; or
			2. a Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the Framework Commencement Date.
		2. If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 16.2.1(b)), the Supplier shall:
			1. notify the Fund as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Goods and/or Services, the Framework Prices or this Framework Agreement; and
			2. provide the Fund with evidence:
				1. that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
				2. as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
				3. demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking), has been taken into account in amending the Framework Prices.
		3. Any change in the Framework Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.2.1(b) shall be implemented in accordance with Clause 16.1(Variation Procedure).
2. TAXATION AND VALUE FOR MONEY PROVISIONS PROMOTING TAX COMPLIANCE
3. PROMOTING TAX COMPLIANCE
	1. If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
		1. notify the Fund in writing of such fact within five (5) Working Days of its occurrence; and
		2. promptly provide to the Fund:
			1. details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
			2. such other information in relation to the Occasion of Tax Non-Compliance as the Fund may reasonably require.
	2. In the event that the Supplier fails to comply with this Clause 19 and/or does not provide details of proposed mitigating factors which in the reasonably opinion of the Fund are acceptable, then the Fund reserves the right to terminate this Framework Agreement for material Default.
4. BENCHMARKING

The Parties shall comply with the provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking) in relation to the benchmarking of any or all of the Goods and/or Services.

1. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS
2. SUPPLY CHAIN RIGHTS AND PROTECTION
	1. Appointment of Key Sub-Contractors
		1. The Fund has consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).
		2. Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Fund and at the time of requesting such consent, provide the Fund with the information detailed in Clause 19.1.3. The decision of the Fund to consent or not will not be unreasonably withheld or delayed. The Fund may reasonably withhold their consent to the appointment of a Key Sub-Contractor if either of them considers that:
			1. the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
			2. the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
			3. the proposed Key Sub-Contractor employs unfit persons.
		3. The Supplier shall provide the Fund with whom the Supplier has entered into a Call Off Agreement with the following information in respect of the proposed Key Sub-Contractor:
			1. the proposed Key Sub-Contractor’s name, registered office and company registration number;
			2. the scope/description of any Goods and/or Services to be provided by the proposed Key Sub-Contractor;
			3. where the proposed Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Fund that the proposed Key Sub-Contract has been agreed on "arm’s-length" terms;
			4. Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Period; and
			5. Credit Rating Threshold (as defined in Framework Schedule 16 (Financial Distress)) of the Key Sub-Contractor.
		4. If requested by the Fund and/or the The Fund with whom the Supplier has entered into a Call Off Agreement, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 19.1.3, the Supplier shall also provide:
			1. a copy of the proposed Key Sub-Contract; and
			2. any further information reasonably requested by the Fund and/or the The Fund with whom the Supplier has entered into a Call Off Agreement.
		5. The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
			1. provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
			2. a right under CRTPA for the Fund to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Fund;
			3. a provision enabling the Fund to enforce the Key Sub-Contract as if it were the Supplier;
			4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Fund;
			5. obligations no less onerous on the Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:
				1. the data protection requirements set out in Clause 21.5 (Protection of Personal Data);
				2. the FOIA requirements set out in Clause 21.4 (Freedom of Information);
				3. the obligation not to embarrass the Fund or otherwise bring the Fund into disrepute set out in Clause 226 (Publicity and Branding);
				4. the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
				5. the conduct of audits set out in Clause 156 (Records, Audit Access and Open Book Data);
				6. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Fund under Clauses 271 (The Fund Termination Rights) and 293 (Consequences of Expiry or Termination) of this Framework Agreement;
			6. a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Fund;
			7. a provision, where a provision in Framework Schedule 15(Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Fund, Former Supplier or the Replacement Supplier as the case may be.
	2. Supply Chain Protection
		1. The Supplier shall ensure that all Sub-Contracts contain a provision:
			1. requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
			2. a right for the Fund with whom the Supplier has entered a Call Off Agreement to publish the Supplier’s compliance with its obligation to pay undisputed invoices within the specified payment period.
		2. The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
		3. Notwithstanding any provision of Clauses  21.2 (Confidentiality) and 226 (Publicity and Branding) if the Supplier notifies the Fund that the Supplier has failed to pay an undisputed Sub-Contractor’s invoice within thirty (30) days of receipt, or the Fund otherwise discovers the same, the Fund shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).
	3. Termination of Sub-Contracts
		1. The Fund may require the Supplier to terminate:
			1. a Sub-Contract where:
				1. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Fund's right of termination pursuant to any of the termination events in Clause 31 (The Fund Termination Rights) except Clause 27.5 (Termination Without Cause); and/or
				2. the relevant Sub-Contractor or its Affiliates embarrassed the Fund or otherwise brought the Fund into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Fund, regardless of whether or not such act or omission is related to the Sub-Contractor’s obligations in relation to the Goods and/or Services or otherwise; and/or
			2. a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
				1. the Fund has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
				2. the Fund has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Fund was given notice of the Change of Control.
		2. Where the Fund requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 19.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Goods and/or Services.
	4. Competitive Terms
		1. If the Fund is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Fund may:
			1. require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Fund in respect of the relevant item; or
			2. subject to Clause 19.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
		2. If the Fund exercises either option pursuant to Clause 19.4.1, then the Framework Prices shall be reduced by an amount that is agreed in accordance with Clause 16.1 (Variation Procedure).
		3. The Fund's right to enter into a direct agreement for the supply of the relevant items is subject to:
			1. the Fund shall make the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and
			2. any reduction in the Framework Prices taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.
	5. Retention of Legal Obligations
		1. Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 193, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.
3. INTELLECTUAL PROPERTY AND INFORMATION
4. INTELLECTUAL PROPERTY RIGHTS
	1. Allocation of title to IPR
		1. Save as granted under this Framework Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
		2. Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 20.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
		3. Subject to Clauses 20.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
		4. Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Fund’s logo exclusively in connection with the provision of the Goods and/or Services during the Framework Period and for no other purpose.
		5. Subject to Clause 20.1.1, the Fund shall take sole ownership of the Intellectual Property Rights of the Goods and/or Services performed by the Supplier under this Framework Agreement.
		6. The Supplier must obtain all permissions regarding filming and capturing persons and property on film to ensure the Fund is able to use the film for its intended purpose without restrictions. Model release forms and written permissions must be obtained by the Supplier for all and every person or location captured in the film.
	2. IPR Indemnity
		1. The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
		2. The Supplier shall at during and after the Framework Period, on written demand indemnify the Fund against all Losses incurred by, awarded against or agreed to be paid by the Fund (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
		3. If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
			1. procure for the Fund the right to continue using the relevant item which is subject to the IPR Claim; or
			2. replace or modify the relevant item with non-infringing substitutes provided that:
				1. the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
				2. the replaced or modified item does not have an adverse effect on any other Goods and/or Services;
				3. there is no additional cost to the Fund; and
				4. the terms and conditions of this Framework Agreement shall apply to the replaced or modified Goods and/or Services.
		4. If the Supplier elects to procure a licence in accordance with Clause 20.2.3(a) or to modify or replace an item pursuant to Clause 20.2.3(b), but this has not avoided or resolved the IPR Claim, then:
			1. the Fund may terminate this Framework Agreement by written notice with immediate effect; and
			2. without prejudice to the indemnity set out in Clause 20.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
5. PROVISION AND PROTECTION OF INFORMATION
	1. Provision of Management Information
		1. The Supplier shall, at no charge to the Fund, submit to the Fund complete and accurate Management Information in accordance with the provisions of Framework Schedule 9 (Management Information).
		2. The Supplier grants the Fund a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
			1. use and to share with the Fund and Relevant Person; and/or
			2. publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Fund for the Fund's normal operational activities including but not limited to administering this Framework Agreement and/or all Call Off Agreements, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

