DATED 16/01/2018

**CROWN COMMERCIAL SERVICE**

**and**

**ALEXANDER MANN SOLUTIONS LIMITED**

**FRAMEWORK AGREEMENT**

**FOR THE PROVISION OF**

**PUBLIC SECTOR RESOURCING MODEL SERVICES**

**RM3749**

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This Agreement is made on 16th January 2018

**BETWEEN:**

(1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the "**Authority**"); and

(2) ***Alexander Mann Solutions Limited*** which is a company registered in ***England and Wales*** under company number ***2073305*** and whose registered office is at ***First Floor, 7-11 Bishopsgate, London, EC2N 3AQ*** (the "**Service Provider**").

**RECITALS:**

1. The Authority placed a contract notice ***2017/S 091-180133*** on ***12/05/2017*** (the **"OJEU Notice"**) in the Official Journal of the European Union and on that date the Authority also issued an invitation to tender (the "Invitation to Tender") for the provision of public sector resourcing Services.
2. The Invitation to Tender made it clear that providers interested in entering into a framework arrangement for the supply of Services to the Authority and / or Contracting Authorities must:

* provide a response to and successfully pass the Authority’s selection questionnaire (“the SQ”);
* submit an Initial Tender to the Authority to demonstrate that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender, which would be the basis for subsequent negotiations;
* present their Initial Tender, as part of a Subsequent Tender, to the Authority in accordance with the Authority's requirements as set out in the Invitation to Tender;
* if they are successful, enter into negotiations with the Authority to improve the content of the Subsequent Tender; and
* once negotiations have been concluded, submit a Final Tender.

1. In response to the Invitation to Tender, the Service Provider made a request to participate by submitting its response to the Authority’s “SQ” on ***20/06/2017*** (the "SQ Response"). The SQ Response was successful and the Service Provider subsequently made representations to the Authority in its Initial Tender dated ***17/08/2017*** in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
2. The Service Provider was successfully shortlisted following its Initial Tender and was subsequently invited to make a presentation on it to the Authority on ***02/11/2017*** as part of a Subsequent Tender. The Service Provider was selected, on the basis of its presentation, to enter into negotiations with the Authority, on the Subsequent Tender, in accordance with the Invitation to Tender document.
3. The Authority concluded negotiations on ***22/11/2017*** and the Service Provider submitted a Final Tender to it on ***11/12/2017*** (set out in Framework Schedule 21 (Final Tender)) (the “**Final** **Tender**”). On the basis of the Final Tender, the Authority selected the Service Provider to enter into a framework agreement to provide the Services to the Contracting Authorities from time to time on a call off basis in accordance with this Framework Agreement.
4. This Framework Agreement sets out the calling-off ordering procedure for purchasing the Services which may be required by the Contracting Authorities, the template terms and conditions for any Call Off Contract which the Contracting Authorities may enter into and the obligations of the Service Provider during and after the Framework Period.
5. It is the Parties' intention that there will be no obligation for any Contracting Authority to enter into any Call Off Contracts 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 2 to 20 and Framework Schedules 22 to 30 inclusive;
         3. Framework Schedule 21 (Final Tender).
      3. If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Contract, the provisions of this Framework Agreement shall prevail over those of the Call Off Contract save that:
         1. any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Contract under Clause 4 and paragraph 1 of 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 Contract shall prevail over Framework Schedule 21 (Final Tender).
      4. Where Framework Schedule 21 (Final Tender) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Final Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Final Tender is more favourable to it in relation to this Framework Agreement.
8. DUE DILIGENCE

The Service Provider acknowledges that:

* + 1. the Authority has delivered or made available to the Service Provider all of the information and documents that the Service Provider 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 raised all relevant due diligence questions with the Authority before the Framework Commencement Date, has undertaken all necessary due diligence 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 Service Provider by entitled to recover any additional costs or charges, arising as a result of any:
       1. misrepresentation of the requirements of the Service Provider in the Invitation to Tender or elsewhere;
       2. failure by the Service Provider to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
       3. failure by the Service Provider to undertake its own due diligence.

1. SERVICE PROVIDER'S APPOINTMENT

The Authority hereby appoints the Service Provider as a potential provider of the Services and the Service Provider shall be eligible to be considered for the award of Call Off Contracts by the Authority and Contracting Authorities during the Framework Period.

In consideration of the Service Provider agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Service Provider 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 Service Provider).

1. SCOPE OF FRAMEWORK AGREEMENT

Without prejudice to Clause 45 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Service Provider in respect of the provision of the Services by the Service Provider.

The Service Provider acknowledges and agrees that:

* + 1. there is no obligation whatsoever on the Authority or on any Contracting Authority to use the Service Provider to provide any Services and/or to purchase any Services under this Framework Agreement; and
    2. in entering into this Framework Agreement no form of exclusivity has been conferred on the Service Provider nor volume or value guarantee granted by the Authority and/or Contracting Authorities in relation to the provision of the Services by the Service Provider and that the Authority and Contracting Authorities are at all times entitled to enter into other contracts and agreements with other service providers for the provision of any or all services which are the same as or similar to the Services.

In the event that any Contracting Authority makes an approach to the Service Provider with a request for the supply of Equivalent Services, the Service Provider shall promptly and in any event within five (5) Working Days of the request by the Contracting Authority, and before any supply of Equivalent Services is made, shall notify the Authority and inform such Contracting Authority of the existence of this Framework and the Contracting Authority’s ability to enter into Call Off Contracts for Services pursuant to this Framework Agreement.

1. CALL OFF PROCEDURE

If the Authority or any Contracting Authority decides to source any of the Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to enter into Call Off Contracts for the Services from the Service Provider by following Framework Schedule 5 (Call Off Procedure).

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

1. ASSISTANCE IN RELATED PROCUREMENTS

Where a Relevant Service Provider is bidding to provide New Services in circumstances where the Service Provider or an Affiliate of the Service Provider is already providing (or due to provide) Legacy Services to a Contracting Authority, the Service Provider shall promptly provide the relevant Contracting Authority and/or the Relevant Service Provider with all reasonable information and assistance as may be required from time to time to enable the relevant Contracting Authority and/or the Relevant Service Provider, as appropriate, to:

* + 1. carry out appropriate due diligence with respect to the provision of the New Services;
    2. effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Services and the New Services;
    3. NOT USED; and
    4. make a proper assessment as to the risk related to the New Services.

When performing its obligations in Clause 6.1 the Service Provider shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Service Provider.

1. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to each other and Contracting Authorities 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 Service Provider, 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 Service Provider represents and warrants to the Authority and to Contracting Authorities 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 (including, where its procedures so require, the consent of its Parent Company) 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 Authority 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 Service Provider as part of the procurement process, its Final 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. if the Charges payable under this Framework Agreement exceed or are likely to exceed five (5) million pounds, as at the Framework Commencement Date, it has notified the Authority 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 Service Provider (and/or any Sub-Contractor) to the Authority which are necessaryfor the performance of the Service Provider’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 Authority’s Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Contracting Authorities;
    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 Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider’s assets or revenue;
    11. for the duration of this Framework Agreement and any Call Off Contracts and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Call Off Contracts, it shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Authority who has been associated with the procurement and/or provision of the Services without Approval or the prior written consent of the relevant Contracting Authority which shall not be unreasonably withheld;
    12. in performing its obligations under this Framework Agreement and any Call Off Contract, it shall not (to the extent possible in the circumstances) discriminate between Contracting Authorities on the basis of their respective sizes;
    13. all information it provides, and shall procure that all information that the Agency Providers and any other Key Sub-Contractors provide, under or in connection with this Framework Agreement will be true, accurate, complete and not misleading;
    14. it shall, in the delivery of the Vendor Management System, the PSR Marketplace, [REDACTED] and any Other Technology Platforms, in its processing of applications for User licences, at all times act promptly and fairly with users of the Vendor Management System, the PSR Marketplace and [REDACTED] technology platforms and any application for such Services;
    15. it shall not, and procure that the Agency Providers do not, manipulate any information supplied to the Vendor Management System, the PSR Marketplace, [REDACTED] and any Other Technology Platforms in a manner that would lead to inaccurate, misleading or discriminating presentation of information being displayed;
    16. it shall procure that the Service Provider Personnel, including the Workers:
        1. are appropriately competent, qualified, trained, and experienced to provide the Services as notified to the Service Provider by the Authority and/or Contracting Authorities and/or Worker Services with all reasonable skill, care and diligence;
        2. are vetted in accordance with Good Industry Practice, Staff Vetting Procedures and, where applicable, the Security Policy and the Standards prior to placement;
        3. obey all lawful instructions and reasonable directions of the Customer and/or Authority (including, if so required by the Customer and/or Authority, the ICT Policy) and provide the Services and/or Worker Services to the reasonable satisfaction of the Customer and/or Authority as applicable;
        4. comply with identity, right to work, employment history and DBS checks in accordance with the Cabinet Office Baseline Personnel Security Standard (BPSS);
        5. supplied to the education sector are compliant with the Safer Recruitment in Education Guidance and are part of either the REC Audited Education Scheme or the APSCO Compliance+ Scheme;
        6. supplied to the health sector are compliant with the requirements specified, including the UK Core Skills Training Framework and safeguarding requirements, prior to placement. There are six (6) NHS Employment Check Standards that outline the type and level of checks employers must carry out before recruiting staff into NHS positions;
        7. have the required level of English language competence ( and Welsh, if required) to enable them to undertake their role effectively, to enable clear communication about medical topics with patients and colleagues and to assure the delivery of safe care to patients in accordance with: http://www.nhsemployers.org/case-studies-and-resources/2017/01/language-competency-good-practice-guidance-for-employers; and
        8. comply with all reasonable requirements of the Customer and / or Authority concerning conduct at the Customer and/or Authority’s premises, including the security requirements set out in Framework Schedule 25 (Security).
        9. are entitled to work in the United Kingdom or (where applicable) any other country from which (or in which) the Framework Agreement and Call Off Contract is to be performed; and
        10. obey all lawful instructions and reasonable directions of the Authority and/or Contracting Authorities and provide the Services including as applicable the Worker Services, to the reasonable satisfaction of the Authority and/or Contracting Authority;
    17. shall, at all times during the Framework Period, ensure that the Services and its obligations under this Framework Agreement:
        1. are provided in accordance and confirm in all respects with the specifications and requirements set out in this Framework Agreement; and
        2. are performed in accordance and conform in all respects with all applicable Laws; and
    18. it shall and shall procure that each Agency Provider shall, in relation to the supply of Workers to Contracting Authorities for the provision of Worker Services, comply with all Law and government guidance, as may be issued from time to time, applicable to providing the Services relating to the Worker, including but not limited to the Employment Agencies Act 1973; the Conduct of Employment Agencies and Employment Businesses Regulations 2003; the Agency Worker Regulations 2010; and the Pensions Act 2008.

Each of the representations and warranties set out in Clauses 7.1 and 7.2 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 7.1 and 7.2 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 Authority may have in respect of the breach of that provision by the Service Provider which constitutes a material Default of this Framework Agreement.

Each time that a Call Off Contract is entered into, the warranties and representations in Clauses 7.1 and 7.2 shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time.

1. GUARANTEE

The award of this Framework Agreement is conditional upon receipt of a valid Framework Guarantee and on or prior to the execution of the Framework Agreement the Service Provider must have delivered to the Authority:

* + 1. an executed Framework Guarantee from a Framework Guarantor; and
    2. a certified copy extract of the board minutes and/or resolution of the Framework Guarantor approving the execution of the Framework Guarantee.

1. CYBER ESSENTIALS SCHEME CONDITION AND PENETRATION TESTING

The award of this Framework Agreement is conditional upon receipt of a valid Cyber Essentials Scheme Plus Certificate. On or prior to the execution of the Framework Agreement, the Service Provider must have delivered to the Authority evidence of the same.

Where the Service Provider continues to Process Cyber Essentials Scheme Data during the Framework Period or the contract period of any Call Off Contract the Service Provider shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Plus Certificate on each anniversary of the first applicable certificate obtained by the Service Provider under Clause 9.1.

In the event that the Service Provider fails to comply with Clause 9.2, the Authority reserves the right to terminate this Framework Agreement for material Default.

Where the Authority has notified the Service Provider that, prior to any I.T system or I.T service related to the Services becomes operational, the Service Provider shall commission CHECK compliant Penetration Testing with an approved CESG provider, then prior to any IT system or IT service related to the Services becoming operational, as a condition for the award of this Framework Agreement, the Service Provider must have delivered to the Authority evidence of the same.

The Service Provider shall commission CHECK compliant Penetration Testing annually during the Framework Period and the contract period of any Call Off Contract that exists beyond the Framework Period, and shall deliver to the Authority evidence of the same on each anniversary of the Penetration Testing evidence being delivered to the Authority under Clause 9.4.

In addition to the Service Provider’s obligations under Clauses 9.4 and 9.5, the Service Provider shall commission CHECK compliant Penetrating Testing if any major change is made to any IT system or IT service related to the Services during the Framework Period and the contract period of any Call Off Contract that exists beyond the Framework Period, and shall deliver to the Authority evidence of the same.

In the event that the Service Provider fails to comply with Clauses 9.4, 9.5 or 9.6 (as applicable), the Authority reserves the right to terminate this Framework Agreement for material Default.

1. DURATION OF FRAMEWORK AGREEMENT
2. FRAMEWORK PERIOD

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

Contracting Authorities shall be entitled to enter into Call Off Contracts at any time during the Framework Period.

The Service Provider shall not enter into a Call Off Contract with a Contracting Authority until the Authority has agreed that the Service Provider has satisfactorily completed its obligations under the Mobilisation Plan and the Authority has agreed that the Service Provider has satisfied its obligations under Framework Schedule 26 (Testing).

Orders may be placed at any time during the term of the Call Off Contract.

Contracting Authorities shall not be able to enter into Call Off Contracts any time after the expiry of the Framework Period.

The Service Provider shall ensure that any Call Off Contract entered into under this Framework Agreement shall expire:

* + 1. no later than the date specified in the Call Off Contract; or
    2. 18 months after the expiry of this Framework Agreement; or
    3. where the Framework Agreement has been terminated earlier in accordance with the Framework Agreement, 18 months after the Framework Agreement has been deemed to terminate,

whichever is the earlier.

Between the Framework Commencement Date and Framework Service Commencement Date, the Service Provider shall comply with the Service Mobilisation requirements set out in Part A of Framework Schedule 2 (Services and Key Performance Indicators).

The Service Provider shall provide the Services, except those which relate to Service Mobilisation, from the Framework Services Commencement Date.

The Framework Service Commencement Date is subject to the Service Provider achieving all Milestones in the Mobilisation Plan to the satisfaction of the Authority.

The Service Provider shall implement the Services in accordance with the Implementation Plan. The Vendor Management System, the PSR Marketplace [REDACTED] and any Other Technology Platforms shall be subjected to Testing in accordance with Framework Schedule 26 (Testing).

Subject to Clause 33 the Service Provider shall provide the Services for the duration of the Framework Period and any Call Off Contract entered into by them pursuant to this Framework Agreement.

1. FRAMEWORK AGREEMENT PERFORMANCE
2. FRAMEWORK AGREEMENT PERFORMANCE

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

* + 1. the requirements of this Framework Agreement, including all Framework Schedules;
    2. the terms and conditions of the respective Call Off Contracts;
    3. Good Industry Practice;
    4. all applicable Standards; and
    5. in compliance with all applicable Law.

The Service Provider shall bring to the attention of the Authority any conflict between any of the requirements of Clause 11 and shall comply with the Authority's decision on the resolution of any such conflict.

1. KEY PERFORMANCE INDICATORS AND SERVICE LEVELS

The Service Provider shall at all times during the Framework Period comply with:

* + 1. the Key Performance Indicators and achieve the KPI Targets set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators); and
    2. the Service Levels set out in Framework Schedule 28.

1. STANDARDS

The Service Provider shall comply with the Standards at all times during the performance by the Service Provider of the Framework Agreement and any Call Off Contract, including any Standards set out in Part A of Framework Schedule 2 (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 Service Provider’s provision, or the receipt by a Contracting Authority under a Call Off Contract, of the 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 Authority, the Service Provider shall be responsible for ensuring that the potential impact on the Service Provider’s provision, or a Contracting Authority’s receipt under a Call Off Contract, of the Services is explained to the Authority and the Contracting Authority (within a reasonable timeframe), 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 Service Provider. 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 (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 Service Provider shall notify the Authority and the Parties shall agree the impact of such change.

1. NOT USED
2. CONTINUOUS IMPROVEMENT

The Service Provider shall at all times during the Framework Period comply with its obligations to continually improve the Services and the manner in which it provides the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators) and Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share).

1. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT

The Service Provider shall perform all its obligations under all Call Off Contracts:

* + 1. in accordance with the requirements of this Framework Agreement, including Framework Schedule 2 (Services and Key Performance Indicators);
    2. in accordance with the terms and conditions of the respective Call Off Contracts.

The Service Provider shall draw any conflict in the application of any of the requirements of Clauses 16.1.1 and 16.1.2 to the attention of the Authority and shall comply with the Authority'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 Service Provider 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 Contract 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 Contract entered into with Contracting Authorities, the Services provided pursuant to the Call Off Contracts, and the amounts paid by each Contracting Authority under the Call Off Contracts and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.

The Service Provider shall keep the records and accounts referred to in Clause 18.1 in accordance with Good Industry Practice and Law.

The Service Provider shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised senior member of the Service Provider’s management team or by the Service Provider’s external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.

Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:

* + 1. Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
    2. all related invoices are completely and accurately included in the MI Reports;
    3. all Charges to Contracting Authorities comply with any requirements under this Framework Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and
    4. an additional sample of twenty (20)public sector orders identified from the Service Provider’s order processing and invoicing systems as orders not placed under this Framework Agreement have been correctly identified as such and that 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 mandated procurement processes executed by the Authority.

Each Self Audit Certificate should be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

The Service Provider shall afford any Auditor access to the records and accounts referred to in Clause 18.1 at the Service Provider'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 Service Provider and/or its Sub-Contractors of any of the Service Provider’s obligations under this Framework Agreement, including in order to:

* + 1. verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Call Off Contract (including proposed or actual variations to them in accordance with this Framework Agreement);
    2. verify the costs of the Service Provider (including the costs of all Sub-Contractors and any third party Service Providers) in connection with the provision of the Services;
    3. verify the Open Book Data;
    4. verify the Service Provider’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 Authority shall have no obligation to inform the Service Provider of the purpose or objective of its investigations;
    6. identify or investigate any circumstances which may impact upon the financial stability of the Service Provider ,the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;
    7. obtain such information as is necessary to fulfil the Authority’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 Service Provider in connection with this Framework Agreement;
    9. carry out the Authority’s internal and statutory audits and to prepare, examine and/or certify the Authority'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 Authority 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 Service Provider’s performance of the Services and to verify that these reflect the Service Provider’s own internal reports and records;
    13. review the integrity, confidentiality and security of the Authority Personal Data; and/or
    14. receive from the Service Provider on request summaries of all central government public sector expenditure placed with the Service Provider including through routes outside the Framework in order to verify that the Service Provider’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 Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Service Provider or delay the provision of the Services pursuant to the Call Off Contracts, save insofar as the Service Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.

Subject to the Authority's obligations of confidentiality, the Service Provider 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 Service Provider and to equipment used in the provision of the Services; and
    3. access to the Service Provider Personnel.

If an Audit reveals that the Service Provider has underpaid an amount equal to or greater than one per cent (1%) of the Management Charge due in respect of any one Contract Year or year of any Call Off Contracts then, without prejudice to the Authority’s other rights under this Framework Agreement, the Service Provider shall reimburse the Authority its reasonable costs incurred in relation to the Audit.

If an Audit reveals that:

* + 1. that the Service Provider has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due during any Contract Year of this Framework Agreement and any Call Off Contract; and/or
    2. a material Default has been committed by the Service Provider;

then the Authority 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, save as specified in Clause 18.9.

1. CHANGE
   1. Variation Procedure
      1. Subject to the provisions of this Clause 19 and, in respect of any change to the Framework Prices, subject to the provisions of Framework Schedule 3 (Framework Prices and Charging Structure), the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Service Provider, request a variation to this Framework Agreement provided always 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 Authority may request a Variation by completing, signing and sending the Variation Form as set out in Framework Schedule 19 (Variation Form) to the Service Provider giving sufficient information for the Service Provider to assess the extent of the proposed Variation and any additional cost that may be incurred.
      3. The Service Provider shall respond to the Authority’s request pursuant to Clause 19.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.
      4. In the event that the Service Provider is unable to agree to or provide the Variation the Authority 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 Service Provider shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an 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 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 19.2.1(b)), the Service Provider shall:
         1. notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, the Framework Prices or this Framework Agreement; and
         2. provide the Authority with evidence:
            1. that the Service Provider 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 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, Benchmarking and Gains Share), has been taken into account in amending the Framework Prices.
      3. Any change in the Framework Prices or relief from the Service Provider's obligations resulting from a Specific Change in Law (other than as referred to in Clause 19.2.1(b) shall be implemented in accordance with Clause 19.1(Variation Procedure).
2. MANAGEMENT CHARGE, TAXATION AND VALUE FOR MONEY PROVISIONS
3. MANAGEMENT CHARGE

In consideration of the establishment and award of this Framework Agreement and the management and administration by the Authority of the same, the Service Provider agrees to pay to the Authority the Management Charge in accordance with this Clause 20.

The Authority shall be entitled to submit invoices to the Service Provider in respect of the Management Charge due each Month based on the Management Information provided pursuant to Framework Schedule 9 (Management Information), and adjusted:

* + 1. in accordance with paragraphs 5.4 to 5.7 of Framework Schedule 9 (Management Information) to take into account of any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and
    2. in accordance with paragraph 6 of Framework Schedule 9 (Management Information)to take into account of any underpayment or overpayment as a result of the application of the Default Management Charge.

Unless otherwise agreed in writing, the Service Provider shall pay by BACS (or by such other means as the Authority may from time to time reasonably require)) the amount stated in any invoice submitted under Clause 20.2 to such account as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Service Provider) within thirty (30) calendar days of the date of issue of the invoice.

The Management Charge shall apply to the full Charges as specified in each and every Call Off Contract and, subject to Clause 20.7, shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits (as defined in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off terms) and/or any other deductions made under any Call Off Contract.

The Service Provider shall not pass through or recharge to, or otherwise recover from any Contracting Authority the cost of the Management Charge in addition to the Charges. The Management Charge shall be exclusive of VAT. In addition to the Management Charge, the Service Provider shall pay the VAT on the Management Charge at the rate and in the manner prescribed by Law from time to time.

Interest shall be payable on any late payments of the Management Charge under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

On each anniversary following the 2nd (i.e. the 3rd, 4th 5th and 6th anniversary) of the Framework Commencement Date the Parties shall review the Management Charge.

Subject to Clause 20.9, the Authority may decrease or increase the Management Charge during the Framework Period by giving notice in writing to the Service Provider.

The Management Charge shall:

* + 1. not be decreased or increased by the Authority for the first two and half (2.5) years of the Framework Commencement
    2. be no less than 0.5%; and
    3. not exceed 1% at any point during the Framework Period.

1. PROMOTING TAX COMPLIANCE

This Clause 21 shall apply if the Charges payable under this Framework Agreement are or are likely to exceed five (5) million pounds during the Framework Period.

If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Service Provider shall:

* + 1. notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
    2. promptly provide to the Authority:
       1. details of the steps that the Service Provider 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 Authority may reasonably require.

In the event that the Service Provider fails to comply with this Clause 21 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Framework Agreement for material Default.

1. BENCHMARKING

The Parties shall comply with the provisions of Framework Schedule 2 (Services and Key Performance Indicators) and Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share) in relation to the benchmarking of any or all of the Services.

1. FINANCIAL DISTRESS

The Parties shall comply with the provisions of Framework Schedule 16 (Financial Distress) in relation to the assessment of the financial standing of the Service Provider and the consequences of a change to that financial standing.

1. SERVICE PROVIDER PERSONNEL AND SUPPLY CHAIN MATTERS
2. STAFF TRANSFER
   1. The Parties agree that :
      1. where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Framework Schedule 15 (Staff Transfer) shall apply as follows:
         1. where the Relevant Transfer involves the transfer of Transferring Former Service Provider Employees, Part B of Framework Schedule 15 (Staff Transfer) shall apply; and
         2. Part C of Framework Schedule 15 (Staff Transfer) shall not apply;
      2. where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Framework Schedule 15 (Staff Transfer) shall apply and Part B of Framework Schedule 15 (Staff Transfer) shall not apply; and
      3. Part D of Framework Schedule 15 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;
   2. The Service Provider shall both during and after the Framework Period indemnify the Authority, for an on behalf of itself or any Contracting Authority, against all Employee Liabilities that may arise as a result of any claims brought against the Contracting Authority and/or Authority, as applicable, by any person where such claim arises from any act or omission of the Service Provider or any Service Provider Personnel.
3. SUPPLY CHAIN RIGHTS AND PROTECTION
   1. Appointment of Key Sub-Contractors
      1. The Authority 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 Service Provider wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Contracting Authority with whom it has entered into a Call Off Contract and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 25.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority and/or the Contracting Authority 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 Services or may be contrary to its interests;
         2. the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
         3. the proposed Key Sub-Contractor employs unfit persons.
      3. The Service Provider shall provide the Authority and the Contracting Authority with whom the Service Provider has entered into a Call Off Contract 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 Services to be provided by the proposed Key Sub-Contractor;
         3. where the proposed Key Sub-Contractor is an Affiliate of the Service Provider, evidence that demonstrates to the reasonable satisfaction of the Authority 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 Authority and/or the Contracting Authority with whom the Service Provider has entered into a Call Off Contract, within ten (10) Working Days of receipt of the information provided by the Service Provider pursuant to Clause 25.1.3, the Service Provider shall also provide:
         1. a copy of the proposed Key Sub-Contract; and
         2. any further information reasonably requested by the Authority and/or the Contracting Authority with whom the Service Provider has entered into a Call Off Contract.
      5. The Service Provider shall ensure that each new or replacement Key Sub-Contract shall include:
         1. provisions which will enable the Service Provider to discharge its obligations under this Framework Agreement;
         2. a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
         3. a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Service Provider;
         4. a provision enabling the Service Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority;
         5. obligations no less onerous on the Key Sub-Contractor than those imposed on the Service Provider under this Framework Agreement in respect of:
            1. the data protection requirements set out in Clause 27.4 (Protection of Personal Data);
            2. the FOIA requirements set out in Clause 27.3 (Transparency and Freedom of Information);
            3. the obligation set out in Clause 28.4 (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 18 (Records, Audit Access and Open Book Data);
         6. provisions enabling the Service Provider to terminate the Key Sub-Contract on notice on terms no more onerous on the Service Provider than those imposed on the Authority under Clauses 33 (Authority Termination Rights) and 35 (Consequences of Expiry or Termination) of this Framework Agreement;
         7. a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Service Provider under the Key Sub-Contract without first seeking the written consent of the Authority;
         8. where a provision in Framework Schedule 15(Staff Transfer) imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, to the Authority, Former Service Provider or the Replacement Service Provider as the case may be, in respect of any Service Provider Personnel and where any Service Provider Personnel are engaged by the Key Sub-Contractor, a provision requiring the Key Sub-Contractor to provide any such indemnity, undertaking or warranty; and
         9. where the Key Sub-Contractor engages any Workers on the Worker Services, a provision requiring that such engagement will be on the Worker Terms and Conditions.
   2. Supply Chain Protection
      1. The Service Provider shall ensure that all Sub-Contracts contain a provision:
         1. requiring the Service Provider to pay any undisputed sums which are due from the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
         2. requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Service Provider in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
         3. conferring a right to the Authority and any Contracting Authority with whom the Service Provider has entered a Call Off Contract to publish the Service Provider’s compliance with its obligation to pay undisputed invoices within the specified payment period;
         4. giving the Service Provider a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
         5. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 25.2.1; and
         6. requiring the Sub-Contractor, where it engages any Workers on the Worker Services, to engage such Workers on the Worker Terms and Conditions.
      2. The Service Provider shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Service Provider under this Framework Agreement in respect of the Cyber Essentials Scheme under Clause 9.
      3. The Service Provider shall pay any undisputed sums which are due from the Service Provider to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.
      4. Any invoices submitted by a Sub-Contractor to the Service Provider shall be considered and verified by the Service Provider in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Service Provider failing to regard an invoice as valid and undisputed.
      5. Notwithstanding any provision of Clauses  27.2 (Confidentiality) and 28 (Publicity and Branding) if the Service Provider notifies the Authority that the Service Provider has failed to pay an undisputed Sub-Contractor’s invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).
      6. The Service Provider shall ensure that all Sub-Contracts with Sub-Contractors require the Sub-Contractor to comply with Clause 28.4 (Publicity and Branding).
      7. The Service Provider shall ensure that where a provision in Framework Schedule 15 (Staff Transfer) imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, to the Authority, Former Service Provider or the Replacement Service Provider as the case may be, in respect of a Worker, and where a Worker is engaged by any Sub-Contractor, that the Sub-Contract shall include a provision requiring that Sub-Contractor to provide any such indemnity, undertaking or warranty.
   3. Termination of Sub-Contracts
      1. The Authority may require the Service Provider to terminate:
         1. a Sub-Contract where:
            1. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 33 (Authority Termination Rights) except Clause 33.7 (Termination Without Cause); and/or
            2. the relevant Sub-Contractor or its Affiliates embarrass the Authority or other Crown Bodies; cause, permit, contribute or is in any way connected to material adverse publicity relating to or affecting the Authority, other Crown Bodies or the Framework; or bring the Authority or other Crown Bodies into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority or other Crown Bodies, regardless of whether or not such act or omission is related to the Service Provider’s obligations under this Framework Agreement; and/or
         2. a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
            1. the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
            2. the Authority 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 Authority was given notice of the Change of Control.
      2. Where the Authority requires the Service Provider to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 25.3.1 above, the Service Provider shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Services.
   4. Competitive Terms
      1. If the Authority 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 Service Provider or the Service Provider Personnel in the supply of the Services, then the Authority may:
         1. require the Service Provider to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
         2. subject to Clause 25.3 (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 Authority exercises either option pursuant to Clause 25.4.1, then the Framework Prices shall be reduced by an amount that is agreed in accordance with Clause 19.1 (Variation Procedure).
      3. The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
         1. the Authority shall make the relevant item available to the Service Provider where this is necessary for the Service Provider to provide the Services; and
         2. any reduction in the Framework Prices taking into account any unavoidable costs payable by the Service Provider 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 Service Provider's right to sub-contract pursuant to this Clause 25, the Service Provider 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.
   6. Worker Terms and Conditions
      1. The Service Provider will be required to develop a range of simple Worker Terms and Conditions in line with Good Industry Practice and in consultation with appropriate Industry Bodies (including, but not limited to, the Association of Independent Professionals and the Self-Employed (IPSE), the Association of Professional Staffing Companies (APSCO) and the Recruitment and Employment Confederation (REC)), the Authority, and other relevant Government bodies (including, but not limited to Civil Service Workforce Policy and Reward Team, Civil Service Workforce Strategy & Inclusion and Civil Service Employee Policy).
      2. The Worker Terms and Conditions developed in consultation with relevant third parties under Clause 25.6.1, may vary (e.g. according to whether the Worker is engaged through Personal Services Company (PSC), Umbrella Company, PAYE, Fixed Term Appointment (FTA) or any other mechanism), but shall, as a minimum include provisions to deal with:
         1. Insurances;
         2. Liabilities;
         3. Tax liability;
         4. Right of substitution;
         5. Legislative requirements and Procurement Policy Notices (PPNs);
         6. IP;
         7. Confidentiality;
         8. Conflicts of interest;
         9. Official Secrets Act;
         10. Security;
         11. IT Security;
         12. FOI compliance;
         13. Corruption / fraud;
         14. Discrimination, bullying and harassment; and
         15. Transfer fees (including temp to temp, temp to perm and temp to third party as referred to in paragraph 3.6 of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators).
      3. The Worker Terms and Conditions shall not include Restrictive Covenants.
      4. The Worker Terms and Conditions will be approved through the Joint Governance Board prior to the engagement by the Service Provider or any Sub-Contractor of any Worker to deliver the Worker Services or any part of the Worker Services.
4. INTELLECTUAL PROPERTY AND INFORMATION
5. 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 26.1.1, 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 Clause 26.1.4, 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 any Authority branding guidance, the Service Provider shall be entitled to use the Authority’s logo exclusively in connection with the provision of the Services during the Framework Period and for no other purpose.
      5. The Service Provider hereby grants (and (as necessary) shall procure that any relevant third party shall grant) to the Authority a non-exclusive, irrevocable, transferable and royalty free licence (with the right to grant sub licences on similar terms) to use, amend, modify, enhance and exploit the Bespoke IPR and to use the Service Provider IPR as may be necessary to receive the benefit of the Services or for the purposes of re-procuring of the Services.
      6. The Authority hereby grants to the Service Provider a royalty free non exclusive, non assignable licence to use the Authority's IPR during the Framework Period for the sole purpose of enabling the Service Provider to provide the Services and not for any other purpose or for the benefit of any person other than the Authority. Such licence includes the right to grant sub licences to Sub-Contractors for the same purpose provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Service Provider on the same terms as set out in 27.2.6(d)(Confidentiality).
   2. IPR Indemnity
      1. The Service Provider shall ensure and procure that the availability, provision and use of the Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
      2. The Service Provider shall, during and after the Framework Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (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 Service Provider anticipates that an IPR Claim might be made, the Service Provider may, at its own expense and sole option, either:
         1. procure for the Authority 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 Services;
            3. there is no additional cost to the Authority; and
            4. the terms and conditions of this Framework Agreement shall apply to the replaced or modified Services.
      4. If the Service Provider elects to procure a licence in accordance with Clause 26.2.3(a) or to modify or replace an item pursuant to Clause 26.2.3(b), but this has not avoided or resolved the IPR Claim, then:
         1. the Authority may terminate this Framework Agreement by written notice with immediate effect; and
         2. without prejudice to the indemnity set out in Clause 26.2.2, the Service Provider 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.
   3. Vendor Management System, PSR Marketplace, [REDACTED] and Other Technology Platforms licences
      1. The Service Provider hereby grants to the Authority and its employees, agents, Sub-Contractors, consultants or other individuals representing the Authority a free of charge, non-exclusive, revocable licence to access and use the Vendor Management System, the PSR Marketplace, [REDACTED] and any Other Technology Platforms for the purposes of receiving the Services including (without limitation) administering or managing its obligations and the provision of the Services under the Framework Agreement.
      2. The Service Provider agrees that it shall enter into agreements with Agency Providers, other Key Sub-Contractors and Contracting Authorities upon request to permit their use of the Vendor Management System, the PSR Marketplace and [REDACTED] and any Other Technology Platforms. The Service Provider shall enter into licences with the same on the terms set out in Framework Schedule 30 (Vendor Management System, PSR Marketplace, [REDACTED] and any Other Technology Platform Licences (Corporate)).
      3. The Service Provider agrees that it shall enter into agreements with Workers upon request to permit their use of the Vendor Management System, PSR Marketplace, [REDACTED] and any Other Technology Platforms***.*** The Service Provider shall enter into licences with Workers on the terms set out in Framework Schedule 31 (Vendor Management System, PSR Marketplace, [REDACTED] and any Other Technology Platform Licences (Worker).
      4. The Service Provider shall not change or attempt to change the form of licence set out in Framework Schedule 30 and Framework Schedule 31 when entering into licensing agreements with Agency Providers, Contracting Bodies and Workers without the prior agreement of the Authority in writing.
6. PROVISION AND PROTECTION OF INFORMATION
   1. Provision of Management Information
      1. The Service Provider shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Framework Schedule 9 (Management Information).
      2. The Service Provider grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
         1. use and to share with any Contracting Authority 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 Authority for the Authority's Framework Agreement and/or all Call Off Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

* + 1. The Authority 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 Authority may consult with the Service Provider to help with its decision regarding any exemptions under Clause 27.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.
  1. Confidentiality
     1. For the purposes of this Clause 27.2, 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 27.2 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 27.3 (Transparency and 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 Authority arising out of or in connection with this Framework Agreement;
           2. the examination and certification of the Authority'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 Authority 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. such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
        5. such information was obtained from a third party without obligation of confidentiality;
        6. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement or breach of a duty of confidentiality; and
        7. the information is independently developed without access to the Disclosing Party's Confidential Information.
     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 27.2.2 and 27.2.3, the Service Provider may only disclose the Confidential Information of the Authority on a confidential basis to:
        1. Service Provider Personnel who are directly involved in the provision of theServices and need to know the Confidential Information to enable the performance of the Service Provider’s obligations under this Framework Agreement or any Call Off Contract; and
        2. its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
     6. Where the Service Provider discloses the Confidential Information of the Authority pursuant to Clause 27.2.5, it shall do the following:
        1. 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;
        2. ensure that the Service Provider Personnel and / or its professional advisers are aware of the Service Provider's confidentiality obligations under this Framework Agreement;
        3. shall use its best endeavours to ensure that the Service Provider Personnel and / or its professional advisers comply with the Service Provider's confidentiality obligations under this Framework Agreement;
        4. at the written request of the Authority (which shall not be made unreasonably), the Service Provider shall procure that members of the Service Provider Personnel and / or its professional advisers whom the Authority may identify from time to time, sign a confidentiality undertaking in a form acceptable to the Authority prior to commencing any work in accordance with this Framework Agreement; and
        5. the Service Provider shall not, and shall procure that the Service Provider Personnel and / or its professional advisers do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Framework Agreement.
        6. in the event that any default, act or omission of any Service Provider Personnel and / or its professional advisers causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Framework Agreement, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Service Provider Personnel, the Service Provider shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Service Provider is taking appropriate steps to comply with its confidentiality obligations, including copies of any written communications to and / or from Service Provider Personnel and its professional advisers, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Service Provider Personnel in connection with obligations as to confidentiality.
     7. The Authority may disclose the Confidential Information of the Service Provider:
        1. to any Central Government Body or Contracting Authority on the basis that the information may only be further disclosed to Central Government Bodies or Contracting Authorities;
        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 Authority (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, Service Provider or other person engaged by any of the entities described in Clause 27.2.7(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 Authority,
        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 Authority under this Clause 27.2.7.
     8. For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 27.2.7 shall include information relating to Call Off Contracts, including Orders, service levels, pricing information and the terms of any Call Off Contract may be shared with any Central Government Body or Contracting Authority from time to time.
     9. Nothing in this Clause 27.2 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 Service Provider fails to comply with Clauses 27.2.2 to 27.2.6 and Clauses 27.2.11 to 27.2.14 below, the Authority reserves the right to terminate this Framework Agreement for material Default.
     11. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Framework Agreement or the Call Off Contracts, the Service Provider undertakes to and shall maintain adequate security arrangements that meet the requirements of Good Industry Practice.
     12. The Service Provider shall immediately notify the Authority of any breach of security in relation to Authority’s Confidential Information obtained in the performance of this Framework Agreement and the Call Off Contracts and will keep a record of such breaches and shall use its best endeavours to recover such Authority’s Confidential Information however it may be recorded.
     13. The Service Provider shall co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Authority’s Confidential Information.
     14. The Service Provider shall at its own expense, alter any security systems used in connection with the performance of this Framework Agreement or Call Off Contract at any time during the Framework Period at the Authority's request if the Authority believes (acting reasonably) the Service Provider has failed to comply with Clause 27.2.6(b).
  2. Transparency and Freedom of Information
     1. The Parties acknowledge that:
        1. the Transparency Reports; and
        2. the content of this Framework Agreement, including any changes to this Framework Agreement agreed from time to time, except for:
           1. any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
           2. Commercially Sensitive Information

(together the “Transparency Information”) are not Confidential Information.

* + 1. Notwithstanding any other provision of this Framework Agreement, the Service Provider hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
    2. The Service Provider shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 22 (Transparency Reports).
    3. If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Service Provider.
    4. The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Framework Agreement is being performed, having regard to the context of the wider commercial relationship with the Service Provider.
    5. The Service Provider agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 27.2.7(c)) and Open Book Data) publish such Information. The Service Provider shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
    6. The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
       1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
       2. transfer to the Authority 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 Authority with a copy of all Information held on behalf of the Authority requested in the Request for Information which is in the Service Provider’s possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
       4. not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.
    7. The Service Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. The Authority shall take reasonable steps to notify the Service Provider 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 Authority 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 EIRs.
  1. 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 Authority is the Data Controller and that the Service Provider is the Data Processor.
     2. The Service Provider shall:
        1. Process the Personal Data only in accordance with instructions from the Authority 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 Service Provider Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (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 Service Provider Personnel who have access to the Personal Data and ensure that the Service Provider Personnel:
           1. are aware of and comply with the Service Provider’s duties under this Clause 27.4.2 and Clause 27.2 (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 Authority 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 Authority 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 Authority's obligations under the DPA;
           2. any communication from the Information Commissioner or any other regulatory authority 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 Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 27.4.2(e), including by promptly providing:
           1. the Authority with full details and copies of the complaint, communication or request;
           2. where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
           3. the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
        7. if requested by the Authority, provide a written description of the measures that the Service Provider has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 27.4.2  and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
     3. The Service Provider shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Framework Commencement Date, the Service Provider 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 Service Provider shall propose a variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 19.1 (Variation Procedure) and Clauses 27.4.3(b) to 27.4.3(d);
        2. the Service Provider shall set out in its proposal to the Authority 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 Service Provider 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 Authority’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 Authority, 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 Service Provider shall comply with such other instructions and shall carry out such other actions as the Authority 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 Authority on such terms as may be required by the Authority; or

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

and the Service Provider 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 Authority deems necessary for the purpose of protecting Personal Data.

* + 1. The Service Provider shall use its reasonable endeavours to assist the Authority 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 Authority to breach any of the Authority’s obligations under the DPA to the extent the Service Provider 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 29 (Marketing), the Service Provider shall not:

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

without Approval (the decision of the Authority 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 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 Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

The Service Provider shall ensure that neither it nor any of its Affiliates, Sub-Contractors, sub-contractors, employees, agents, servants or representatives:

* + 1. embarrass the Authority or other Crown Bodies;
    2. cause, permit, contribute or is in any way connected to material adverse publicity relating to or affecting the Authority, other Crown Bodies or the Framework; or
    3. bring the Authority or other Crown Bodies into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority or other Crown Bodies, regardless of whether or not such act or omission is related to the Service Provider’s obligations under this Framework Agreement.

1. MARKETING

The Service Provider shall undertake marketing of this Framework Agreement and the Services on behalf of the Authority to Contracting Authorities in accordance with the provisions of Framework Schedule 11 (Marketing).

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

The Service Provider does not exclude or limit its liability in respect of the indemnity in Clause 26.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

Subject to Clauses 30.1 and 30.2, the Service Provider’s total aggregate liability:

* + 1. in respect of all:
       1. Service Credits; and
       2. Compensation for Critical Service Level Failure,

incurred in any rolling period of 12 Months shall be subject in aggregate to the Service Credit Cap;

* + 1. in respect of all other Losses incurred under or in connection with this Framework Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed:
       1. in relation to any Default occurring from the Framework Commencement Date to the end of the first Contract Year, a sum equal to one hundred and twenty five percent (125%) of the Estimated Year 1 Management Charge;
       2. in relation to any Default occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Service Provider under this Framework Agreement in the previous Contract Year; and
       3. in relation to any Default occurring in each Contract Year that commences after the end of the Framework Period, a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Service Provider under this Framework Agreement in the last Contract Year commencing during the Framework Period.

Subject to Clauses 30.1 and 30.2, the Authority's total aggregate liability in respect of all Losses as a result of Authority Causes shall be limited to:

* + 1. in relation to any Authority Cause occurring from the Framework Commencement Date to the end of the first Contract Year, a sum equal to one hundred and twenty five percent (125%) of the Estimated Year 1 Management Charge;
    2. in relation to any Authority Cause occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Service Provider under this Framework Agreement in the previous Contract Year; and
    3. in relation to any Authority Cause occurring in each Contract Year that commences after the end of the Framework Period, a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Service Provider under this Framework Agreement in the last Contract Year commencing during the Framework Period.

Subject to Clause 30.1 and 30.2, 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 30.3, and notwithstanding Clause 30.4, the Service Provider acknowledges that the Authority may, amongst other things, recover from the Service Provider the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Service Provider:

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

Any Default Management Charge shall not be taken into consideration when calculating the Service Provider’s liability under Clause 30.3.

For the avoidance of doubt, the Parties acknowledge and agree that this Clause 30 shall not limit the Service Provider’s liability to a Contracting Authority under any Call Off Contract and the Service Provider’s liability under a Call Off Contract shall be as provided for in that Call Off Contract only.

The Parties acknowledge and agree that the Framework Agreement constitutes a framework arrangement for the provision of Services relating to the supply of Workers to Contracting Authorities and not a contract of employment. The Service Provider shall at all times indemnify the Authority and keep the Authority, and any Contracting Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority or any Contracting Authority, other than as a result of acts or omissions on the part of the Authority or a Contracting Authority, is alleged or determined to have been assumed or imposed with the liability or responsibility for Workers (or any of them) as an employer of the Workers and/or any liability or responsibility to HM Revenue or Customs as an employer of the Workers whether during the Framework Period or arising from termination or expiry of the Framework Agreement.

1. INSURANCE

The Service Provider shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement and any Call Off Contract, and shall procure that Sub-Contractors 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 Contracts.

1. REMEDIES
2. AUTHORITY REMEDIES

Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 33.2 (Termination on Material Default), if the Service Provider fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Service Provider acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

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

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

1. TERMINATION AND SUSPENSION
2. AUTHORITY TERMINATION RIGHTS
   1. Termination in Relation To Guarantee
      1. Where the Authority has procured a Framework Guarantee from the Service Provider under Clause 8.1 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Service Provider where:
         1. the Framework Guarantor withdraws the Framework Guarantee for any reason whatsoever;
         2. the Framework Guarantor is in breach or anticipatory breach of the Framework Guarantee;
         3. an Insolvency Event occurs in respect of the Framework Guarantor;
         4. the Framework Guarantee becomes invalid or unenforceable for any reason whatsoever; or
         5. the Service Provider fails to provide the documentation required by Clause 8.1 by the date so specified by the Authority;

and in each case the Framework Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

* 1. Termination on Material Default
     1. The Authority may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Service Provider where:
        1. the Service Provider commits a Critical Service Level Failure;
        2. the Service Provider fails to accept a Call Off Contract pursuant to paragraph 1 of Framework Schedule 5 (Call Off Procedure);
        3. a Contracting Authority terminates a Call Off Contract for the Service Provider’s breach of that Call Off Contract;
        4. an Audit reveals that the Service Provider has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due;
        5. NOT USED
        6. the Service Provider refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share);
        7. in the event of two or more failures by the Service Provider to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;
        8. the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
           1. Clauses 9.3 and 9.7 (Cyber Essentials Scheme Condition and Penetration Testing)
           2. Clause 19.1.4(b) (Variation Procedure);
           3. Clause 32.1.4 (Authority Remedies);
           4. Clause 27.2.10 (Confidentiality);
           5. Clause 40.6.2 (Prevention of Fraud and Bribery);
           6. Clause 36.1.2 (Compliance with the Law);
           7. Clause  41.3 (Conflicts of Interest);
           8. paragraph 6.2 of Framework Schedule 9 (Management Information); and/or
           9. anywhere that is stated in this Framework Agreement that the Service Provider, by its act or omission, will have committed a material Default;
        9. the Service Provider commits a material Default of any of the following Clauses or Framework Schedules:
           1. Clause 7 (Representations and Warranties) except Clause 7.2.6;
           2. Clause 11 (Framework Agreement Performance);
           3. NOT USED
           4. Clause 18 (Records, Audit Access and Open Book Data);
           5. Clause 20 (Management Charge);
           6. Clause 21 (Promoting Tax Compliance);
           7. Clause 24 (Staff Transfer);
           8. Clause 25 (Supply Chain Rights and Protection);
           9. Clause 27.1 (Provision of Management Information);
           10. Clause 27.3 (Transparency and Freedom of Information);
           11. Clause 27.4 (Protection of Personal Data);
           12. paragraph 1.2 of Part B of Framework Schedule 2 (Services and Key Performance Indicators); and/or
           13. Framework Schedule 15 (Staff Transfer);
        10. the representation and warranty given by the Service Provider pursuant to Clause 7.2.6 is materially untrue or misleading, and the Service Provider fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
        11. the Service Provider commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy;
        12. the Service Provider commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Service Provider specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority; and/or
        13. the Service Provider fails to comply with any of Clause 28.4 (Publicity and Branding).
  2. Termination in Relation to Financial Standing
     1. The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Service Provider where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which:
        1. adversely impacts on the Service Provider's ability to supply the Services under this Framework Agreement; or
        2. could reasonably be expected to have an adverse impact on the Service Providers ability to supply the Services under this Framework Agreement;]
  3. Termination on Insolvency
     1. The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Service Provider where an Insolvency Event affecting the Service Provider occurs.
  4. Termination on Change of Control
     1. The Service Provider shall notify the Authority immediately in writing and as soon as the Service Provider is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
     2. The Service Provider shall ensure that any notification made pursuant to Clause 33.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
     3. The Authority may terminate this Framework Agreement under Clause 33.5 by issuing a Termination Notice to the Service Provider within six (6) Months of:
        1. being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
        2. where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated 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. Where the Service Provider is a special purpose vehicle, formed by a consortium for the purposes of this Framework ("SPV") the Service Provider shall notify the Authority immediately in writing if any shareholder of such SPV transfers all or any of its shares in such SPV (to any other shareholder or any other person) or in any other way ceases to be involved in all or part of the provision of the Services pursuant to the terms of this Framework Agreement.
    2. The Authority may terminate this Framework Agreement under Clause 33.5.4 by giving notice in writing to the Service Provider with immediate effect within six (6) months of:
       1. being notified that a transfer of shares or cessation of involvement (as envisaged by Clause 33.5.4) has occurred; or
       2. where no notification has been made, the date that the Authority becomes aware of the transfer of shares or cessation of involvement (as envisaged by Clause 33.5.4),

if it believes, acting reasonably, that such change would have caused the Service Provider to have failed the financial and/or technical assessment carried out as part of the assessment of legal, economic and technical capacity which preceded the award of this Framework Agreement or if the Authority has reasonable grounds to believe that such a Change of Control would call the Service Provider’s compliance with the Business Rules into question.

* 1. Termination for breach of Regulations
     1. The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Service Provider on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).
  2. Termination Without Cause
     1. The Authority shall have the right to terminate this Framework Agreement with effect from at any time following nine (9) Months after the Framework Service Commencement Date by giving at least three (3) Months' written notice to the Service Provider.
  3. Partial Termination
     1. Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 33.8 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority’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 19.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Services and the Framework Prices provided that:
        1. the Service Provider shall not be entitled to an increase in the Framework Prices in respect of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority’s termination rights under Clause 33 (Authority Termination Rights) with the exception of Clause 33.7 (Termination Without Cause); and
        2. the Service Provider shall not be entitled to reject the variation.
  4. Termination on Critical Service Level Failure
     1. The Authority may terminate this Framework Agreement by serving notice on the Service Provider in writing with effect from the date specified in such notice in the event of a Critical Service Level Failure.
  5. Termination on failure of Testing
     1. The Authority may terminate this Framework Agreement by serving notice on the Service Provider in writing with effect from the date specified in such notice in the event the Vendor Management System, the PSR Marketplace [REDACTED] and any Other Technology Platforms fail to satisfactorily complete the Testing procedures in accordance with Framework Schedule 6.
  6. Termination on failure of Vendor Management System, PSR Marketplace, [REDACTED] and any Other Technology Platforms to secure security accreditation
     1. The Authority may terminate this Framework Agreement by serving notice on the Service Provider in writing with effect from the date specified in such notice in the event the Vendor Management System, the PSR Marketplace [REDACTED] and any Other Technology Platforms fail to secure accreditation against HMG IA Standard in accordance with Framework Schedule 25.
  7. Termination for continuing Force Majeure Event
     1. Either Party may, by written notice to the other, terminate this Framework Agreement with effect from the date specified in such notice if a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) Working Days.

1. SUSPENSION OF SERVICE PROVIDER'S APPOINTMENT

If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 33 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Service Provider's ability to accept Orders under this Framework Agreement by giving notice in writing to the Service Provider, and the Service Provider agrees that it shall not be entitled to enter into any new Call Off Contract during the period specified in the Authority’s notice.

Any suspension under Clause 34.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

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

If the Authority provides notice to the Service Provider in accordance with this Clause 34.1, the Service Provider's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Service Provider by the Authority in writing from time to time.

For the avoidance of doubt, no period of suspension under this Clause 34 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 Service Provider 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 35.

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

If the Authority terminates this Framework Agreement under Clause  33.2 (Termination on Material Default) and then makes other arrangements for the supply of the Services to Contracting Authorities, the Service Provider shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement services to the Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Service Provider the full amount of such cost.

Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Service Provider shall return to the Authority any and all of the Authority’s Confidential Information in the Service Provider's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, 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 Authority 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), 7 (Representations and Warranties), 9 (Cyber Essentials Scheme Condition and Penetration Testing), 11 (Framework Agreement Performance), 18 (Records, Audit Access and Open Book Data), 20 (Management Charge), 23 (Financial Distress), 24 (Staff Transfer), 26 (Intellectual Property Rights), 27.1 (Provision of Management Information), 27.2 (Confidentiality), 27.3 (Transparency), 27.3 (Transparency and Freedom of Information), 27.4 (Protection of Personal Data), 30 (Liability), 31 (Insurance), 35 (Consequences of Expiry or Termination), 36 (Compliance), 38 (Waiver and Cumulative Remedies), 40 (Prevention of Fraud and Bribery), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 46 (Notices), 47 (Complaints Handling), 48 (Dispute Resolution) and 49 (Governing Law and Jurisdiction); and
    2. Framework Schedules 2 (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, Benchmarking and Gains Share), 13 (Guarantee), 14 (Insurance Requirements), 15 (Staff Transfer), 16 (Financial Distress), 17 (Commercially Sensitive Information) and 21 (Final Tender).

Where this Framework Agreement expires or is terminated the Service Provider shall, where so requested by the Authority, provide assistance to the Authority and Contracting Authorities to migrate the provision of the Services to a Replacement Service Provider including as set out in the Exit Plan.

The Service Provider shall, within three (3) Months after the Framework Commencement Date, deliver to the Authority a draft plan which sets out the Service Provider’s proposed methodology for achieving orderly transition of the provision of the Services from the Service Provider to the Authority and/or the Replacement Service Provider on the expiry or termination of this Agreement (the “Draft Exit Plan”). Within thirty (30) Working Days after submission of the Draft Exit Plan (or any revised Exit Plan) the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure. The version of the Draft Exit Plan as agreed between the Parties or following the Dispute Resolution Procedure shall be the “Exit Plan”. The Service Provider shall review and update the Exit Plan within one (1) Month of each anniversary of the Commencement Date and shall comply with the exit planning provisions as set out in Framework Schedule 23.

1. MISCELLANEOUS AND GOVERNING LAW
2. COMPLIANCE
   1. Compliance with Law
      1. The Service Provider shall comply with all applicable Law in connection with the performance of this Framework Agreement.
      2. In the event that the Service Provider or the Service Provider Personnel fails to comply with Clause 36.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Service Provider.
   2. Equality and Diversity
      1. The Service Provider shall:
         1. perform its obligations under this Framework Agreement (including those in relation to the provision of the 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 Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
         2. take all necessary steps, and inform the Authority 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 Service Provider 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 Service Provider 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 Authority 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 Contracting Authority; or
    2. 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 Authority; or
    3. any private sector body which substantially performs the functions of the Authority,

and the Service Provider shall, at the Authority’s request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 37.2.

A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 37.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Contracting Authority or if a body which is not a Contracting Authority succeeds the Authority (both “**Transferee**” in the rest of this Clause) the right of termination of the Authority in Clause 33.4 (Termination on Insolvency) shall be available to the Service Provider in the event of the insolvency of the Transferee (as if the references to Service Provider in Clause 33.4 (Termination on Insolvency)) and to Service Provider or the 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 46 (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 Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider 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 Service Provider 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 Authority or any of the Authority’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 Service Provider shall during the Framework Period:

* + 1. 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. require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 40.3.1;
    3. keep appropriate records of its compliance with its obligations under Clause 40.3.1 and make such records available to the Authority on request;
    4. if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 40.3 of all persons associated with the Service Provider or its Sub-Contractors who are responsible for supplying the Services in connection with this Framework Agreement. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request; and
    5. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Service Provider Personnel or any person acting on the Service Provider's behalf from committing a Prohibited Act.

The Service Provider shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 40.1, 40.2 and 40.3.2, or has reason to believe that it has or any of the Service Provider 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 Service Provider makes a notification to the Authority pursuant to Clause 40.4, the Service Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 18 (Records, Audit Access and Open Book Data).

If the Service Provider breaches Clause 40.1,the Authority may by notice:

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

Any notice served by the Authority under Clause 40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

1. CONFLICTS OF INTEREST

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

The Service Provider shall promptly notify and provide full particulars to the Authority or the relevant Contracting Authority if such conflict referred to in Clause 41.1 arises or may reasonably been foreseen as arising.

The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Authority under the provisions of this Framework Agreement or any Call Off Contract. The action of the Authority pursuant to this Clause 41.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

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 42.1 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 42 within twenty (20) Working Days of the date of the notice given pursuant to Clause 42.2, 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 42.3.

1. FURTHER ASSURANCES AND CALL OFF CONTRACT PREPARATION

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.

The Service Provider shall at no charge to the Contracting Authority prepare a complete Call Off Contract unless this is not required by the Contracting Authority.

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 44 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), 6 (Assistance in Related Procurements), 7 (Representations and Warranties), 8 (Guarantee), 16 (Call Off Performance Under Framework Agreement Performance), 18 (Records, Audit Access and Open Book Data), 24 (Staff Transfer), 27.4 (Protection of Personal Data), 30.9 (Liability), 31 (Insurance), 36.2 (Equality and Diversity) and 45 (Third Party Rights); and
    2. Framework Schedules 3 (Framework Prices and Charging Structure ), 5 (Call Off Procedure), 13 (Guarantee), 14 (Insurance Requirements), 15 (Staff transfer) and 21 (Final 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 45.1, 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 Authority may determine.

Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 45.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

The Authority 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 46, an e-mail is accepted as being "in writing".

Subject to Clause 46.3, 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 46.3) | 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 46.2 within twenty four (24) hours of transmission of the email:

* + 1. any Termination Notice under Clause 33 (Authority Termination Rights), including in respect of partial termination;
    2. any notice in respect of:
       1. Suspension of Service Provider’s appointment (Clause 34)
       2. Waiver (Clause 38);
       3. Default or Authority Cause; and
    3. any Dispute Notice.

Failure to send any original notice in accordance with Clause 46.3 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 46.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

This Clause 46 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 46, the address of each Party shall be:

* + 1. For the Authority:

**Crown Commercial Service**  
9th Floor  
The Capital  
Old Hall Street  
Liverpool  
L3 9PP

For the attention of: **Workforce Category Director**

* + 1. For the Service Provider:

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

For the attention of: **[REDACTED]**

Either Party may change its address for service by serving a notice in accordance with this Clause 46.

This Clause 46 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 Contracting Authorities, which are not resolved by operation of the Service Provider's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Service Provider is the Party providing the notice, such notice shall contain full details of the Service Provider'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 Contract), and without prejudice to any obligation of the Service Provider to take remedial action under the provisions of this Framework Agreement and/or a Call Off Contract, the Service Provider 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 Authority, the Service Provider shall provide full details of a Complaint to the Authority, 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, which is set out in Framework Schedule 18 (Dispute Resolution Procedure).

The Service Provider shall continue to provide the 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 48 (Dispute Resolution) and Framework Schedule 18 (Dispute Resolution Procedure) (including the Authority’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.

1. FORCE MAJEURE
   1. Subject to the remaining provisions of this Clause 50, either Party to this Framework Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
   2. A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   3. An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
   4. The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
   5. As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Framework Agreement. Where the Service Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
   6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement. Following such notification, this Framework Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
2. MALICIOUS SOFTWARE
   1. The Service Provider shall, as an enduring obligation throughout the Framework Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed between the Parties).
   2. Notwithstanding Clause 51.1, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
   3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 51 shall be borne by the Parties as follows:
      1. by the Service Provider, where the Malicious Software originates from the Authority Data (whilst the Authority Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Service Provider; and
      2. by the Authority if the Malicious Software originates from the Authority’s software or the Authority Data (whilst the Authority Data was under the control of the Authority).
3. SECURITY REQUIREMENTS
   1. The Service Provider shall comply, and shall procure the compliance of the Service Provider Personnel, with the Security Requirements set out in Framework Schedule 25 (Security Requirements), including the Security Management Plan and the Service Provider shall ensure that the Security Management Plan produced by the Service Provider fully complies with the Security Requirements set out in Framework Schedule 25 (Security Requirements).
   2. The Authority shall notify the Service Provider of any changes or proposed changes to the Security Requirements.
   3. If the Service Provider believes that a change or proposed change to the Security Requirements will have a material and unavoidable cost implication to the provision of the Services it shall notify the Authority. In doing so, the Service Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Framework Prices shall then be agreed in accordance with the Framework Agreement.
   4. Until and/or unless a change to the Framework Prices is agreed by the Authority pursuant to Clause 52.3 the Service Provider shall continue to perform the Services in accordance with its existing obligations.
4. BUSINESS CONTINUITY AND DISASTER RECOVERY
   1. The Parties shall comply with Framework Schedule 27 (Business Continuity and Disaster Recovery).
5. EXIT MANAGEMENT
   1. The Parties shall comply with Framework Schedule 23 (Exit Management).
6. SERVICE LEVELS AND SERVICE CREDITS
   1. The Parties shall comply with Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring).
   2. The Service Provider shall at all times during the Framework Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
   3. The Service Provider acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and that it shall entitle the Authority to the rights set out in Part A of Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring) including the right to any Service Credits.
   4. The Service Provider acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Service Provider’s failure to meet any Service Level Performance Measure.
   5. A Service Credit shall be the Authority’s exclusive financial remedy for a Service Level Failure except where:
      1. the Service Provider has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
      2. the Service Level Failure:
         1. exceeds the relevant Service Level Threshold;
         2. has arisen due to a Prohibited Act or wilful Default by the Service Provider or any Service Provider Personnel; and
         3. results in the corruption or loss of any Authority Data in which case the following remedies are available:
            1. the Service Provider shall, at the Service Provider's expense, restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Framework Schedule 27  (Business Continuity and Disaster Recovery) or as otherwise required by the Authority, and the Service Provider shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority’s notice; and/or
            2. the Authority shall itself restore or procure the restoration of Authority Data, and require the Service Provider to repay any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Framework Schedule 27  (Business Continuity and Disaster Recovery) or as otherwise required by the Authority; and/or
         4. the Authority being required to make a compensation payment to one or more third parties; and/or
      3. the Authority is otherwise entitled to or does terminate this Framework Agreement pursuant to Clause 33.2.1(a) (Authority Termination Rights) except Clause 33.7 (Termination Without Cause).
   6. Not more than once in each Contract Year, the Authority may, on giving the Service Provider at least three (3) Months’ notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Service Provider shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
      1. the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed three (3);
      2. the principal purpose of the change is to reflect changes in the Authority’s business requirements and/or priorities or to reflect changing industry standards; and
      3. there is no change to the Service Credit Cap.
   7. On the occurrence of a Critical Service Level Failure:
      1. any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
      2. the Customer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to the total Managed Service Provide Fee which would otherwise have been due to the Service Provider in respect of that Service Period (“**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 55.7 shall be without prejudice to the right of the Authority to terminate this Framework Agreement and/or to claim damages from the Service Provider for material Default as a result of such Critical Service Level Failure.

* 1. The Service Provider:
     1. agrees that the application of Clause 55.7 is commercially justifiable where a Critical Service Level Failure occurs; and
     2. acknowledges that it has taken legal advice on the application of Clause 55.7 and has had the opportunity to price for that risk when calculating the Charges.

1. TESTING
   1. The Parties shall comply with Framework Schedule 26 (Testing).
2. TECHNOLOGY SYSTEM REQUIREMENTS
   1. The Parties shall comply with Framework Schedule 24 (Technology System Requirements).
3. STEP IN RIGHTS
   1. On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Service Provider (a “Step-In Notice”) that it will be taking action under this Clause 58 (Step-in Rights), either itself or with the assistance of a third party (provided that the Service Provider may require any third parties to comply with a confidentiality undertaking equivalent to Clause 27.2 (Confidentiality)). The Step-In Notice shall set out the following:
      1. the action the Authority wishes to take and in particular the Services that itwishes to control (the “Required Action”);
      2. the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Service Provider’s Default;
      3. the date on which it wishes to commence the Required Action;
      4. the time period which it believes will be necessary for the Required Action;
      5. whether the Authority will require access to the Service Provider’s premises and/or the Sites; and
      6. to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Service Provider’s obligations to provide the Services during the period that the Required Action is being taken.
   2. Following service of a Step-In Notice, the Authority shall:
      1. take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
      2. keep records of the Required Action taken and provide information about the Required Action to the Service Provider;
      3. co-operate wherever reasonable with the Service Provider in order to enable the Service Provider to continue to provide the Services in relation to which the Authority is not assuming control; and

act reasonably in mitigating the cost that the Service Provider will incur as a result of the exercise of the Authority's rights under this Clause 58.

* 1. For so long as and to the extent that the Required Action is continuing, then:
     1. the Service Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
     2. no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 58.4 shall apply to Deductions from Charges in respect of other Services; and
     3. the Authority shall pay to the Service Provider the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
  2. If the Service Provider demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
     1. the degradation of any Services not subject to the Required Action; or
     2. the non-Achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Service Provider shall be entitled to an agreed adjustment of the Charges.

* 1. Before ceasing to exercise its step in rights under this Clause 58 the Authority shall deliver a written notice to the Service Provider (a “Step-Out Notice”), specifying:
     1. the Required Action it has actually taken; and
     2. the date on which the Authority plans to end the Required Action (the“Step-Out Date”) subject to the Authority being satisfied with the Service Provider’s ability to resume the provision of the Services and the Service Provider’s plan developed in accordance with Clause 58.6.
  2. The Service Provider shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a “Step-Out Plan”) relating to the resumption by the Service Provider of the Services, including any action the Service Provider proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
  3. If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Service Provider of its reasons for not approving it. The Service Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority’s approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
  4. The Service Provider shall bear its own costs in connection with any step-in by the Authority under this Clause 58, provided that the Authority shall reimburse the Service Provider’s reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
     1. limbs (c) or (d) of the definition of a Step-In Trigger Event; or
     2. limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Service Provider’s Default).