* + 1. The Fund shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.
		2. The Fund may consult with the Supplier to help with its decision regarding any exemptions under Clause 21.1.3 but, for the purpose of this Framework Agreement, the Fund shall have the final decision in its absolute and sole discretion.
	1. Confidentiality
		1. For the purposes of this Clause 21.2, the term **“Disclosing Party”** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **“Recipient”** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
		2. Except to the extent set out in this Clause 21.2 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:
			1. treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
			2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;
			3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
			4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
		3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
			1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 21.4 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
			2. the need for such disclosure arises out of or in connection with:
				1. any legal challenge or potential legal challenge against the Fund arising out of or in connection with this Framework Agreement;
				2. the examination and certification of the Fund's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Fund is making use of its resources; or
				3. the conduct of a Central Government Body review in respect of this Framework Agreement; or
			3. the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
		4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
		5. Subject to Clauses 21.2.2 and 21.2.3, the Supplier may only disclose the Confidential Information of the Fund on a confidential basis to:
			1. Supplier Personnel who are directly involved in the provision of theGoods and/or Services and need to know the Confidential Information to enable the performance of the Supplier’s obligations under this Framework Agreement; and
			2. its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
		6. Where the Supplier discloses the Confidential Information of the Fund pursuant to Clause 21.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.
		7. The Fund may disclose the Confidential Information of the Supplier:
			1. to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
			2. to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
			3. to the extent that the Fund (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
			4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
			5. on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
			6. to a proposed transferee, assignee or novatee of, or successor in title to the Fund,
			7. and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Fund under this Clause 21.2.7.
		8. For the avoidance of doubt, the Confidential Information that the Fund may disclose under Clause 21.2.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call Off Agreement) and the terms of any Call Off Agreement may be shared with any Central Government Body from time to time.
		9. Nothing in this Clause 21.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.
		10. In the event that the Supplier fails to comply with Clauses 21.2.2 to 21.2.5, the Fund reserves the right to terminate this Framework Agreement for material Default.
	2. Transparency
		1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information. The Fund shall determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Fund may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
		2. Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Fund to publish this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Framework Agreement agreed from time to time.
		3. The Supplier acknowledges that publication of this Framework Agreement will include the publication of the name and contact details of the Supplier Representative. Such details will not be redacted. By executing this Framework Agreement, the Supplier confirms that it has ensured that the Supplier Representative has given their consent to the publication of their name and contact details or otherwise taken steps to ensure that publication will not breach the Data Protection Act 1998. The name and contact details of any subsequent Supplier Representative details will also be published and in every such case the Supplier will ensure that consent is obtained or otherwise takes steps to ensure that publication of those details will not amount to a breach of the Data Protection Act 1998.
		4. The Supplier shall assist and cooperate with the Fund to enable the Fund to publish this Framework Agreement.
	3. Freedom of Information
		1. The Supplier acknowledges that the Fund is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
			1. provide all necessary assistance and cooperation as reasonably requested by the Fund to enable the Fund to comply with its Information disclosure obligations under the FOIA and EIRs;
			2. transfer to the Fund all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
			3. provide the Fund with a copy of all Information belonging to the Fund requested in the Request for Information which is in the Supplier’s possession or control in the form that the Fund requires within five (5) Working Days (or such other period as the Fund may reasonably specify) of the Fund's request for such Information; and
			4. not respond directly to a Request for Information unless authorised in writing to do so by the Fund.
		2. The Supplier acknowledges that the Fund may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Fund shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State’s Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Fund shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
	4. Protection of Personal Data
		1. Where any Personal Data are Processed in connection with the exercise of the Parties’ rights and obligations under this Framework Agreement, the Parties acknowledge that the Fund is the Data Controller and that the Supplier is the Data Processor.
		2. The Supplier shall:
			1. Process the Personal Data only in accordance with instructions from the Fund to perform its obligations under this Framework Agreement;
			2. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
			3. not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Fund (save where such disclosure or transfer is specifically authorised under this Framework Agreement);
			4. take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
				1. are aware of and comply with the Supplier’s duties under this Clause 21.5.2 and Clause 21.2 (Confidentiality);
				2. 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 Fund or as otherwise permitted by this Framework Agreement; and
				3. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
			5. notify the Fund within five (5) Working Days if it receives:
				1. from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Fund's obligations under the DPA;
				2. any communication from the Information Commissioner or any other regulatory the Fund in connection with Personal Data; or
				3. 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;
			6. provide the Fund with full cooperation and assistance (within the timescales reasonably required by the Fund) in relation to any complaint, communication or request made (as referred to at Clause 21.5.2(e), including by promptly providing:
				1. the Fund with full details and copies of the complaint, communication or request;
				2. where applicable, such assistance as is reasonably requested by the Fund to enable the Fund to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
				3. the Fund, on request by the Fund, with any Personal Data it holds in relation to a Data Subject; and
			7. if requested by the Fund, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 21.5.2  and provide to the Fund copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
		3. The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together “**Restricted Countries**”). If, after the Framework Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:
			1. the Supplier shall propose a variation to the Fund which, if it is agreed by the Fund, shall be dealt with in accordance with Clause 16.1 (Variation Procedure) and Clauses 21.5.3(b) to 21.5.3(d);
			2. the Supplier shall set out in its proposal to the Fund for a Variation, details of the following:
				1. the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
				2. the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
				3. any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
				4. how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Fund’s compliance with the DPA;
			3. in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Fund, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
			4. the Supplier shall comply with such other instructions and shall carry out such other actions as the Fund may notify in writing, including:
				1. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Framework Agreement or a separate data processing agreement between the Parties; and
				2. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

a direct data processing agreement with the Fund on such terms as may be required by the Fund; or

a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Fund and the Supplier relating to the relevant Personal Data transfer,

and the Supplier acknowledges that in each case, this may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Fund deems necessary for the purpose of protecting Personal Data.

* + 1. The Supplier shall use its reasonable endeavours to assist the Fund to comply with any obligations under the DPA and shall not perform its obligations under this Framework Agreement in such a way as to cause the Fund to breach any of the Fund’s obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
1. PUBLICITY AND BRANDING

Subject to Clause 23 (Marketing), the Supplier shall not:

* + 1. make any press announcements or publicise this Framework Agreement in any way; or
		2. use the Fund's name or brand in any promotion or marketing or announcement of Orders,

without Approval (the decision of the Fund to Approve or not shall not be unreasonably withheld or delayed).

Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Goods and/or Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

The Fund shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Fund, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

1. MARKETING

The Supplier shall obtain the Fund's Approval prior to publishing any content in relation to this Framework Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Fund may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Fund within one (1) Month of receipt of such notice, the Fund shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

1. LIABILITY AND INSURANCE
2. LIABILITY

Neither Party excludes or limits its liability for:

* + 1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
		2. bribery or Fraud by it or its employees; or
		3. any liability to the extent it cannot be excluded or limited by Law.
	1. The Supplier does not exclude or limit its liability in respect of the indemnity of clause 20.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

Subject to Clauses 24.1 and 24.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of Defaults or The Fund Cause (as the case may be) shall in no event exceed:

* + 1. in relation to any Default or The Fund Cause (as the case may be) occurring from the Framework Commencement Date to the end of the first Contract Year, one hundred thousand pounds (£100,000); and
		2. in relation to any Default or The Fund Cause (as the case may be) occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, one hundred thousand pounds (£100,000) in each such Contract Year; and
		3. in relation to any Default or The Fund Cause occurring in each Contract Year that commences after the end of the Framework Period, one hundred thousand pounds (£100,000) in each such Contract Year payable by the Supplier under this Framework Agreement in the last Contract Year commencing during the Framework Period.

Subject to Clause 24.1, neither Party shall be liable to the other Party for any:

* + 1. indirect, special or consequential Loss;
		2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

Subject to Clause 24.3, and notwithstanding Clause 24.4, the Supplier acknowledges that the Fund may, amongst other things, recover from the Supplier the following Losses incurred by the Fund to the extent that they arise as a result of a Default by the Supplier:

* + 1. any additional operational and/or administrative costs and expenses incurred by the Fund, including costs relating to time spent by or on behalf of the Fund in dealing with the consequences of the Default;
		2. any wasted expenditure or charges;
		3. the additional cost of procuring Replacement Goods and/or Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Framework Agreement;
		4. any compensation or interest paid to a third party by the Fund;
		5. any fine, penalty or costs incurred by the Fund pursuant to Law.

Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.

For the avoidance of doubt, the Parties acknowledge and agree that this Clause 24 shall not limit the Supplier’s liability to the Fund under any Call Off Agreement and the Supplier’s liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.

1. INSURANCE

The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement [and any Call Off Agreement], and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 14 (Insurance Requirements).

The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Framework Agreement or any Call Off Agreements.

1. REMEDIES
2. THE FUND REMEDIES

Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 27.1 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Fund shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

* + 1. The Fund shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Fund, an Improvement Plan within ten (10) Working Days of a written request by the Fund for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.
		2. The Fund shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Fund in order to resolve the issues raised by the Fund in its notice to the Supplier requesting such meetings.
		3. The Fund shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.
		4. In the event that the Fund has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:
			1. fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
			2. fails to implement an Improvement Plan Approved by the Fund;

then (without prejudice to any other rights and remedies of termination provided for in this Framework Agreement), the Fund shall be entitled to terminate this Framework Agreement.

1. TERMINATION AND SUSPENSION
2. THE FUND TERMINATION RIGHTS
	1. Termination on Material Default
		1. The Fund may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier where:
			1. the Supplier fails to accept a Call Off Agreement pursuant to paragraph 14.2 of Framework Schedule 5 (Call Off Procedure);
			2. a The Fund terminates a Call Off Agreement for the Supplier’s breach of that Call Off Agreement;
			3. the Fund conducts an assessment pursuant to Clause 11.2 and concludes that the Supplier has not demonstrated that it meets the Minimum Standards of Reliability;
			4. the Supplier refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking);
			5. in the event of two or more failures by the Supplier to meet the KPI Targets (except in relation to the “Spend under Management” KPI set out in Part B of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators)), whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;
			6. the Fund expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
				1. Clause 16.1.4(b)(ii) (Variation Procedure);
				2. Clause 21.2.10 (Confidentiality);
				3. Clause 34.6.2 (Prevention of Fraud and Bribery);
				4. Clause 30.1.2 (Compliance);
				5. Clause  35.3 (Conflicts of Interest);
				6. anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;
			7. the Supplier commits a material Default of any of the following Clauses or Framework Schedules:
				1. Clause 6 (Representations and Warranties) except Clause 6.2.6;
				2. Clause 8 (Framework Agreement Performance);
				3. Clause 15 (Records, Audit Access and Open Book Data);
				4. Clause E (Promoting Tax Compliance);
				5. Clause 19 (Supply Chain Rights and Protection);
				6. Clause 21.4 (Freedom of Information);
				7. Clause 21.5 (Protection of Personal Data); and/or

 paragraph 1.2 of Part B of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators);

* + - 1. the representation and warranty given by the Supplier pursuant to Clause 6.2.6 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Fund are acceptable;
			2. the Supplier commits any material Default which is not, in the reasonable opinion of the Fund, capable of remedy; and/or
			3. the Supplier commits a Default, including a material Default, which in the opinion of the Fund is remediable but has not remedied such Default to the satisfaction of the Fund within twenty (20) Working Days, or such other period as may be specified by the Fund, after issue of a written notice from the Fund to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Fund.
	1. Termination in Relation to Financial Standing
		1. The Fund may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Fund there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
			1. adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Framework Agreement; or
			2. could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Framework Agreement;
	2. Termination on Insolvency
		1. The Fund may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.
	3. Termination on Change of Control
		1. The Supplier shall notify the Fund immediately if the Supplier is intending to undergo, undergoes or has undergone a Change of Control and provided this does not contravene any Law, shall notify the Fund immediately in writing of the circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place. The Fund may terminate this Framework Agreement by issuing a Termination Notice to the Supplier within six (6) Months of:
			1. being notified in writing that a Change of Control is planned or is in contemplation or has occurred; or
			2. where no notification has been made, the date that the Fund becomes aware that a Change of Control is planned or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

* 1. Termination Without Cause
		1. The Fund shall have the right to terminate this Framework Agreement with effect from at any time following nine (9) Months after the Framework Commencement Date by giving at least three (3) Months' written notice to the Supplier.
	2. Partial Termination
		1. Where the Fund has the right to terminate this Framework Agreement, the Fund is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 27.6 provided always that, if the Fund elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Fund’s reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.
		2. The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 16.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Goods and/or Services and the Framework Prices provided that:
			1. the Supplier shall not be entitled to an increase in the Framework Prices in respect of the Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer’s termination rights under Clause 27 (The Fund Termination Rights) with the exception of Clause 27.5 (Termination Without Cause); and
			2. the Supplier shall not be entitled to reject the variation.
1. SUSPENSION OF SUPPLIER'S APPOINTMENT

If the Fund is entitled to terminate this Framework Agreement pursuant to Clause 27 (The Fund Termination Rights), the Fund may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Agreement during the period specified in the Fund’s notice.