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

Signed duly authorised for and on behalf of the SERVICE PROVIDER

Signature: **[REDACTED]**

Name: **[REDACTED]**

Position: **[REDACTED]**

Date: **[REDACTED]**

Signed for and on behalf of the AUTHORITY

Signature: **[REDACTED]**

Name: **[REDACTED]**

Position: **[REDACTED]**

Date: **[REDACTED]**

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, save for Framework Schedules 3, 8, 12, 13, 15, 16, 18, 23, 25 and 27 where Schedule-specific definitions are specified:

|  |  |
| --- | --- |
| “Achieve” | means:  (a) in respect of a Test, to successfully pass a Test without any Test Issues; and  (b) in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone,  and **“Achieved”** and **“Achievement”** shall be  construed accordingly; |
| "Admin Fees" | means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: https://www.gov.uk/guidance/current-crown-commercial-service-suppliers-what-you-need-to-know (refer to ‘Submitting monthly management information’ |
| "Affiliates" | 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; |
| “Agency Provider” | means a Sub-Contractor appointed by the Service Provider to supply Workers to provide Worker Services, via Agency Supply, to Contracting Authorities; |
| “Agency Provider Management” | means the processes to be put in place by the Service Provider to manage the Agency Providers in the Tailored Supply Chain; |
| “Agency Supply” | means the Route to Talent which provides access to a Tailored Supply Chain for the sourcing of Workers; |
| “Agency Worker Regulations” or “AWR” | means the Agency Worker Regulations 2010; |
| “Agnostic Technology Solution” | means a technology solution which is readily available in the UK market and has the capacity to work with other systems without requiring any special adaptations; |
| "Approval" | means the prior written consent of the Authority and "**Approve**" and "**Approved**" shall be construed accordingly; |
| “Assignment” | means an assignment established pursuant to a Requisition under which a Worker sourced by a Contracting Authority via this Framework Agreement provides the Worker Services to that Contracting Authority; |
| "Audit" | means an audit carried out pursuant to Clause 18 (Records, Audit Access and Open Book Data); |
| "Audit Report" | means a report summarising the testing completed and the actions arising following an Audit; |
| "Auditor" | means the Authority, and/or Contracting Authority who is a party to a Call Off Contract, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them; |
| "Authority" | means **THE MINISTER FOR THE CABINET OFFICE** ("**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP; |
| “Authority Assets” | means the Authority’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services; |
| “Authority Cause” | means any breach of the obligations of the Authority (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 Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Service Provider; |
| “Authority IPR” | means any Intellectual Property Rights vested in or licensed to the Authority including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs, but which shall exclude Bespoke IPR and Service Provider IPRs; |
| "Authority Data" | means:   * 1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Authority’s Confidential Information, and which:      1. are supplied to the Service Provider by or on behalf of the Authority; or      2. the Service Provider is required to generate, process, store or transmit pursuant to this Framework Agreement; or   2. any Personal Data for which the Authority is the Data Controller; |
| “Authority Premises” | means premises owned, controlled or occupied by the Authority which are made available for use by the Service Provider or its Sub-Contractors for the provision of the Services (or any of them); |
| “Authority Property” | means the property, other than real property and IPR, including any equipment issued or made available to the Service Provider by the Authority in connection with this Framework Agreement; |
| "Authority Representative" | means the representative appointed by the Authority from time to time in relation to this Framework Agreement; |
| "Authority's Confidential Information" | means:  (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Authority to the Service Provider (or otherwise acquired by the Service Provider) pursuant to or in anticipation of this Framework Agreement that relates to:  (i) the Authority or any Crown Body; or  (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Authority or any Crown Body;  (b) other Information provided by the Authority to the Service Provider (or otherwise acquired by the Service Provider) that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Service Provider’s attention or into the Service Provider’s possession;  (c) discussions, negotiations, and correspondence between the Authority or any of its directors, officers, employees, consultants or professional advisers and the Service Provider or any of its directors, officers, employees, consultants and professional advisers in connection with this Framework Agreement (directly or indirectly) or any other matters relating to the Authority and Crown Bodies; and  (d) Information derived from any of the above; |
| “Automatic Rate Benchmarking” | means the provision of a solution to provide Contracting Authorities with access to online up to date information on Worker Day Rates on an Assignment by Assignment basis, by location, experience and skill sets across both public and private sectors; |
| “Bespoke IPR” | means any Intellectual Property Rights arising as a result of the provision of the Services to the Authority by the Service Provider under this Framework Agreement and/or IPRs in items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Framework Agreement including updates to the same, excluding any Service Provider IPRs, any Authority IPRs or for the avoidance of doubt and IPRs subsisting in the Vendor Management System, the PSR Marketplace, [REDACTED] and any Other Technology Systems; |
| “Cabinet Office Baseline Personnel Security Standards” | means the standards set out in the Cabinet Office Security Policy Framework and detailed at paragraph 6.1.17 of Framework Schedule 2: Services and Key Performance Indicators; |
| "Call Off Contract" | means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Services made between a Contracting Authority and the Service Provider pursuant to Framework Schedule 5 (Call Off Procedure); |
| "Call Off Procedure" | means the process for entering into a Call Off Contract pursuant to Clause 5 (Call Off Procedure) and paragraph 1 of Framework Schedule 5 (Call Off Procedure); |
| “Candidate” | means an individual proposed by the Service Provider to a Contracting Authority pursuant to a Requisition; |
| “Categories” | means types of Workers categorised by skill set such as Administrative Workers and Clerical Workers or Executive Workers; |
| “CCS” | means the Crown Commercial Service, otherwise referred to in the terms of this Framework Agreement as the Authority; |
| "CEDR" | means the Centre for Effective Dispute Resolution; |
| "Central Government Body" | 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" | means any change in Law which impacts on the supply of the Services and performance of the Call Off Terms which comes into force after the Framework Commencement Date; |
| "Change of Control" | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| "Charges" | means the charges raised under or in connection with a Call Off Contract from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure; |
| "Charging Structure" | means the structure to be used in the establishment of the charging model which is applicable to each Call Off Contract, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure); |
| "Commercially Sensitive Information" | means the Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) (if any) comprising of commercially sensitive information relating to: -   1. (a) the pricing of the Services; 2. (b) details of the Service Provider’s IPR; 3. (c) the Service Provider’s business and investment plans; and/or 4. (d) the Service Provider’s trade secrets;   which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss; |
| "Comparable Supply" | means the supply of Services to another customer of the Service Provider that are the same or similar to the Services; |
| "Complaint" | means any formal written complaint raised by a Contracting Authority in relation to the performance of this Framework Agreement or any Call Off Contract in accordance with Clause 47 (Complaints Handling); |
| "Confidential Information" | means the Authority's Confidential Information and/or the Service Provider's Confidential Information, as the context requires; |
| “Contingent Labour Market” | means available Contingent Labour via Agency Supply and Non Agency Supply in the UK; |
| “Contingent Labour Market Rates” | means the rate paid in the Contingent Labour Market for a defined role or skillset; |
| “Contingent LabourONE (RM960)” | means the CCS framework agreement for the provision of specialist contractors and interims, admin and clerical workers and operational workers; |
| "Continuous Improvement Plan" | means a plan for improving the provision of the Services and/or reducing the Charges produced by the Service Provider pursuant to Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share); |
| “Continuous Professional Development” or “CPD” | means the process of tracking and documenting the skills, knowledge and experience that are gained both formally and informally through work, beyond any initial training; |
| "Contract Year" | means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof; |
| "Contracting Authorities" | means the bodies listed in the OJEU Notice and “**Contracting Authority**” shall be construed accordingly and for the avoidance of doubt, for the purposes of Framework Schedule 4 (Template Order Form And Template Call Off Terms) the contracting authority is referred to as the Customer; |
| “Contracting Authorities Authorised Users” | means any of the Contracting Authorities’ personnel who access the Services; |
| "Control" | means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly; |
| "Costs" | means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Service Provider in providing the Services:   * 1. the cost to the Service Provider or the Key Sub-Contractor (as the context requires), calculated per Worker Hour, of engaging the Service Provider Personnel, including:      1. base salary paid to the Service Provider 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 Services (but not including items included within limb (b) below); and      9. reasonable recruitment costs, as agreed with the Contracting Authorities under any Call Off Contracts;   2. costs incurred in respect of those Service Provider Assets which are detailed on the Registers (“Service Provider Assets” and “Register” shall have the meaning given to them under Framework 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 Service Provider Assets by the Service Provider to the Contracting Authorities or (to the extent that risk and title in any Service Provider Asset is not held by the Service Provider) any cost actually incurred by the Service Provider in respect of those Service Provider 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 Service Provider in the provision of the Services;  1. 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 Contracts whether in relation to Service Provider Assets or otherwise;      4. taxation;      5. fines and penalties;      6. amounts payable under the benchmarking provisions of Framework Schedule 12  (Continuous Improvement, Benchmarking and Gains Share); and      7. non-cash items (including depreciation, amortisation, impairments and movements in provisions); |
| “Critical Service Level Failure” | means as set out in paragraph 6 of Framework Schedule 28; |
| "Crown" | 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, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| "Crown Body" | means any department, office or executive agency of the Crown; |
| “Crown Marketplace” or “CMP” | means the customer facing system for access to CCS framework agreements; |
| "CRTPA" | means the Contracts (Rights of Third Parties) Act 1999; |
| “Customer Service Function” | means the provision by the Service Provider of personnel to provide support and assistance to Contracting Authorities when using the Services; |
| “Cyber Essentials Scheme” | means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here:  <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>; |
| “Cyber Essentials Scheme Data” | means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; |
| “Cyber Essentials Scheme Plus Certificate” | means the certification awarded on the basis of external testing by an independent certification body of the Service Provider’s cyber security approach under the Cyber Essentials Scheme and is an advanced level of assurance; |
| "Data Controller" | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| "Data Processor" | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| "Data Protection Legislation or “DPA”" | 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" | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| "Data Subject Access Request" | means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data; |
| “DBS” | means the Disclosure and Barring Service; |
| “Deductions” | means all Service Credits, Delay Payments or any other deduction which the Authority is paid or is payable under this Framework Agreement; |
| "Default" | means any breach of the obligations of the Service Provider (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 Service Provider or the Service Provider 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 Service Provider is liable to the Authority; |
| "Default Management Charge" | has the meaning given to it in paragraph 6.2 of Framework Schedule 9 (Management Information); |
| “Direct Hire” | means the ability from the market to attract and hire Workers directly from the market; |
| “Disclosing Party” | means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient; |
| "Direct Award Criteria" | means the award criteria to be applied for the direct award of Call Off Contracts for Services set out in Part A of Framework Schedule 6 (Award Criteria); |
| "Dispute" | 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 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" | 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" | means the dispute resolution procedure set out in Framework Schedule 18 (Dispute Resolution); |
| "DOTAS" | 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" | means the Data Protection Act 1998 as amended from time to time; |
| "Due Diligence Information" | means any information supplied to the Service Provider by or on behalf of the Authority prior to the Framework Commencement Date; |
| "Employee Liabilities" | 1. means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:    1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;    2. unfair, wrongful or constructive dismissal compensation;    3. compensation for discrimination on grounds of  sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity  or sexual orientation or claims for equal pay;    4. compensation for less favourable treatment of part-time workers or fixed term employees;    5. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Service Provider to a Transferring Service Provider Employee which would have been payable by the Service Provider or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;    6. claims whether in tort, contract or statute or otherwise;    7. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| “End to End Solution” | means the delivery of a resourcing solution to meet the Authority’s requirements for sourcing of Workers from the identification of Worker requirements to Off-Boarding at the end of the Worker Assignment; |
| "Environmental Information Regulations or EIRs" | 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 Services" | means services which the Service Provider can supply which are the same or similar to the Services; |
| “ERP Systems” | means the enterprise resource planning systems put in place by the Contracting Authorities to manage the sourcing of Workers process from the point of Order to payment; |
| "Estimated Year 1 Management Charge" | means the sum of £6 million pounds for first year estimated by the Authority to be payable to it by the Service Provider as the total aggregate Management Charge from the Framework Commencement Date~~;~~ |
| "Exit Plan" | means the exit plan described in paragraph 5 of Framework Schedule 23 (Exit Management); |
| “Final Tender” | means the tender submitted by the Service Provider to the Authority, a copy of which is annexed or referred to in Framework Schedule 21 (Final Tender); |
| "Financial Distress Event" | means the occurrence or one or more of the events listed in paragraph 3 of Schedule 16 (Financial Distress); |
| “Fixed Term Appointment” or “FTA” | means where a Worker is engaged by the Authority on the basis that the contract will terminate at a future date when a specific 'term' expires e.g. the completion of a particular project or task, the occurrence or non occurrence of a specific event such as cover for sick or maternity leave; |
| "Former Service Provider" | has the meaning given to it in Schedule 15 (Staff Transfer); |
| "FOIA" | 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; |
| "Force Majeure Event" | means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Service Provider of its obligations arising from:   1. a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Framework Agreement; 2. b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; 3. c) acts of the Crown, local government or Regulatory Bodies; 4. d) fire, flood or any disaster; and 5. e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: 6. i) any industrial dispute relating to the Service Provider, the Service Provider Personnel (including any subsets of them) or any other failure in the Service Provider or the Sub-Contractor's supply chain; and 7. (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and 8. (iii) any failure of delay caused by a lack of funds; |
| "Framework" | means the framework arrangements established by the Authority for the provision of the Services to Contracting Authorities by the Service Provider pursuant to the OJEU Notice; |
| "Framework Agreement" | means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same; |
| "Framework Commencement Date" | means 17/01/2018 |
| "Framework Guarantee" | means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 13 (Framework Guarantee) granted pursuant to Clause 8 (Guarantee); |
| "Framework Guarantor" | means any person acceptable to the Authority to give a Framework Guarantee; |
| "Framework Period" | means the period from the Framework Commencement Date until its sixth anniversary or the earlier termination of this Framework Agreement; |
| "Framework Price(s)" | means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure); |
| "Framework Schedules" | means the schedules to this Framework Agreement; |
| “Framework Service Commencement Date” | means the date from which the Service Provider starts to deliver the Services, except those that relate to the Mobilisation Period, to the Authority and / or Contracting Authorities; |
| "Fraud" | means any offence under any 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; |
| “Fixed Term Assignment” or “FTA” | means a Worker engaged on an assignment which ends on a particular date to complete a specific project or cover periods of long term absence such as maternity leave. |
| "General Anti-Abuse Rule" | means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| "General Change in Law" | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply; |
| "Good Industry Practice | means standards, practices, methods and procedures used in the Contingent Labour Market and conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the Contingent Labour Market; |
| "Government" | 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" | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| “High Touch Services” | means the provision by the Service Provider of a fully managed recruitment service including provision of technology, liaison with the Contracting Authorities, development of specification of requirements, identification of the best Route to Talent, sourcing of Workers, sift and shortlist of CV’s, interviewing Workers, On-Boarding, training and induction (as appropriate) and resource availability at the Contracting Authorities’ premises, as needed; |
| "Holding Company" | has the meaning given to it in section 1159 of the Companies Act 2006; |
| "Implementation and Transition Plan" | means the plan agreed between the Service Provider and the Authority which details all activities required to implement and transition the Contracting Authorities ready for delivery of the Services; |
| “Implementation and Transition Period” | means the time from the day after the end of the Service Mobilisation Period up to the Framework Service Commencement Date during which the Service Provider will complete all activities required to implement and transition with the Contracting Authorities ready for delivery of the Services; |
| "Improvement Plan" | means the plan required by the Authority from the Service Provider which shall detail how the Service Provider will improve the provision of the Services pursuant to Clause 32.1.1 (Authority Remedies); |
| "Improvement Notice" | means the notice issued by the Authority to the Service Provider pursuant to Clause 32.1.3 (Authority Remedies) which will detail how the Service Provider shall improve the provision of the Services; |
| "Information" | means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); |
| “Initial Tender” | means the Service Provider response at stage 2 of the ITT; |
| “Innovation Roadmap” | means the plan to be delivered by the Service Provider which details all actions to be taken to develop and implement innovative new Routes to Talent and ways to deliver the Services; |
| "Insolvency Event" | means, in respect of the Service Provider or Framework Guarantor or Call Off 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 Service Provider 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" | 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” | means the document, referred to in the Recitals of this Framework Agreement, issued by the Authority on 12th May 2017; |
| "IPR Claim" | 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 Service Provider (or to which the Service Provider has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement; |
| “Job Role” | means the template specification of requirements to be held in the Vendor Management System***;*** |
| “Joint Governance Board” | means the governance board to be established by the Service Provider and the Authority, including any Key Sub-Contractors, by which the operational and strategic delivery of the Services will be managed; |
| “Joint Governance Structure” | means the structure to be established detailing persons responsible within the Service Provider, Authority and Key Sub-Contractors’ organisations for operational and strategic delivery of the Services; |
| "Key Performance Indicators" or "KPIs" | means the performance measurements and targets set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators); |
| "Key Sub-Contract" | means each Sub-Contract with a Key Sub-Contractor; |
| "Key Sub-Contractor" | means any Sub-Contractor, including Agency Provider, which is listed in Framework Schedule 7 (Key Sub-Contractors), that in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; |
| "Know-How" | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Framework Commencement Date; |
| "KPI Target" | means the acceptable performance level for a KPI as set out in relation to each KPI; |
| "Law" | 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 Service Provider is bound to comply; |
| "Legacy Services" | means services similar to the New Services and/or services which interface with or are intended to interface with or be replaced by the New Services; |
| “Light Touch” | means the provision by the Service Provider of technology which allows the Contracting Authorities the ability to source Workers through the all part of the recruitment process via self-service; |
| "Losses" | 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; |
| “Managed Recruitment Service” | means the provision by the Service Provider of a recruitment service providing recruitment advice, workforce planning, sourcing, on-boarding, payroll and off-boarding of workers to meet the needs of the Authority and the Contracting Authorities; |
| “Managed Recruitment Services Levels” | means the level of service requested by the Authority as detailed at paragraph 5 of Framework Schedule 2: Services and Key Performance Indicators; |
| "Management Charge" | means the sum payable by the Service Provider to the Authority being an amount equal to 1 per cent (1%) from the Framework Commencement Date, or as otherwise may be agreed, in writing, by the Parties in accordance with Clause 20.7, of all Charges for the Services invoiced to the Contracting Authorities by the Service Provider (net of VAT) in each Month throughout the Framework Period and thereafter until the expiry or earlier termination of all Call Off Contracts entered pursuant to this Framework Agreement; however this may be negotiated down (to a minimum of 0.5 per cent) or up (to a maximum of 1 per cent), at any time during Framework Period by the Authority. |
| "Management Information" or “MI” | means the management information specified in Framework Schedule 9 (Management Information), which includes all information and reporting required to manage the performance of the Service Provider in the delivery of the Services; |
| “Medium Touch Services” | means the provision by the Service Provider of a service to partially manage the resourcing requirements of the Contracting Authorities such as provision of technology, sourcing of Workers and sift and shortlisting services; |
| "MI Default" | has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information); |
| "MI Failure" | 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); |
| "MI Report" | means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information); |
| "MI Reporting Template" | means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Service Provider is required to supply to the Authority; |
| “Milestone” | means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan; |
| "MISO" | means 'Management Information System Online'. An online portal located at https://miso.ccs.cabinetoffice.gov.uk provided by the Authority for collection and receipt of Management Information; |
| "Month" | means a calendar month and "**Monthly**" shall be interpreted accordingly; |
| “MSP Fee” | means the managed service provider fee, as set out in Annex 3 of Framework Schedule 3; |
| “National Security Vetting” | means the requirements of the Contracting Authorities for Workers to have security checks in place to the standards set out in the Governments National Security Vetting Guidance <https://www.gov.uk/guidance/security-vetting-and-clearance>; |
| "New Services" | means services which a Contracting Authority wishes to procure from a third party which are the same or similar to the Services; |
| “NHS Employment Check Standards” | means the standards set out by NHS Employers for NHS Workers; |
| "Nil Return" | has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information); |
| “Nominated Workers” | means a Worker that has been identified by the Contracting Authority Authorised User as having the skills and experience required to meet their requirements for an available role; |
| “Non-Agency Supply” | means the Routes to Talent such as Direct Hire, Talent Pools, Nominated Workers and Referrals through which Workers are engaged without the requirements for a Tailored Supply Chain; |
| “Non-Medical Non Clinical (RM 979)” | means the CCS framework agreement put in place for the provision of temporary workers to the NHS. Services under the Non-Medical Non Clinical Framework Agreement are neutral vendor, master vendor, admin and clerical, corporate services, IT professionals, legal, clinical coding and ancillary staff; |
| "Occasion of Tax Non –Compliance" | means where:   * 1. any tax return of the Service Provider submitted to a Relevant Tax Authority 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 Authority successfully challenging the Service Provider 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 Service Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or   2. any tax return of the Service Provider submitted to a Relevant Tax Authority 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; |
| “Off-Boarding” | means the process to be put in place by the Service Provider or Agency Provider at the end of each Worker Assignment to ensure that all equipment, IT, building passes, keys, fobs and information is returned to the Contracting Authorities; |
| "OJEU Notice" | has the meaning given to it in Recital A to this Framework Agreement; |
| “On Boarding” | means the process to be put in place by the Service Provider or Agency Provider prior to the start of each Worker Assignment to ensure that all Workers engaged to work for the Contracting Authorities are fully compliant with the requirements of the Cabinet Office Baseline Personnel Security Standards, intermediaries legislation, National Security Vetting and any other legislative requirements requested at point of Requisition by the Contracting Authorities; |
| "Open Book Data" | means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Framework Period and term of any Call Off Contracts, including details and all assumptions relating to:   * 1. the Service Provider’s Costs broken down against each Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all services;   2. operating expenditure relating to the provision of the Services including an analysis showing:      1. the unit costs and quantity of consumables and bought-in goods and services;      2. manpower resources broken down into the number and grade/role of all Service Provider Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and      3. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Service Provider Profit Margin;   3. Overheads;   4. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;   5. the Service Provider Profit achieved over the Framework Period and term of any Call Off Contracts 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 Service Provider;   7. an explanation of the type and value of risk and contingencies associated with the provision of the 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 Contracts; |
| “Operational Contract Management and Governance” | means the structure and process put in place to manage the Service Provider’s operational performance of the Services; |
| “Operating Model” | means a visual representation (model) of how the Service Provider delivers value to Contracting Authorities; |
| “Operational Contract Management and Governance” | means the structure and process put in place to manage the Service Providers operational performance of the Services; |
| "Order" | means an order for the provision of the Services, by way of Requisition, placed by a Contracting Authority with the Service Provider under a Call Off Contract; |
| “Ordered Services” | means Services which are the subject of an Order by a Contracting Authority; |
| *“Other Technology Platforms”* | means any technology systems such as Rant and Rave, Elevate Direct and Service Now which are used in the delivery of the Services |
| "Overhead" | means those amounts which are intended to recover a proportion of the Service Provider’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 Service Provider Personnel and accordingly included within limb (a) of the definition of “Costs”; |
| “Partnership” | means the association of the Service Provider and the Authority to jointly ensure the successful delivery of the Services to be delivered under this Framework Agreement; |
| “Partnership Approach” | means the responsibility of the Service Provider to work with the Authority to ensure successful delivery of the Services as outlined at paragraph 1 of Framework Schedule 2: Services and Key Performance Indicators; |
| "Party" | means the Authority or the Service Provider and **"Parties"** shall mean both of them; |
| “PAYE” | means the system of income tax withholding that requires employers to deduct income tax, and in some cases, the Worker portion of social benefit taxes, from each paycheck delivered to the Worker; |
| “Payroll Services” | means the processes to be put in place either by the Service Provider for payment of Workers sourced via Non Agency Supply routes and payment of Agency Providers; |
| “Penetration Testing” | means the practice of testing a computer system, network or web application to find vulnerabilities that an attacker could exploit; |
| "Personal Data" | has the meaning given to it in the Data Protection Act 1998 as amended from time to time; |
| “Personal Service Company” or “(PSC)” | means a limited company supplying Worker Services to the Contracting Authorities either directly or via an Agency Provider; |
| “Plans” | means the Implementation Plan, Service Mobilisation Plan and Transition Plan; |
| “Pre-Identified Workers” | means a Worker identified by the Contracting Authority Authorised User as having the appropriate experience, skills and expertise to meet their Worker requirements; |
| "Processing" | 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" | means any of the following:   * 1. to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body 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. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or   3. committing any offence:      1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or      2. under legislation or common law concerning fraudulent acts; or      3. defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or      4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK; |
| “Public Sector Resourcing Model” | means the model on which the Final Tender is based, which the Service Provider will deliver under this Framework Agreement; |
| “Purchase to Pay” or “P2P” | means systems put in place by the Contracting Authorities to manage the procurement process from point of Order to payment; |
| “Recipient” | mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party; |
| “Referrals” | means the process to be put in place by the Service Provider which allows the Contracting Authorities to identify Workers and refer them to the Service Provider for retention and access via Non Agency Supply routes for future assignments; |
| “Register(s)” | has the meaning given to in Framework Schedule 23 (Exit Management); |
| "Regulations" | means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time; |
| "Relevant Person" | means any employee, agent, servant, or representative of the Authority, or of any Contracting Authority or other public body; |
| "Relevant Requirements" | 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 Service Provider" | means a third party bidding to provide New Services; |
| "Relevant Tax Authority" | means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Service Provider is established; |
| "Replacement Service Provider" | means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time; |
| "Replacement Services" | means any services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Framework Agreement; |
| "Reporting Date" | 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; |
| "Request for Information" | means a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the FOIA or the EIRs; |
| "Requisition" | means a request for Worker Services, under a Requisition Form, made by a Contracting Authority pursuant to a Call Off Contract; |
| "Requisition Form" | means the requisition form built into the Vendor Management System and any Other Technology Platforms for submission of Requisitions by Contracting Authorities; |
| "Restricted Countries" | means a 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; |
| “Restrictive Covenant” | means any term in a Worker’s contract with the Service Provider or any Sub-Contractor which seeks to impose restrictions on the Worker’s freedom to work for others or carry out his trade or business after the contract has ended. |
| “Routes To Talent” | means the route used to source a Worker via Agency Supply or Non Agency Supply; |
| "Security Policy" | means the Authority’s security policy set out in Annex 2 of Framework Schedule 25; |
| “Security Vetting” | means the requirements of the Contracting Authorities for Workers to have security checks in place to the standards set out in the Governments National Security Vetting Guidance <https://www.gov.uk/guidance/security-vetting-and-clearance>; |
| “Segmented Talent Pools” | means the systems and processes put in place by the Service Provider to design, build and maintain talent pools by professional skill set; |
| “Selection” | means the selection by a Contracting Authority of a Candidate to provide services; |
| "Self Audit Certificate" | means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 18 (Records, Audit Access and Open Book Data); |
| “Service Commencement Date” | means the date 19/06/2018 from which the Service Provider starts to deliver the Services to the Authority under this Framework Agreement, except those services that relate to the Implementation and Transition Period; |
| "Service Credit Cap" | shall be:   1. (a) for Contract Year 1, 10% of the estimated Year 1 total annual value (excluding VAT and CCS Levy) of the MSP Fee; |
| "Service Credits" | means any service credits specified in Annex 1 to Part A of Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring) being payable by the Service Provider to the Authority in respect of any failure by the Service Provider to meet one or more Service Levels; |
| "Service Failure" | means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of Services in the future; |
| "Service Level Failure" | means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion; |
| "Service Level Performance Criteria" | has the meaning given to it in paragraph 3.2 of Part A of Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring); |
| "Service Level Performance Measure" | shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring); |
| "Service Level Threshold" | shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring); |
| "Service Levels" | means any service levels applicable to the provision of the Services under this Framework Agreement specified in Annex 1 to Part A of Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring); |
| "Service Period" | has the meaning given to in paragraph 4.1 of Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring); |
| “Service Mobilisation Period” | means the period between the Framework Commencement Date and the Framework Service Commencement Date when the Service Provider will complete all activities detailed in the Service Mobilisation Plan; |
| “Service Mobilisation Plan” | means the plan agreed between the Service Provider and the Authority which details all activities required to establish and build the Public Sector Resourcing Model ready for implementation of the Services; |
| "Service Period" | has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Contracting Authority in a Call Off Contract between that Contracting Authority and the Service Provider; |
| "Service Provider" | means the person, firm or company stated in the preamble to this Framework Agreement and references to the term in the Framework Agreement, also include all staff associated with such person, firm or company; |
| "Service Provider Action Plan" | means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and Service Provider performance; |
| “Service Provider Assets” | means all assets and rights used by the Service Provider to provide the Services in accordance with this Framework Agreement but excluding the Authority Assets; |
| “Service Provider Equipment” | means the Service Provider’s hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Authority) in the performance of its obligations under this Framework Agreement; |
| “Service Provider IPR” | means shall mean any Intellectual Property Rights vested in or licensed to the Service Provider prior to or independently of the performance by the Service Provider of its obligations under the Framework Agreement and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs; |
| "Service Provider Personnel" | means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Framework Agreement or any Call Off Contracts; |
| "Service Provider Profit" | means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Framework Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of the Framework Agreement for the relevant period; |
| "Service Provider Profit Margin" | means, in relation to a period, the Service Provider Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Contracts and expressed as a percentage; |
| "Service Provider Representative" | means the representative appointed by the Service Provider from time to time in relation to this Framework Agreement; |
| "Service Provider's Confidential Information" | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and Service Providers of the Service Provider, 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; |
| “Service Requirements” | means the requirements of the Authority or any Contracting Authority (as appropriate) for the Services from time to time; |
| "Services" | means the services described in Framework Schedule 2 (Services and Key Performance Indicators) which the Service Provider shall make available to Contracting Authorities including the Public Sector Resourcing Model; |
| “Short List” | means a list of Candidates provided by the Service Provider to the Contracting Authority; |
| “Sites” | means any premises (including the Authority Premises, the Service Provider’s premises or third party premises) from, to or at which:   1. (a) the Services are (or are to be) provided; or 2. (b) the Service Provider manages, organises or otherwise directs the provision or the use of the Services; |
| “Small and Medium Business (SME)” | means an organisation, which meets at least two out of the three following characteristics:   1. (a) turnover (less than £25m); 2. (b) employees (less than 250); 3. (c) gross assets (less than £12.5m). 4. <http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en>; |
| "Specific Change in Law" | means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply; |
| "SQ” | has the meaning given to it in Recital B of this Framework Agreement; |
| “SQ Response" | has the meaning given to it in Recital C of this Framework Agreement; |
| “Staff Vetting Procedures” | means the procedures and policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989, as set out in HMG's Baseline Security Standards and any policies and procedures notified to the Service Provider by the Authority from time to time; |
| "Standards" | 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 Service Provider would reasonably and ordinarily be expected to comply with;   2. any standards detailed in the Framework Agreement, including the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators);   3. any standards detailed by a Contracting Authority in a Call Off Contract; and   4. any relevant Government codes of practice and guidance applicable from time to time. |
| "Statement of Requirements" | means a statement issued by the Authority or any Contracting Authority detailing its Services Requirements issued in accordance with the Call Off Procedure; |
| “Statement Of Works” | means a requirement delivered in line with defined project-specific activities, deliverables and timelines; |
| “Step-In Notice” | has the meaning given in Clause 58.1 (Step-In Rights); |
| “Step-In Trigger Event” | (a) any event falling within the definition of a Service Provider Termination Event;  (b) a Default by the Service Provider that is materially preventing or materially delaying the performance of the Services or any material part of the Services;  (c) the Authority considers that the circumstances constitute an emergency despite the Service Provider not being in breach of  its obligations under this Framework Agreement;  (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 58 (Step-In Rights) is necessary;  (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or  (f) a need by the Authority to take action to discharge a statutory duty; |
| “Step-Out Date” | has the meaning given in Clause 58.5.2 (Step-In Rights); |
| “Step-Out Notice” | has the meaning given in Clause 58.5 (Step-In Rights); |
| “Step-Out Plan” | has the meaning given in Clause 58.6 (Step-In Rights); |
| “Strategic Contract Management and Governance” | means the structure and process put in place to manage the Service Providers strategic delivery of the Public Sector Resourcing Model and the Services; |
| "Sub-Contract" | means any contract or agreement (or proposed contract or agreement) to which a third party:   1. (a) provides the Services (or any part of them); 2. (b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or 3. (c) is responsible for the management, direction or control of the provision of the Services (or any part of them); |
| "Sub-Contractor" | means any person other than the Service Provider who is a party to a Sub-Contract and the servants or agents of that person; |
| “Subsequent Tender” | means the Service Provider response at Stage 3 of the ITT; |
| “Tailored Supply Chain” | means the segmented supply chains available under the Agency Supply Route to Talent to source Workers; |
| “Talent” | means suitably skilled and qualified Workers; |
| “Talent Pool” | means a pool of skilled and qualified Workers available for access by the Contracting Authorities based on skills, experience, availability and Worker Day Rate; |
| “Temp to Perm” | means the process followed when a Worker transfers from a contract for temporary work to a contract of permanent employment; |
| “Temp to Temp” | means when a Worker transfers their contract of employment to another contract for temporary employment with an alternative Agency Provider; |
| “Temp to Third Party” | means when a Worker transfers contract from their Assigned Agency Provider to a third party; |
| "Template Call Off Terms" | means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms); |
| "Template Order Form" | means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off terms); |
| "Termination Notice" | 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; |
| “Terms of Reference” | means the terms to define the purpose of the Joint Governance Structure; |
| “Transparency Reports” | means the information relating to the Services and performance of this Framework Agreement which the Service Provider is required to provide to the Authority in accordance with the reporting requirements in Framework Schedule 22; |
| "TUPE" | 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; |
| “UK Core Skills Training Framework” | means <http://www.skillsforhealth.org.uk/services/item/146-core-skills-training-framework>; |
| “Umbrella Company” | means a company through which a Worker is engaged to provide Worker Services to a Contracting Authority on a time-limited basis; |
| "Variation" | has the meaning given to it in Clause 19.1.1 (Variation Procedure); |
| "Variation Form" | 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" | means the procedure for carrying out a Variation as set out in Clause 19.1 (Variation Procedure); |
| "VAT" | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| “Vendor Management System” or “VMS” | means the internet-based common technology platform provided by the Service Provider under the terms of this Agreement to facilitate the delivery of services to Contracting Authority by the Service Provider, providing a single point of access for Contracting Authorities; |
| "VMS Services" | means the development, implementation, operational deployment, ongoing support and management of the VMS in accordance with the Framework Agreement; |
| “Worker” | means a person supplied to a Contracting Authority to provide Worker Services, whether engaged through a Personal Services Company (PSC), Umbrella Company, PAYE, Fixed Term Appointment (FTA) or any other mechanism pursuant to a Requisition issued; |
| “Worker Care” | means the Services provided by the Service Provider to provide a positive Worker experience under the Public Sector Resourcing Model; |
| “Worker Categories” | means the categories of workers to be supplied under the Public Sector Resourcing Model, as outlined at paragraph 3 of Framework Schedule 2: Services and Key Performance Indicators; |
| “Worker Day Rates” | means the net rate paid to the Worker excluding any Service Provider / Agency Provider charges and any National Insurance or tax contributions; |
| “Worker Hour” | means an hour regarded in terms of the amount of work that can be done by one person within this period; |
| “Worker Services” | means the services required to be performed by a Worker under supervision of the Customer in performing fulfilment of any vacant post pursuant to a Requisition; |
| “Worker Terms and Conditions” | means the terms on which the Service Provider or a Sub-Contractor engages a Worker to provide Worker Services in accordance with the requirements set out in Clause 25.6 of this Framework Agreement; |
| “Worker Types” | means the types of Worker as set out in paragraph 3.2 of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators); |
| "Working Days" | means any day other than a Saturday, Sunday or public holiday in England and Wales. |

FRAMEWORK SCHEDULE 2: SERVICES and Key Performance Indicators

Part A –Services

1. GENERAL

The purpose of this Part A of Framework Schedule 2 (Services and Key Performance Indicators) is to lay down the characteristics of the Services that the Service Provider will be required to make available to all Contracting Authorities under this Framework Agreement together with any specific Standards applicable to the Services.

The Services and any Standards set out below may be refined (to the extent permitted and set out in Framework Schedule 5 (Call Off Procedure)) by a Contracting Authority to reflect its Services Requirements for entering a particular Call Off Contract.

1. **INTRODUCTION**
2. Crown Commercial Service (CCS) (the “Authority”) is seeking to establish a Framework Agreement for the provision of the Public Sector Resourcing Model for Workers,
3. The Public Sector Resourcing Model includes:
   1. Delivering the specified aims and objectives as set out in paragraph 2
   2. Providing all Worker Categories as set out in paragraph 3.2
   3. Providing the Service Requirements as set out in paragraph 3.7
4. The Authority requires an End to End Solution to deliver the Public Sector Resourcing Model effectively, from identification of requirement through to payment, Off Boarding and management, governance and on-going improvement of the overall Public Sector Resourcing Model.
5. The purpose of the Framework Agreement is to appoint a single Service Provider who shall be responsible for the provision of the Public Sector Resourcing Model. The Service Provider shall provide effective systems and be backed and supported by a strong and innovative network of Key Sub-Contractors.
6. The Service Provider shall provide a range of Routes to Talent to source, engage and On Board Workers with the right skills, at the right price - quickly and easily.
7. The Routes to Talent shall include Non Agency Supply and Agency Supply, providing multiple options for more innovative delivery methods throughout the duration of the Framework Agreement.
8. The Agency Supply route will be provided through a robust, tailored and fully transparent supply chain, segmented effectively for the type of resources being sourced (“Tailored Supply Chain”).
9. The scope of this Framework Agreement includes Contingent Workers (“Workers”).
10. Under this Framework Agreement, the Service Provider shall not be eligible itself to supply Workers through the Agency Supply Routes to Talent and the Service Provider shall not be permitted to be an Agency Provider from its own business (or any affiliated businesses).
11. The Service Provider shall bring their expertise to the mobilisation, implementation and transition of the Services, as these activities will require substantial organisation and careful planning to ensure success and a positive experience for Contracting Authorities, Workers and Agency Providers.
12. The Service Provider shall ensure all Workers engaged through the Public Sector Resourcing Model comply with all legislative and regulatory requirements, as detailed in the terms and conditions of the Framework Agreement.
13. Call Off Contracts entered into by Contracting Authorities will be managed by Contracting Authorities. The Authority may also call off from this Framework Agreement.
14. Contracting Authorities will contract only with the Service Provider and not with Agency Providers or Key Sub-Contractors.
15. This Framework Agreement will create a collaborative and joined up Partnership Approach between the Authority and the Service Provider. The Partnership Approach aims to deliver more effective management of the Public Sector Resourcing Model demand through the Service Provider’s provision of high quality advice and innovative solutions on resourcing routes available to the Authority and/or Contracting Authorities at Call Off Stage.
16. **Partnership Approach**
17. The Service Provider shall create and maintain a Partnership Approach with the Authority which will, as a minimum:
18. ensure that Public Sector Resourcing Model and Service Levels are of a consistently high quality and meet the requirements of the Authority and/or Contracting Authorities;
19. ensure Public Sector Resourcing Model and Service Levels are provided in line with Good Industry Practice and are evaluated and improved throughout the term of the Framework Agreement;
20. create an environment of continuous improvement, share knowledge and best practice, benchmark data and improve service usage across Contracting Authorities;
21. establish minimum Service Levels, governance and performance monitoring which will drive and monitor the quality of service provision, ensure value for money and maximise return on investment;
22. generate an improved understanding across all Contracting Authorities of all available Routes to Talent in the supply market for all categories of Workers;
23. manage demand more effectively, through the Service Provider’s provision of expert market advice and innovative vision;
24. be at the centre of the UK Contingent Labour Market innovation;
25. improve understanding of the national and regional changes in the supply market and proposing how to respond effectively to these changes so that the Authority and/or Contracting Authorities benefit.
26. **AIMS AND OBJECTIVES**
27. The aims and objectives of the Public Sector Resourcing Model are to provide:
28. a simple, effective and streamlined customer-focussed solution;
29. a mechanism for the provision, attraction, management and retention of high quality Workers;
30. a range of Routes to Talent from traditional options to more innovative options;
31. full transparency of pricing, employment opportunities and end to end processes so that Contracting Authorities, the UK Contingent Labour Market and Workers have visibility of pricing and processes;
32. prompt turnaround of fulfilment and compliant On Boarding;
33. value for money, transparency of spend and year-on-year savings;
34. a clear understanding of the current and future public sector Worker demand for all Contracting Authorities;
35. flexibility to meet the changing needs of Contracting Authorities and the UK Contingent Labour Market;
36. end to end management of the Worker journey;
37. increase spend from 40% to over 60% with Small and Medium Business (SME) by 2020;
38. a non-proprietary/agnostic technology solution to manage end to end requirements for all Workers;
39. better access to a flexible workforce and untapped Workers (i.e. people who are not currently in the UK Contingent Labour market and/or those who are not actively looking for work) and embrace emerging, relevant industry practices;
40. innovative, relevant industry practices and methods of delivery (such as Statement of Works).
41. **DESCRIPTION OF SERVICES** 
    1. The Service Provider shall provide the Public Sector Resourcing Model which is made up of:
42. Delivering the specified aims and objectives as set out in paragraph 2
43. Covering all Worker Categories as set out in paragraph 3.2
44. Providing all the Service requirements as set out in paragraph 3.7
    1. The Service Provider shall provide Workers in each of the following Contingent Worker Categories, as a minimum:

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| **Worker Categories** |
| 1. **Professional Interims** - Workers that undertake a temporary contract to provide labour and/or materials to perform a service or do a job, including senior executive roles. Typically these roles range from the Senior Executive Officer (SEO) grade to the Senior Civil Service grades in Central Government. Within the NHS the roles (non-clinical in scope are Agenda for Change (AfC) pay band 5, up to, and including, pay band 9. For further details please access this link - [Agenda for Change pay - NHS Employers](http://www.nhsemployers.org/your-workforce/pay-and-reward/pay/agenda-for-change-pay) 2. **Administration and Clerical Workers** - Workers performing an administrative role or junior management role providing short term cover for non-professional roles. Typically these roles range from the Administrative Assistant (AA) grade to Higher Executive Officer (HEO). Within the NHS the roles (non-clinical) in scope are Agenda for Change (AfC) pay bands 1 - 5. For further details please access this link - [Agenda for Change pay - NHS Employers](http://www.nhsemployers.org/your-workforce/pay-and-reward/pay/agenda-for-change-pay) 3. **Operational Workers** - operational Workers, typically auxiliary roles/support staff covering all support staff roles. 4. **Digital and Technology -** Workers with the specialist skills and experience to deliver digital transformation programmes, as well as specialist digital and technology roles 5. **Specialist/Niche Workers** – Workers with specialist/niche skillsets which are not covered by traditional recruitment agencies, and require alternative sourcing routes to attract talent 6. **University Specialists** -– Workers with specialist expert knowledge in their field of expertise including, but not limited to, lecturers and professors/unique roles not covered by the specialist and niche Workers category 7. **NHS/ Health Workers -** Workers employed by the NHS or in the health market (non-clinical) who have a range of skills across all professions/skill sets above. Typically these roles range from AfC pay band 1 up to and including pay band 9, and exclude clinical Workers such as doctors, nurses and allied healthcare professionals. For further details access this link - Agenda for Change pay - NHS Employers 8. **Executive Workers** – Workers engaged in executive roles across all professions from Director level up to and including Chief Executive Officer. Typically these roles range from Senior Civil Servant (SCS) 1 to 4. Within the NHS these roles (non-clinical) are AfC Band 9 and Very Senior Manager (VSM) Roles. 9. **Wider Public Sector Workers** - Any Workers across the Wider Public Sector (for example, local government, police, charities) not captured in other categories in this table. 10. **Charity Workers** – Any Workers across the Charity Sector not captured in the other categories in this table. 11. **Education & Teachers** - supply teachers for planned and unplanned requirements, including teachers required at short notice. 12. **Statement of Works (SOW)** - an output based package of works that outlines specific services the Supply Chain is expected to deliver, by indicating the type, level, quality and cost of service, as well as the time schedule required. 13. **Overseas Workers** – the attraction of Workers who are engaged to complete assignments which involve working outside the UK. |

* 1. The roles described within the Worker Categories are designed to be indicative of the types of Worker roles typically arising within that Worker Category – however these descriptions are not intended to be exhaustive due to the wide range of roles which exist in the public sector. In utilising the Worker Categories, the Authority and/or Contracting Authorities will not be restricted to the specific roles listed in each Worker Category, providing the role(s) they are seeking to fill are relevant to the broad heading of that Worker Category. The Service Provider will work with the Authority and the Contracting Authorities to ensure any duplication or overlap in the above Worker Categories is clearly identified and communicated to Authorised Users to enable flexibility, the best value for money and compliance. The Service Provider will ensure confusion is minimised and buying practices are clear.
  2. The Service Provider shall provide all Worker Categories from the Service Commencement Date with the exception of the following three (3) Worker Categories:

1. Education & Teachers
2. Statement of Works (SOW)
3. Overseas Workers

The Service Provider shall indicate how and when they will phase the introduction of the above three (3) mentioned Worker Categories in the Service Mobilisation Plan, including the date by when all three (3) Worker Categories will be fully operational and available.

* 1. The Service Provider shall be able to source Workers through Personal Services Companies (PSCs), Umbrella Companies, PAYE, Fixed Term Appointments (FTAs) or any other legally compliant routes.
  2. The Service Provider acknowledges that Contracting Authorities have the right to offer a Worker permanent employment within their organisation (“Temp to Perm”) or transfer them to another Agency Provider (away from Non Agency Supply) or between Agency Providers (“Temp to Temp”) or transfer to other third parties (“Temp to third party”).
  3. The Service Provider shall provide all the following Services:

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| 1. **Summary of Service Requirements** |
| 1. **Service Mobilisation, Implementation and Transition of the Services** 2. **Managed Recruitment Services**     1. Managed Recruitment Services that allow Contracting Authorities to choose a level of service that meets their needs from: 3. Light Touch Services; 4. Medium Touch Services; 5. High Touch Services.    1. Customer Service Function 6. **Provision of Technology**    1. **Vendor Management System (VMS):** 7. Technology Provisions; 8. Legislative Compliance 9. Management 10. Time-sheets 11. Management of payment to Workers (through Non Agency Supply) and payment to the Supply Chain;     1. **Automatic Rate Benchmarking;**     2. **Other Technology Platforms**     3. **Training** 12. **Routes to Talent**   Provision of, and managing a range of routes to source Workers, including provision of technology platforms associated with each route outlined below:   * 1. **Non Agency Supply**  1. Design, implementation and management 2. Direct Hire 3. Segmented Talent Pools 4. Pre Identified Workers (including Referrals and Nominated Workers) 5. Other Innovative and Emerging Non Agency Supply    1. **Agency Supply** 6. Supply Chain design and implementation (Agency Providers) 7. Tailored Supply Chain management / Agency Provider Management 8. **Worker care and experience**    1. On Boarding, Security Vetting and Off Boarding    2. Feedback on assignments    3. Performance management of Workers 9. **Payment to Workers and the Supply Chain**    1. Non Agency Supply    2. Agency Supply 10. **Spend under management and Savings** 11. **Workforce Planning** 12. **Continuous Improvement Plan & Innovation Roadmap**      1. Development and implementation the Innovation Roadmap     2. Diversity and Inclusion     3. Legislation Changes     4. Workforce Policy 13. **Joint Governance, Framework Management and Reporting** 14. **Overseas Services** 15. **Management Information** 16. **Key Performance Indicators** 17. **Service Levels** 18. **Branding of the Public Sector Resourcing Model** |

1. **SERVICE MOBILISATION, IMPLEMENTATION AND TRANSITION OF THE SERVICES**
2. The Service Mobilisation Period will start on the Framework Commencement Date and will expire the day before the Service Commencement Date, as set out in Clause 10 of the Framework Agreement.
3. The Service Provider shall produce a Service Mobilisation Plan and an Implementation and Transition Plan which shall include all elements of the Public Sector Resourcing Model, and which details how and when implementation and transition will occur for the Services.
4. Within fifty (50) calendar days of Framework Award, the Service Provider shall submit the final plans to the Joint Governance Board for approval.
5. The Service Provider shall appoint a Service mobilisation, implementation and transition team with a named manager and a named deputy manager, and each must have a minimum of five (5) years relevant experience managing mobilisation, implementation and transition of complex programmes in the UK Contingent Labour Market. The Service Provider shall provide the names of these managers to the Authority within five (5) Working Days of Framework Award.
6. The Service Provider shall provide named Key Personnel who shall be appropriately skilled and qualified to deliver all the activities required during the Service Mobilisation Period and the Implementation and Transition Period.
7. The Service Provider shall ensure that appropriately skilled and qualified Key Personnel are available during the entire Service Mobilisation Period regardless of other Service Provider activities, to ensure that all deliverables in the plans are delivered within the timescales specified, and to the Authority’s satisfaction. Key Personnel shall be required to remain in post after the Service Commencement Date to provide continuity in the provision of Services throughout the duration of the Framework Agreement.
8. The Service Mobilisation Plan and the Implementation and Transition Plan shall include, as a minimum:
9. All tasks required with for successful mobilisation, implementation and transition, including clear phasing, timelines and milestones with a transition schedule, work streams, tasks and activities;
10. Logical work breakdown, key milestones and dependencies during mobilisation, transition and deployment;
11. Testing and verification activities, including testing of related/impacted projects, software, and hardware;
12. Contingency plans and work-around(s) in the event that problems or unforeseen circumstances arise;
13. Specific activities related to new, existing, and/or upgraded technology platforms, including roles and responsibilities of external vendors and internal resources;
14. Data mobilisation and transition process;
15. Systems and/or data back-up(s), conversion plans;
16. Hand-off(s) between developers, vendors, operational staff, and/or technical support, including incumbent Service Providers;
17. Communication(s) to the Authority and Contracting Authority Authorised Users;
18. Transition review to assess and document results of the transition, defects found, correction actions to be taken, work-around(s) to be implemented;
19. Risks and mitigation including management and escalation of these;
20. Dependencies;
21. TUPE responsibilities;
22. Roles, responsibilities and resources including a detailed RACI (responsible, accountable, communicate, inform) for all parties;
23. How success will be measured;
24. Reporting on the transition;
25. Training;
26. Governance, controls and meeting schedules;
27. Acceptance / Sign-off Procedure.
28. For each Call Off Contract, the Service Provider shall provide a tailored Implementation and Transition Plan, scaled according to the scope of the Services required within the Call Off Contract. Each such Implementation and Transition Plan shall be based on the requirements as set out in paragraph 4 and scaled accordingly.
29. **MANAGED RECRUITMENT SERVICES AND CUSTOMER SERVICE FUNCTION**
30. **Managed Recruitment Services**
31. The Service Provider shall provide a full Managed Recruitment Service in line with Good Industry Practice to include, but not limited to, those Services as set out in paragraphs 5.2, 6, 14, 15, 16, 18 and 19 of this Framework Schedule 2
32. The Service Provider shall throughout the term of the Framework Agreement provide a Managed Recruitment Service including advice at no additional cost, including but not limited to, ensuring the Authority and/or Contracting Authorities are using the most appropriate Routes to Talent to meet their resourcing requirements.
33. The Service Provider shall also provide a range of Managed Recruitment Service Levels to the Contracting Authorities, including Light Touch Services, Medium Touch Services and High Touch Services as follows:
34. **Light Touch Services -** Contracting Authorities will self-serve for their requirements using the VMS and the Service Provider shall provide Managed Recruitment Services including but not limited to, workforce planning advice, identification of best Routes to Talent, On Boarding Workers, skills testing and training and invoicing and payment.
35. **Medium Touch Services –** the Service Provider shall deliver the Services detailed as set out in paragraph 5.1.3 (a) plus development of specifications, upload and issue of requirements, sift and shortlisting services, interview management and management of the Worker feedback.
36. **High Touch Services –** the Service Provider shall manage the full end to end recruitment process on behalf of the Authority and/or Contracting Authorities delivering the Services detailed as set out in paragraph 5.1.3 (a) and (b) with the additional services including but not limited to, management of approvals, management of the offer and acceptance process, Worker performance management, workforce planning services and on site resource availability
37. The Service Provider shall provide suitably qualified and experienced Service Provider Personnel to advise and assist Contracting Authorities in procuring their resourcing requirements.
38. The Service Provider acknowledges that Contracting Authorities will select which of the three (3) Managed Recruitment Services Levels they wish to utilise at the point of each individual requisition through the VMS. The Service Provider shall ensure that Contracting Authorities are able to use all of Managed Recruitment Services Levels at any point during the term of the Framework Agreement.
39. Managed Recruitment Service Levels shall apply to all Routes to Talent. The Service Provider shall work with, and provide advice to Contracting Authorities to determine the Managed Recruitment Service Levels required.
40. As part of the Managed Recruitment Services, the Service Provider shall comply with all legislative requirements at all times, and ensure that such requirements are embedded into recruitment processes throughout the term of the Framework Agreement.
41. **Customer Service Function**
    1. The Service Provider shall create, manage and maintain a Customer Service Function to manage and respond to any user enquiries, complaints, request for advice and requests for technical support from the following parties, but not limited to:
42. the Authority;
43. Workers;
44. Agency Providers;
45. Contracting Authorities Authorised Users
    1. The Service Provider shall provide, implement, operate and maintain a clearly defined process for the management of enquiries and complaints, requests for advice and technical support, received from the Authority, Contracting Authorities, Workers, Agency Providers and Contracting Authorities Authorised Users.
    2. The Service Provider shall provide a Customer Service Function that shall be staffed and operational from Monday to Friday inclusive, between the hours of 08:00hrs to 18:00hrs
    3. Contracting Authorities which may require extended operational hours will specify their requirement at Call Off Stage.
    4. The Service Provider shall ensure the Customer Service Function supports the Authority and/or Contracting Authorities management of enquiries and complaints, request for advice and technical support through all means of communication, including but not limited to:
46. online systems;
47. email;
48. letter;
49. telephone;
50. fax.
    1. The Service Provider shall ensure all telephone calls are charged at no more than a standard call rate (no premium rate telephone numbers are permitted). Standard rate in the UK means calls to local and national numbers beginning 01, 02 and 03. Excluded numbers include non-geographic numbers (e.g. 0871) and all premium rate services.
    2. The Service Provider shall ensure that all Service Provider Personnel appointed to the Customer Service Function have the relevant skills and knowledge of the Services, customer relations and relevant technology, to address and resolve all enquiries, complaints, and advice and support requests to the satisfaction of the Authority and/or Contracting Authorities.
    3. The Service Provider shall provide and maintain an appropriate level of Service Provider Personnel availability, to consistently deliver an effective service to the Authority and/or Contracting Authorities via the Customer Service Function during operational hours as set in paragraph 5.2.3.
    4. The Service Provider shall provide online operating guidance on how to access the Customer Service Function to the Authority and/or Contracting Authorities as well as a generic Frequently Asked Questions or information page. This information shall be available on the commencement date of each Call Off Contract.
51. **PROVISION OF TECHNOLOGY – VENDOR MANAGEMENT SYSTEM (VMS)**
52. **Vendor Management System (VMS)**
53. The Service Provider shall provide, host, manage and maintain an internet- enabled Vendor Management System (VMS) that will act as the mechanism to manage and procure staffing services, and provide an end to end work flow for the Public Sector Resourcing Model.
54. The Service Provider shall ensure that the VMS has achieved all specified security accreditations and has been fully tested to the satisfaction of the Authority prior to the Service Commencement Date.
55. The Service Provider shall ensure that the VMS is fully operational at the Service Commencement Date.
56. The Service Provider shall ensure that the VMS and all system components used in the delivery of the Services under this Framework Agreement comply with Government Digital Services (GDS) design principles. Further information can be found at:

[www.gov.uk/design-principles](http://www.gov.uk/design-principles)

1. The Service Provider shall ensure that the VMS and all system components are based on non-proprietary/agnostic technology solutions and that the VMS has the functionality to manage the end to end procuring of all Workers engaged through Non Agency Supply and Agency Supply routes.
2. The Service Provider shall provide full technical details about all aspects of their non-proprietary interface standards e.g. Gs1-xml to the Authority and/or Contracting Authorities immediately upon request.

<http://www.gs1.org/gs1-xml/latest>

1. The Service Provider shall ensure that all web based components are accessible via all major website browsing software.
2. The Service Provider shall ensure that the VMS and all system components have the ability to integrate with the Authority and/or Contracting Authorities IT systems, to streamline and create efficiencies. Any costs of integration with Contracting Authorities IT systems will be agreed at Call Off Stage in accordance with the terms as set out in Framework Agreement Schedule 3 - Pricing
3. The Service Provider shall ensure the VMS has the functionality to be integrated with any Purchase to Pay (P2P) system, ERP systems, eMarketplace, Crown Marketplace (CmP) and other procurement systems through open Application Programming Interfaces (APIs) using industry standards without the need for extensive customisation or configuration. Any costs of will be agreed at Call Off Stage in accordance with the terms as set out in Framework Agreement Schedule 3 – Pricing
4. The Service Provider shall be responsible for configuration, testing and accreditation of the VMS and customising solutions to the individual Authority and/or Contracting Authorities requirements, and ensuring that the Implementation and Transition Plan meets the timescales specified by the Authority and/or Contracting Authorities.
5. The Service Provider shall ensure that all system components of the VMS comply with the requirements including, but not limited to data management, maintenance, upgrade, downtime and accessibility in accordance with the requirements as set out in Framework Schedule 24 - Provision of Technology Systems.
6. The Service Provider shall be responsible for providing the Authority and/or Contracting Authorities with upgrades for all software within six (6) months of a new release being launched. The Service Provider shall provide all software upgrades at no additional charge to the Authority and/or Contracting Authorities.
7. Where the Authority and/or Contracting Authorities IT operating systems and software are not the most current versions, the Service Provider shall ensure that access to the VMS remains available via a variety of web browsers which are compatible with the Authority and/or Contracting Authorities IT systems.
8. The Service Provider shall ensure that all licenses required for technology systems used in delivery of the Services are transferable upon the request of the Authority and Contracting Authorities. At any point in time after the second (2nd) anniversary of the Service Commencement Date
9. Any costs associated with the transfer of licenses at the point of request of transfer by the Authority and/or Contracting Authorities will be agreed at the point of request, however the Service Provider shall not charge the Authority and/or Contracting Authorities more than actual cost (i.e. no mark-up shall be permitted).
10. The Service Provider shall ensure that the VMS is capable of maintaining normal performance during periods of peak usage (i.e. high volumes of Contracting Authorities Authorised Users accessing and using the VMS at the same time), and not cause degradation to front line Contracting Authorities Service provision.
11. The Service Provider shall provide, host and maintain a VMS, which meets all the following requirements, as a minimum:
    1. **Single sign on** – a single point of access to submit requisitions for requirements from both Non Agency Supply and Agency Supply routes for all Worker Categories for the Contracting Authorities Authorised Users.
    2. **Request/Approvals** – a process that requires the Contracting Authorities Authorised Users to secure the relevant approvals within their organisation to allow the sourcing of their resourcing requirements.
    3. **Requisition -** a process that assists the Contracting Authorities Authorised Users to find and select a Worker via both Agency Supply and Non Agency Supply for all Worker Categories.
    4. **Communication** - the functionality for Contracting Authorities Authorised Users to have ability to communicate directly via phone, email/writing, face to face with Agency Supply and Non Agency Supply Providers for all Worker Categories.
    5. **Scale** - the functionality to scale solutions depending on the size of Contracting Authorities from less than 50 hires per year to over 5000 hires per year
    6. **Transparency** - open and transparent processes including date and time stamping of all activities executed on the VMS.
    7. **Worker Pay Rates** – functionality to engage Workers through Personal Services Companies (PSCs), Umbrella Companies, PAYE, Fixed Term Appointments (FTAs) or any other legally compliant routes, including transparency throughout the end to end process (from initial request from Contracting Authorities Authorised Users to invoicing the Contracting Authorities for ordered services)
    8. **Legislative Compliance** – functionality to demonstrate compliance with all relevant legislation (such as, but not limited, to Agency Worker Regulations)
    9. **Management** - functionality that allows management of end to end Worker assignment including, but not limited to:
12. On Boarding, compliance and online document storage in line with requirements of the Cabinet Office Baseline Personnel Security Standards (BPSS), National Security Vetting (as necessary) and any other On Boarding requirements that may be requested by the Authority and/or Contracting Authorities
13. evidence of training/qualifications and Continuous Professional Development (CPD), if required.
14. storing Workers personal data in a manner which is compliant with the requirements of the Data Protection Legislation (as maybe updated from time to time)

<http://www.legislation.gov.uk/ukpga/1998/29/contents>

1. providing benchmarking data in real time on UK Contingent Labour Market Rates, by role and by location, by the public sector and private sector.
2. Worker performance management which tracks Worker performance by assignment in line with relevant legislation and relevant Government policies
3. timesheet completion and approvals including the ability for quarter, half and full days
4. Off Boarding, tracking process to ensure all requisite activities are completed prior to the end of an assignment such as knowledge and skills transfer, return of all official equipment, information and building passes.
   1. **Payment (Purchase Order & Work Order Processing)** - the processing of purchase orders, invoicing (including full transparency in invoices), verification and payment, including integration with embedded payment cards
   2. **Performance reporting** - providing dashboards against agreed Key Performance Indicators, fill rates, regular reporting (as specified by the Authority and/or Contracting Authorities), ad-hoc reporting and Contracting Authorities self-service reporting.
   3. **Statement of Works (SOW)** - the process of seeking services from Workers and project teams (i.e. teams of Workers) with payments against outputs and deliverables appointing to the role which may include a number of Workers.
   4. **Modification** – functionality which enables the Service Provider to create customised screens, forms, alerts and reports at no additional cost to the Authority and/or Contracting Authorities (for example to allow for customised approvals screens) so that the VMS meets the individual and different requirements specified by the Authority and/or Contracting Authorities
   5. **Worker Performance Management** – functionality to develop, monitor, manage and record Worker performance in line with legislation and relevant Government policies, including but not limited to:
5. Contracting Authorities Authorised Users to provide feedback on Worker performance;
6. Workers to provide feedback on the assignment to the Authority and/or Contracting Authorities;
7. feedback to the Authority and/or Contracting Authorities on the Services provided by the Agency Provider.
   1. **Management Information and Reporting**
8. collection, storage of data and reporting, relating to provision of the Services and provision of Management Information to the Authority and/or Contracting Authorities.
9. access to self service reporting to provide a real time view of the Worker landscape a
10. monitor the performance and compliance of the Service Provider in their delivery of the Services
    1. **Functionality:**
11. creation and rate card management
12. self-service for all users
13. Service Provider registration and management
14. Worker and Contracting Authorities Authorised User feedback on the Service Provider’s performance
15. timesheet functionality to clearly capture where a Worker has worked part of a Working Day (½ day or ¼ day). The timesheet functionality shall also provide notification to the Contracting Authority where a Worker has submitted a timesheet for approval showing hours worked on a non working day, such as a weekend or bank holiday.
16. tracking and application of all appropriate legislation to ensure correct application of Worker pay rates, tax and pensions deductions.
17. the ability to include Worker expenses within the timesheet/payments functionality. The Service Provider shall ensure that this functionality also enables scanned receipts to be uploaded to the system and made visible to the Authority and the Contract Authorities to meet the audit requirements of the Authority.
18. notification functionality that can be configured to meet the requirements of the Authority and the Contract Authorities for notification of the following, but not limited to, activities;

* Financial approvals
* HR approvals
* Commercial approval
* Purchase Order/Work order approvals
* Receipt of CV’s/shortlist
* Outstanding activity (no offer within defined timescales)
* Timesheet approvals
* End of Assignment
* Extensions
  1. **Transparency**