Any suspension under Clause 28.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Fund.

The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Agreements concluded prior to the suspension notice.

If the Fund provides notice to the Supplier in accordance with this Clause 28.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Fund in writing from time to time.

For the avoidance of doubt, no period of suspension under this Clause 28 shall result in an extension of the Framework Period.

1. CONSEQUENCES OF EXPIRY OR TERMINATION

Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 29.

Termination or expiry of this Framework Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement and the Supplier shall continue to pay any Management Charge due to the Fund in relation to such Call Off Agreements, notwithstanding the termination or expiry of this Framework Agreement.

If the Fund terminates this Framework Agreement under Clause  27.1 (Termination on Material Default) and then makes other arrangements for the supply of the Goods and/or Services to The Fund, the Supplier shall indemnify the Fund in full upon demand for the cost of procuring, implementing and operating any alternative or replacement goods and/or services to the Goods and/or Services and no further payments shall be payable by the Fund until the Fund has established and recovered from the Supplier the full amount of such cost.

Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Fund any and all of the Fund’s Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Fund, and any other information and all copies thereof owned by the Fund, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Fund and is reasonably necessary for such compliance).

Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:

* + 1. Clauses 1 (Definitions and Interpretation), 6 (Representations and Warranties), 8 (Framework Agreement Performance), 15 (Records, Audit Access and Open Book Data), 20 (Intellectual Property Rights), 21.1 (Provision of Management Information), 21.2 (Confidentiality), 21.3 (Transparency), 21.4 (Freedom of Information), 21.5 (Protection of Personal Data), 24 (Liability), 25 (Insurance), 29 (Consequences of Expiry or Termination), 30 (Compliance), 32 (Waiver and Cumulative Remedies), 34 (Prevention of Fraud and Bribery), 36 (Severance), 38 (Entire Agreement), 39 (Third Party Rights), 40 (Notices), 41 (Complaints Handling), 42 (Dispute Resolution) and 43 (Governing Law and Jurisdiction); and
		2. Framework Schedules  2 (Goods and/or Services and Key Performance Indicators), 3 (Framework Prices and Charging Structure), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 12 (Continuous Improvement and Benchmarking), 14 (Insurance Requirements), 17 (Commercially Sensitive Information) and 19 (Tender).
1. MISCELLANEOUS AND GOVERNING LAW
2. COMPLIANCE
	1. Compliance with Law
		1. The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement.
		2. In the event that the Supplier or the Supplier Personnel fails to comply with Clause 30.1.1, this shall be deemed to be a material Default and the Fund reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.
	2. Equality and Diversity
		1. The Supplier shall:
			1. perform its obligations under this Framework Agreement (including those in relation to the provision of the Goods and/or Services) in accordance with:
				1. all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
				2. any other requirements and instructions which the Fund reasonably imposes in connection with any equality obligations imposed on the Fund at any time under applicable equality Law;
			2. take all necessary steps, and inform the Fund of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
	3. Official Secrets Act and Finance Act
		1. The Supplier shall comply with the provisions of:
			1. the Official Secrets Acts 1911 to 1989; and
			2. section 182 of the Finance Act 1989.
3. ASSIGNMENT AND NOVATION

The Supplier shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement or any part of it without Approval.

The Fund may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Framework Agreement or any part thereof to:

* + 1. any Central Government Body or 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 Fund; or
		2. any private sector body which substantially performs the functions of the Fund,

and the Supplier shall, at the Fund’s request, enter into a novation agreement in such form as the Fund shall reasonably specify in order to enable the Fund to exercise its rights pursuant to this Clause 31.2.

A change in the legal status of the Fund such that it ceases to be a The Fund shall not, subject to Clause 31.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Fund.

If the Fund assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a The Fund or if a body which is not a The Fund succeeds the Fund (both “**Transferee**” in the rest of this Clause) the right of termination of the Fund in Clause 27.3 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 27.3 (Termination on Insolvency)) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee.

1. WAIVER AND CUMULATIVE REMEDIES

The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 40 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

1. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Parties pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

1. PREVENTION OF FRAUD AND BRIBERY

The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Commencement Date:

* + 1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
		2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

The Supplier shall not during the Framework Period:

* + 1. commit a Prohibited Act; and/or
		2. do or suffer anything to be done which would cause the Fund or any of the Fund’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

The Supplier shall during the Framework Period:

* + 1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
		2. keep appropriate records of its compliance with its obligations under Clause 34.3.1 and make such records available to the Fund on request;
		3. if so required by the Fund, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Fund, the compliance with this Clause 34.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Goods and/or Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Fund may reasonably request; and
		4. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Fund on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

The Supplier shall immediately notify the Fund in writing if it becomes aware of any breach of Clause 34.1, or has reason to believe that it has or any of the Supplier Personnel has:

* + 1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
		2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
		3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.

If the Supplier makes a notification to the Fund pursuant to Clause 34.4, the Supplier shall respond promptly to the Fund's enquiries, co-operate with any investigation, and allow the Fund to audit any books, records and/or any other relevant documentation in accordance with Clause 15 (Records, Audit Access and Open Book Data).

If the Supplier breaches Clause 34.1,the Fund may by notice:

* + 1. require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier’s breach; or
		2. immediately terminate this Framework Agreement for material Default.

Any notice served by the Fund under Clause 34.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Fund believes has committed the Prohibited Act and the action that the Fund has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

1. CONFLICTS OF INTEREST

The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Fund) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Fund under the provisions of this Framework Agreement or any Call Off Agreement.

The Supplier shall promptly notify and provide full particulars to the Fund or the relevant Other The Fund if such conflict referred to in Clause 35.1 arises or may reasonably been foreseen as arising.

The Fund reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Fund, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Fund under the provisions of this Framework Agreement or any Call Off Agreement. The action of the Fund pursuant to this Clause 38 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Fund.

1. SEVERANCE

If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.

In the event that any deemed deletion under Clause 36.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

If the Parties are unable to resolve any Dispute arising under this Clause 39 within twenty (20) Working Days of the date of the notice given pursuant to Clause 36.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 36.

1. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Framework Agreement.

1. ENTIRE AGREEMENT

This Framework Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.

Nothing in this Clause 38 shall exclude any liability in respect of misrepresentations made fraudulently.

1. THIRD PARTY RIGHTS

The provisions of:

* + 1. Clauses: 4 (Scope of Framework Agreement), 5 (Call Off Procedure), **Error! Reference source not found.** (Assistance in Related Procurements), 6 (Representations and Warranties), 13 (Call Off Performance Under Framework Agreement Performance), 15 (Records, Audit Access and Open Book Data), 21.5 (Protection of Personal Data), 25 (Insurance), 30.2 (Equality and Diversity) and 39 (Third Party Rights); and
		2. Framework Schedules 3 (Framework Prices and Charging Structure ), 5 (Call Off Procedure), 13 (Guarantee), 14 (Insurance Requirements) and 19 (Tender),

(together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

Subject to Clause 39.1, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without Approval, which may, if given, be given on and subject to such terms as the Fund may determine.

Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 39.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

The Fund may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any Third Party Provision and/or recover any Loss suffered by that Third Party Beneficiary in connection with a breach of any Third Party Provision.

1. NOTICES

Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 40, an e-mail is accepted as being "in writing".

Subject to Clause 40.3, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of delivery | Proof of Service |
| Email (Subject to Clause 40.3) | 9.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message  |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day | Properly addressed and delivered as evidenced by signature of a delivery receipt |
| Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm) | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |

The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 40.2:

* + 1. any Termination Notice under Clause 27 (The Fund Termination Rights), including in respect of partial termination;
		2. any notice in respect of:
			1. Suspension of Supplier’s appointment (Clause 28)
			2. Waiver (Clause 32);
			3. Default or The Fund Cause; and
		3. any Dispute Notice.

Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 40.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 40.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

This Clause 40 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 18 (Dispute Resolution Procedure).

For the purposes of this Clause 40,the address of each Party shall be:

* + 1. For the Fund:

**Heritage Lottery Fund**
7, Holbein Place
Sloane Square
London
SW1W 8NR

For the attention of: Lousie Lane

* + 1. For the Supplier:

[insert name of supplier]

Address: [insert address of supplier]

For the attention of: [insert supplier contact name]

Either Party may change its address for service by serving a notice in accordance with this Clause 40.

This Clause 40 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

1. COMPLAINTS HANDLING

Either Party shall notify the other Party of any Complaints made by Other The Fund, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Supplier is the Party providing the notice, such notice shall contain full details of the Supplier's plans to resolve such Complaint.

Without prejudice to any rights and remedies that a complainant may have at Law (including under this Framework Agreement and/or a Call Off Agreement), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Framework Agreement and/or a Call Off Agreement, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

Within two (2) Working Days of a request by the Fund, the Supplier shall provide full details of a Complaint to the Fund, including details of steps taken to achieve its resolution.

1. DISPUTE RESOLUTION

The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure.

The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Framework Agreement until a Dispute has been resolved.

1. GOVERNING LAW AND JURISDICTION

This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

Subject to Clause 42 (Dispute Resolution) and Framework Schedule 18 (Dispute Resolution Procedure) (including the Fund’s right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

**IN WITNESS** of which this Framework Agreement has been duly executed by the Parties.

Signed duly authorised for and on behalf of the SUPPLIER

Signature: ……………………………………………….

Name: ………………………………

Position: ……………………………..

Date ……………………………………………….

Signed for and on behalf of the Fund

Signature: ……………………………………………….

Name: Louise Lane

Position: Director of Communications

Date ……………………………………………….

FRAMEWORK SCHEDULE 1: DEFINITIONS

1. In accordance with Clause 1.1 (Definitions), in this Framework Agreement including its recitals the following expressions shall have the following meanings:

|  |  |
| --- | --- |
|  |  |
| "Affiliates" | 1. 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 of that body corporate from time to time;
 |
| "Approval" | 1. means the prior written consent of the Fund and "**Approve**" and "**Approved**" shall be construed accordingly;
 |
| "Audit" | 1. means an audit carried out pursuant to Clause 15 (Records, Audit Access and Open Book Data);
 |
| "Audit Report" | 1. means a report summarising the testing completed and the actions arising following an Audit;
 |
| "Auditor" | 1. means the Fund, and/or Other The Fund who is a party to a Call Off Agreement, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
 |
| "Branding Guidance" | 1. means the Fund's guidance in relation to the use of branding available upon request
 |
| "Call Off Agreement" | 1. means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and/or Services made between a The Fund and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
 |
| "Call Off Procedure" | 1. means the process for awarding a Call Off Agreement pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
 |
| "CEDR" | 1. means the Centre for Effective Dispute Resolution;
 |
| "Central Government Body" | 1. means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
	1. Government Department;
	2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
	3. Non-Ministerial Department; or
	4. Executive Agency;
 |
| "Change in Law" | 1. means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date;
 |
| "Change of Control" | 1. means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
 |
| "Charges" | 1. means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;
 |
| "Charging Structure" | 1. means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
 |
| "Commercially Sensitive Information" | 1. means the Supplier’s Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) comprised of commercially sensitive information:
	1. relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Fund that, if disclosed by the Fund, would cause the Supplier significant commercial disadvantage or material financial loss; and
	2. that constitutes a trade secret;
 |
| "Comparable Supply" | 1. means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
 |
| "Complaint" | 1. means any formal written complaint raised by a The Fund in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause 41 (Complaints Handling);
 |
| "Confidential Information" | 1. means the Fund's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
 |
| "Continuous Improvement Plan" | 1. means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
 |
| "Contract Year" | 1. means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
 |
| "The Fund" | 1. means bodies listed in paragraph [VI.3] of the OJEU Notice and “**The Fund**” shall be construed accordingly;
 |
| "Control" | 1. means control in either of the senses defined in sections  450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly;
 |
| "Costs" | 1. means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:
	1. the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
		1. base salary paid to the Supplier Personnel;
		2. employer’s national insurance contributions;
		3. pension contributions;
		4. car allowances;
		5. any other contractual employment benefits;
		6. staff training;
		7. work place accommodation;
		8. work place IT equipment and tools reasonably necessary to provide  the Goods and/or Services (but not including items included within limb (b) below); and
		9. reasonable recruitment costs, as agreed with the The Fund under any Call Off Agreements;
	2. costs incurred in respect of those Supplier Assets which are detailed on the Registers (“Supplier Assets” and “Register” shall have the meaning given to them under Call Off Schedule 1 (Definitions)) and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the The Fund or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
	3. operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;
	4. Reimbursable Expenses to the extent these are incurred in delivering any Goods and/or Services where the Charges for those Goods and/or Services are to be calculated on a Fixed Price or Firm Price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure);
2. but excluding:
	* 1. Overhead;
		2. financing or similar costs;
		3. maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Agreements whether in relation to Supplier Assets or otherwise;
		4. taxation;
		5. fines and penalties;
		6. amounts payable under the benchmarking provisions of Framework Schedule 12  (Continuous Improvement and Benchmarking); and
		7. non-cash items (including depreciation, amortisation, impairments and movements in provisions);
 |
| "Crown Body" | 1. means any department, office or executive agency of the Crown;
 |
| "CRTPA" | 1. means the Contracts (Rights of Third Parties) Act 1999;
 |
| "Data Controller" | 1. has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
 |
| "Data Processor" | 1. has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
 |
| "Data Protection Legislation" | 1. means the Data Protection Act 1998, as amended from time to time 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 or relevant Government department in relation to such legislation;
 |
| "Data Subject" | 1. has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
 |
| "Data Subject Access Request" | 1. means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
 |
| "Default" | 1. means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Fund;
 |
| "Default Management Charge" | 1. has the meaning given to it in paragraph **Error! Reference source not found.** of Framework Schedule 9 (Management Information);
 |
| "Direct Award Criteria" | 1. means the award criteria to be applied for the direct award of Call Off Agreements for Goods and/or Services set out in Part A of Framework Schedule 6 (Award Criteria);
 |
| "Dispute" | 1. means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 16.1(Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
 |
| "Dispute Notice" | 1. means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
 |
| "Dispute Resolution Procedure" | 1. means the dispute resolution procedure set out in Framework Schedule 18 (Dispute Resolution);
 |
| "DOTAS" | 1. means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
 |
| "DPA" | 1. means the Data Protection Act 1998 as amended from time to time;
 |
| "Due Diligence Information" | 1. means any information supplied to the Supplier by or on behalf of the Customer prior to the Framework Commencement Date;
 |
| "Environmental Information Regulations or EIRs" | 1. means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
 |
| "Equivalent Goods and/or Services" | 1. means goods and/or services which the Supplier can supply which are the same or similar to the Goods and/or Services;
 |
| "FOIA" | 1. means the Freedom of Information Act 2000 as amended from time to time 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;
 |
| "Framework" | 1. means the framework arrangements established by the Fund for the provision of the Goods and/or Services to The Fund by suppliers (including the Supplier) pursuant to the OJEU Notice;
 |
| "Framework Agreement" | 1. means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;
 |
| "Framework Commencement Date" | 1. means 01/05/2017;
 |
| "Framework Period" | 1. means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
 |
| "Framework Price(s)" | 1. means the price(s) applicable to the provision of the Goods and/or Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
 |
| "Framework Schedules" | 1. means the schedules to this Framework Agreement;
 |
| "Framework Suppliers" | 1. means thesuppliers (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
 |
| "Fraud" | 1. means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts offorgery;
 |
| "Fund" | 1. means the National Heritage Memorial Fund;
 |
| “Fund Cause” | 1. means any breach of the obligations of the Fund (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Fund in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Fund is liable to the Supplier;
 |
| "Fund Personal Data" | 1. means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Fund to the Supplier;
 |
| "Fund Representative" | 1. means the representative appointed by the Fund from time to time in relation to this Framework Agreement;
 |
| "Fund's Confidential Information" | 1. means all The Fund 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 Fund and/or Other The Fund, including all IPR, 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 to be considered to be confidential;
 |
| "Goods" | 1. means the goods described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to The Fund;
 |
| "Goods and/or Services Requirements" | 1. means the requirements of the Fund or any other The Fund (as appropriate) for the Goods and/or Services from time to time;
 |
| "Government" | 1. means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
 |
| "Halifax Abuse Principle" | 1. means the principle explained in the CJEU Case C-255/02 Halifax and others;
 |
| "Holding Company" | 1. has the meaning given to it in section 1159 of the Companies Act 2006;
 |
| "Improvement Plan" | 1. means the plan required by the Fund from the Supplier which shall detail how the Supplier will improve the provision of the Goods and/or Services pursuant to Clause 26.1.1 (The Fund Remedies);
 |
| "Improvement Notice" | 1. means the notice issued by the Fund to the Supplier pursuant to Clause 26.1.3 (The Fund Remedies) which will detail how the Supplier shall improve the provision of the Goods and/or Services;
 |
| "Information" | 1. has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
 |
| "Insolvency Event" | 1. means, in respect of the Supplier or Framework Guarantor (as applicable):
	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; or
	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); or
	3. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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; or
	4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
	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; or
	6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
	7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
	8. where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
	9. any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
 |
| "Intellectual Property Rights" or "IPR" | 1. means:
	1. 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;
	2. 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
	3. all other rights having equivalent or similar effect in any country or jurisdiction;
 |
| "Invitation to Tender" or “ITT” | 1. has the meaning given to it in the recitals to this Framework Agreement;
 |
| "Key Sub-Contract""Key Personnel" | 1. means each Sub-Contract with a Key Sub-Contractor;