1. with date and time stamping to ensure Contracting Authorities Authorised User and Workers and Authorised Users can view the current status of activities in real time
2. Advertising of roles in line with relevant taxation legislation (for example, but not limited to inside or outside of IR35, PAYE, FTA etc.)
3. The Service Provider shall provide a dedicated technology support team as part of the Customer Service Function.
4. The Service Provider shall provide additional integration with other business technology systems if requested by the Authority and/or Contracting Authorities, following initial implementation. The Service Provider shall provide this service upon request from the Authority and/or Contracting Authorities. The Service Provider shall ensure that any new integration activities do not affect any other users or the performance of the VMS. Any costs of integration will be agreed at Call Off Stage in accordance with the terms as set out in Framework Agreement Schedule 24 – Provision of Technology Systems.
5. The Service Provider shall be responsible for advising the Authority and/or Contracting Authorities of the information they require to deliver the required interoperability, including timeframes and any other specific project management requirements.
6. The Service Provider shall ensure that the VMS can collect data on the Services to enable compliance with the monthly reporting requirements to the Authority, (for the Management Information System) MISO as set out in Framework Schedule 9 - Management Information and Reporting.
7. The Service Provider shall be responsible for ongoing development of the VMS to ensure availability of the latest system capabilities at their own cost. The Service Provider shall inform the Authority and/or Contracting Authorities (in advance) of new upgrades, as set out in Framework Schedule 24 - Provision of Technology Systems.
8. The Service Provider shall provide unlimited user licences, to the Authority and/or Contracting Authorities Authorised Users.
9. The Service Provider shall be responsible for ensuring the security and data integrity of all information held in the VMS in accordance with the terms as set out in Framework Agreement Schedule 24 - Provision of Technology Systems.
10. The Service Provider shall ensure that the VMS will facilitate delivery of the following benefits:
    1. decrease costs across the Public Sector Resourcing Model;
    2. enhance programme efficiency and ensure access to best quality Workers.
11. **Automatic Rate Benchmarking**
    * 1. The Service Provider shall provide Automatic Rate Benchmarking via the VMS. The Service Provider shall gather data and report on the following data relating to Worker rates:
    1. Worker rate by location;
    2. Worker rate by skill set/profession/role type;
    3. Worker rate across public and private sectors;
       1. The Service Provider shall ensure Automatic Rate Benchmarking includes the identification of when savings (associated with Benchmarked Rates) should be accepted/declined, and alert the Contracting Authorities Authorised User on individual assignments, at point of selection. The Service Provider shall ensure that reasons for paying more than the Benchmarked Rates are captured at time of selection and recorded through the Management Information (MI) process.
12. **Other Technology Platforms** 
    1. Where the Service Provider uses other technology platforms alongside the VMS in the provision of Services under this Framework Agreement, the Service Provider is required to ensure that any Contracting Authority Authorised User is only required to login to the system once. The Service Provider shall ensure that the Authorised User is re-directed automatically between the platforms in a seamless manner.
    2. The Service Provider shall be responsible for ensuring that all platforms used in the delivery of the Services under this Framework Agreement comply with GDS Design Principles. Further information can be found at [www.gov.uk/design-principles](http://www.gov.uk/design-principles)
    3. The Service Provider shall be responsible for configuration, testing and accreditation of all required technology solutions to the Authority and/or Contracting Authorities requirements, including ensuring the Implementation and Transition Plans takes into account these timeframes.
    4. The Service Provider shall be responsible for the provision, management and maintenance of all technology and all IT licenses required to ensure streamlined delivery of the Services and full suite of management reporting to provide a technology enabled solution.
    5. The Service Provider shall source non-proprietary/agnostic technology solutions to manage the end to end sourcing for all Workers engaged through Non Agency Supply and Agency Supply Chain through technology solutions in line with Good Industry Practice.
    6. The Service Provider shall be responsible for ensuring that all technology provisions adhere to the requirements including, but not limited to data management, maintenance, upgrade, downtime, accessibility etc. as set out in this Schedule 2 and the terms in Framework Schedule 24 - Provision of Technology Systems.
    7. The Service Provider shall ensure that all systems provided under this Framework Agreement have the ability to integrate with the Authority and/or Contracting Authorities IT systems to streamline and create efficiencies. Any costs of integration are to be agreed at Call Off Stage as set out in Framework Agreement Schedule 3 – Pricing.
    8. The Service Provider shall ensure all web based systems are accessible via all major web-site browsing software.
    9. The Service Provider shall be responsible for the ongoing development and maintenance of the technology platforms to ensure they meet the changing requirements of Authority and/or Contracting Authorities.
    10. The Service Provider shall ensure the appropriate representation is part of the joint Governance structure by all providers of technology to ensure that the Authority are informed of all new developments and improvements to systems functionality.
    11. The Service Provider shall be responsible for providing the Authority and/or Contracting Authorities with upgrades for all software within six (6) months of a new software upgrades and/or releases being launched. The Service Provider shall provide all software upgrades at no additional charge to the Authority and/or Contracting Authorities during this period.
    12. Where the Authority and/or Contracting Authorities IT operating systems and software are not the most current versions, the Service Provider shall ensure technology access is available via the older version, which is compatible with the Authority and/or Contracting Authorities IT systems.
13. **Training**
14. The Service Provider shall provide initial training to the Authority and Contracting Authorities at no additional cost to the Authority and Contracting Authorities
15. The Service Provider shall provide the Authority and/or Contracting Authorities Authorised User with clear instructions on how to use the VMS which will enable the Contracting Authorities Authorised Users to fulfil all operational functions.
16. Where requested by the Authority and/or Contracting Authorities, the Service Provider shall provide refresher training and any training required for new software updates at no additional cost to the Authority and/or Contracting Authorities.
17. The Service Provider shall ensure that all training material is provided to the Authority and/or Contracting Authorities prior to publication/delivery.
18. The Service Provider shall ensure all training for the VMS is delivered via a route to be agreed with the Authority and/or Contracting Authorities and shall include, as a minimum:
    1. face-to-face,
    2. online;
    3. webinar;
    4. telephone.
19. The Service Provider shall ensure appropriate Service Provider Personnel are in place to meet all training requirements of the Authority and/or Contracting Authorities to allow full use of all VMS functionality throughout the duration of the Framework Agreement
20. **ROUTES TO TALENT – NON AGENCY SUPPLY**
21. **Design, Implementation and Management**
22. The Service Provider shall be required to identify, implement, manage and maintain a range of Non Agency Routes to Talent.
23. This shall include the provision of an End to End service, including provision of technology and the provision of Service Provider Personnel to source Workers through:
    1. Direct Hire;
    2. Segmented Talent Pools;
    3. Pre Identified Workers (including referrals and nominated Workers);
    4. Other innovative and emerging Non Agency Supply routes.
24. The Service Provider shall work collaboratively with the Authority and/or Contracting Authorities to identify the optimum Routes to Talent to attract suitably qualified and experienced Workers in a timely and cost effective manner.
25. The Service Provider shall use a phased approach to implementation of all Non Agency Supply routes. The Service Provider shall develop a plan for phasing and implementation of the Non Agency Supply routes which shall be produced and submitted to the Authority as part of the Service Mobilisation Plan and Implementation and Transition Plan as set out in paragraph 4 of this Framework Schedule.
26. In the event that the Service Provider utilises a separate technology platform(s) for Non Agency Supply (i.e. a platform that is not part of the VMS) the Service Provider shall be required to integrate the separate technology platform(s) with the VMS at no additional cost to the Authority and/or Contracting Authorities.
27. The Service Provider shall provide, as a minimum, the following services for all Workers sourced via any of the Non Agency Supply routes:
    1. management of Worker Day Rates, including negotiation of Worker day rate in line with real time benchmarking data;
    2. management and issue of contracts to Workers via email or other agreed routes;
    3. Payment of the Worker;
    4. Worker Care;
    5. management of any Worker restrictions (e.g. ownership of Workers and restricted covenants);
    6. management of any extensions of Worker contracts;
    7. management of and compliance to any legislative requirements;
28. **Direct Hire**
29. The Service Provider shall design, implement, manage and maintain a Direct Hire Routes to Talent including providing the resources and technology to manage the End to End process to enable Contracting Authorities to engage directly with individual Workers.
30. The Service Provider shall, as a minimum:
    1. select and amend from predefined/existing role profiles, create new role profiles;
    2. gather and provide real time benchmarking data based on role type and location to ensure the most competitive UK Contingent Labour Market Rates are achieved;
    3. filter Workers by skill set, qualifications and previous employers;
    4. enable new shortlisting skill filters to be included on the Authority and/or Contracting Authorities request within one (1) hour;
    5. provide simple Worker registration and upload of CV’s;
    6. notification to all suitable pre-registered Workers on publication of requirements;
    7. facilitate communication between Workers and Contracting Authorities Authorised Users for the management of the interview process;
    8. functionality to provide feedback to Workers with reasons for why they were not hired
    9. the ability to introduce additional/new functionality such as interviewing via video conferencing as and when identified by the Service Provider, or when specified by Contracting Authorities.
31. **Segmented Talent Pools**
32. The Service Provider shall design, implement, manage and maintain a Segmented Talent Pool including provision of Service Provider Personnel and technology to manage the End to End Talent Pool process.
33. The Service Provider shall ensure that the Segmented Talent Pool aligns with the Worker Categories, as set out in paragraph 3.2 of this Framework Schedule 2.
34. The Service Provider shall ensure the technology platform provided for the Segmented Talent Pools shall comply with the technology requirements as set out in this Schedule 2 and Framework Schedule 24 - Provision of Technology Systems.
35. The Service Provider shall ensure the Segmented Talent Pool enables the Authority and/or Contracting Authorities Authorised Users to conduct the following activities, as a minimum:
    1. locate Workers by geographical location and skill set;
    2. view Workers availability;
    3. view Workers CVs and work history;
    4. review Worker Day Rates;
    5. ability for Workers to review and update their CV and availability data in real time;
    6. manage potential Workers entering the Segmented Talent Pool ensuring that they meet the minimum requirements of the Authority and/or Contracting Authorities.
36. **Pre Identified Workers (including Referrals and Nominated Workers)**
37. The Service Provider shall design, implement, manage and maintain the End to End process for Pre Identified Workers including Referrals and Nominated Workers, providing the Service Provider Personnel and technology platforms to manage this Service.
38. The Service Provider shall ensure that any technology platform(s) provided as part of managing the End to End process for Pre Identified Workers including Referrals and Nominated Workers comply with technology requirements as set out in this Schedule 2 and Framework Schedule 24 - Provision of Technology Systems.
39. The Service Provider shall ensure the process enables and includes, as a minimum:
    1. initial contact with the Worker once pre identified by Contracting Authorities;
    2. offer of a contract to the Worker;
    3. allocation and addition of Pre Identified Workers to Tailored Supply Chain to facilitate Contracting Authorities Authorised Users ease of access to Workers.
40. **Other Innovative and Emerging Non Agency Supply**
41. The Service Provider shall propose additional innovative Non Agency Supply Routes to Talent, throughout the duration of the Framework Agreement.
42. For any innovative or emerging Non Agency Supply Routes to Talent, the Service Provider shall manage the End to End process, including provision of technology platforms.
43. The Service Provider shall include proposals for innovative and emerging Non Agency Supply Routes to Talent in the following documents which the Service Provider shall produce:
    1. Mobilisation and Implementation and Transition Plans;
    2. Continuous Improvement Plan and Innovation Roadmap;
    3. Spend under management and savings plan;
44. **ROUTE TO TALENT – AGENCY SUPPLY**
45. The Service Provider shall design, implement, manage and maintain Tailored Supply Chain, which align with the Worker Categories as set out in paragraph 3.2 and Annex 1 (Routes to Talent) of this Framework Schedule 2.
46. **Tailored Supply Chain Design and Implementation (Agency Providers)**
47. The design of the Tailored Supply Chain shall be developed for Contracting Authorities and shall, as a minimum:
    1. be based on the Service Provider’s UK Contingent Labour Market expertise and knowledge, with flexibility to meet the changing needs of Contracting Authorities;
    2. be based on information and/or data provided by the Authority and it’s specified requirements;
    3. include consultation with the Authority and/or Contracting Authorities to ensure the Tailored Supply Chain which shall be tailored for Contracting Authorities meets the specified requirements.
    4. be agreed by the Authority and refreshed in the Innovation Roadmap.
    5. facilitate the ability for Contracting Authorities Authorised Users to liaise and communicate directly with providers within the Tailored Supply Chains where this is the recommended Route to Talent. This shall enable Contracting Authorities Authorised Users to talk directly in a timely manner to Agency Providers in a controlled and documented manner.
48. The implementation of the Tailored Supply Chain shall include, but is not limited to:
    1. The Service Provider shall design, build, manage and maintain a Tailored Supply Chain which is capable of delivering the Services to the standards to be specified by the Authority
    2. In designing, building, managing and maintaining a Supply Chain for the delivery of the Services, the Service Provider shall adopt and demonstrate the following principles at all times, namely:
    3. Transparency;
    4. fair and equal treatment;
    5. non-discrimination;
    6. proportionality;
49. The Service Provider shall develop a Mobilisation Plan (as set out in paragraph 4 of this Framework Schedule 2) for implementing the Tailored Supply Chains (i.e. segmented by type of supply and by Worker category, as set out in paragraph 3.2 of this Framework Schedule 2.
50. The Service Provider shall ensure that the Mobilisation Plan includes details of how each part of the Tailored Supply Chain will be structured by type of supply route and Worker category and also details when each part of the Tailored Supply Chain will be implemented using a phased approach.
51. The Service Provider shall submit the Mobilisation Plan for the Tailored Supply Chain to the Authority for their review to ensure all the requirements of the Contracting Authorities are captured. Where the Authority identifies any changes required to the Plan they shall advise the Service Provider as soon as practicable.
52. The Service Provider shall ensure that any changes to the Mobilisation Plan requested by the Authority are updated to the plan ready for approval by the Service Provider and the Authority through the Joint Governance Board.
53. The Authority will also have the ability to procure separate Tailored Agency Supply Chains or add existing Tailored Supply Chains (through existing Framework Agreements established by the Authority) at its discretion, as part of the Joint Governance.
54. **Tailored Supply Chain Management / Agency Provider Management**
55. The Service Provider shall ensure the provision of a seamless Agency Supply service in line with Non Agency Supply provisions as set out at paragraph 7 of this Framework Schedule 2. The Service Provider will ensure robust Agency Provider Management in line with good industry practice.
56. The Service Provider shall have transparent and documented processes in place to manage any existing Worker restrictions (i.e. restricted covenants) through the Tailored Supply Chain.
57. The Service Provider shall develop and implement performance metrics to actively manage the Tailored Supply Chains for example, but not limited to:
    1. managing performance;
    2. fill rates, and;
    3. quality of Workers;
58. These metrics will be reviewed on a regular basis by the Joint Governance Board.
59. Where Agency Supply is the chosen Route to Talent, the Service Provider shall ensure, that there is:
    1. no double handling of requirements or duplication;
    2. a seamless Worker journey;
    3. use of VMS for all assignments;
    4. full transparency of processes for Agency Providers, Workers, and Contracting Authorities Authorised Users.
60. The Service Provider shall ensure that their approach to Supply Management actively supports the government’s SME agenda and the Service Provider shall be required to be fully transparent in their approach at all times throughout the duration of this Framework Agreement.
61. The Service Provider shall provide the Authority with the number and names of SMEs in their Supply Chain and associated spend within their monthly Management Information reports as set out at paragraph 7 of this Framework Schedule 2.
62. Upon the request, the Service Provider shall provide the Authority with a copy of the contracts and service schedules of all of their service providers within the Service Provider’s Supply Chains.
63. The Service Provider acknowledges that its approach to Supply Chain management will be published in the interests of transparency.
64. Where Agency Supply is the chosen Routes to Talent, Agency Providers shall provide, as a minimum, the following services for all Workers sourced via this route:
    1. management of Worker Day Rates, including negotiation of Worker Day Rate in line with real time benchmarking data;
    2. management and issue of contract to the Worker including managing enquiries and payment of the Worker;
    3. Worker Care including On Boarding and Off Boarding and feedback;
    4. management of any existing restrictions (e.g. restricted covenants);
    5. management of any extensions of Worker contracts;
    6. management of and compliance to any legislative requirements;
65. **WORKER** **CARE AND EXPERIENCE**
66. The Service Provider shall be responsible for creating and providing a positive Worker care experience for all Workers.
67. The Service Provider shall be responsible for all security vetting and compliance checks for each Worker prior to placement.
68. **On Boarding, Security vetting and Off Boarding**
69. The Service Provider shall be responsible for completing checks to ensure each Worker’s compliance with the Cabinet Office Baseline Personnel Security Standard (BPSS);
    1. identity, right to work, employment history and DBS checks in line with the requirements of Cabinet Office Baseline Personnel Security Standard policy;
    2. ensuring processes are in place to monitor Worker security clearance/visas on an ongoing basis including monitoring expiry dates, hours worked and any other restrictions that may be in place;
    3. ensure any qualifications held by the Worker meet the Authority and/or Contracting Authorities specification;
    4. More information on the requirement of Cabinet Office Baseline Personnel Security Standard can be accessed using the following link:

<https://www.gov.uk/government/publications/hmg-personnel-security-controls>

1. The Service Provider shall ensure that copies of all verified documentation are held on file in a format that is unable to be altered/amended. All documentation shall be held for six (6) years after expiry of the Framework Agreement.
2. The Service Provider shall ensure that Workers supplied to the education sector are compliant with the Safer Recruitment in Education Guidance and are part of either the REC Audited Education Scheme or the APSCO Compliance+ Scheme.

<https://www.rec.uk.com/business-support/audited/audited-education>

1. The Service Provider shall ensure that Workers supplied to the health sector are compliant with the requirements specified and that safeguarding checks have been completed prior to placement of a Worker:
   1. The Service Provider shall undertake pre-employment checking for the NHS which seeks to verify that an individual meets the preconditions of the role they are applying for.
   2. There are six (6) NHS Employment Check Standards that outline the type and level of checks employers must carry out before recruiting staff into NHS positions.
   3. The Service Provider shall comply with the following guidance and further information about each employment check may be found here:

<http://www.nhsemployers.org/your-workforce/recruit/employment-checks>

* 1. The Service Provider shall ensure each Worker has the required level of English language competence (and Welsh, if required) to enable them to undertake their role effectively, to enable clear communication about medical topics with patients and colleagues and to assure the delivery of safe care to patients in accordance with:

<http://www.nhsemployers.org/case-studies-and-resources/2017/01/language-competency-good-practice-guidance-for-employers>

* 1. On being recruited and thereafter on an annual basis, the Service Provider shall ensure that each Worker receives mandatory training relevant to the normal duties that the Worker shall be expected to perform in accordance with the UK Core Skills Training Framework. Details can be found here:

[http://www.skillsforhealth.org.uk/developing-your-organisations-talent/uk-wide-core-skills-training--framework](http://www.skillsforhealth.org.uk/developing-your-organisations-talent/uk-wide-core-skills-training--framework%20)

* 1. The Service Provider shall ensure secure retention of all records in relation to safeguarding, in line with the Data Protection Act as maybe updated from time to time. Records must be kept for two (2) years after the Worker leaves job role.
  2. The Service Provider shall have policies and procedures in place which describe and explain the Non Agency Supply routes and the relevant recruitment processes, as the pre-employment checks apply to all Workers in the health sector.

1. The Service Provider shall be responsible for validating the accuracy of the information supplied by all Workers sourced via Non Agency Supply routes.
2. The Service Provider shall not raise charges where checks have already been made and evidenced to the satisfaction of the Authority and/or Contracting Authorities in the circumstances where additional checks are required to be undertaken on Workers before they commence an assignment. These additional checks will be identified by the Authority and/or Contracting Authorities at start of the recruitment process, and if required a charging structure agreed for the provision of this service.
3. The Service Provider shall be responsible for ensuring that all documentation in relation to such checks is made available to the Authority and/or Contracting Authorities, immediately upon request.
4. The Service Provider shall obtain a signed declaration from all Workers giving the Service Provider permission to share their personal details and any supporting documentation to Contracting Authorities Authorised Users
5. The Service Provider shall ensure that the Worker is able to contact the Contracting Authorities Authorised Users directly, which contributes towards creating a positive Worker experience.
6. The Service Provider shall ensure Off Boarding of Workers is undertaken in a timely and professional manner.
7. The Service Provider shall report on Off Boarding processes and Worker and experience as part of the MI, as set out in Framework Schedule 9 – Management Information and Reporting.
8. **Feedback on Assignments**
9. The Service Provider shall ensure that feedback about the selection process is offered to all Workers (whether successful or unsuccessful), in a timely and professional manner.
10. The Service Provider shall manage the feedback process to Workers in conjunction with Authorised Users.
    1. **Performance Management of Workers** 
       1. The Service Provider shall ensure that feedback Worker performance management is undertaken, which tracks Worker performance by assignment in line with relevant legislation and relevant Government policies
11. **PAYMENT TO WORKERS AND THE SUPPLY CHAIN**
12. **Non Agency Supply**
13. The Service Provider shall be responsible for the provision of payroll services for all Workers engaged via Non Agency Supply routes and Agency Supply routes.
14. The Service Provider shall be responsible for development, configuration and ongoing maintenance of the technology required to deliver payroll services.
15. The Service Provider shall ensure that any systems used for payment of Workers is integrated with the VMS to deliver a streamlined payment process to the Authority and/or the Contracting Authorities.
16. The Service Provider shall ensure that where requested by the Authority and/or Contracting Authorities, payroll systems have the functionality to be integrated with the Authority and/or Contracting Authorities P2P systems.
17. The Service Provider shall, on receipt of a Worker’s verified and duly authorised timesheet, ensure the Worker is paid in line with market standards with payments to be made monthly as a minimum, and weekly as a maximum
18. **Agency Supply**
19. The Service Provider shall be responsible for payment to the Agency Providers in line with the terms to be agreed with the Authority at the Joint Governance Board.
20. **SPEND UNDER MANAGEMENT AND SAVINGS**
21. The Service Provider shall work with the Authority and/or Contracting Authorities to agree a series of on-going publicity and general promotional material and initiatives throughout the term of the Framework Agreement to highlight awareness of the Services and encourage uptake and use of the Services by the Authority and/or Contracting Authorities Personnel, in accordance with the requirements as set out in Framework Schedule 11 - Marketing.
22. The Service Provider shall ensure they take action for promotion of the Services and the Authority and/or Contracting Authorities shall not be charged for such Services. Any material shall be agreed in advance by the Authority and/or Contracting Authorities, and contain branding specific to the Contracting Authorities if required.
23. The Service Provider shall work collaboratively with the Authority and/or Contracting Authorities to identify and deliver savings, and identify and act on, opportunities for increased spend under management throughout the life of the Framework Agreement.
24. The Service Provider shall develop, implement, manage and report on, a plan for spend under management and savings detailing the following as a minimum (but not limited to):
25. year on year growth of business through the Framework Agreement with Contracting Authorities and especially to wider public sector, including approach and resources to achieve;
26. optimum Routes to Talent to attract suitably qualified and experienced Workers in a timely and cost effective manner, including approach and resources to achieve;
27. how Contracting Authorities can buy more effectively and make incremental savings;
28. benefits methodologies and savings levers that can be applied;
29. lost savings opportunities;
30. how savings will be tracked and reported to the Authority and/or Contracting Authorities as part of the monthly MI, as set out in Framework Schedule 9 – Management Information and Reporting;
31. This plan will be approved by the Joint Governance Board;
32. **WORKFORCE PLANNING**
33. The Service Provider shall, if requested by Contracting Authorities, deliver workforce planning services which will include, but not limited to:
34. Workforce analysis and advisory services to understand demand patterns and current utilisation of substantive and flexible workforce
35. Workforce optimisation services such as shift planning, absence management,
36. forecasting and budgeting
37. Investment analysis to determine whether an in-house or fully outsourced Flexible Resource Pool solution is required.
38. Workforce planning activities such as substantive Worker recruitment, training of substantive Worker and performance management of substantive Worker
39. **CONTINUOUS IMPROVEMENT PLAN & INNOVATION ROADMAP**
40. **Development and Implementation of the Innovation Roadmap**
41. The Service Provider shall be responsible for delivering innovation and continuous improvement, throughout the duration Framework Agreement.
42. Over the life of the Framework Agreement, the Service Provider shall actively work with the Authority and/or Contracting Authorities, to continually improve and provide innovative solutions for the provision of Services. This includes, but is not limited to:
43. streamlining processes, including internal hiring processes
44. improving the experience for Workers, Contracting Authorities Authorised Users and Agency Providers, ensuring the public sector is an employer of choice including consistent branding that helps to achieve this.
45. removing duplication across the End to End process
46. providing advice and support to build the Authority and/or Contracting Authorities brand as an employer of choice to ensure attraction of quality Workers
47. regular review of the Services with the Authority and/or Contracting Authorities with a view to reducing the Authority's costs, the Framework Prices, the costs of other Authority’s and/or Contracting Authorities improving the quality and efficiency of the Services.
48. introducing market innovations and technology trials
49. ensuring the public sector is an employer of choice including branding of the Public Sector Resourcing Model.
50. **Diversity and Inclusion**
    1. As part of the continuous improvement plan and innovation roadmap, the Service Provider shall clearly demonstrate how the Services promote and ensure equality and value diversity, clearly working towards the Civil Service Diversity and Inclusion targets as outlined:

<https://www.gov.uk/government/organisations/civil-service/about/equality-and-diversity>.

This shall include a Talent Action Plan that clearly outlines the best possible mix of existing and future Talent, including setting out actions to ensure that the Civil Service is one of the best and most progressive UK employers for Workers.

1. **Legislation Changes**
   1. The Service Provider shall be required to keep abreast of changes in the UK Contingent Labour Market and legislation and ensure that such changes are communicated in a timely manner to the Authority and/or Contracting Authorities and where necessary, appropriate changes made to processes and procedures (i.e. AWR, IR35, Minimum Wage), in line with the Variation procedure as set out in Framework Schedule 19 – Variation Form.
2. **Workforce Policy**
   1. Understand, interpret and influence public sector policies around Workers, workforce management and total Talent.
3. The Service Provider and the Authority and/or Contracting Authorities shall provide to each other any information which may be relevant in driving the objectives of continuous improvement and in particular reducing costs.
4. The Service Provider shall produce an Innovation Roadmap and Continuous Improvement Plan which will detail continuous improvements, innovative new ways of working, UK Contingent Labour Market trends, and ways to improve the provision of Services under all Call Off Contracts and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Contract) throughout the term of the Agreement. The Continuous Improvement Plan/Innovation Roadmap will be approved by the Authority at the Joint Governance Board.
5. The Continuous Improvement Plan/Innovation Roadmap shall include, as a minimum, proposals in respect of the following:
6. All areas outlined in Clause 13.1 – 13.5 of this Framework Schedule 2.
7. alternative/additional Routes to Talent, and increasing usage of existing more cost effective Routes to Talent;
8. Digital enablement;
9. Supply Chain optimisation;
10. Cost optimisation;
11. Customised data including management and business intelligence and analytics;
12. identifying the emergence of new and evolving technologies which could improve the Services;
13. identifying changes in behaviour within the Authority and/or Contracting Authorities that result in a cost saving and a reduction in the Framework Prices;
14. improving the way in which the Services are marketed via the Framework Agreement that may result in reduced Framework Prices;
15. identifying and implementing efficiencies in the Service Provider’s internal processes and administration that may lead to cost savings and reductions in the Framework Prices;
16. identifying and implementing efficiencies in the way the Authority and/or Contracting Authorities  interact with the Service Provider that may lead to cost savings and reductions in the Framework Prices;
17. identifying and implementing efficiencies in the Tailored Supply Chain that may lead to cost savings and reductions in the Framework Prices;
18. baselining the quality of the Services, its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Framework Term; and
19. measuring and reducing the sustainability impacts of the Service Provider and the supply chains operations pertaining to the Services, and identifying opportunities to assist Authority and/or Contracting Authorities in meeting their sustainability objectives.
20. The Service Provider shall produce a customer satisfaction survey which will be approved by the Joint Governance Board and will be issued to the Contracting Authorities annually. The Service Provider shall report all findings from the customer satisfaction survey as part of the Joint Governance Board and shall take the necessary actions to rectify where any issues or areas of poor performance of the services are identified.
21. **JOINT GOVERNANCE AND FRAMEWORK MANAGEMENT**
22. The Service Provider shall apply the principles of Good Industry Practice to govern this Framework Agreement and any Call Off Contracts, including providing a suitably qualified nominated contact (Service Provider Framework Manager) who will take overall responsibility for delivering the Services required, as well as a suitably qualified deputy to act in their absence. w
23. The Service Provider shall be required to design, implement and manage a joint Governance approach with the Authority and/or Contracting Authorities.
24. The Service Provider shall ensure that governance structures are established, and regular meetings are scheduled and conducted with the Authority and/or Contracting Authorities in line with the size and scope of the requirements of the Authority and/or Contracting Authorities.
25. The Service Provider shall ensure that the Joint Governance Structure is supported by Terms of Reference which shall include Operational and Strategic Contract Management and Governance.
26. The Service Provider shall ensure the Joint Governance Structure includes representation from technology providers (where this may have been Sub-Contracted), to ensure that the Authority and/or Contracting Authorities are informed of all potential new developments and improvements to systems functionality.
27. The Service Provider shall develop a proposal on how this Framework Agreement will be governed with the Authority ensuring a collaborative and partnering approach is maintained throughout the duration of the Framework Agreement. This shall include, as a minimum:
28. the Joint Governance Structure,
29. escalation provisions
30. proposed meeting schedules for the Authority.
31. The joint Governance structure shall include input and representation from any technology Key Sub-Contractors, Non Agency Supply routes and Agency Providers to ensure feedback is provided regularly and on an ongoing basis. The Governance shall provide transparency for the Authority, Contract Authorities, Agency Providers, Key Sub-Contractors and Workers.
32. Through the Joint Governance Structure, the Service Provider and the Authority shall Approve, within a maximum of two (2) months of the Framework Commencement Date, the following Final documents (but not limited to):
33. Joint Governance Structure proposal.
34. Joint Governance Structure for Contracting Authorities
35. Spend Under Management and savings plan
36. Service Mobilisation Plan and Implementation and Transition Plan
37. Continuous Improvement Plan and Innovation Roadmap
38. Tailored Supply Chain approach
39. Any other documentation required to govern, manage and improve the Partnership Approach;
40. The above mentioned documents shall be reviewed as part of the Joint Governance Structure every six (6) months as a minimum.
41. The Terms of Reference shall be reviewed, as part of the Joint Governance Structure, every six (6) months as a minimum.
42. The Joint Governance Board shall monitor and measure the Partnership Approach including the Service Levels as set out in Schedule 28 - Service Levels
43. The Service Provider shall also be required as part of the Joint Governance Structure to have responsibility for drafting any policy notes required for implementation and management of the Public Sector Resourcing Model which shall be submitted to the Joint Governance Board for approval prior to implementation.
44. **OVERSEAS SERVICES**
45. The Service Provider shall provide Services to Contracting Authorities Authorised Users who will be required to complete assignments which will involve working outside the UK.
46. The Service Provider shall ensure that the VMS is fully accessible to Contracting Authorities Personnel located overseas, if specified at Call Off Stage.
47. The Service Provider shall work with Contracting Authorities to ensure requirements meet all relevant legislation and requirements of the Country where the Worker is engaged (if applicable)
48. **MANAGEMENT INFORMATION**
49. The Service Provider shall produce a suite of monthly management reports and dashboards for the Authority and/or Contracting Authorities by the seventh (7th) working day of each calendar month which comply with the requirements set out in Framework Schedule 9 - Management Information and Reporting.
50. **KEY PERFORMANCE INDICATORS**
51. The Service Provider shall monitor its performance against each of the Key Performance Indicators in Framework Schedule 2 (Part B: Key Performance Indicators) and shall report to the Authority through the Joint Governance Structure in accordance with Framework Schedule 8 (Framework Management).
52. **SERVICE LEVELS**
53. The Service Provider shall monitor its performance against each of the Service Levels (as set out in Framework Agreement Schedule 28 - Service Levels) and shall report to the Authority through the Joint Governance Structure, in accordance with Framework Schedule 8 - Framework Management.
54. Any changes to Service Levels shall be agreed between the Authority and/or Contracting Authorities in accordance with the terms of this Framework Agreement using the Variation Procedure set out in Framework Schedule 19 – Variation Form.
55. **BRANDING OF THE PUBLIC SECTOR RESOURCING MODEL**
56. The Service Provider shall brand the Public Sector Resourcing Model as agreed with the Joint Governance Structure in line with branding standards.
57. The Service Provider shall ensure that all branding of the Public Sector Resourcing Model is complies to government branding rules, for more information please see the link below, and in accordance with Framework Schedule 11 - Marketing.