Key personnel requirements1. (A) Certain skilled experienced professional and/or technical personnel are essential for successful contractor accomplishment of the work to be performed under this contract. These are defined as "Key Personnel" and are those persons whose resumes were submitted for evaluation of the proposal. The contractor agrees that such personnel shall not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) hereof.
2. (B) If one or more of the key personnel for whatever reason becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding thirty (30) work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the Contracting Officer and shall, subject to the concurrence of the Contracting Officer or his authorized representative, promptly replace such personnel with personnel of at least substantially equal ability and qualifications.
3. (C) All requests for approval of substitutions hereunder must be in writing and provide a detailed explanation of the circumstances necessitating the proposed substitutions. They must contain a complete resume for the proposed substitute, and any other information requested by the Contracting Officer or needed by him to approve or disapprove the proposed substitution. The Contracting Officer or his authorized representative will evaluate such requests and promptly notify the contractor of his approval or disapproval thereof in writing.
4. (D) If the Contracting Officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work is not reasonably forthcoming or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the services ordered, the contract may be terminated by the Contracting Officer for default or for the convenience of the Government, as appropriate, or, at the discretion of the Contracting Officer if he finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Fund for any resultant delay, loss, or damage.
 |
| "Key Sub-Contractors" | 1. means any Sub-Contractor which, in the opinion of the Fund, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services;
 |
| "IPR Claim" | 1. means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Fund in the fulfilment of its obligations under this Framework Agreement;
 |
| "Key Performance Indicators" or "KPIs" | 1. means the performance measurements and targets set out in Part B of Framework Schedule 1 (Goods and/or Services and Key Performance Indicators);
 |
| "Know-How" | 1. means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
 |
| "KPI Target" | 1. means the acceptable performance level for a KPI as set out in relation to each KPI;
 |
| "Law" | 1. means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
 |
| "Legacy Goods and/or Services" | 1. means goods and/or services similar to the New Goods and/or Services and/or goods and/or services which interface with or are intended to interface with or be replaced by the New Goods and/or Services;
 |
| "Losses" | 1. means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and **“Loss”** shall be interpreted accordingly;
 |
| "Lot" | 1. means any of the lots specified in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) and "Lots" shall be construed accordingly;]
 |
|  |  |
| "Management Information" or “MI” | 1. means the management information specified in Framework Schedule 9 (Management Information);
 |
| "MI Default" | 1. has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information);
 |
| "MI Failure" | 1. means when an MI report:
	1. contains any material errors or material omissions or a missing mandatory field; or
	2. is submitted using an incorrect MI reporting Template; or
	3. is not submitted by the reporting date(including where a Nil Return should have been filed);
 |
| “Minimum Standards of Reliability” | 1. means the minimum standards of reliability as set out in the OJEU Notice
 |
| "MI Report" | 1. means a report containing Management Information submitted to the Fund in accordance with Framework Schedule 9 (Management Information);
 |
| "MI Reporting Template" | 1. means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Fund;
 |
| "Ministry of Justice Code" | 1. means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time;
 |
| "Month" | 1. means a calendar month and "**Monthly**" shall be interpreted accordingly;
 |
| "New Goods and/or Services" | 1. means goods and/or services which a The Fund wishes to procure from a third party which are the same or similar to the Goods and/or Services;
 |
| "Nil Return" | 1. has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);
 |
| "Occasion of Tax Non –Compliance" | 1. means where:
	1. any tax return of the Supplier submitted to a Relevant Tax The Fund on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
		1. a Relevant Tax The Fund successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;
		2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax The Fund under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
	2. any tax return of the Supplier submitted to a Relevant Tax The Fund on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;
 |
| "OJEU Notice" | 1. has the meaning given to it in Recital A;
 |
| "Open Book Data" | 1. means complete and accurate financial and non-financial information which is sufficient to enable the Fund to verify the Charges already paid or payable and Charges forecast to be paid during the Framework Period and term of any Call Off Agreements, including details and all assumptions relating to:
	1. the Supplier’s Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
	2. operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:
		1. the unit costs and quantity of Goods and any other consumables and bought-in services;
		2. manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
		3. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
		4. Reimbursable Expenses;
	3. Overheads;
	4. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
	5. the Supplier Profit achieved over the Framework Period and term of any Call Off Agreements and on an annual basis;
	6. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
	7. an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and
	8. the actual Costs profile for each Service Period under any Call Off Agreements;
 |
| "Order" | 1. means an order for the provision of the Goods and/or Services placed by a The Fund with the Supplier under a Call Off Agreement;
 |
| "Overhead" | 1. means those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-Contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”;
 |
| "Party" | 1. means the Fund or the Supplier and **"Parties"** shall mean both of them;
 |
| "Personal Data" | 1. has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
 |
| "PQQ Response" | 1. means, where the Framework Agreement has been awarded under the Restricted Procedure, the response submitted by the Supplier to the Pre-Qualification questionnaire issued by the Fund, and the expressions “Restricted Procedure” and “Pre-Qualification Questionnaire shall have the meaning given to them in the Regulations;
 |
| "Processing" | 1. has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and “**Process**” and “**Processed**” shall be interpreted accordingly;
 |
| "Prohibited Act" | 1. means:
	1. to directly or indirectly offer, promise or give any person working for or engaged by the Fund a financial or other advantage to:
		1. induce that person to perform improperly a relevant function or activity; or
		2. reward that person for improper performance of a relevant function or activity;
	2. or
	3. committing any offence:
		1. under the Bribery Act 2010; or
		2. under legislation creating offences concerning Fraud; or
		3. at common law concerning Fraud; or
		4. committing (or attempting or conspiring to commit) Fraud;
 |
| "Regulations" | 1. means the Public Contracts Regulations 2006 (as amended) and/or the Public Contracts (Scotland) Regulations 2012 (as amended) (as the context requires) as amended from time to time;
 |
| "Relevant Person" | 1. means any employee, agent, servant, or representative of the Fund, or of any Other The Fund or other public body;
 |
| "Relevant Requirements" | 1. means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
 |
| "Relevant Tax The Fund" | 1. means HMRC, or, if applicable, the tax the Fund in the jurisdiction in which the Supplier is established;
 |
| "Relevant Supplier" | 1. means a third party bidding to provide New Goods and/or Services;
 |
| "Replacement Goods and/or Services" | 1. means any goods and/or services which are substantially similar to any of the Goods and/or Services and which are received in substitution for the Goods and/or Services following the expiry or termination of this Framework Agreement;
 |
| "Replacement Supplier" | 1. means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Fund from time to time;
 |
| "Reporting Date" | 1. means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
 |
| "Requests for Information" | 1. means a request for information relating to this Framework Agreement or the provision of the Goods and/or Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
 |
| "Restricted Countries" | 1. shall have the meaning given to it in Clause 21.5.3 (Protection of Personal Data);
 |
| "Self Audit Certificate" | 1. means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Fund in accordance with Clause 15 (Records, Audit Access and Open Book Data);
 |
| "Service Period" | 1. has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a The Fund in a Call Off Agreement between that The Fund and the Supplier;
 |
| "Services" | 1. means the services described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to The Fund;
 |
| "Specific Change in Law" | 1. means a Change in Law that relates specifically to the business of the Fund and which would not affect a Comparable Supply;
 |
| "Standards" | 1. means:
	1. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
	2. any standards detailed in the specification in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators);
	3. any standards detailed by the The Fund in the Call Off Agreement following a Further Competition Procedure or agreed between the Parties from time to time;
	4. any relevant Government codes of practice and guidance applicable from time to time.
 |
| "Statement of Requirements" | 1. means a statement issued by the Fund or any Other The Fund detailing its Goods and/or Services Requirements issued in accordance with the Call Off Procedure;
 |
| "Sub-Contract" | 1. means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services (or any part thereof) or to provide facilities or services necessary for the provision of the Goods and/or Services (or any part thereof) or necessary for the management, direction or control of the provision of the Goods and/or Services or any part thereof;
 |
| "Sub-Contractor" | 1. means the third party from the list of sub-contractors in Framework Schedule 7 (Key Sub-Contractors) or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to this Framework Agreement;
 |
| "Supplier" | 1. means the person, firm or company stated in the preamble to this Framework Agreement;
 |
| "Supplier Action Plan" | 1. means a document, maintained by the Fund, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
 |
| "Supplier Personnel" | 1. means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor’s servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Agreements;
 |
| "Supplier Profit" | 1. means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Call Off Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Agreements for the relevant period;
 |
| "Supplier Profit Margin" | 1. means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreements and expressed as a percentage;
 |
| "Supplier Representative" | 1. means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
 |
| "Supplier's Confidential Information" | 1. means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
 |
| "Template Call Off Terms" | 1. means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
 |
| "Template Order Form" | 1. means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
 |
| "Tender" | 1. means the tender submitted by the Supplier to the Fund on a copy of which is set out in Framework Schedule 20 (Tender);
 |
| "Termination Notice" | 1. means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
 |
| "TUPE" | 1. means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
 |
| "Variation" | 1. has the meaning given to it in Clause 16.1.1 (Variation Procedure);
 |
| "Variation Form" | 1. means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 19 (Variation Form);
 |
| "Variation Procedure" | 1. means the procedure for carrying out a Variation as set out in Clause 16.1 (Variation Procedure);
 |
| "VAT" | 1. means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
 |
| "Working Days" | 1. means any day other than a Saturday, Sunday or public holiday in England and Wales.
 |

FRAMEWORK SCHEDULE 2: GOODS AND/or SERVICES and Key Performance Indicators

Part A – Goods and/or Services

GENERAL

The purpose of this Part A of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) is to set out the intended scope of the Goods and/or Services that the Supplier will be required to make available to all The Fund under this Framework Agreement and to provide a description of what the Goods and/or Services entail (including, if applicable, in each Lot) together with any specific Standards applicable to the Goods and/or Services.

The Goods and/or Services and any Standards set out in paragraph 2.2 below may be refined (to the extent permitted and set out in Framework Schedule 5 (Call Off Procedure)) by a The Fund during a Further Competition Procedure to reflect its Goods and/or Services Requirements for entering a particular Call Off Agreement.

SPECIFICATION

 Summary

* + 1. We envisage that the Fund makes as many as 6 – 12 short films per annum and we are looking to setup a Framework Agreement from which to draw. The Supplier may be required to provide services in relation to the supply of the Goods and/or Services to The Fund including but not limited to:
			1. Working within sensitive historic/ natural environments
			2. On occasion, working with individuals with special needs
			3. Working with professionals from heritage or other grantee organisations.
	1. Goods and/or Services
		1. The Goods and/or Services covered are: The production of professional films generally within the Heritage and Art History market sector. This includes but is not limited to: -
			1. The creative stage managing and responding to briefs
			2. Developing those ideas in to a visual or written presentation
			3. Making a professional film to the creative brief
			4. Editing and finalising the raw film to a finished film ready for showing
			5. Managing the asset (digital and or otherwise) in a safe accessible environment for seven years.
			6. Visiting sites on behalf of the Fund, managing the client with appropriate client service staff
			7. Servicing the Fund including but not limited to reports, demos, trailers and presenting work in progress of production and or creative services
			8. Conforming to the Charging Structure;
			9. Undertaking any billing requirements;
			10. Undertaking to meet all The Fund’s requirements;
			11. Providing a support function to deal with The Fund’s enquiries and issues;
			12. Complying with any KPIs and any service levels and any reporting requirements;
			13. Providing a nominated account manager to manage the relationship between the Fund and the Supplier under this Framework Agreement, to resolve any issues arising from this Framework Agreement and to implement any improvements/innovations during the Framework Period;
			14. Complying with the Fund’s Management Information requirements.
	2. Procurement specific Standards
		1. The Supplier shall at all times during the Framework Period and the term of any Call Off Agreement comply with the Standards including but not limited to the following:
			1. Key Staff on the project should have one of the following qualifications and one of the following backgrounds:-
				1. A qualification in film, media studies, advertising or marketing or
				2. 10 years professional experience of film making
				Part B – Key Performance Indicators

General

The purpose of this Part B is to set out the KPIs by which the Supplier’s overall performance under this Framework Agreement shall be monitored and managed. The Fund reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Fund and the Supplier in accordance with Clause 16.1 (Variation Procedure).

The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Framework Schedule 8 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.

The KPIs from which performance by the Supplier of this Framework Agreement will be reported against are set out below:

|  |  |  |
| --- | --- | --- |
| **Key Performance Indicator (KPI)** | **KPI Target**  | **Measured by** |
| Framework Management |  |  |
| Progress updates should be returned within 1 days of request by the Fund |  | Confirmation of receipt and time of receipt by the Fund at review with the Supplier |
| All invoices to be paid within 30 calendar days of issue  |  | Confirmation of receipt and time of receipt by the Fund (as evidenced within the Fund’s SUN system) |
| Supplier self-audit certificate to be issued to the Fund in accordance with the Framework Agreement |  | Confirmation of receipt and time of receipt by the Fund |
| Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report |  | Confirmation by the Fund of completion of the actions by the dates identified in the Audit Report |
| Operational Efficiency / Price Savings |  |  |
| The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and innovation  |  | Confirmation by the Fund of the cost savings achieved by the dates identified in the Supplier Action Plan |
|  |  |  |
| Customer Satisfaction |  |  |
| Goods and/or Services to be provided under Call Off Agreements to the satisfaction of The Fund |  | Confirmation by the Fund of the Supplier’s performance against customer satisfaction surveys |
| production measures |  |  |
| Production plans must be available on the date agreed and updated and available immediately upon request Each identified stage within a production schedule or plan must be met to the satisfaction of the Fund, unless a Force Majure situation occurs or the Fund agrees a variance to the schedule or planThe finished film meets the Fund’s brief in full and is of the same or better technical quality as sample films shown to the Supplier as preparation within the brief |  | Plan to be discussed at review meetings as agreed during Services for each Call Off.As above 4.1.The Fund’s Director of Communications shall ultimately decide if the film is acceptable or unacceptable |

FRAMEWORK SCHEDULE 3: FRAMEWORK prices AND CHARGING STRUCTURE

DEFINITIONS

The following terms used in this Framework Schedule 3 shall have the following meanings:

|  |  |
| --- | --- |
|  |  |
|  |  |
| "Reimbursable Expenses" | 1. means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Goods and/or Services, calculated at the rates and in accordance with the The Fund's expenses policy current from time to time, but not including:
	1. travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the The Fund otherwise agrees in advance in writing; and
	2. subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
 |
| "Supporting Documentation" | 1. means sufficient information in writing to enable the The Fund reasonably to assess whether the Charges, Reimbursable Expenses (as referred to in paragraph 5 to this Framework Schedule 3 (Reimbursable Expenses) and other sums due from the The Fund under a Call Off Agreement detailed in the information are properly payable.
 |

General Provisions

The Framework Prices set out in Annex 3 to this Framework Schedule 3 are the maximum that the Supplier may charge pursuant to any Call Off Agreement.

The Supplier acknowledges and agrees that any prices submitted in relation to a further competition held in accordance with Framework Schedule 5 (Call Off Procedure) shall be equal to or lower than the Framework Prices.

The Supplier acknowledges and agrees that, subject to paragraph 6 of this Framework Schedule 3 (Adjustment of the Framework Prices), the Framework Prices cannot be increased during the Framework Period.

Pricing mechanism for the caLculation of framework prices

Framework Prices shall be calculated using the pricing mechanism specified in Annex 1 to this Framework Schedule 3 and on the basis of the rates and prices specified in Annex 2 to this Framework Schedule 3, as more particularly set out in this Framework Schedule 3.

Table 1 of Annex 1 sets out which pricing mechanism shall be used to calculate each Framework Price, which shall be one or more of the following:

* + 1. **“Time and Materials**”, in which case the provisions of Paragraph 3.3 shall apply;
		2. **“Fixed Price”** in which case the provisions of Paragraph 3.4 shall apply; or
		3. **“Volume Based”** pricing, in which case the provisions of Paragraph 3.5 shall apply.
	1. Time and Materials
		1. Where Table 1 of Annex 1 indicates that a Framework Price (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism, the day rates set out in Table 1 of Annex 2 shall be used to calculate the relevant Framework Prices, provided that the Supplier (or its Sub-Contractor) shall not be entitled to include any uplift for risks or contingencies within its day rates.
	2. Fixed Price Framework Prices
		1. Where Table 1 of Annex 1 indicates that a Framework Price is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Framework Price shall be the amount set out against that Framework Price in Table 2 of Annex 2.
	3. Volume Based Framework Prices
		1. Where Table 1 of Annex 1 indicates that a Framework Price is to be calculated by reference to a Volume Based pricing mechanism, the relevant Framework Price shall be calculated on the basis of the unit costs set out against that Framework Price in Table 3 of Annex 2.

costs and expenSes

Except as expressly set out in paragraph  5 of this Framework Schedule 3 (Reimbursable Expenses), the Framework Prices shall include all costs and expenses relating to the Goods and/or Services provided to The Fund and/or the Supplier’s performance of its obligations under any Call Off Agreements and no further amounts shall be payable by a The Fund to the Supplier in respect of such performance, including in respect of matters such as:

* + 1. any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
		2. any amount for any services provided or costs incurred by the Supplier prior to the commencement date of any Call Off Agreement.

REIMBURSABLE EXPENSES

Where Services are to be provided to The Fund under any Call Off Agreement on the basis of Framework Prices submitted by the Supplier to the Fund using the Time and Materials pricing mechanism, the Supplier shall be entitled to be reimbursed by the The Fund for Reimbursable Expenses (in addition to being paid the relevant Charges under the respective Call Off Agreements), provided that such Reimbursable Expenses are supported by Supporting Documentation. The The Fund shall provide a copy of their current expenses policy to the Supplier upon request

Adjustment of the Framework Prices

The Framework Prices shall only be varied:

* + 1. due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Prices in accordance with Clause 16.2 of this Framework Agreement (Legislative Change);
		2. where all or part of the Framework Prices are reviewed and reduced in accordance with Framework Schedule 12 (Continuous Improvement and Benchmarking);
		3. where all or part of the Framework Prices are reviewed and reduced in accordance with paragraph 7 of this Framework Schedule 3 (Supplier Periodic Assessment of Framework Prices);

Subject to paragraphs 6.1.1 to 6.1.3 of this Framework Schedule, the Framework Prices will remain fixed for the first Contract Years.

SUPPLIER PERIODIC ASSESSMENT OF FRAMEWORK PRICES

Every twelve (12) Months during the Framework Period, the Supplier shall assess the level of the Framework Prices to consider whether it is able to reduce them.

Such assessments by the Supplier under paragraph 7.1 shall be carried out on 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Framework Prices it shall promptly notify the Fund in writing and such reduction shall be implemented in accordance with paragraph 8.1.3 below.

IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES

Variations in accordance with the provisions of this Framework Schedule 3 to all or part the Framework Prices (as the case may be) shall be made by the Fund to take effect:

* + 1. in accordance with Clause 16.2 (Legislative Change) where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.1 of this Framework Schedule;
		2. in accordance with paragraph 3.3.3 and 4.8 of Framework Schedule 12 (Continuous Improvement and Benchmarking) where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.2 of this Framework Schedule 3; or
		3. on 10 January for assessments made on 1 December where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.3 of this Framework Schedule and the Parties shall amend the Framework Prices shown in Annex 3 to this Framework Schedule 3 to reflect such variations.

CHARGES UNDER CALL OFF AGREEMENTS

ANNEX 1: PRICING MECHANISM

TABLE 1

| Framework Price Number | Pricing Mechanism (T&M/ VOL/ FIX) |
| --- | --- |
| TO BE CONFIRMED | [T&M] |
| TO BE CONFIRMED | [FIX] |
| TO BE CONFIRMED | [VOL] |

ANNEX 2: RATES AND PRICES

TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS FRAMEWORK PRICES

TO BE UPDATED WITH SUPPLIERS’ CHARGES

TABLE 2: FIXED PRICE FRAMEWORK PRICES

|  |  |
| --- | --- |
| **Framework Price** | **Fixed Framework Price (£)** |
| To Be Identified |  |
|  |  |
|  |  |

TABLE 3: VOLUME BASED FRAMEWORK PRICES

|  |  |  |  |
| --- | --- | --- | --- |
| **Framework Price Number** | **Unit** | **Number of units per Service Period** | **Charge per unit (£)** |
| To Be Identified |  | [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [TBI] |  | [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [TBI] |  | [ ] - [ ] | [ ] - [ ] |
| [ ] - [ ] | [ ] - [ ] |
| [ ] - [ ] | [ ] - [ ] |

FRAMEWORK SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CALL OFF TERMS

ANNEX 1: TEMPLATE ORDER FORM

Link to manual purchase order

<http://winintranet/Finance/Manuals%20and%20Forms/Forms/Manual%20Purchase%20Order%20Form.docx>

a pdf of the fund’s purchase order from kypura, the fund’s purchase ordering system

ANNEX 2: TEMPLATE CALL OFF TERMS

Not applicable

FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

AWARD PROCEDURE

If the Fund decides to source the Goods and/or Services through this Framework Agreement then it will award its Goods and/or Services Requirements in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, “**Guidance**” shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

If a The Fund can determine that:

* + 1. its Goods and/or Services Requirements can be met by the Framework Supplier's catalogue/description of the Goods and/or Services as set out in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators); and all of the terms of the proposed Call Off Agreement are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

then the Fund may award a Call Off Agreement in accordance with the procedure set out in paragraph 11 below.

If all of the terms of the proposed Call Off Agreement are not laid down in this Framework Agreement and the Fund:

* + 1. requires the Supplier to develop proposals or a solution in respect of such The Fund's Goods and/or Services Requirements; and/or
		2. needs to amend or refine the Template Call Off Terms to reflect its Goods and/or Services Requirements to the extent permitted by and in accordance with the Regulations and Guidance;

then the Fund shall award a Call Off Agreement in accordance with the Further Competition Procedure set out in paragraph 12 below.

DIRECT ORDERING WITHOUT A FURTHER COMPETITION

Subject to paragraph 10.2 above the Fund awarding a Call Off Agreement under this Framework Agreement without holding a further competition shall:

* + 1. develop a clear Statement of Requirements;
		2. apply the Direct Award Criteria to the catalogue of the Goods and/or Services for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Framework Suppliers provides the most economically advantageous solution; and
		3. on the basis set out above, award the Call Off Agreement with the successful Framework Supplier in accordance with paragraph 14 below.