<https://gcs.civilservice.gov.uk/wp-content/uploads/2016/04/HMG-branding-overview-_February2017.pdf>

**Annex 1 - ROUTES TO TALENT**

**Strategic Partner**

**Enhanced Vendor Management System & Performance & On boarding & P2P**

**Non-Agency Supply**

**Innovation**

talent management, supply chain management, brand management, workforce management, **thought leadership**, attraction & retention, benchmarking & access to subject matter expertise

**Agency Supply**

**Specialist / niche / charity**

**Professional**

**Admin, clerical & operation**

**NHS/Health Non-**

**Clinical**

**Universities & specialist providers**

**Digital / Tech**

**WPS Workers**

**Executive Workers**

Talent Pool

Pre-

Identified Workers

Tailored Supply chain

Other Non Agency

Tailored Supply chain

Tailored Supply chain

Tailored Supply chain

Light

Tailored Supply chain

Tailored Supply chain

Tailored Supply chain

MOJ

DWP

HO

NHS

WPS

MOD

Local Govt

All CG

Schools

Medium

High

Direct Hire

Talent Pool

Pre-

Identified Workers

Other Non Agency

Direct Hire

Talent Pool

Pre-

Identified Workers

Other Non Agency

Direct Hire

Talent Pool

Pre-

Identified Workers

Other Non Agency

Direct Hire

Talent Pool

Pre-

Identified Workers

Other Non Agency

Direct Hire

Talent Pool

Pre-

Identified Workers

Other Non Agency

Direct Hire

Talent Pool

Pre-

Identified Workers

Other Non Agency

Direct Hire

Talent Pool

Pre-

Identified Workers

Other Non Agency

Direct Hire

Schools

NHS

WPS

Local Govt

Government Departments and Arm’s Length Bodies

NHS

WPS

Local Govt

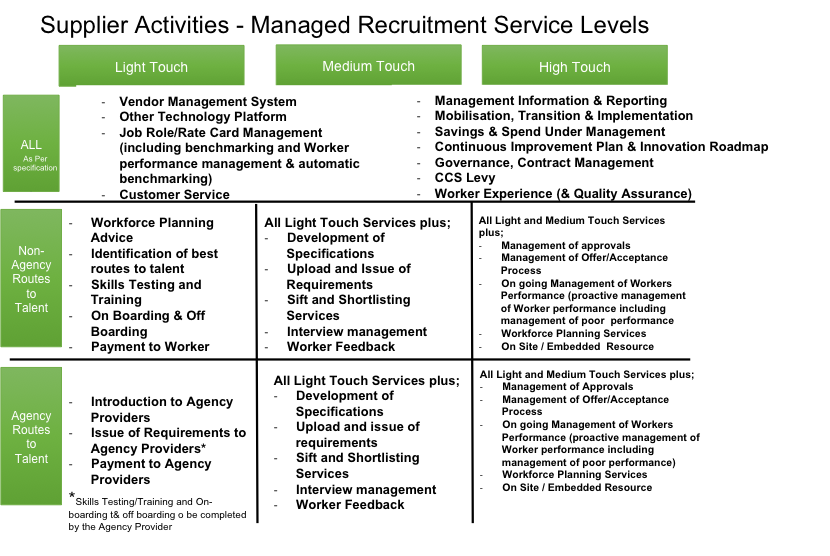
Customers

Government Departments and Arm’s Length Bodies

Schools

***Following successful implementation, Teachers, SOW and International Workers will be rolled out***

Tailored Supply chain

**ANNEX 2 -**

**Note:** ***Following successful implementation of the above, Teachers, SOW and International Workers will be rolled out***

Part B – Key Performance Indicators

1. General
   1. The purpose of this Part B is to set out the KPIs by which the Service Provider’s overall performance under this Framework Agreement shall be monitored and managed. The Authority 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 Authority and the Service Provider in accordance with Clause 19.1 (Variation Procedure).
   2. The Service Provider 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.
   3. The KPIs from which performance by the Service Provider of this Framework Agreement will be reported against are set out below:

|  |  |  |
| --- | --- | --- |
| **Key Performance Indicator (KPI)** | **KPI Target** | **Measured by** |
| **1. FRAMEWORK MANAGEMENT** |  |  |
| 1.1 MI returns: All MI returns to be returned to CCS by the 5th Working Day of each month. | Monthly | Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority’s data warehouse (MISO) system) |
| 1.2 All undisputed invoices to be paid within 30 calendar days of issue. | Monthly | Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority’s CODA system) |
| 1.3 Service Provider self-audit certificate to be issued to the Authority in accordance with the Framework Agreement. | Annually | Confirmation of receipt and time of receipt by the Authority |
| 1.4 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report. | As required | Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report |
| 1.5 Service Provider to make all Agency Provider and Worker payments in line with the agreed payment terms. | Monthly | Evidence provided in monthly performance report submitted to the Authority |
| 1.6 Technology Systems availability (working hours) 99.99%. | Monthly | Notification from Service Provider/Sub-Contractor of non-availability |
| 1.7 Technology Systems availability (non working hours) 99%. | Monthly | Notification from Service Provider/Sub-Contractor of non-availability |
| 1.8 Less than 10 complaints received in 1 month, with all complaints acknowledged within 24 hours and action to resolve complaint agreed within 5 Working Days. | Monthly | Evidence provided in monthly performance report submitted to Authority |
| 2. OPERATIONAL EFFICIENCY/PRICE SAVINGS |  |  |
| 2.1 The Service Provider to deliver against the Continuous Improvement Plan, Innovation Roadmap, and the Spend Under Management and Savings Plan, to derive further cost savings over the Framework Period. | Monthly | Confirmation by the Authority of the cost savings achieved by the dates identified in the Service Provider Action Plan |
| 2.2 Distribution of opportunities:  - to Agency Providers to shortlist Workers to be submitted to Contracting Authority Authorised Users; and  - from distribution to Agency Provider Tailored Supply Chain to receipt of CV's by the Contracting Authority Authorised Users. | Monthly | Evidence provided in monthly performance report submitted to the Authority |
| 2.3 Distribution of opportunities to Non- Agency Supply to submission of successful Candidates’ CV | Monthly | Evidence provided in monthly performance report submitted to the Authority |
| 2.4 Shortlisted Candidates sent to Contracting Authorities to offer accepted by Candidate | Monthly | Evidence provided in monthly performance report submitted to the Authority |
| 2.5 Offer accepted to completion of On-Boarding | Monthly | Evidence provided in monthly performance report submitted to the Authority |
| 2.6 Percentage of roles filled 1st time /2nd time /3rd time | Monthly | Evidence provided in monthly performance report submitted to the Authority |
| 2.7 Service Provider to provide a positive Worker Care Experience for all Workers sourced via Agency Supply and Non Agency Supply | Quarterly | Confirmation by the Authority of the Service Provider’s performance against the Worker satisfaction survey |
| **3. DEMAND MANAGEMENT SAVINGS** |  |  |
| 3.1 The Service Provider to deliver against the Continuous Improvement Plan, Innovation Roadmap, and the Spend Under Management and Savings Plan to derive further cost savings over the Framework Period continuous improvement and innovation. |  | Confirmation by the Authority of the cost savings achieved by the dates identified in the Service Provider Action Plan |
| **4.** **CUSTOMER SATISFACTION** |  |  |
| 4.1 Services to be provided under Call Off Contracts to the satisfaction of Contracting Authorities |  | Confirmation by the Authority of the Service Provider’s performance against customer satisfaction surveys |

FRAMEWORK SCHEDULE 3: FRAMEWORK prices AND CHARGING STRUCTURE

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

|  |  |
| --- | --- |
| "Indexation" | 1. means the adjustment of an amount or sum in accordance with Paragraph 9 of this Framework Schedule 3; |
| "Indexation Adjustment Date" | 1. has the meaning given to it in paragraph 1.1.1a of this Framework Schedule 3; |

1. General Provisions
   1. The Framework Prices set out in Annex 3 to this Framework Schedule 3 are the maximum that the Service Provider may charge pursuant to any Call Off Contract.
   2. NOT USED.
   3. The Service Provider 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.
2. Pricing mechanism for the caLculation of framework prices
   1. Framework Prices shall be calculated using the pricing mechanism specified in Annex 3 to this Framework Schedule 3.
   2. NOT USED
   3. NOT USED
   4. NOT USED
   5. **Rebates**
      1. Where table 2 in tab 8 of Annex 3 indicates that a rebate is to be calculated, the relevant Framework Prices shall be calculated on the basis of the percentage rebates as set out in table 2 in Tab 8 of Annex 3 of this Framework Schedule.
3. costs and expenSes
   1. The Framework Prices shall include all costs and expenses relating to the Services provided to Contracting Authorities and/or the Service Provider’s performance of its obligations under any Call Off Contracts and no further amounts shall be payable by a Contracting Authority to the Service Provider in respect of such performance, including in respect of matters such as:
      1. any incidental expenses that the Service Provider incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Service Provider Personnel, network or data interchange costs or other telecommunications charges; or
      2. any amount for any services provided or costs incurred by the Service Provider prior to the commencement date of any Call Off Contract.
4. Not USED
5. Adjustment of the Framework Prices
   1. 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 19.2 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 (Service Provider Periodic Assessment of Framework Prices);
      4. where a review and increase of Framework Prices is requested by the Service Provider and Approved, in accordance with the provisions of paragraph 8 of this Framework Schedule 3 (Service Provider Request For Increase Of The Framework Prices); or
      5. where Framework Prices or any component amounts or sums thereof are expressed in this Framework Schedule as “subject to increase by way of Indexation”, in accordance with the provisions in paragraph 9 of this Framework Schedule 3 (Indexation).
   2. Subject to paragraphs 6.1.1 to 6.1.3 of this Framework Schedule, the Framework Prices will remain fixed for the first two (2) Contract Years following the Service Commencement Date.
6. SERVICE PROVIDER PERIODIC ASSESSMENT OF FRAMEWORK PRICES
   1. Every twelve (12) Months (as a minimum), following the Service Commencement Date during the Framework Period, the Service Provider shall assess the level of the Framework Prices to consider whether it is able to reduce them.
   2. Such assessments by the Service Provider under paragraph 7.1 shall be carried out on a date (or dates) to be agreed by the Joint Governance Board. To the extent that the Service Provider is able to decrease all or part of the Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 10.1.3 below.
7. SERVICE PROVIDER REQUEST FOR INCREASE of the Framework Prices
   1. The Service Provider may request an increase in all or part of the Framework Prices in accordance with the remaining provisions of this paragraph 8 subject always to:
      1. the Service Provider's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Framework Prices ("Review Adjustment Date") which shall be subject to paragraph 8.2;
      2. the approval of the Authority which shall be granted in the Authority’s sole discretion.
   2. The earliest Review Adjustment Date will be the first (1st) Working Day following the expiry of the period specified in paragraph 6.2 of this Framework Agreement during which the Contract Charges shall remain fixed (and no review under this paragraph 8 is permitted). Thereafter any subsequent increase to any of the Framework Prices in accordance with this paragraph 8 shall not occur before the anniversary of the previous Review Adjustment Date during the Framework Period.
   3. To make a request for an increase in some or all of the Framework Prices in accordance with this paragraph 8, the Service Provider shall provide the authority with:
      1. a list of the Framework Prices it wishes to review;
      2. for each of the Framework Prices under review, written evidence of the justification for the requested increase including:
         1. a breakdown of the profit and cost components that comprise the relevant Framework Price;
         2. details of the movement in the different identified cost components of the relevant Framework Price;
         3. reasons for the movement in the different identified cost components of the relevant Framework Price;
         4. evidence that the Service Provider has attempted to mitigate against the increase in the relevant cost components; and
         5. evidence that the Service Provider’s profit component of the relevant Framework Price is no greater than that applying to Framework Prices using the same pricing mechanism as at the Framework Commencement Date.
8. INDEXATION
   1. Where the Framework Prices or any component amounts or sums thereof are expressed in this Framework Schedule 3 as “subject to increase by way of Indexation” the following provisions shall apply:
      1. The relevant adjustment shall:
         1. be applied on the effective date of the increase in the relevant Framework Prices by way of Indexation (“Indexation Adjustment Date”) which shall be subject to paragraph 9.1.2;
         2. be determined by multiplying the relevant amount or sum by the percentage increase or changes in the relevant Index specified in table 5 in tab 8 of Annex 3, for the most recently published twelve (12) Months immediately preceding the relevant Indexation Adjustment Date;
         3. if the specified Index is no longer published, the Authority and the Service Provider shall agree a fair and reasonable adjustment to that Index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Framework Schedule 3.
      2. The earliest Indexation Adjustment Date will be the (1st) working day following the expiry of the period specified in paragraph 6.2 of this Framework Agreement during which the Contract Charges shall remain fixed (and no review under this paragraph 8 is permitted). Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Framework Period;
      3. Except as set out in this paragraph 9, neither the Framework Prices nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Service Provider or Sub-Contractors of the performance of their obligations under this Framework Agreement and any Call Off Contracts.
9. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES
   1. 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 Authority to take effect:
      1. in accordance with Clause 19.2 (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 1st of the following Month where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.3 of this Framework Schedule 3 ; or
      4. on the Review Adjustment Date where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.4 of this Framework Schedule 3;
      5. on the Indexation Adjustment Date where an adjustment to the Framework Prices is made in accordance with paragraph 9 of this Framework Schedule 3.
   2. and the Parties shall amend the Framework Prices shown in Annex 3 to this Framework Schedule 3 to reflect such Variations
   3. CHARGES UNDER CALL OFF AGREEMENTS
      1. For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Framework Schedule 3 are made independently of, and, subject always to paragraph 2.1 of this Framework Schedule 3 and shall not affect the Charges payable by a Contracting Authority under a Call Off Contract in force at the time a change to the Framework Prices is implemented.
      2. NOT USED
10. E-commerce transactions with Central Government Bodies

11.1. the service provider acknowledges and agrees that the government’s wide strategy of ‘digital by default’(<https://www.gov.uk/government/publications/government-digital-strategy>)  endorses a commitment to implement e-commerce systems, including, for example, purchase-to-pay (p2p) automated systems, as the preferred transacting model for all government’s purchasing transactions. the intent is to migrate, wherever practically possible, all government’s purchasing to an e-commerce environment.

11.2. The Service Provider acknowledges and agrees that when contracting with Central Government Bodies, the latter may use a specific e-commerce application and the Service Provider shall be required to comply with the relevant requirements set out by the relevant Central Government Body in their Statement of Requirements.

ANNEX 1: NOT USED

ANNEX 2: not USED

**ANNEX 3: FRAMEWORK PRICES**

**[REDACTED]**

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

ANNEX 1: TEMPLATE ORDER FORM and Annex 2: TEMPLATE Call Off terms



FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

1. CALL OFF CONTRACT

If the Authority or Contracting Authority decides to source the Services through this Framework Agreement then it will enter into a Call Off Contract in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure).

The Service Provider acknowledges that each Contracting Authority is independently responsible for entering into Call Off Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

* + 1. the conduct of Contracting Authorities in relation to this Framework Agreement; or
    2. the performance or non-performance of any Call Off Contracts between the Service Provider and Contracting Authorities entered into pursuant to this Framework Agreement.

Subject to paragraphs 1.1 and 1.2 of this Framework Schedule 5 (Call Off Procedure), a Contracting Authority may enter into a Call Off Contract with the Service Provider by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Authority to the extent permitted by and in accordance with the requirements of the Regulations) 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 Contract) which is not as described in this paragraph 1.3 shall not constitute a Call Off Contract under this Framework Agreement.

On receipt of an order form as described in paragraph 1.3 from a Contracting Authority the Service Provider shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Contracting Authority concerned.

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

Each Contracting Authority shall be able, at any time during the duration of the Framework Agreement, enter into a Call Off Contract with the Service Provider.

ORDERING PROCEDURE

Upon entering into the Call Off Contract, the Contracting Authority shall be able to place Orders for Services.

Each Order shall contain the information listed in the Requisition Form.

The Authority and the Service Provider agree that any document or communication, including a document or communication in the apparent form of an Order, which:

* + 1. does not contain all of the information listed the Requisition Form; and/or
    2. purports to exclude or vary any of the terms and conditions of the Call Off Contract, other than in accordance with the provisions of Framework Schedule 4,

shall not constitute an Order under this Framework Agreement.

The Service Provider shall, within three (3) Working Days of receipt of an Order; either

* + 1. acknowledge in writing (which, for the purposes of this paragraph 2.4.1, shall include email) receipt of that Order to the Contracting Authority and state that it requires further information; or
    2. acknowledge in writing (which, for the purposes of this paragraph 2.4.2, shall include email) receipt of that Order to the Contracting Authority and state its acceptance of that Order.

In the event that the Service Provider accepts the Order in accordance with the provisions of paragraph 2.4.2, the Service Provider shall, simultaneously with that acceptance confirm its agreement to the terms of the Order.

If in accordance with paragraph 2.4.1 the Service Provider wishes to query any matter in relation to an Order served on it by a Contracting Authority, the Service Provider shall raise the matter with the relevant Contracting Authority as soon as practicable and in any event within three (3) Working Days of receipt of that Order. The Service Provider shall agree the Order with the Contracting Authority as soon as possible thereafter and in any event prior to the delivery of the Ordered Services, as specified in the Order.

A binding agreement for the provision of the Ordered Services shall be formed upon counter-signature by the Contracting Authority of the signed Call Off Order Form.

If the Contracting Authority and the Service Provider are unable to agree the Order they shall refer the Order to the Authority. The Authority shall determine whether the Order is in accordance with the Framework Agreement. If the Authority determines that the Order is in accordance with the Framework Agreement then the Service Provider shall agree the Order and any breach of this requirement will be deemed a material Default. If the Authority determines the Order is not in accordance with the Framework Agreement then the Contracting Authority and the Service Provider shall agree such changes to the Order as specified as required by the Authority, or shall agree to abandon the Order.

FRAMEWORK SCHEDULE 6: NOT USED

FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

1. In accordance with Clause 25.1 (Appointment of Key Sub-Contractors), the Service Provider is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Contracts entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

|  |  |
| --- | --- |
| **Name and full contact details** | **Obligation** |
| **[REDACTED]** | **[REDACTED]** |

**FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT**

INTRODUCTION

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

|  |  |
| --- | --- |
| "Service Provider Framework Manager" | 1. has the meaning given to it in paragraph 2.1.1 of this Framework Schedule 8; and |
| "Service Provider 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 Service Provider and the Authority in developing a strategic relationship immediately following the conclusion of this Framework Agreement with the Service Provider 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 Service Provider and the Authority.

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 Service Provider shall provide a suitably qualified nominated Approved contact (the “**Service Provider** **Framework Manager**”) who will take overall responsibility for delivering the Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
     2. The Service Provider shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Services and Key Performance Indicators).
     3. A full governance structure for the Framework will be agreed between the Parties during Service Mobilisation.
     4. Following discussions between the Parties following the Framework Commencement Date, the Authority shall produce and issue to the Service Provider a draft Service Mobilisation Plan. The Service Provider shall not unreasonably withhold its agreement to the draft Service Mobilisation Plan. The Service Mobilisation Plan shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Service Provider of the draft Service Mobilisation Plan.
     5. The Service Mobilisation Plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Service Mobilisation Plan shall be notified by the Authority to the Service Provider. The Service Provider shall not unreasonably withhold its agreement to any changes to the Service Provider Action Plan. Any such changes shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Service Provider of the Authority’s notification.
  2. Service Provider Review Meetings
     1. Regular performance review meetings will take place at the Authority’s premises throughout the Framework Period and thereafter until the expiry of the Framework Agreement **(“Service Provider Review Meetings”**).
     2. The exact timings and frequencies of such Service Provider Review Meetings will be determined by the Authority following the conclusion of the Framework Agreement. It is anticipated that the frequency of the Service Provider 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 Service Provider Review Meetings will be to review the Service Provider’s performance under this Framework Agreement and, where applicable, the Service Provider’s adherence to the Service Provider Action Plan. The agenda for each Service Provider Review Meeting shall be set by the Authority and communicated to the Service Provider in advance of that meeting.
     4. The Service Provider Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Service Provider Framework Manager.

KEY PERFORMANCE INDICATORS

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

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

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

The Service Provider’s achievement of KPIs shall be reviewed during the Service Provider 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 Authority 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 Authority and the Service Provider.

The Authority reserves the right to use and publish the performance of the Service Provider against the KPIs without restriction.

EFFICIENCY TRACKING PERFORMANCE MEASURES

The Service Provider shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this Framework Agreement. This shall include but is not limited to:

* + 1. tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Authorities are consuming less and buying more smartly;
    2. developing additional KPIs to ensure that the Framework Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).

The list in paragraph 4.1 is not exhaustive and may be developed during the Framework Period.

The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Service Provider. Such metrics shall be incorporated into the list of KPIs set out in Framework Schedule 2 (Services and Key Performance Indicators).

The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 8.

ESCALATION PROCEDURE

In the event that the Authority and the Service Provider are unable to agree the performance score for any KPI during a Service Provider Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Service Provider 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 Authority Representative and the Service Provider 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 48 (Dispute Resolution).

FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION AND MANAGEMENT REPORTING

management information GENERAL REQUIREMENTS

The Service Provider 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 Authority in accordance with the provisions of this Framework Schedule 9.

The Service Provider shall also supply such Management Information as may be required by a Contracting Authority in accordance with the terms of a Call Off Contract.

MANAGEMENT INFORMATION AND FORMAT

The Service Provider agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Framework Schedule 9.

The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Service Provider. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.

If the MI Reporting Template is amended by the Authority at any time, then the Service Provider agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.

The Authority may provide the Service Provider with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Service Provider agrees to complete the Monthly MI Report in accordance with any such guidance.

The Service Provider may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.

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

management information FREQUENCY AND COVERAGE

All MI Reports must be completed by the Service Provider using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Contracts have permanently ceased.

The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Service Provider must report the invoice in October's MI Report and not September's. Each Order received by the Service Provider must be reported only once when the Order is received.

The Service Provider must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "**Nil Return**").

The Service Provider must inform the Authority of any errors or corrections to the Management Information:

* + 1. in the next MI Report due immediately following discovery of the error by the Service Provider; or
    2. as a result of the Authority querying any data contained in an MI Report.

SUBMISSION OF THE MONTHLY MI REPORT

The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.

The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Service Provider using an alternative communication to that specified in paragraph 4.1 above such as email. The Service Provider agrees to comply with any such instructions provided they do not materially increase the burden on the Service Provider.

DEFECTIVE MANAGEMENT INFORMATION

The Service Provider acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge.

Following an MI Failure the Authority may issue reminders to the Service Provider or require the Service Provider to rectify defects in the MI Report provided to the Authority. The Service Provider shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

The Service Provider agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Service Provider shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Service Provider's performance.

Admin Fees

If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Service Provider acknowledges and agrees that the Authority shall have the right to invoice the Service Provider Admin Fees and (subject to paragraph 5.5) in respect of any MI Failures as they arise in subsequent Months.

If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.4, the Service Provider submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Framework Period if the conditions in paragraph 5.4 are met.

The Service Provider acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Service Provider failing to supply Management Information as required by this Framework Agreement.

The Authority shall notify the Service Provider if any Admin Fees arise pursuant to paragraph 5.4 above and shall be entitled to invoice the Service Provider for such Admin Fees which shall be payable in accordance with Clause 20 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

DEFAULT MANAGEMENT CHARGE

If:

* + 1. Two (2) MI Failures occur in any rolling six (6) Month period;
    2. Two (2) consecutive MI Failures occur;

then a "**MI Default**" shall be deemed to have occurred.

If an MI Default occurs the Authority shall (without prejudice to any other rights or remedies available to it under this Framework Agreement) be entitled to determine the level of Management Charge in accordance with paragraph 6.3, which the Service Provider shall be required to pay to the Authority (**"Default Management Charge"**) and/or to terminate this Framework Agreement.

The Default Management Charge shall be calculated as the higher of:

* + 1. the average Management Charge paid or payable by the Service Provider to the Authority based on any Management Information submitted in the six (6) Month period preceding the date on which the MI Default occurred or, if the MI Default occurred within less than six (6) Months from the commencement date of the first Call Off Contract, in the whole period preceding the date on which the MI Default occurred; or
    2. the sum of ten thousand pounds (£10,000).

If an MI Default occurs, the Authority shall be entitled to invoice the Service Provider the Default Management Charge (less any Management Charge which the Service Provider has already paid to the Authority in accordance with Clause 20 for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

* + 1. in arrears for those Months in which an MI Failure occurred; and
    2. on an ongoing Monthly basis,

until all and any MI Failures have been rectified to the reasonable satisfaction of the Authority.

For the avoidance of doubt the Parties agree that:

* + 1. the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause 20 of this Framework Agreement; and
    2. any rights or remedies available to Authority under this Framework Agreement in respect of the payment of the Management Charge shall be available to the Authority also in respect of the payment of the Default Management Charge.

If the Service Provider provides sufficient Management Information to rectify any MI Failures to the satisfaction of the Authority and the Management Information demonstrates that:

* + 1. the Service Provider has overpaid the Management Charges as a result of the application of the Default Management Charge then the Service Provider shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable; or
    2. the Service Provider has underpaid the Management Charges during the period when a Default Management Charge was applied, then the Authority shall be entitled to immediate payment of the balance as a debt together with interest pursuant to Clause 20 (Management Charge).

management reporting

* 1. The Service Provider shall ensure that a suite of monthly management reports and dashboards in line with Good Industry Practice are available to the Authority and Contracting Authorities by the 10th day of each Month.
  2. The management reports available shall include as a minimum but not be limited to:
     1. Number of new requirements that Month;
     2. Number of referrals that Month;
     3. Number of Workers sourced via Direct Hire that Month;
     4. Number of Workers sourced via Talent Pool that Month;
     5. Number of Worker extensions that Month;
     6. Number of Worker contracts expiring that Month;
     7. Number of Workers through Personal Services Companies (PSCs), Umbrella Companies, PAYE, Fixed Term Appointments (FTAs) or any other mechanisms;
     8. Time to hire broken down to show:
        1. Total time to hire from issue of requirement to worker start;
        2. Issue of requirement to market to CV submission;
        3. CV submission to shortlist;
        4. Shortlist to Interview;
        5. Interview to offer and acceptance;
        6. Time to on-board, including any security vetting or additional compliance requirements required by the Contracting Authorities; and
        7. Time to off-board.
     9. Feedback on Candidate (Worker) Experience (as outlined in section 9 of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators));
     10. Worker Performance Ratings (as outlined in section 5 of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators));
     11. Progress against savings (as outlined in section 11 of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators)); and
     12. Actual vs Benchmark Worker Rates and level of compliance.

ANNEX 1: MI REPORTING TEMPLATE

FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE

[To be signed by Head of Internal Audit, Finance Director or company’s external auditor]

Dear Sirs

In accordance with the Framework Agreement entered into on 17th January 2018between ***[insert name of Service Provider]*** and the Authority, we confirm the following:

1. In our opinion based on the testing undertaken ***[name of Service Provider]*** 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 Authority.

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 18 (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 Service Providers: where CCS 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.***

FRAMEWORK SCHEDULE 11: MARKETING

INTRODUCTION

This Framework Schedule 11 describes the activities that the Service Provider will carry out as part of its ongoing commitment to the marketing of the Services to Contracting Authorities.

MARKETING

Marketing contact details:

* + 1. **[REDACTED]**
    2. **[REDACTED]**
    3. **[REDACTED]**

AUTHORITY PUBLICATIONS

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

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

Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Service Provider's exclusion from the use of such marketing materials.

SERVICE PROVIDER PUBLICATIONS

Any marketing materials in relation to this Framework Agreement that the Service Provider produces must comply in all respects with any Authority branding guidance. The Service Provider will periodically update and revise such marketing materials.

The Service Provider shall be responsible for keeping under review the content of any information which appears on the Service Provider’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, BENCHMARKING and gains share

DEFINITIONS

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

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

BACKGROUND

The Service Provider acknowledges that the Authority wishes to ensure that the Services, represent value for money to the taxpayer throughout the Framework Period.

This Framework Schedule 12 (Continuous Improvement, Benchmarking and Gains Share) sets out the following processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Contracts remain in force:

* + 1. Benchmarking;
    2. Continuous Improvement;
    3. Gains share.

BENCHMARKING

* 1. Frequency Purpose and Scope of Benchmark Review
     1. The Service Provider shall carry out Benchmark Reviews of the Services when so requested by the Authority.
     2. The Authority shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Framework Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Review.
     3. The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.
     4. The Services that are to be the Benchmarked Services will be identified by the Authority in writing.
  2. Benchmarking Process
     1. The Service Provider shall produce and send to the Authority for Approval, a draft plan for the Benchmark Review.
     2. The plan must include:
        1. a proposed timetable for the Benchmark Review;
        2. a description of the benchmarking methodology to be used;
        3. a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and
        4. a description of how the Service Provider will scope and identify the Comparison Group.
     3. The Authority must give notice in writing to the Service Provider within ten (10) Working Days after receiving the draft plan, advising whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Authority may not unreasonably withhold or delay its Approval of the draft plan and any suggested amendments must be reasonable.
     4. Where the Authority suggests amendments to the draft plan under paragraph 3.2.3, the Service Provider must produce an amended draft plan. Paragraph 3.2.2 shall apply to any amended draft plan.
     5. Once it has received the Approval of the draft plan, the Service Provider shall:
        1. finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Service Provider's professional judgment using:
           1. market intelligence;
           2. the Service Provider's own data and experience;
           3. relevant published information; and
           4. pursuant to paragraph 3.2.7 below, information from other Service Providers or purchasers on Comparable Rates;
        2. by applying the adjustment factors listed in paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
        3. using the Equivalent Data to calculate the Upper Quartile;
        4. determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
     6. The Service Provider agrees to use its reasonable endeavours to obtain information from other Service Providers or purchasers on Comparable Rates.
     7. In carrying out the benchmarking analysis the Service Provider may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
        1. the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
        2. exchange rates;
        3. any other factors reasonably identified by the Service Provider, which, if not taken into consideration, could unfairly cause the Service Provider's pricing to appear non-competitive.
  3. Benchmarking Report
     1. For the purposes of this Framework Schedule 12 **“Benchmarking Report”** shall mean the report produced by the Service Provider following the Benchmark Review and as further described in this Framework Schedule 12;
     2. The Service Provider shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved pursuant to paragraph 3.2.3 of this Schedule 12, setting out its findings. Those findings shall be required to:
        1. include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;
        2. if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and
        3. include sufficient detail and transparency so that the Authority can interpret and understand how the Service Provider has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.
     3. The Parties agree that any changes required to this Framework Agreement identified in the Benchmarking Report may be implemented at the direction of the Authority in accordance with Clause 19.1 (Variation Procedure).
     4. The Authority shall be entitled to publish the results of any benchmarking of the Framework Prices to Contracting Authorities.

CONTINUOUS IMPROVEMENT

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

Without limiting paragraph 4.1, the Service Provider shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges produced by the Service Provider pursuant to this Schedule 12 under all Call Off Contracts and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Contract) during that Contract Year (**"Continuous Improvement Plan"**) for the Approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:

* + 1. identifying the emergence of new and evolving technologies which could improve the Services;
    2. identifying changes in behaviour at Contracting Authorities that result in a cost saving and a reduction in the Framework Prices;
    3. improving the way in which the Services are sold via the Framework Agreement that may result in reduced Framework Prices;
    4. identifying and implementing efficiencies in the Service Provider's internal processes and administration that may lead to cost savings and reductions in the Framework Prices;
    5. identifying and implementing efficiencies in the way the Authority and/or Contracting Authorities interact with the Service Provider that may lead to cost savings and reductions in the Framework Prices;
    6. identifying and implementing efficiencies in the Service Provider's supply chain that may lead to cost savings and reductions in the Framework Prices;
    7. baselining the quality of the Service Provider's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Framework Period; and
    8. measuring and reducing the sustainability impacts of the Service Provider's operations and supply-chains pertaining to the Services, and identifying opportunities to assist Contracting Authorities in meeting their sustainability objectives.

The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Service Provider to the Authority for Approval within ninety (90) Working Days of the first Order or six (6) Months following the Framework Commencement Date, whichever is earlier.

The Authority shall notify the Service Provider of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Service Provider shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.

Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4.4:

* + 1. the Service Provider shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
    2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Service Provider) to review the Service Provider's progress against the Continuous Improvement Plan.

The Service Provider shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in paragraph 4.2.

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 Service Provider's costs in providing the Services to Contracting Authorities be reduced as a result of any changes implemented by the Authority and/or Contracting Authorities, all of the cost savings shall be passed on to Contracting Authorities by way of a consequential and immediate reduction in the Framework Prices for the Services.

Gains Share

* 1. At any time during the Framework Period, the Service Provider may make a proposal to a Contracting Authority and the Authority for a new or different way of providing the Services ("Proposal"). Any Proposal must clearly state that it is submitted for consideration under this gains share provision and shall include:
     1. a business case for the new or different way the Service Provider intends to provide the Services;
     2. the potential direct and indirect cost savings for the Service Provider and the Contracting Authority;
     3. the potential direct and indirect costs which might be incurred by the Service Provider and the Contracting Authority;
     4. the potential benefit(s) (financial or otherwise) to the Service Provider and the Contracting Authority;
     5. the gains share ratio.
  2. The Service Provider, the Contracting Authority and the Authority shall meet to discuss the Proposal and shall attempt to agree the investment (financial or otherwise) to be contributed by the Service Provider and the Contracting Authority, the estimated amount of savings, the gains share ratio, the timing of any payments or adjustments and the proportion of the costs and losses to be borne by the Service Provider and the Contracting Authority should the Proposal be aborted or not meet its financial objectives. The Service Provider shall then submit a revised Proposal to the Contracting Authority and the Authority.
  3. The Contracting Authority shall assess the Proposal in conjunction with the Authority and shall, in writing within one (1) Month (or such other time as agreed between the Parties), either accept it in principle, reject it or offer recommendations or refinements in order for the Service Provider to submit a revised Proposal.
  4. If and when the Proposal is accepted in principle by the Contracting Authority and the Authority and such agreement is put in writing, the Service Provider shall formulate an implementation plan which shall set out in more detail the way in which the Service Provider intends that the Proposal shall be implemented and the timetable for payments or adjustments to any element of the prices paid in accordance with the agreed gains share ratio ("Gains Share Implementation Plan").
  5. Once the Gains Share Implementation Plan has been agreed between the Parties and the Contracting Authority, the Service Provider shall implement the Proposal in accordance with the plan and the Service Provider and the Contracting Authority shall comply with any obligations they have assumed, including adjustments to the prices paid and obligations to make payments. In each case these will be in accordance with the timetable outlined in the Gains Share Implementation Plan.
  6. Following implementation, the Parties and the Contracting Authority shall meet to discuss the implementation as a whole, including a cost and benefit review.
  7. The Service Provider shall provide regular updates to the Authority on:
     1. gains share Proposals that have been submitted to Contracting Authorities for consideration, and
     2. the resultant benefits that have been derived from Proposals which have been implemented.
  8. Such information may be collated by the Authority as part of the Management Information process.

FRAMEWORK SCHEDULE 13: GUARANTEE

[REDACTED]

- and -

[REDACTED]

DEED OF GUARANTEE

**DEED OF GUARANTEE**

**THIS DEED OF GUARANTEE** is made the 15th day of January 2018

**BETWEEN**:

(1) **[REDACTED]**with number **[REDACTED]** whose registered office is at **[REDACTED]** (**“Guarantor”**); in favour of

(2) ***The Authority*** whose principal office is at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (**“Beneficiary”**)

**WHEREAS**:

(A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Service Provider, to guarantee all of the Service Provider's obligations under the Guaranteed Agreement.

(B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

Definitions and Interpretation

In this Deed of Guarantee:

unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

the words and phrases below shall have the following meanings:

|  |  |
| --- | --- |
| "Authority" | 1. has the meaning given to it in the Framework Agreement; |
| "Beneficiary" | 1. means the Authority and "Beneficiaries" shall be construed accordingly; |
| "Call Off Contract" | 1. has the meaning given to it in the Framework Agreement; |
| "Framework Agreement" | 1. means the Framework Agreement for the Services dated on or about the date hereof made between the Authority and the Service Provider; |
| "Guaranteed Agreement" | 1. means the Framework Agreement and the Call Off Contract made between the Beneficiary and the Service Provider on ***16th January 2018*** |
| "Guaranteed Obligations" | 1. means all obligations and liabilities of the Service Provider to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Service Provider to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement; and |
| "Services" | 1. has the meaning given to it in the Framework Agreement. |

references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

references to liability are to include any liability whether actual, contingent, present or future.

Guarantee and indemnity

The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Service Provider duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Service Provider to the Beneficiary.

The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Service Provider to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

If at any time the Service Provider shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

* + 1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
    2. as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Service Provider to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Service Provider under the Guaranteed Agreement.

As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Service Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Service Provider, or if the Guaranteed Agreement is disclaimed by a liquidator of the Service Provider or the obligations of the Service Provider are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

Demands and Notices

Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

* + 1. ***[REDACTED]***
    2. ***[REDACTED]***
    3. ***[REDACTED]***

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

* + 1. if delivered by hand, at the time of delivery; or
    2. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
    3. if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

Beneficiary's protections

The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Service Provider and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

* + 1. it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Service Provider of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
    2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Service Provider, the Beneficiary, the Guarantor or any other person;
    3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Service Provider for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
    4. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Service Provider of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Service Provider or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Service Provider or any third party, or to take any action whatsoever against the Service Provider or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

Guarantor intent

Without prejudice to the generality of Clause 5 (Beneficiary’s protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Service Provider and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

* + 1. of subrogation and indemnity;
    2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Service Provider’s obligations; and
    3. to prove in the liquidation or insolvency of the Service Provider,

only in accordance with the Beneficiary’s written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Service Provider and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

Deferral of rights

Until all amounts which may be or become payable by the Service Provider under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

* + 1. exercise any rights it may have to be indemnified by the Service Provider;
    2. claim any contribution from any other guarantor of the Service Provider’s obligations under the Guaranteed Agreement;
    3. take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
    4. demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Service Provider; or
    5. claim any set‑off or counterclaim against the Service Provider;

If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

* + 1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
    2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
    3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
       1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
       2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
       3. the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
    4. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
    5. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

Payments and set-off

All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

Assignment

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

Severance

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

Third party rights

A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

Governing Law

This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

The Guarantor hereby irrevocably designates, appoints and empowers the Service Provider at its registered office from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

***[REDACTED]*** by

[REDACTED]

[REDACTED]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director : **[REDACTED]** Director : **[REDACTED]**

Dated : [REDACTED] Dated : [REDACTED]FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS

OBLIGATION TO MAINTAIN INSURANCES

Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Service Provider 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 Service Provider 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 Service Provider shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Service Provider is legally liable.