FURTHER COMPETITION PROCEDURE

The Fund's Obligations

The Fund awarding a Call Off Agreement under this Framework Agreement through a Further Competition Procedure shall:

* + 1. develop a Statement of Requirements setting out its requirements for the Goods and/or Services and identify the Framework Suppliers capable of supplying the Goods and/or Services;
		2. amend or refine the Template Call Off Form and Template Call Off Terms to reflect its Goods and/or Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
		3. invite tenders by conducting a Further Competition Procedure for its Goods and/or Services Requirements in accordance with the Regulations and Guidance and in particular:
		4. apply the Further Competition Award Criteria to the Framework Suppliers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Agreement for its Goods and/or Services Requirements;
		5. on the basis set out above, award its Call Off Agreement to the successful Framework Supplier in accordance with paragraph 14 which Call Off Agreement shall:
			1. state the Goods and/or Services Requirements;
			2. state the tender submitted by the successful Framework Supplier;
			3. state the charges payable for the Goods and/or Services Requirements in accordance with the tender submitted by the successful Framework Supplier; and
			4. incorporate the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the The Fund in accordance with paragraph 12.1.2 above) applicable to the Goods and/or Services,
		6. provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

The Supplier's Obligations

The Supplier shall in writing, by the time and date specified by the Fund following an invitation to tender pursuant to paragraph 12.1.3 above provide the The Fund with either:

* + 1. a statement to the effect that it does not wish to tender in relation to the relevant Goods and/or Services Requirements; or
		2. the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
			1. an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
			2. a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
			3. a proposal covering the Goods and/or Services Requirements.
			4. CVs of key personnel – as a minimum any filming, editing, production and creative staff, with others, as considered appropriate along with required staff levels; and
			5. confirmation of discounts applicable to the Goods and/or Services, as referenced in Framework Schedule 3 (Framework Prices and Charging Structure).
		3. The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 12 shall be based on the Charging Structure and take into account any discount to which the Fund may be entitled as set out in Framework Schedule 3 (Framework Prices and Charging Structure).
		4. The Supplier agrees that:
			1. all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 12 shall remain open for acceptance by the The Fund for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant The Fund in accordance with the Call Off Procedure); and
			2. all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
				1. communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
				2. enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

NO AWARD

Notwithstanding the fact that the Fund has followed a procedure as set out above in paragraph 11 or 12 (as applicable), the Fund shall be entitled at all times to decline to make an award for its Goods and/or Services Requirements. Nothing in this Framework Agreement shall oblige any The Fund to award any Call Off Agreement.

CALL OFF award PROCEDURE

Subject to paragraphs 10 to 12, the Fund may award a Call Off Agreement with the Supplier by sending (including electronically) a signed order form substantially in the form (as as may be amended or refined by the Fund in accordance with paragraph 12.1.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Agreement) which is not as described in this paragraph 14 shall not constitute a Call Off Agreement under this Framework Agreement.

On receipt of an order form as described in paragraph 14.1. above from the Fund the Supplier shall accept the Call Off Agreement by promptly signing and returning (including by electronic means) a copy of the order form to the Fund concerned.

On receipt of the signed order form from the Supplier, the Fund shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Agreement shall be formed.

FRAMEWORK SCHEDULE 6: AWARD CRITERIA

General

This Framework Schedule 6 is designed to assist The Fund when drafting an invitation to tender for a Further Competition Procedure.

A contract may be awarded on the basis of most economically advantageous tender ("MEAT").

This Framework Schedule 6 will include details of the evaluation criteria and any weightings that will be applied to that criteria.

Part A: Direct Award

1. The following criteria and weightings shall be applied to the Framework Suppliers' compliant tenders submitted through direct award.

|  |  |  |
| --- | --- | --- |
| **Quality Criteria**  | **Section Weighting %** | **Question Weighting** |
| **Niche Experience & Proven Capability** | **20%** |   |
| **Production** | **20%** |   |
| **Innovation, Creativity & Staff Experience** | **20%** |   |
| **Production Staff Experience** | **15%** |   |
| **Client Services** | **20%** |   |
| **Archive & Asset Management Process** | **5%** |   |

|  |  |  |
| --- | --- | --- |
| **Price Criteria**  | **Section Weighting 100%** | **Question Weighting** |

Part B: Further Competition Award Criteria

1. The following criteria shall be applied to the Goods and/or Services set out in the Suppliers' compliant tenders submitted through the Further Competition Procedure:

|  |  |  |
| --- | --- | --- |
| **Quality Criteria**  | **Section Weighting %** | **Question Weighting** |
| **Niche Experience & Proven Capability** | **20%** |   |
| **Production** | **20%** |   |
| **Innovation, Creativity & Staff Experience** | **20%** |   |
| **Production Staff Experience** | **15%** |   |
| **Client Services** | **20%** |   |
| **Archive & Asset Management Process** | **5%** |   |

|  |  |  |
| --- | --- | --- |
| **Price Criteria**  | **Section Weighting 100%** | **Question Weighting** |

FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

1. In accordance with Clause 19.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Agreements entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT

INTRODUCTION

The following definitions shall apply in addition to the definitions contained in the Framework Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "Supplier Framework Manager" | 1. has the meaning given to it in paragraph 2.1.1 of this Framework Schedule 8
 |
| "Supplier Review Meetings" | 1. has the meaning given to it in paragraph 2.2.1. of this Framework Schedule 8
 |

The successful delivery of this Framework Agreement will rely on the ability of the Supplier and the Fund in developing a strategic relationship immediately following the conclusion of this Framework Agreement with the Supplier and maintaining this relationship throughout the Framework Period.

To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information, and the sharing of information between the Supplier and the Fund.

This Framework Schedule 8 outlines the general structures and management activities that the Parties shall follow during the Framework Period.

FRAMEWORK MANAGEMENT

* 1. Framework Management Structure:
		1. The Supplier shall provide a suitably qualified nominated contact (the “**Supplier** **Framework Manager**”) who will take overall responsibility for delivering the Goods and/or Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
		2. The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).
		3. by the Supplier of the Fund’s notification.
	2. Supplier Review Meetings
		1. Regular performance review meetings will take place at the Fund’s premises throughout the Framework Period and thereafter until the Framework Expiry Date **(“Supplier Review Meetings”**).
		2. The exact timings and frequencies of such Supplier Review Meetings will be determined by the Fund following the conclusion of the Framework Agreement. It is anticipated that the frequency of the Supplier Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.
		3. The purpose of the Supplier Review Meetings will be to review the Supplier’s performance under this Framework Agreement and, where applicable, the Supplier’s adherence to the Supplier Action Plan. The agenda for each Supplier Review Meeting shall be set by the Fund and communicated to the Supplier in advance of that meeting.
		4. The Supplier Review Meetings shall be attended, as a minimum, by the Fund Representative(s) and the Supplier Framework Manager.

KEY PERFORMANCE INDICATORS

The KPIs applicable to this Framework Agreement are set out in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).

The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.

The Fund shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.

The Supplier’s achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the framework management process as outlined in this Framework Schedule 8.

The Fund reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Fund and the Supplier.

The Fund reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

ESCALATION PROCEDURE

In the event that the Fund and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Fund Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).

In cases where the Fund Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 42 (Dispute Resolution).

FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION

GENERAL REQUIREMENTS

The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Fund in accordance with the provisions of this Framework Schedule 9.

The Supplier shall also supply such Management Information as may be required by a The Fund in accordance with the terms of a Call Off Agreement.

The Fund shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Fund.

ANNEX 1: MI REPORTING TEMPLATE

not applicable

FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE

Dear Sirs

In accordance with the Framework Agreement entered into on 1st May 2017 between [insert name of Supplier] and the Fund, we confirm the following:

1. In our opinion based on the testing undertaken [name of Supplier] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.
2. We have tested the systems for identifying and reporting on framework activity and found them to be operating satisfactorily.
3. We have tested a sample of [ ] [insert number of sample transactions tested] Orders and related invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the Framework Agreement.
4. We have tested from the order processing and invoicing systems a sample of [ ] [Insert number of sample transactions tested] public sector orders placed outside the Framework Agreement during our audit for the financial year ended [insert financial year] and confirm they have been identified correctly as orders placed outside the Framework Agreement, an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised and mandated procurement processes executed by the Fund.
5. We have also attached an Audit Report which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

[Guidance Note: see Clause 15(Records, Audit Access and Open Book Data) for details of what is required]

Name:………………………………………………………

Signed:…………………………………………………….

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:……………………………………………………….

Professional Qualification held by Signatory:............................................................

Note to Suppliers: where the Fund identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this behaviour goes beyond poor commercial practice and will seek further guidance from the Treasury Solicitor’s Department.

FRAMEWORK SCHEDULE 11: MARKETING

INTRODUCTION

This Framework Schedule 11 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Goods and/or Services to The Fund.

MARKETING

Marketing contact details:

* + 1. Louise Lane at Heritage Lottery Fund, 7 Holbein Place London SW1W 8NR.

THE FUND PUBLICATIONS

The Fund will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Fund.

Such information shall be provided in the form of a completed template, supplied by the Fund together with the instruction for completion and the date for its return.

Failure to comply with the provisions of paragraphs 4.1 and 4.2 may result in the Supplier's exclusion from the use of such marketing materials.

SUPPLIER PUBLICATIONS

Any marketing materials in relation to this Framework Agreement that the Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.

The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier’s website and which relates to this Framework Agreement and ensuring that such information is kept up to date at all times.

FRAMEWORK SCHEDULE 12: CONTINUOUS IMPROVEMENT AND BENCHMARKING

DEFINITIONS

In this Framework Schedule 12, the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| "Benchmarked Rates" | 1. means the Framework Prices for the Benchmarked Goods and/or Services
 |
| "Benchmark Review" | 1. means a review of the Goods and/or Services carried out in accordance with this Framework Schedule 12 to determine whether those Goods and/or Services represent Good Value
 |
| "Benchmarked Goods and/or Services" | 1. means any Goods and/or Services included within the scope of a Benchmark Review pursuant to this Framework Schedule 12
 |
| "Comparable Rates" | 1. means rates payable by the Comparison Group for Comparable Goods and/or Services that can be fairly compared with the Framework Prices
 |
| "Comparable Supply" | 1. means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services
 |
| "Comparable Goods and/or Services" | 1. means Goods and/or Services that are identical or materially similar to the Benchmarked Goods and/or Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Goods and/or Services exist in the market, the Supplier shall propose an approach for developing a comparable Goods and/or Services benchmark
 |
| "Comparison Group" | 1. means a sample group of organisations providing Comparable Goods and/or Services which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations
 |
| "Equivalent Data" | 1. means data derived from an analysis of the Comparable Rates and/or the Comparable Goods and/or Services (as applicable) provided by the Comparison Group
 |
| "Good Value" | 1. means that the Benchmarked Rates are within the Upper Quartile
 |
| "Upper Quartile" | 1. means, in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Goods and/or Services, are within the top 25% in terms of best value for money for the recipients of Comparable Goods and/or Services
 |

BACKGROUND

The Supplier acknowledges that the Fund wishes to ensure that the Goods and/or Services, represent value for money to the taxpayer throughout the Framework Period.

This Framework Schedule 7 (Value for Money) sets out the following processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Agreements remain in force:

* + 1. Benchmarking;
		2. Continuous Improvement;

BENCHMARKING

* 1. Frequency Purpose and Scope of Benchmark Review
		1. The Fund shall carry out Benchmark Reviews of the Goods and/or Services twelve (12) Months after the Framework Commencement Date and or any previous Benchmark Review.
		2. The purpose of a Benchmark Review will be to establish whether the Benchmarked Goods and/or Services are, individually and/or as a whole, Good Value.
		3. The Goods and/or Services that are to be the Benchmarked Goods and/or Services will be identified by the Fund in writing.
	2. Benchmarking Process
		1. The Fund shall produce and send to the Supplier the Benchmark Review.
		2. The Review will include:
			1. a timetable of the Benchmark Review;
			2. a description of the benchmarking methodology used;
			3. a description that demonstrates objectively and transparently that the benchmarking methodology used was capable of fulfilling the benchmarking purpose.
			4. Comparable Rates
		3. Once the Supplier has received the Review, the Supplier shall:
			1. determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
			2. Meet with the Fund to discuss how Framework Agreement Prices in Annex 2.

CONTINUOUS IMPROVEMENT

The Supplier shall adopt a policy of continuous improvement in relation to the Goods and/or Services pursuant to which it will regularly review with the Fund the Goods and/or Services and the manner in which it is providing the Goods and/or Services with a view to reducing the Fund's costs, the costs of The Fund (including the Framework Prices) and/or improving the quality and efficiency of the Goods and/or Services. The Supplier and the Fund will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Framework Prices.

Should the Supplier's costs in providing the Goods and/or Services to The Fund be reduced as a result of any changes implemented by the Fund and/or The Fund, all of the cost savings shall be passed on to The Fund by way of a consequential and immediate reduction in the Framework Prices for the Goods and/or Services.

FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS

OBLIGATION TO MAINTAIN INSURANCES

Without prejudice to its obligations to the Fund under this Framework Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.

The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Fund shall be indemnified in respect of claims made against the Fund in respect of death or bodily injury or third party property damage arising out of or in connection with the Goods and/or Services and for which the Supplier is legally liable.

GENERAL OBLIGATIONS

Without limiting the other provisions of this Framework Agreement, the Supplier shall:

* + 1. take or procure the taking of all reasonable risk management and risk control measures in relation to the Goods and/or Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
		2. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
		3. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

FAILURE TO INSURE

The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Fund may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Fund shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

EVIDENCE OF POLICIES

The Supplier shall upon the Framework Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Fund, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 14. Receipt of such evidence by the Fund shall not in itself constitute acceptance by the Fund or relieve the Supplier of any of its liabilities and obligations under this Agreement.

AGGREGATE LIMIT OF INDEMNITY

Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

* + 1. if a claim or claims which do not relate to this Framework Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Fund:
			1. details of the policy concerned; and
			2. its proposed solution for maintaining the minimum limit of indemnity specified; and
		2. if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Framework Agreement are paid by insurers, the Supplier shall:
			1. ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Framework Agreement; or
			2. if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Fund full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

CANCELLATION

The Supplier shall notify the Fund in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

INSURANCE CLAIMS

The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Goods and/or Services and/or this Framework Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Fund receives a claim relating to or arising out of the Goods and/or Services or this Framework Agreement, the Supplier shall co-operate with the Fund and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

Except where the Fund is the claimant party, the Supplier shall give the Fund notice within twenty (20) Working Days after any insurance claim in excess of £10,000 relating to or arising out of the provision of the Goods and/or Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Fund) full details of the incident giving rise to the claim.

Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Fund any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.

ANNEX 1: REQUIRED INSURANCES

Part A: Third Party Public & Products Liability Insurance

Insured

The Supplier

Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

* + 1. death or bodily injury to or sickness, illness or disease contracted by any person;
		2. loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 14) and arising out of or in connection with the provision of the Goods and/or Services and in connection with this Framework Agreement.

Limit of indemnity

Not less than **£100,000** in respect of any one occurrence, the number of occurrences being unlimited, but **£100,000** any one occurrence and in the aggregate per annum in respect of products and pollution liability.

Territorial limits

* + 1. United Kingdom

Period of insurance

From the Framework Commencement Date for the Framework Period and renewable on an annual basis unless agreed otherwise by the Fund in writing.

Cover features and extensions

Indemnity to principals clause.

Principal exclusions

War and related perils.

Nuclear and radioactive risks.

Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

Liability arising from the ownership, possession or use of any aircraft or marine vessel.

Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

Maximum deductible threshold

Not to exceed £10,000 for each and every third party property damage claim (personal injury claims to be paid in full).

Part B: Professional Indemnity Insurance

Insured

The Supplier

Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants’ costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Goods and/or Services.

Limit of indemnity

 Not less than £100,000 in respect of any one claim and in the aggregate per annum.

Territorial Limits

 United Kingdom.

Period of insurance

From the date of this Framework Agreement and renewable on an annual basis unless agreed otherwise by the Fund in writing (a) throughout the Framework Period or until earlier termination of this Framework Agreement and (b) for a period of 6 years thereafter.

Cover features and extensions

Retroactive cover to apply to any claims made policy wording in respect of this Framework Agreement or retroactive date to be no later than the Framework Commencement Date.

Principal exclusions

War and related perils

Nuclear and radioactive risks

Maximum deductible threshold

Not to exceed £10,000 for each and every claim.

Part C: United Kingdom Compulsory Insurances

General

The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

FRAMEWORK SCHEDULE 17: COMMERCIALLY SENSITIVE INFORMATION

INTRODUCTION

In this Framework Schedule 17 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.

Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule 17 applies.

Without prejudice to the Fund's obligation to disclose Information in accordance with FOIA or Clause 21.4 (Freedom of Information), the Fund will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

| **No.** | **Date** | **Item(s)** | **Duration of Confidentiality** |
| --- | --- | --- | --- |
|  | [insert date]  | [insert details] | [insert duration] |
|  |  | ONLY LIST SUPPLIER DATA IF REQUESTED TO EXEMPT |  |
|  |  |  |  |
|  |  |  |  |

FRAMEWORK SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE

DEFINITIONS

In this Framework Schedule 18, the following definitions shall apply:

|  |  |
| --- | --- |
| "CEDR" | 1. means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
 |
| "Counter Notice" | 1. has the meaning given to it in paragraph 6.2;
 |
| "Exception" | 1. means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Framework Agreement or in the supply of the Goods and/or Services;
 |
| "Expedited Dispute Timetable" | 1. means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6;
 |
| "Expert" | 1. means the person appointed by the Parties in accordance with paragraph 5.2 of this Framework Schedule 18;
 |
| "Mediation Notice" | 1. has the meaning given to it in paragraph 3.2; and
 |
| "Mediator" | 1. means the independent third party appointed in accordance with paragraph 4.2 of this Framework Schedule 18.
 |

INTRODUCTION

If a Dispute arises then:

* + 1. the Fund Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
		2. if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

The Dispute Notice shall set out:

* + 1. the material particulars of the Dispute;
		2. the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
		3. if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6, the reason why.

Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Framework Schedule 18.

Subject to paragraph 3.2, the Parties shall seek to resolve Disputes:

* + 1. first by commercial negotiation (as prescribed in paragraph 3);
		2. then by mediation (as prescribed in paragraph 4); and
		3. lastly by recourse to arbitration (as prescribed in paragraph 6) or litigation (in accordance with Clause 43 (*Governing Law and Jurisdiction*)).

Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5) where specified under the provisions of this Framework Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination).

In exceptional circumstances where the use of the times in this Framework Schedule 18 would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Fund.

If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Framework Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Framework Schedule 18:

* + 1. in paragraph 3.2.3, ten (10) Working Days;
		2. in paragraph 4.2, ten (10) Working Days;
		3. in paragraph 5.2, five (5) Working Days; and
		4. in paragraph 6.2, ten (10) Working Days.

If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

COMMERCIAL NEGOTIATIONS

Following the service of a Dispute Notice, the Fund and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Fund’s Purchasing Manager and the Supplier’s [***insert role***], such discussions being commercial negotiations.

If:

* + 1. either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
		2. the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or
		3. the Parties have not settled the Dispute in accordance with paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a “**Mediation Notice”**) in accordance with paragraph 4.

MEDIATION

If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Framework Agreement.

If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.

If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 16.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

EXPERT DETERMINATION

If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.

The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

The Expert shall act on the following basis:

* + 1. he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
		2. the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;
		3. the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
		4. any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
		5. the process shall be conducted in private and shall be confidential; and
		6. the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

ARBITRATION

The Fund may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4.

Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Fund of its intentions and the Fund shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 43 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

If:

* + 1. the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4shall apply;
		2. the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 43 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
		3. the Fund does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 43 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3, the Parties hereby confirm that:

* + 1. all disputes, issues or claims arising out of or in connection with this Framework Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5, 6.4.6 and 6.4.7);
		2. the arbitration shall be administered by the LCIA;
		3. the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
		4. if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
		5. the chair of the arbitral tribunal shall be British;
		6. the arbitration proceedings shall take place in London and in the English language; and
		7. the seat of the arbitration shall be London.

URGENT RELIEF

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

* + 1. for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
		2. where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

FRAMEWORK SCHEDULE 19: VARIATION FORM

Variation Form No:

……………………………………………………………………………………

BETWEEN:

|  |
| --- |
| **[**insert name of The Fund **]** ("**the Fund"**)and**[**insert name of Supplier**]** (**"the Supplier"**) |

1. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:
2. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
3. The Framework Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Fund

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

Signed by an authorised signatory to sign for and on behalf of the Supplier

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |

FRAMEWORK SCHEDULE 20: TENDER

General

This Framework Schedule 20 sets out a copy of the Supplier’s Tender including the Supplier’s responses to the whole award questionnaire in accordance with the award questionnaire to the ITT.

Subject to Clauses 1.2.2 and 1.2.3, in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Agreement, the Supplier shall provide the Goods and/or Services to The Fund in accordance with the Tender.

[Guidance Note: Include here a copy of the Supplier’s Tender, including the Supplier’s responses to the whole award questionnaire in accordance with section [AQA1] of the award questionnaire to the ITT]