GENERAL OBLIGATIONS

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

* + 1. take or procure the taking of all reasonable risk management and risk control measures in relation to the 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 Service Provider 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 Service Provider 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 Service Provider has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Service Provider to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Service Provider.

EVIDENCE OF POLICIES

The Service Provider 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 Authority, 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 Authority shall not in itself constitute acceptance by the Authority or relieve the Service Provider 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 Service Provider shall immediately submit to the Authority:
       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 Service Provider 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 Service Provider 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 Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

CANCELLATION

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

Except where the Authority is the claimant party, the Service Provider shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of one (1) million pounds relating to or arising out of the provision of the 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 Authority) full details of the incident giving rise to the claim.

Where any Insurance requires payment of a premium, the Service Provider 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 Service Provider shall be liable for such excess or deductible. The Service Provider shall not be entitled to recover from the Authority 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 Liability Insurance

Insured

The Service Provider

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 Services and in connection with this Framework Agreement.

Limit of indemnity

Not less than five (5) million poundsin respect of any one occurrence, the number of occurrences being unlimited, or such higher limit as required by Law from time to time.

Territorial limits

* + 1. UK and overseas

Period of insurance

From the Framework Commencement Date for the Framework Period and renewable on an annual basis unless agreed otherwise by the Authority 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 **[REDACTED]** pounds each and every claim for each and every third party property damage claim (personal injury claims to be paid in full).

Part B: Professional Indemnity Insurance

Insured

The Service Provider

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 Services.

Limit of indemnity

Not less than five (5) million pounds in respect of any one claim or such higher limit as required by Law from time to time.

Territorial Limits

UK and Overseas

Period of insurance

From the date of this Framework Agreement and renewable on an annual basis unless agreed otherwise by the Authority 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 **[REDACTED]** each and every claim.

Part C: United Kingdom Compulsory Insurances

General

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

FRAMEWORK SCHEDULE 15: STAFF TRANSFER

|  |  |
| --- | --- |
| **“Admission Agreement”** | An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Service Provider where it agrees to participate in the Schemes in respect of the Services; |
| **“Eligible Employee”** | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement; |
| **“Fair Deal Employees”** | any Transferring Former Service Provider Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal); |
| **“Former Service Provider”** | a Service Provider supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Service Provider (or any sub-contractor of any such sub-contractor); |
| **“New Fair Deal”** | the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date; |
| **“Notified Sub-Contractor”** | a Sub-Contractor identified in the Annex to this Framework Schedule 15 to whom Transferring Former Service Provider Employees will transfer on a Relevant Transfer Date; |
| **“Replacement Sub-Contractor”** | a sub-contractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor); |
| **“Relevant Transfer”** | a transfer of employment to which the Employment Regulations applies; |
| **“Relevant Transfer Date”** | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place; |
| **“Schemes”** | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014; |
| **“Service Transfer”** | any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to a Replacement Service Provider or a Replacement Sub-Contractor; |
| **“Service Transfer Date”** | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires; |
| **“Staffing Information”** | in relation to all persons identified on the Service Provider's Provisional Service Provider Personnel List or Service Provider's Final Service Provider Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:   1. their ages, dates of commencement of employment or engagement, gender and place of work; 2. details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; 3. the identity of the employer or relevant contracting party; 4. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; 5. their wages, salaries, bonuses and profit sharing arrangements as applicable; 6. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; 7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); 8. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; 9. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and 10. any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations; |
| **“Service Provider's Final Service Provider Personnel List”** | a list provided by the Service Provider of all Service Provider Personnel who will transfer under the Employment Regulations on the Service Transfer Date; |
| **“Service Provider's Provisional Service Provider Personnel List”** | a list prepared and updated by the Service Provider of all Service Provider Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider; |
| **“Transferring Former Service Provider Employees”** | in relation to a Former Service Provider, those employees of the Former Service Provider to whom the Employment Regulations will apply on the Relevant Transfer Date; and |
| **“Transferring Service Provider Employees”** | those employees of the Service Provider and/or the Service Provider’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date. |

1. **INTERPRETATION**
   1. Where a provision in this Framework Schedule 15 imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Service Provider, Replacement Service Provider or Replacement Sub-Contractor, as the case may be.

**PART A: NOT USED**

**PART B**

**TRANSFERRING FORMER SERVICE PROVIDER EMPLOYEES AT COMMENCEMENT OF SERVICES**

1. **RELEVANT TRANSFERS**
   1. The Authority and the Service Provider agree that:
      1. the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Service Provider Employees; and
      2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Service Provider and the Transferring Former Service Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or Notified Sub-Contractor and each such Transferring Former Service Provider Employee.
   2. Subject to Paragraph 6, the Authority shall procure that each Former Service Provider shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Service Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Service Provider shall make, and the Authority shall procure that each Former Service Provider makes, any necessary apportionments in respect of any periodic payments.
2. **FORMER SERVICE PROVIDER INDEMNITIES**
   1. Subject to Paragraphs 2.2 and 6, the Authority shall procure that each Former Service Provider shall indemnify the Service Provider and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the Former Service Provider in respect of any Transferring Former Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee arising before the Relevant Transfer Date;
      2. the breach or non-observance by the Former Service Provider arising before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Service Provider Employees; and/or
         2. any custom or practice in respect of any Transferring Former Service Provider Employees which the Former Service Provider is contractually bound to honour;
      3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Former Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Former Service Provider Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Service Provider to the Service Provider and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
      4. a failure of the Former Service Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period to (but excluding) the Relevant Transfer Date;
      5. any claim made by or in respect of any person employed or formerly employed by the Former Service Provider other than a Transferring Former Service Provider Employee for whom it is alleged the Service Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
      6. any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee relating to any act or omission of the Former Service Provider in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Service Provider or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
   2. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
      1. arising out of the resignation of any Transferring Former Service Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
      2. arising from the failure by the Service Provider and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
   3. If any person who is not identified by the Authority as a Transferring Former Service Provider Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Service Provider Employee, that his/her contract of employment has been transferred from a Former Service Provider to the Service Provider and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
      1. the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Service Provider; and
      2. the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Service Provider and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Service Provider considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
   4. If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Service Provider and/or the Authority, the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
   5. If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved,

the Service Provider and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Service Provider and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Service Provider indemnifies the Service Provider and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Service Provider takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 2.6:
     1. shall not apply to:

any claim for:

discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-Contractor; or

any claim that the termination of employment was unfair because the Service Provider and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

* + 1. shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Service Provider and/or any Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Service Provider, within 6 months of the Framework Commencement Date.
  1. If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Service Provider nor dismissed by the Service Provider and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Service Provider or Notified Sub-Contractor and the Service Provider shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

1. **SERVICE PROVIDER INDEMNITIES AND OBLIGATIONS**
   1. Subject to Paragraph 3.2, the Service Provider shall indemnify the Authority and/or the Former Service Provider against any Employee Liabilities arising from or as a result of:
      1. any act or omission by the Service Provider or any Sub-Contractor in respect of any Transferring Former Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the Service Provider or any Sub-Contractor on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Service Provider Employee; and/or
         2. any custom or practice in respect of any Transferring Former Service Provider Employees which the Service Provider or any Sub-Contractor is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Former Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
      4. any proposal by the Service Provider or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Service Provider Employees to their material detriment on or after their transfer to the Service Provider or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the Service Provider or a Sub-Contractor to, or in respect of, any Transferring Former Service Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Service Provider in writing;
      6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Former Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Former Service Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Service Provider to the Service Provider or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
      7. a failure of the Service Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period from (and including) the Relevant Transfer Date;
      8. any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Service Provider's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
      9. a failure by the Service Provider or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
   2. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Service Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Service Provider’s failure to comply with its obligations under the Employment Regulations.
   3. The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Service Provider Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Service Provider.
2. **INFORMATION**

The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority’s direction, the Former Service Provider, in writing such information as is necessary to enable the Authority and/or the Former Service Provider to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, the Authority shall procure that the Former Service Provider shall promptly provide to the Service Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Service Provider and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**
   1. The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Service Provider Employee as set down in:
      1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
      2. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
      3. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
      4. the New Fair Deal.
   2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.
2. **PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Service Provider contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Service Provider does or does not act accordingly.

1. **PENSIONS**

The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

**ANNEX TO PART B: PENSIONS**

1. **PARTICIPATION**
   1. The Service Provider undertakes to enter into the Admission Agreement
   2. The Service Provider and the Authority:
      1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Service Provider to participate in the Schemes in respect of the Fair Deal Employees;
      2. agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Service Provider breaches any obligations it has under the Admission Agreement;
      3. agree, notwithstanding Paragraph 1.2.2 of this Annex, the Service Provider shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
      4. agree that the Authority may terminate this Framework Agreement for material default in the event that the Service Provider breaches the Admission Agreement:
         1. and that breach is not capable of being remedied; or
         2. where such breach is capable of being remedied, the Service Provider fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Authority giving particulars of the breach and requiring the Service Provider to remedy it.
   3. The Service Provider shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Service Provider participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.
2. **FUTURE SERVICE BENEFITS**
   1. If the Service Provider is rejoining the Schemes for the first time, the Service Provider shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   2. If staff have already been readmitted to the Schemes, the Service Provider shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Service Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
   3. The Service Provider undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
   4. The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.
3. **FUNDING**
   1. The Service Provider undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
   2. The Service Provider shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Service Provider to or in respect of the Schemes.
4. **PROVISION OF INFORMATION**

The Service Provider and the Authority respectively undertake to each other:

* 1. to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
  2. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

1. **INDEMNITY**

The Service Provider undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

1. **EMPLOYER OBLIGATION**

The Service Provider shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

1. **SUBSEQUENT TRANSFERS**

The Service Provider shall:

* 1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
  2. provide all such co-operation and assistance as the Schemes and the Replacement Service Provider and/or the Authority may reasonably require to enable the Replacement Service Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
  3. for the applicable period either
     1. after notice (for whatever reason) is given, in accordance with the other provisions of this Framework Agreement, to terminate the Agreement or any part of the Services; or
     2. after the date which is two (2) years prior to the date of expiry of this Framework Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Service Provider or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

1. **bulk transfer**
   1. Where the Service Provider has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Service Provider agrees to:
      1. fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme’s actuary or by the Government Actuary’s Department;
      2. instruct any such broadly comparable pension scheme’s actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Service Provider and/or the Authority may reasonably require, to enable the Replacement Service Provider to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
      3. allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Service Provider agrees to pay the Shortfall to the Schemes; and
      4. indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART C

**No transfer of employees at commencement of Services**

PROCEDURE IN THE EVENT OF TRANSFER

* 1. The Authority and the Service Provider agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Service Provider.
  2. The Service Provider can, in its discretion, make to any of the employees of a Former Service Provider identified by the Customer, an offer of employment, in writing, to take effect from the Commencement of the Services.
  3. If any employee of the Authority and/or a Former Service Provider claims, or it is determined in relation to any employee of the Authority and/or a Former Service Provider, that his/her contract of employment has been transferred from the Authority and/or the Former Service Provider to the Service Provider and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
     1. the Service Provider shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Service Provider; and
     2. the Authority and/or the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Service Provider or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Service Provider (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
  4. If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Service Provider), the Service Provider shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
  5. If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
     1. no such offer of employment has been made;
     2. such offer has been made but not accepted; or
     3. the situation has not otherwise been resolved,

the Service Provider and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

1. **INDEMNITIES**
   1. Subject to the Service Provider and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
      1. indemnify the Service Provider and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Service Provider takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
      2. subject to paragraph 3, procure that the Former Service Provider indemnifies the Service Provider and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Service Provider referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Service Provider takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
   2. If any such person as is described in Paragraph 1.2 is neither re-employed by the Authority and/or the Former Service Provider as appropriate nor dismissed by the Service Provider and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Service Provider and/or the Sub-Contractor (as appropriate) and the Service Provider shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
   3. Where any person remains employed by the Service Provider and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Service Provider and/or the Sub-Contractor and the Service Provider shall indemnify the Authority and any Former Service Provider, and shall procure that the Sub-Contractor shall indemnify the Authority and any Former Service Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Service Provider and/or employees of the Sub-Contractor.
   4. The indemnities in Paragraph 2.1:
      1. shall not apply to:
         1. any claim for:
            1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
            2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-Contractor; or

* + - 1. any claim that the termination of employment was unfair because the Service Provider and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Service Provider and/or any Sub-Contractor to the Authority and, if applicable, Former Service Provider within 6 months of the Framework Commencement Date.

1. **PROCUREMENT OBLIGATIONS**

Where in this Part C the Authority accepts an obligation to procure that a Former Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Service Provider contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Service Provider does or does not act accordingly.

**PART D**

**Employment Exit Provisions**

1. **PRE-SERVICE TRANSFER OBLIGATIONS**
   1. The Service Provider agrees that within twenty (20) Working Days of the earliest of:
      1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination or any Partial Termination of this Framework Agreement;
      3. the date which is twelve (12) months before the end of the Term; and
      4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

it shall provide to the Authority or at the direction of the Authority to any Replacement Service Provider and/or any Replacement Sub-Contractor, in a suitably anonymised format so as to comply with the DPA, the Service Provider's Provisional Service Provider Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Service Provider Personnel List and it shall provide an updated Service Provider's Provisional Service Provider Personnel List at such intervals as are reasonably requested by the Authority.

* 1. At least thirty (30) Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Authority or at the direction of the Authority to any Replacement Service Provider and/or any Replacement Sub-Contractor:
     1. the Service Provider's Final Service Provider Personnel List, which shall identify which of the Service Provider Personnel are Transferring Service Provider Employees; and
     2. the Staffing Information in relation to the Service Provider’s Final Service Provider Personnel List (insofar as such information has not previously been provided).
  2. The Authority shall be permitted to use and disclose information provided by the Service Provider under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-Contractor.
  3. The Service Provider warrants, for the benefit of the Authority, any Replacement Service Provider, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
  4. From the date of the earliest event referred to in Paragraph 1.1, the Service Provider agrees, that it shall not, and agrees to procure that each Sub‑Contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider’s Provisional Service Provider Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
     1. replace or re-deploy any Service Provider Personnel listed on the Service Provider Provisional Service Provider Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
     2. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Service Provider Personnel (including any payments connected with the termination of employment);
     3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Service Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
     4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Service Provider Personnel List;
     5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
     6. terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Service Provider Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Service Provider and any Replacement Sub-Contractor of any notice to terminate employment given by the Service Provider or relevant Sub-Contractor or received from any persons listed on the Service Provider's Provisional Service Provider Personnel List regardless of when such notice takes effect.

* 1. During the Term, the Service Provider shall provide, and shall procure that each Sub‑Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which Services are organised, which shall include:
     1. the numbers of employees engaged in providing the Services;
     2. the percentage of time spent by each employee engaged in providing the Services;
     3. the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Framework Schedule 15 or paragraph 2.3 of the Annex (Pensions) to Part B of this Framework Schedule 15 (as appropriate); and
     4. a description of the nature of the work undertaken by each employee by location.
  2. The Service Provider shall provide, and shall procure that each Sub‑Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Service Provider and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Service Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Service Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Service Provider and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Service Provider's Final Service Provider Personnel List who is a Transferring Service Provider Employee:
     1. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.

1. **EMPLOYMENT REGULATIONS EXIT PROVISIONS**
   1. The Authority and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Framework Agreement or otherwise) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-Contractor. Such change in the identity of the Service Provider of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Service Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Service Provider or any Sub-Contractor and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Service Provider Employee.
   2. The Service Provider shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Service Provider Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Service Provider and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-Contractor.
   3. Subject to Paragraph 2.4, where a Relevant Transfer occurs the Service Provider shall indemnify the Authority and/or the Replacement Service Provider and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
      1. any act or omission of the Service Provider or any Sub-Contractor in respect of any Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee whether occurring before, on or after the Service Transfer Date;
      2. the breach or non-observance by the Service Provider or any Sub-Contractor occurring on or before the Service Transfer Date of:
         1. any collective agreement applicable to the Transferring Service Provider Employees; and/or
         2. any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Sub-Contractor is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
      4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
         2. in relation to any employee who is not identified in the Service Provider’s Final Service Provider Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider to the Authority and/or Replacement Service Provider and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
      5. a failure of the Service Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);
      6. any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-Contractor other than a Transferring Service Provider Employee identified in the Service Provider’s Final Service Provider Personnel List for whom it is alleged the Authority and/or the Replacement Service Provider and/or any Replacement Sub-Contractor may be liable by virtue of this Framework Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
      7. any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Service Provider to comply with regulation 13(4) of the Employment Regulations.
   4. The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Service Provider and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
      1. arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
      2. arising from the Replacement Service Provider’s failure, and/or Replacement Sub-Contractor’s failure, to comply with its obligations under the Employment Regulations.
   5. If any person who is not identified in the Service Provider’s Final Service Provider Personnel List claims, or it is determined in relation to any person who is not identified in the Service Provider’s Final Service Provider Personnel List that his/her contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Replacement Service Provider and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
      1. the Authority shall procure that the Replacement Service Provider shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and
      2. the Service Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Service Provider and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
   6. If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider or a Sub-Contractor, the Authority shall procure that the Replacement Service Provider shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
   7. If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      3. the situation has not otherwise been resolved

the Replacement Service Provider and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Replacement Service Provider and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Service Provider shall indemnify the Replacement Service Provider and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Service Provider takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 2.8:
     1. shall not apply to:
        1. any claim for:
           1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
           2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Service Provider and/or Replacement Sub-Contractor; or

* + - 1. any claim that the termination of employment was unfair because the Replacement Service Provider and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Service Provider and/or Replacement Sub-Contractor to the Service Provider within six (6) months of the Service Transfer Date.
  1. If any such person as is described in Paragraph 2.5 is neither re-employed by the Service Provider or any Sub-Contractor nor dismissed by the Replacement Service Provider and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Service Provider Employee.
  2. The Service Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Service Provider’s Final Service Provider Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
     1. the Service Provider and/or any Sub-Contractor; and
     2. the Replacement Service Provider and/or the Replacement Sub-Contractor.
  3. The Service Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Service Provider and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Service Provider and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Service Provider and/or Replacement Sub-Contractor, shall promptly provide to the Service Provider and each Sub-Contractor in writing such information as is necessary to enable the Service Provider and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
  4. Subject to Paragraph 2.14, where a Relevant Transfer occurs the Authority shall procure that the Replacement Service Provider indemnifies the Service Provider on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
     1. any act or omission of the Replacement Service Provider and/or Replacement Sub-Contractor in respect of any Transferring Service Provider Employee identified in the Service Provider’s Final Service Provider Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Service Provider Employee;
     2. the breach or non-observance by the Replacement Service Provider and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Service Provider Employees identified in the Service Provider’s Final Service Provider Personnel List; and/or
        2. any custom or practice in respect of any Transferring Service Provider Employees identified in the Service Provider’s Final Service Provider Personnel List which the Replacement Service Provider and/or Replacement Sub-Contractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Service Provider Employees identified in the Service Provider’s Final Service Provider Personnel List arising from or connected with any failure by the Replacement Service Provider and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
     4. any proposal by the Replacement Service Provider and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Service Provider Employees identified in the Service Provider’s Final Service Provider Personnel List on or after their transfer to the Replacement Service Provider or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Service Provider’s Final Service Provider Personnel List who would have been a Transferring Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
     5. any statement communicated to or action undertaken by the Replacement Service Provider or Replacement Sub-Contractor to, or in respect of, any Transferring Service Provider Employee identified in the Service Provider’s Final Service Provider Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider in writing;
     6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
        1. in relation to any Transferring Service Provider Employee identified in the Service Provider’s Final Service Provider Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
        2. in relation to any employee who is not a Transferring Service Provider Employee identified in the Service Provider’s Final Service Provider Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider or Sub-Contractor, to the Replacement Service Provider or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
     7. a failure of the Replacement Service Provider or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees identified in the Service Provider’s Final Service Provider Personnel List in respect of the period from (and including) the Service Transfer Date; and
     8. any claim made by or in respect of a Transferring Service Provider Employee identified in the Service Provider’s Final Service Provider Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
  5. The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Service Provider and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX to schedule 10: LIST OF NOTIFIED SUB-CONTRACTORS**

FRAMEWORK SCHEDULE 16: FINANCIAL DISTRESS

DEFINITIONS

In this Framework Schedule 16, the following definitions shall apply:

|  |  |
| --- | --- |
| "Credit Rating Threshold" | 1. means the minimum credit rating level for the Service Provider and the Framework Guarantor as set out in Annex 2 and for each Key Sub-Contractor as set out in Schedule 7 (Key Sub-Contractors); and |
| "Financial Distress Service Continuity Plan" | 1. means a plan setting out how the Service Provider will ensure the continued performance and delivery of the Services in accordance with this Framework Agreement in the event that a Financial Distress Event occurs; |
| "Rating Agencies" | 1. means the rating agencies listed in Annex 1. |

CREDIT RATING AND DUTY TO NOTIFY

The Service Provider warrants and represents to the Authority for the benefit of the Authority that as at the Framework Commencement Date the long term credit ratings issued for the Service Provider and Framework Guarantor by each of the Rating Agencies are as set out in Annex 2.

The Service Provider shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Service Provider or the Framework Guarantor (and in any event within five (5 )Working Days of the occurrence of the downgrade).

If there is any downgrade credit rating issued by any Rating Agency for either the Service Provider or the Framework Guarantor the Service Provider shall ensure that the Service Provider’s auditors or the Framework Guarantor auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Service Provider or the Framework Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the “quick ratio” on any date means:



where:

|  |  |
| --- | --- |
| A | is the value at the relevant date of all cash in hand and at the bank of the Service Provider or the Framework Guarantor; |
| B | is the value of all marketable securities held by the Service Provider or the Framework Guarantor determined using closing prices on the Working Day preceding the relevant date; |
| C | is the value at the relevant date of all account receivables of the Service Provider or Framework Guarantor; and |
| D | is the value at the relevant date of the current liabilities of the Service Provider or the Framework Guarantor. |

The Service Provider shall:

* + 1. regularly monitor the credit ratings of the Service Provider, Framework Guarantor and each Key Sub-Contractor with the Rating Agencies; and
    2. promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-Contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Service Provider first becomes aware of the Financial Distress Event, the Key Sub-Contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event).

For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph 4.1.1, the credit rating of the Service Provider, the Framework Guarantor or relevant Key Sub-Contractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Service Provider, the Framework Guarantor or relevant Key Sub-Contractor at or below the applicable Credit Rating Threshold.

CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

In the event of:

* + 1. the credit rating of the Service Provider, the Framework Guarantor or any Key Sub-Contractor dropping below the applicable Credit Rating Threshold;
    2. the Service Provider, the Framework Guarantor or any Key Sub-Contractor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
    3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Service Provider, the Framework Guarantor or any Key Sub-Contractor;
    4. the Service Provider, the Framework Guarantor or any Key Sub-Contractor committing a material breach of covenant to its lenders;
    5. a Key Sub-Contractor notifying the Authority that the Service Provider has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
    6. any of the following:
       1. commencement of any litigation against the Service Provider, the Framework Guarantor or any Key Sub-Contractor with respect to financial indebtedness or obligations under a service contract;
       2. non-payment by the Service Provider[, the Framework Guarantor or any Key Sub-Contractor] of any financial indebtedness;
       3. any financial indebtedness of the Service Provider, the Framework Guarantor or any Key Sub-Contractor becoming due as a result of an event of default; or
       4. the cancellation or suspension of any financial indebtedness in respect of the Service Provider, the Framework Guarantor or any Key Sub-Contractor,

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Service Provider), the Service Provider shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 4.3 to 4.6.

In the event of a late or non-payment of a Key Sub-Contractor pursuant to paragraph 4.1.5, the Authority shall not exercise any of its rights or remedies under paragraph 4.3 without first giving the Service Provider ten (10) Working Days to:

* + 1. rectify such late or non-payment; or
    2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

The Service Provider shall and shall procure that the Framework Guarantor and/or any relevant Key Sub-Contractor shall:

* + 1. at the request of the Authority meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Service Provider in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Framework Agreement; and
    2. where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Framework Agreement:
       1. submit to the Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Service Provider in writing); and
       2. provide such financial information relating to the Service Provider or the Framework Guarantor as the Authority may reasonably require.

The Authority shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Service Provider of its reasons and the Service Provider shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Authority or referred to the Dispute Resolution Procedure pursuant to paragraph 4.5.

If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Service Provider shall:

* + 1. on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Framework Agreement;
    2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval, and the provisions of paragraphs 4.5 and 4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
    3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

Where the Service Provider reasonably believes that the relevant Financial Distress Event under paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Service Provider may be relieved of its obligations under paragraph 4.6.

TERMINATION RIGHTS

The Authority shall be entitled to terminate this Framework Agreement for material Default if:

* + 1. the Service Provider fails to notify the Authority of a Financial Distress Event in accordance with paragraph 3.4;
    2. the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 4.3 to 4.5; and/or
    3. the Service Provider fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 4.6.3.

PRIMACY OF CREDIT RATINGS

Without prejudice to the Service Provider’s obligations and the Authority’s rights and remedies under paragraph 4, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 4.1.1 to 4.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

* + 1. the Service Provider shall be relieved automatically of its obligations under paragraphs 4.3 to 4.6; and
    2. the Authority shall not be entitled to require the Service Provider to provide financial information in accordance with paragraph 4.3.2(b).

ANNEX 1: RATING AGENCIES

‘Rating Agency – Dunn and Bradstreet’

ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

|  |  |  |
| --- | --- | --- |
| Entity | Credit rating (long term) | Credit Rating Threshold |
| Service Provider | Dun & Bradstreet score of 51 | Dun & Bradstreet score of 51 |
| Framework Guarantor | Dun & Bradstreet score of 51 | Dun & Bradstreet score of 51 |

FRAMEWORK SCHEDULE 17: COMMERCIALLY SENSITIVE INFORMATION

INTRODUCTION

In this Framework Schedule 17 (Commercially Sensitive Information) the Parties have sought to identify the Service Provider'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 Authority's obligation to disclose Information in accordance with FOIA or Clause 27.3 (Transparency and Freedom of Information), the Authority 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** |
| --- | --- | --- | --- |
| **[REDACTED]** | **[REDACTED]** | **[REDACTED]** | **[REDACTED]** |

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 of this Framework Schedule 18; |
| "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 Services; |
| "Expedited Dispute Timetable" | 1. means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6 of this Framework Schedule 18; |
| "Expert" | 1. means the person appointed by the Parties in accordance with paragraph 5.2 of this Framework Schedule 18; |
| “Extraordinary Meeting” | 1. a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this Framework Schedule 18; |
| "Mediator" | 1. means the independent third party appointed in accordance with paragraph 4.2 of this Framework Schedule 18; and |
| “Senior Officers” | 1. are senior officials of the Authority and Service Provider that have been instructed by the Authority Representative and Service Provider Representative respectively to resolve the Dispute by commercial negotiation. |

INTRODUCTION

The Parties shall seek to resolve a Dispute:

* + 1. first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this Framework Schedule 18);
    2. where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this Framework Schedule 18);
    3. where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this Framework Schedule 18); and
    4. if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this Framework Schedule 18) or litigation (in accordance with Clause 49 of this Framework Agreement (Governing Law and Jurisdiction)).
  1. Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Framework Schedule 18) 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) of this Framework Schedule 18.
  2. Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this Framework Schedule 18.

Good faith discussions

Pursuant to paragraph 2.1.1 of this Framework Schedule 18, if any Dispute arises the Authority Representative and the Service Provider Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.

Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.

The Authority Representative and Service Provider Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.

The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.

* 1. If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.
  2. If:
     1. the Extraordinary Meetings are unsuccessful in resolving the Dispute; or
     2. the Parties agree that good faith discussions shall not resolve the dispute; or
     3. the Dispute has not been resolved through good faith discussions within thirty (30) Working Days from when they first started,

the Parties shall attempt to resolve the Dispute by commercial negotiation.

COMMERCIAL NEGOTIATIONS

Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this Framework Schedule 18, pursuant to paragraph 2.1.2, the Authority and the Service Provider shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers.

Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.

If Senior Officers:

* + 1. are 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. fail to resolve the Dispute in the timelines under paragraph 3.2 of this Framework Schedule 18,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this Framework Schedule 18.

Dispute Notice

* 1. 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 7 of this Framework Schedule 18, the reason why.
  2. 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.

MEDIATION

Pursuant to paragraph 2.1.3 of this Framework Schedule 18, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation and where mediation is not agreed, the Parties may proceed to arbitration or litigation in accordance with this Framework Schedule 18.

Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.

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

If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this Framework Schedule 18, either Party may proceed to:

* + 1. hold further discussions between Senior Officers; or
    2. an Expert determination, as prescribed in paragraph 5 of this Framework Schedule 18; or
    3. arbitration, as prescribed in paragraph 6 of this Framework Schedule 18; or
    4. litigation in accordance with Clause 49 of this Framework Agreement (Governing Law and Jurisdiction).

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.

The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this Framework Schedule 18 shall be shared equally between the Parties.

EXPERT DETERMINATION

If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.

Where the Parties agree to an expert determination, the Expert shall:

* + 1. 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 relevant professional body; and
    2. 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

Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation , mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Framework Schedule 18. The Parties are not obliged to pursue arbitration but may choose to do so in resolving the Dispute.

Before the Service Provider commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Service Provider 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 49 (Governing Law and Jurisdiction). The Service Provider 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 6.4 shall apply;
    2. the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 49 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Service Provider shall not commence arbitration proceedings;
    3. the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Service Provider may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 49 (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 and 6.4.6);
    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 arbitration proceedings shall take place in London and in the English language; and
    6. the seat of the arbitration shall be London.

EXPEDITED DISPUTE TIMETABLE

* 1. In exceptional circumstances where the use of the times in this Framework Schedule 18 would be considered unreasonable by the Parties, 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 Authority.
  2. If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this Framework Schedule 18 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 2.8, fourteen (14) Working Days;
     2. in paragraph 3.2, ten (10) Working Days;
     3. in paragraph 4.2, ten (10) Working Days;
     4. in paragraph 5.2, five (5) Working Days; and
     5. in paragraph 6.2, ten (10) Working Days.
  3. If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this Framework Schedule 18 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.
  4. If, pursuant to paragraph 7.2 of this Framework Schedule 18, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this Framework Schedule 18).
  5. Any agreed extension under paragraph 7.2 of this Framework Schedule 18 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

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; 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; or
    3. if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where it is agreed between the Parties) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

FRAMEWORK SCHEDULE 19: VARIATION FORM

Variation Form No:

……………………………………………………………………………………

BETWEEN:

|  |
| --- |
| ***[insert name of Authority]*** ("**the Authority"**)  and  ***[insert name of Service Provider]*** (**"the Service Provider"**) |

1. This Framework Agreement is varied as follows:

[Guidance Note: Refer to Clause 19.1 and insert details of the Variation]

1. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the Authority.
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 Authority

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

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

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

FRAMEWORK SCHEDULE 20: CONDUCT OF CLAIMS

INDEMNITIES

This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Framework Agreement or any Call Off Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “Beneficiary”).

If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Framework Agreement or any Call Off Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.

Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

* + 1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
    2. the Indemnifier shall not bring the name of the Beneficiary into disrepute;
    3. the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
    4. the Indemnifier shall conduct the Claim with all due diligence.

The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Framework Agreement or any Call Off Contract if:

* + 1. the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
    2. the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
    3. the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

RECOVERY OF SUMS

If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

* + 1. an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
    2. the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

MITIGATION

Each of the Authority or Contracting Authority and the Service Provider shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

FRAMEWORK SCHEDULE 21: FINAL TENDER

General

This Framework Schedule 21 sets out a copy of the Service Provider’s Final Tender.

Subject to Clauses 1.2.2 and 1.2.3, in addition to any other obligations on the Service Provider under this Framework Agreement and any Call Off Contract the Service Provider shall provide the Services to Contracting Authorities in accordance with the Final Tender.

**[REDACTED]**

FRAMEWORK Schedule 22: Transparency reports

1. General

Within three (3) months of the 16th January 2018 the Service Provider shall submit to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Annex 1 of this Framework Schedule 22 below.

If the Authority rejects any proposed Transparency Report submitted by the Service Provider, the Service Provider shall submit a revised version of the relevant report for further Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.

The Service Provider shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Framework Schedule 22 below.

Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above of this Framework Schedule 22 in relation to the contents of a Transparency Report, shall be treated as a Dispute.

The requirements in this Framework Schedule 22 are in addition to any other reporting requirements set out in this Framework Agreement.

**ANNEX 1: LIST OF TRANSPARENCY REPORTS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Title** | **Content** | **Format** | **Frequency** |
| ***Performance*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** |
| ***Charges*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** |
| ***Key Sub-Contractors*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** |
| ***Technical*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** |
| ***Performance management*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** | ***TO BE AGREED With the Authority*** |

FRAMEWORK Schedule 23: exit MANAGEMENT

DEFINITIONS

In this Framework Schedule 23, the following definitions shall apply:

|  |  |
| --- | --- |
| "Exclusive Assets" | means those Service Provider Assets used by the Service Provider or a Sub-Contractor which are used exclusively in the provision of the Services; |
| "Exit Information" | has the meaning given to it in paragraph 4.1 of this Framework Schedule 23; |
| "Exit Manager" | means the person appointed by each Party pursuant to paragraph 3.4 of this Framework Schedule 23 for managing the Parties' respective obligations under this Framework Schedule 23; |
| "Net Book Value" | means the net book value of the relevant Service Provider Asset(s) calculated in accordance with the depreciation policy of the Service Provider set out in the letter in the agreed form from the Service Provider to the Authority. |
| "Non-Exclusive Assets" | means those Service Provider Assets (if any) which are used by the Service Provider or a Sub-Contractor in connection with the Services but which are also used by the Service Provider or Sub-Contractor for other purposes; |
| "Registers" | means the information held in the Vendor Management System, PSR Marketplace, [REDACTED] and any ***Other Technology Platforms*** or database used referred to in the delivery of the Services. |
| "Termination Assistance" | means the activities to be performed by the Service Provider pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice; |
| "Termination Assistance Notice" | has the meaning given to it in paragraph 6.1 of this Framework Schedule 23; |
| "Termination Assistance Period" | means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Service Provider is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Framework Schedule 23; |
| "Transferable Assets" | means those of the Exclusive Assets which are capable of legal transfer to the Authority; |
| "Transferable Contracts" | means the Sub-Contracts, licences for Service Provider Software, licences for Third Party Software or other agreements which are necessary to enable Contracting Authorities or any Replacement Service Provider to provide the Services or the Replacement Services, including in relation to licences all relevant Documentation; |
| “Transferring Assets” | has the meaning given to it in paragraph 9.2.1 of this Framework Schedule 23; |
| "Transferring Contracts" | has the meaning given to it in paragraph 9.2.3 of this Framework Schedule 23. |

INTRODUCTION

This Framework Schedule 23 describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Service Provider to the Authority leading up to and covering the expiry of the Framework Agreement and the transfer of service provision to the Authority and/or a Replacement Service Provider.

The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Service Provider to the Authority and/or a Replacement Service Provider at the expiry of the Framework Agreement.

OBLIGATIONS DURING THE FRAMEWORK AGREEMENT TERM TO FACILITATE EXIT

During the Framework Period, the Service Provider shall:

* + 1. create and maintain a Register of all:
       1. Service Provider Assets, detailing their:
          1. make, model and asset number;
          2. ownership and status as either Exclusive Assets or Non-Exclusive Assets;
          3. Net Book Value;
          4. condition and physical location; and
          5. use (including technical specifications); and
       2. Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
    2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Service Provider provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Service Provider to understand how the Service Provider provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
    3. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
    4. at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

The Service Provider shall:

* + 1. procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Framework Agreement; and
    2. (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Service Provider upon the Service Provider ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.

Where the Service Provider is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Framework Schedule 23 which the Service Provider proposes to enter into after the Framework Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Service Provider without restriction or payment, the Service Provider shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Service Provider seeking an alternative Sub-Contractor or provider of services to which the relevant agreement relates.

Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Framework Schedule 23 and provide written notification of such appointment to the other Party within three (3) months of the Framework Commencement Date. The Service Provider’s Exit Manager shall be responsible for ensuring that the Service Provider and its employees, agents and Sub-Contractors comply with this Framework Schedule 23. The Service Provider shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider to comply with the requirements set out in this Framework Schedule 23. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Framework Agreement and all matters connected with this Framework Schedule 23 and each Party's compliance with it.

OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

On reasonable notice at any point during the Framework Period, the Service Provider shall provide to the Authority and/or its potential Replacement Service Providers (subject to the potential Replacement Providers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Service Providers undertaking due diligence:

* + 1. details of the Service(s);
    2. a copy of the Registers, updated by the Service Provider up to the date of delivery of such Registers;
    3. an inventory of Authority Data in the Service Provider’s possession or control;
    4. details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
    5. a list of on-going and/or threatened disputes in relation to the provision of the Services;
    6. all information relating to Transferring Service Provider Employees or those who may be Transferring Service Provider Employees’ required to be provided by the Service Provider under this Framework Agreement such information to include the Staffing Information as defined in Framework Schedule 15 (Staff Transfer); and
    7. such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

The Service Provider acknowledges that the Authority may disclose the Service Provider’s Confidential Information to an actual or prospective Replacement Service Provider or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Framework Schedule 23 disclose any Service Provider’s Confidential Information which is information relating to the Service Provider’s or its Sub-Contractors’ prices or costs).

The Service Provider shall:

* + 1. notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and
    2. provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

The Service Provider may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.

The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Service Provider shall be such as would be reasonably necessary to enable a third party to:

* + 1. prepare an informed offer for those Services; and
    2. not be disadvantaged in any subsequent procurement process compared to the Service Provider (if the Service Provider is invited to participate).

EXIT PLAN

The Service Provider shall, within three (3) months after the Framework Commencement Date, deliver to the Authority an Exit Plan which:

* + 1. sets out the Service Provider’s proposed methodology for achieving an orderly transition of the Services from the Service Provider to the Authority and/or its Replacement Service Provider on the expiry or termination of this Framework Agreement;
    2. complies with the requirements set out in paragraph 5.3 of this Framework Schedule 23;
    3. is otherwise reasonably satisfactory to the Authority.

The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:

* + 1. how the Exit Information is obtained;
    2. the management structure to be employed during both transfer and cessation of the Services;
    3. the management structure to be employed during the Termination Assistance Period;
    4. a detailed description of both the transfer and cessation processes, including a timetable;
    5. how the Services will transfer to the Replacement Service Provider and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Service Provider or its Sub-Contractors (where applicable);
    6. details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Service Provider upon the expiry of the Framework Agreement together with any reasonable costs required to effect such transfer (and the Service Provider agrees that all assets and contracts used by the Service Provider in connection with the provision of the Services will be available for such transfer);
    7. proposals for the training of key members of the Replacement Service Provider’s personnel in connection with the continuation of the provision of the Services following the expiry of the Framework Agreement charged at rates agreed between the Parties at that time;
    8. proposals for providing the Authority or a Replacement Service Provider copies of all documentation:
       1. used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Service Provider; and
       2. relating to the use and operation of the Services;
    9. proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Service Provider in connection with the performance of the supply of the Services;
    10. proposals for the identification and return of all Authority Property in the possession of and/or control of the Service Provider or any third party (including any Sub-Contractor);
    11. proposals for the disposal of any redundant Services and materials;
    12. procedures to:
        1. deal with requests made by the Authority and/or a Replacement Service Provider for Staffing Information pursuant to Framework Schedule 15 (Staff Transfer);
        2. determine which Service Provider Personnel are or are likely to become Transferring Service Provider Employees; and
        3. identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Service Provider Employees;
    13. how each of the issues set out in this Framework Schedule 23 will be addressed to facilitate the transition of the Services from the Service Provider to the Replacement Service Provider and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
    14. proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Service Provider in order to effect an orderly handover of the provision of the Services.

TERMINATION ASSISTANCE

The Authority shall be entitled to require the provision of Termination Assistance at any time during the Framework Period by giving written notice to the Service Provider (a "Termination Assistance Notice") at least four (4) months prior to the expiry of the Framework Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

* + 1. the date from which Termination Assistance is required;
    2. the nature of the Termination Assistance required; and
    3. the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Service Provider ceases to provide the Services.

The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Service Provider ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Service Provider to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Service Provider to such effect.

TERMINATION ASSISTANCE PERIOD

Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Service Provider shall:

* + 1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Framework Schedule 23, provide the Termination Assistance;
    2. in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Framework Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Service Provider;
    3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Framework Schedule 23 without additional costs to the Authority;
    4. provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
    5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

Without prejudice to the Service Provider’s obligations under paragraph 7.1.3 of this Framework Schedule 23, if it is not possible for the Service Provider to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Framework Schedule 23 without additional costs to the Authority, any additional costs incurred by the Service Provider in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

If the Service Provider demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Service Provider’s ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

TERMINATION OBLIGATIONS

The Service Provider shall comply with all of its obligations contained in the Exit Plan.

Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider’s performance of the Services and the Termination Assistance and its compliance with the other provisions of this Framework Schedule 23), the Service Provider shall:

* + 1. cease to use the Authority Data;
    2. provide the Authority and/or the Replacement Service Provider with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
    3. erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
    4. return to the Authority such of the following as is in the Service Provider’s possession or control:
       1. all copies of the Authority Software and any other software licensed by the Authority to the Service Provider under this Framework Agreement;
       2. all materials created by the Service Provider under this Framework Agreement in which the IPRs are owned by the Authority;
       3. any parts of the ICT Environment and any other equipment which belongs to the Authority;
       4. any items that have been on-charged to the Authority, such as consumables; and
       5. all Authority Property issued to the Service Provider under this Framework Agreement. Such Authority Property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
       6. any sums prepaid by the Authority in respect of Services not delivered by the expiry of the Framework Agreement;
    5. vacate any Authority Premises;
    6. remove the Service Provider Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider and/or any Service Provider Personnel;
    7. provide access during normal working hours to the Authority and/or the Replacement Service Provider for up to twelve (12) months after expiry or termination to:
       1. such information relating to the Services as remains in the possession or control of the Service Provider; and
       2. such members of the Service Provider Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Service Provider, provided that the Authority and/or the Replacement Service Provider shall pay the reasonable costs of the Service Provider actually incurred in responding to requests for access under this paragraph 8.2.7.

Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider’s performance of the Services and the Termination Assistance and its compliance with the other provisions of this Framework Schedule 23), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or termination services or for statutory compliance purposes.

Except where this Framework Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Service Provider in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

ASSETS, SUB-CONTRACTS AND SOFTWARE

Following notice of termination of this Framework Agreement and during the Termination Assistance Period, the Service Provider shall not, without the Authority's prior written consent:

* + 1. terminate, enter into or vary any Sub-Contract;
    2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Service Provider Assets or acquire any new Service Provider Assets; or
    3. terminate, enter into or vary any licence for software in connection with the provision of Services.

Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Service Provider pursuant to paragraph 7.1.5 of this Framework Schedule 23, the Authority shall provide written notice to the Service Provider setting out:

* + 1. which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Service Provider (“Transferring Assets”);
    2. which, if any, of:
       1. the Exclusive Assets that are not Transferable Assets; and
       2. the Non-Exclusive Assets,

the Authority and/or the Replacement Service Provider requires the continued use of; and

* + 1. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Service Provider (the “Transferring Contracts”), in order for the Authority and/or its Replacement Service Provider to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Service Provider, the Service Provider shall provide all reasonable assistance to the Authority and/or its Replacement Service Provider to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Service Provider requires to provide the Services or the Replacement Services.

With effect from the expiry of the Termination Assistance Period, the Service Provider shall sell the Transferring Assets to the Authority and/or its nominated Replacement Service Provider for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Framework Agreement Charges at the expiry of the Framework Agreement, in which case the Authority shall pay the Service Provider the Net Book Value of the Transferring Asset less the amount already paid through the Framework Agreement Charges.

Risk in the Transferring Assets shall pass to the Authority or the Replacement Service Provider (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Service Provider (as appropriate) on payment for the same.

Where the Service Provider is notified in accordance with paragraph 9.2.2 of this Framework Schedule 23 that the Authority and/or the Replacement Service Provider requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Service Provider shall as soon as reasonably practicable:

* + 1. procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Service Provider to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
    2. procure a suitable alternative to such assets and the Authority or the Replacement Service Provider shall bear the reasonable proven costs of procuring the same.

The Service Provider shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Service Provider of the Transferring Contracts. The Service Provider shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

The Authority shall:

* + 1. accept assignments from the Service Provider or join with the Service Provider in procuring a novation of each Transferring Contract; and
    2. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Service Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Service Provider does the same.

The Service Provider shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Service Provider has been effected.

The Service Provider shall indemnify the Authority (and/or the Replacement Service Provider, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Service Provider) pursuant to paragraph 9.6 of this Framework Schedule 23 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

Service Provider PERSONNEL

The Authority and Service Provider agree and acknowledge that in the event of the Service Provider ceasing to provide the Services or part of them for any reason, Framework Schedule 10 (Staff Transfer) shall apply.

The Service Provider shall not and shall procure that any relevant Sub-Contractor shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) without the prior written consent of the Authority to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Service Provider and/or Replacement Sub-Contractor.

During the Termination Assistance Period, the Service Provider shall and shall procure that any relevant Sub-Contractor shall:

* + 1. give the Authority and/or the Replacement Service Provider and/or Replacement Sub-Contractor reasonable access to the Service Provider Personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Service Provider and/or to discuss or consult on any measures envisaged by the Authority, Replacement Service Provider and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Service Provider Employees;
    2. co-operate with the Authority and the Replacement Service Provider to ensure an effective consultation process and smooth transfer in respect of Transferring Service Provider Employees in line with good employee relations and the effective continuity of the Services.

The Service Provider shall immediately notify the Authority or, at the direction of the Authority, the Replacement Service Provider of any period of notice given by the Service Provider or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

The Service Provider shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Service Provider except that this paragraph 10.5 shall not apply where an offer is made pursuant to an express right to make such offer under Framework Schedule 10.1 (Staff Transfer) in respect of a Transferring Service Provider Employee not identified in the Service Provider’s Final Service Provider’s Personnel List.

CHARGES

Except as otherwise expressly specified in this Framework Agreement, the Service Provider shall not make any charges for the services provided by the Service Provider pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Service Provider in relation to its compliance with, this Framework Schedule 23 including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

APPORTIONMENTS

All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Service Provider and/or the Replacement Service Provider and the Service Provider (as applicable) as follows:

* + 1. the amounts shall be annualised and divided by 365 to reach a daily rate;
    2. the Authority shall be responsible for (or shall procure that the Replacement Service Provider shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
    3. the Service Provider shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Each Party shall pay (and/or the Authority shall procure that the Replacement Service Provider shall pay) any monies due under paragraph 12.1 of this Framework Schedule 23 as soon as reasonably practicable.

framework schedule 24: TECHNOLOGY SYSTEM REQUIREMENTS

Accessibility

The Service Provider shall from the Framework Service Commencement Date provide and manage all technology systems required to ensure successful delivery of the Services.

The Service Provider shall be responsible for ensuring the security, integrity and maintaining the confidentiality of all data held within all technology systems in the delivery of the Services.

The Service Provider shall ensure that all technology systems are configured to meet the requirements of the Contracting Authorities.

The Service Provider shall ensure that all technology systems used in the delivery of the Services can be used by the diverse set of users who shall interact with them by:

* + 1. making services and systems compliant with [EN 301 549](http://www.etsi.org/deliver/etsi_en/301500_301599/301549/01.01.01_60/en_301549v010101p.pdf) and following [accessibility guidance;](https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction#meeting-the-accessibility-standard)
    2. involving users with a range of impairments in user testing as the Service Provider develops its services and systems;
    3. providing [assisted digital support](https://www.gov.uk/service-manual/helping-people-to-use-your-service/assisted-digital-support-introduction) for any services the Service Provider builds when its research shows that users need it; and
    4. enabling access to services through a [range of web browsers](https://www.gov.uk/service-manual/user-centred-design/browsers-and-devices.html) to support people using [assistive technology](https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction#making-your-service-work-with-assistive-technology) and a range of end user devices.

The Service Provider shall be responsible for providing training and support to the Contracting Authorities to ensure ease of use of all technology systems required in the delivery of the Services.

Systems Functionality and Integration

The Service Provider shall ensure that the Contracting Authorities are able to access the technology systems via single sign/single point of entry.

The Service Provider shall ensure that the technology systems can be accessed via mobile devices, such as a Blackberry, Android, iPhone, or iPad so that approvals/timesheets can be completed without access to a laptop or desktop computer.

The Service Provider shall ensure that the technology systems provide the functionality for the Contracting Authorities to send email notifications for any actions requiring approval and allows approve or reject items simply by responding to the email notification.

The Service Provider shall ensure that the technology systems used in the delivery of the Services have, as a minimum, the functionality detailed at paragraph 7.1.2 of the Specification in Framework Schedule 2.

The Service Provider shall ensure that where any new requirements or changes to systems functionality are identified, the Service Provider, or their Sub - Contractor, as appropriate, will provide appropriate resources to manage the process across the software development lifecycle, capturing requirements, development, testing and deployment.

The Service Provider shall ensure that all technology systems used in the delivery of the Services can meet the anticipated levels of business in line with the requirements of the Contracting Authorities as detailed in paragraph 7.1.2 (d) of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators)

The Service Provider shall be responsible for managing and administering access for the Contracting Authorities to the technology systems and shall ensure:

* + 1. the provision of access to all functions via an intuitive, user-friendly interface.
    2. the technology systems a single log-in screen which provides the Contracting Authorities with password-protected access and ensures that security of the technology systems is maintained at all times;

The Service Provider shall ensure that there is the ability within all required Other Technology Platforms to configure the Contracting Authorities’ accounts to roles defined by the activities they perform following a Requisition.

The Service Provider shall ensure that the technology systems have the ability to allocate a unique reference by Worker to allow tracking of the worker across Assignments throughout the term of the Framework Agreement.

The Service Provider shall ensure that the technology systems have notification functionality that can be configured to meet the requirements of the Contracting Authorities for notification of the following, but not limited to, activities:

* + 1. Financial approvals;
    2. HR approvals;
    3. Commercial approval;
    4. Purchase Order/Work order approvals;
    5. Receipt of CV’s/shortlist;
    6. Outstanding activity (no offer within defined timescales);
    7. Timesheet approvals;
    8. End of Assignment; and
    9. Extensions.

The Service Provider shall ensure that the Vendor Management System and Other Technology Systems, as deemed appropriate by the Authority, have timesheet functionality to clearly capture where a Worker has worked part of a Working Day (½ day or ¼ day). The timesheet functionality shall also provide notification to the Authority where a Worker has submitted a timesheet for approval showing hours worked on a non working day, such as a weekend or bank holiday.

The Service Provider shall ensure the technology systems have the functionality to ensure tracking and application of all appropriate legislation to ensure correct application of Worker pay rates, tax and pensions deductions.

The Service Provider shall ensure that the technology systems have the ability to include Worker expenses within the timesheet/payments functionality. The Service Provider shall ensure that this functionality also enables scanned receipts to be uploaded to the system and made visible to the Contracting Authorities to meet the audit requirements of the Authority.

The Service Provider shall ensure that any technology systems used in the delivery of the Services can be integrated with any Purchase to Pay system, ERP systems, eMarketplace and other procurement systems through open Application Programming Interfaces (APIs) using industry standards.

Implementation and Governance

The Service Provider shall ensure that as part of the implementation of the Framework Agreement, any Sub-Contractors instrumental in the delivery of the technology systems have named personnel to form part of the implementation team and any appropriate governance board.

Maintenance and Downtime

The Service Provider shall ensure that the technology systems have 99.99% availability for use by the Contracting Authorities 365 days of the year.

The Service Provider shall provide the Authority with a schedule of planned maintenance (the Maintenance Schedule) within 30 Working days of the Framework Service Commencement Date which will be updated quarterly. The provision of planned maintenance in line with the Maintenance Schedule will be monitored as part of the performance against the Service Levels outlined in Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring).

The Service Provider shall ensure that all planned maintenance is completed outside of Working Hours.

The Service Provider shall ensure that all non planned maintenance is completed within 240 mins of a fault being identified.

Where any maintenance is required that is not part of the Maintenance Schedule as detailed in paragraph 4.2 of this Framework Schedule 24, the Service Provider shall immediately notify the Authority and the Contracting Authorities of any incidents which may cause loss of access or functionality within any of the technology systems.

In the event that an unplanned incidents/outage occurs that causes or is likely to cause a loss of service, the Sub-Contractor responsible for provision of the affected technology system shall advise the Service Provider. The Service Provider, on notification from the Sub - Contractor, shall ensure that the appropriate persons within their, and their Sub – Contractors’ organisations are advised of the incident/outage and updated on status of the incident/outage until resolution to ensure that communications are issued to ensure the Contracting Authorities and Agency Providers can be advised.

Where there has been an incident/outage as detailed at paragraph 4.6 above in this Framework Schedule 24 then the Service Provider and the appropriate Sub - Contractors shall complete analysis to establish the cause of the incident/outage and put in place processes to minimise re-occurrence of the incident/outage.

The Service Provider and their Sub-Contractors, as appropriate, shall ensure all technology systems have the facility to provide secure backup of the systems in line with industry standards to safeguard against data loss in the event of hardware failure.

In the event of a hardware failure the Service Provider shall immediately:

* + 1. work with their Sub - Contractors, as appropriate, to restore data from the backup; and
    2. restore provision of the Services.

Reporting

The Service Provider shall ensure that all technology systems used in the delivery of the Services has the ability for the Contracting Authorities to access self service reporting to provide a real time view of their Worker landscape and monitor the performance and compliance of the Service Provider in their delivery of the Services.

The Service Provider shall ensure the technology systems have the capability to provide management reports in line with the requirements of paragraph 16.1 of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators) and Framework Schedule 9 (Management Information and Management Reporting).

Customer Support

The Service Provider shall ensure there is the provision of customer service to assist with any user or technical queries from the Contracting Authorities in line with the requirements detailed at paragraph 5.2 of the Specification in Part A of Framework Schedule 2 (Services and Key Performance Indicators).

The Service Provider shall identify and analyse common themes and issues from requests for assistance received from the Contracting Authorities and use this to update guidance, FAQ’s or any other appropriate format used to communicate with the Contracting Authorities. These common themes and issues should also be notified to the Service Providers’ Sub - Contractors, as appropriate, to allow for actions to be put in place to ensure performance improvement and improved quality of service.

The Service Provider shall ensure there is a robust process in place to manage escalation of issues and enquiries raised by Contracting Authorities. Escalation processes will be agreed between the Authority, the Service Provider and any Sub - Contractors, as appropriate, as part of the Framework Agreement governance structure and will be reported and measured as part of the Service Levels as detailed at Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring).

The Service Provider shall offer training to the Authority, the Contracting Authorities and the Agency Providers to ensure they have the ability to fully utilise all aspects of the technology systems required to allow access to the Services.

The Service Provider shall provide a range of training to the Contracting Authorities including, but not limited to:

* + 1. Online training by webinar or any other online media;
    2. User handbooks;
    3. Face to face training tailor to the requirements of the Contracting Authorities and/or Agency Providers; and
    4. Train the Trainer to build in house capability for the Contracting Authorities and/or Agency Providers.

The level of training required will be identified as part of the Implementation and Transition Period.

The Service Provider shall ensure that access to training is available to the Authority, the Contracting Authorities and the Agency Providers throughout the Framework Period.

framework schedule 25: security

DEFINITIONS

In this Framework Schedule 25, the following definitions shall apply:

|  |  |
| --- | --- |
| **"Breach of Security"** | means the occurrence of:  a) any unauthorised access to or use of the Services, the Sites and/or any Information and Communication Technology (“ICT”), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Service Provider in connection with this Framework Agreement; and/or  b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Service Provider in connection with this Framework Agreement,  in either case as more particularly set out in the security requirements in the Security Policy; |
| **"ISMS"** | means the information security management system and process developed by the Service Provider in accordance with paragraph 3 (ISMS) as updated from time to time in accordance with this Framework Schedule 25; and |
| **"Security Tests"** | means tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security. |

INTRODUCTION

The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Framework Agreement will be met.

The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:

* + 1. [REDACTED], Crown Commercial Service Head of Service Assurance
    2. [REDACTED], Alexander Mann Solutions Limited, Global Head of Compliance

In respect of the persons identified in paragraphs 2.2.1 and 2.2.2 of this Framework Schedule 25, the Service Provider shall:

* + 1. ensure that such persons fulfil their roles as security representative at all times during the Framework Period;
    2. ensure that such persons are not removed or replaced unless:
       1. requested to do so by the Authority;
       2. the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
       3. the person’s employment or contractual arrangement with the Service Provider or a Sub-Contractor is terminated for material breach of contract by the employee; or
       4. the Service Provider obtains the Authority’s Approval;
    3. notify the Authority promptly of the absence of such persons (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Service Provider shall ensure appropriate temporary cover);
    4. give as much notice as is reasonably practicable of its intention to remove or replace such persons and, except in the cases of death, unexpected ill health or a material breach of such person’s employment contract, this will mean at least three (3) Months’ notice;
    5. ensure that all arrangements for planned changes in such persons provide adequate periods during which incoming and outgoing Service Provider Personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services;
    6. ensure that any replacement for such persons:
       1. has the relevant level of qualifications and experience; and
       2. is fully competent to carry out the tasks assigned to such persons to whom he or she has replaced; and
    7. shall and shall procure that any Sub-Contractor shall not remove or replace such persons during the Framework Period without Approval.

2.3A The Authority may require the Service Provider to remove such persons identified in paragraphs 2.2.1 and 2.2.2 of this Framework Schedule 24 that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing such persons.

The Authority shall clearly articulate its high level security requirements so that the Service Provider can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

The Service Provider shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Service Provider at all times.

The Service Provider shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.

The Authority and the Service Provider acknowledge that information security risks are shared between the Parties and that a compromise of either the Service Provider or the Authority’s security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

ISMS

The Service Provider shall develop and submit to the Authority for the Authority’s Approval, within twenty (20) working days after the Framework Commencement Date or such other date as agreed between the Parties, an ISMS for the purposes of this Framework Agreement, which shall have been tested in accordance with Framework Schedule 26 (Testing) and shall comply with the requirements of paragraphs 3.3 to 3.5 of this Framework Schedule 25 (Security).

The Service Provider acknowledges that the Authority places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Service Provider shall be responsible for the effective performance of the ISMS.

The ISMS shall:

* + 1. unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Authority premises, the Sites, the Service Provider System, the Authority System (to the extent that it is under the control of the Service Provider) and any ICT, information and data (including the Confidential Information and the Authority Data) to the extent used by the Authority or the Service Provider in connection with this Framework Agreement;
    2. meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with paragraph 7 of this Framework Schedule 25; and
    3. at all times provide a level of security which:
       1. is in accordance with the Law and this Framework Agreement;
       2. complies with the Baseline Security Requirements;
       3. as a minimum demonstrates Good Industry Practice;
       4. complies with the Security Policy;
       5. complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4)<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf>
       6. takes account of guidance issued by the Centre for Protection of National Infrastructure on Risk Management
       7. [NOT](http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk_management.pdf) USED
       8. complies with HMG Information Assurance Maturity Model and Assurance Framework   
          https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-iamm
       9. meets any specific security threats of immediate relevance to the ISMS, the Services and/or Contracting Authority Data;
       10. addresses issues of incompatibility with the Service Provider’s own organisational security policies;
       11. complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 7 of this Framework Schedule 25; and
       12. complies with the Authority’s ICT policies.
    4. document the security incident management processes and incident response plans;
    5. document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Service Provider becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
    6. be certified by (or by a person with the direct delegated authority of) a Service Provider’s main board representative, being the “Chief Security Officer”, “Chief Information Officer”, “Chief Technical Officer” or “Chief Financial Officer” (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).

Subject to Clause 52 of this Framework Agreement (Security Requirements) the references to Standards, guidance and policies contained or set out in paragraph 3.3 of this Framework Schedule 25 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Service Provider from time to time.

In the event that the Service Provider becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Framework Schedule 25, the Service Provider shall immediately notify the Authority of such inconsistency and the Authority shall, as soon as practicable, notify the Service Provider as to which provision the Service Provider shall comply with.

If the ISMS submitted to the Authority pursuant to paragraph 3.1 of this Framework Schedule 25 is Approved by the Authority, it shall be adopted by the Service Provider immediately and thereafter operated and maintained in accordance with this Framework Schedule 25. If the ISMS is not Approved by the Authority, the Service Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Authority. If the Authority does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to this paragraph 3 of this Framework Schedule 25 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 of this Framework Schedule 25 shall be deemed to be reasonable.

Approval by the Authority of the ISMS pursuant to paragraph 3.6 of this Framework Schedule 25 or of any change to the ISMS shall not relieve the Service Provider of its obligations under this Framework Schedule 25.

SECURITY MANAGEMENT PLAN

Within twenty (20) Working Days after the Framework Commencement Date, the Service Provider shall prepare and submit to the Authority for Approval in accordance with paragraph 4 of this Framework Schedule 25 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Framework Schedule 25.

The Security Management Plan shall:

* + 1. be based on the initial Security Management Plan set out in Annex 3 (Security Management Plan);
    2. comply with the Baseline Security Requirements and Security Policy;
    3. identify the necessary delegated organisational roles defined for those responsible for ensuring this Framework Schedule 25 is complied with by the Service Provider;
    4. detail the process for managing any security risks from Sub‑Contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority premises, the Sites, the Service Provider System, the Authority System (to the extent that it is under the control of the Service Provider) and any ICT, Information and data (including the Confidential Information and the Contracting Authority Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
    5. unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority premises, the Sites, the Service Provider System, the Authority System (to the extent that it is under the control of the Service Provider) and any ICT, Information and data (including the Confidential Information and the Contracting Authority Data) to the extent used by the Authority or the Service Provider in connection with this Framework Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
    6. set out the security measures to be implemented and maintained by the Service Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Framework Schedule 25 (including the requirements set out in paragraph 3.3 of this Framework Schedule 25);
    7. demonstrate that the Service Provider’s approach to delivery of the Services has minimised the Authority and Service Provider effort required to comply with this Framework Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, ‘platform as a service’ offering from the G-Cloud catalogue);
    8. set out the plans for transitioning all security arrangements and responsibilities from those in place at the Framework Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties .
    9. set out the scope of the Authority System that is under the control of the Service Provider;
    10. be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
    11. be written in plain English in language which is readily comprehensible to the staff of the Service Provider and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Framework Schedule 25.

If the Security Management Plan submitted to the Authority pursuant to paragraph 3.1 of this Framework Schedule 25 is Approved by the Authority, it shall be adopted by the Service Provider immediately and thereafter operated and maintained in accordance with this Framework Schedule 25.

If the Security Management Plan is not approved by the Authority, the Service Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval.

The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Authority of the Security Management Plan.

If the Authority does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to paragraph 4 of this Framework Schedule 25 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Framework Schedule 25 shall be deemed to be reasonable.

Approval by the Authority of the Security Management Plan pursuant to paragraph 4 of this Framework Schedule 25 or of any change or amendment to the Security Management Plan shall not relieve the Service Provider of its obligations under this Framework Schedule 25.

AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

The ISMS and Security Management Plan shall be fully reviewed and updated by the Service Provider and at least annually to reflect:

* + 1. emerging changes in Good Industry Practice;
    2. any change or proposed change to the Service Provider System, the Services and/or associated processes;
    3. any new perceived or changed security threats; and
    4. any changes to the Security Policy;
    5. any new perceived or changed security threats; and
    6. any reasonable change in requirement requested by the Authority.

The Service Provider shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

* + 1. suggested improvements to the effectiveness of the ISMS;
    2. updates to the risk assessments;
    3. proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
    4. suggested improvements in measuring the effectiveness of controls.

Subject to paragraph 5.4 of this Framework Schedule 25, any change which the Service Provider proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Framework Schedule 25, a Authority request, a change to Annex 1 (Baseline Security Requirements) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Authority.

The Customer may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Framework Agreement.

SECURITY TESTING

The Service Provider shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Service Provider so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Service Provider with the foregoing requirements, if any Security Tests adversely affect the Service Provider’s ability to deliver the Services so as to meet the Service Level Performance Measures, the Service Provider shall be granted relief against any resultant under-performance for the period of the Security Tests.

The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Service Provider shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

Without prejudice to any other right of audit or access granted to the Authority pursuant to this Framework Agreement, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Service Provider, to carry out such tests (including Penetration Tests) as it may deem necessary in relation to the ISMS and the Service Provider’s compliance with the ISMS and the Security Management Plan. The Authority may notify the Service Provider of the results of such tests after completion of each such test. If any such Authority’s test adversely affects the Service Provider’s ability to deliver the Services so as to meet the Target Performance Levels, the Service Provider shall be granted relief against any resultant under-performance for the period of the Authority’s test.

Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Framework Schedule 25 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Service Provider shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Service Provider proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written Approval, the Service Provider shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Baseline Security Requirements) to this Framework Schedule 25) or the requirements of this Framework Schedule 25, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

If any repeat Security Test carried out pursuant to paragraph 6.4 of this Framework Schedule 25 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Framework Agreement.

ISMS COMPLIANCE

The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy.

If, on the basis of evidence provided by such security audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or the Security Policy are not being achieved by the Service Provider, then the Authority shall notify the Service Provider of the same and give the Service Provider a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Service Provider does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.

If, as a result of any such independent audit as described in paragraph 7.2 of this Framework Schedule 25 the Service Provider is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or the Security Policy then the Service Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

BREACH OF SECURITY

Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.

Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Framework Schedule 25, the Service Provider shall:

* + 1. immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
       1. minimise the extent of actual or potential harm caused by any Breach of Security;
       2. remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Customer Property and/or Customer Assets and/or ISMS to the extent that this is within the Service Provider’s control;
       3. apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Service Provider, if the mitigation adversely affects the Service Provider’s ability to provide the Services so as to meet the relevant Service Level Performance Measures, the Service Provider shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Service Provider;
       4. prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and
       5. supply any requested data to the Authority (or the Computer Emergency Response Team for UK Government (“GovCertUK”)) on the Authority’s request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
       6. as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy or the requirements of this Framework Schedule 25, then any required change to the ISMS shall be at no cost to the Authority.

VULNERABILITES AND CORRECTIVE ACTION

The Authority and the Service Provider acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority’s information.

The severity of threat vulnerabilities for Service Provider COTS Software and Third Party COTS Software shall be categorised by the Service Provider as ‘Critical’, ‘Important’ and ‘Other’ by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

* + 1. the ‘National Vulnerability Database’ ‘Vulnerability Severity Ratings’: ‘High’, ‘Medium’ and ‘Low’ respectively (these in turn are aligned to CVSS scores as set out by NIST http://nvd.nist.gov/cvss.cfm); and
    2. Microsoft’s ‘Security Bulletin Severity Rating System’ ratings ‘Critical’, ‘Important’, and the two remaining levels (‘Moderate’ and ‘Low’) respectively.

The Service Provider shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as ‘Critical’ within 14 days of release, ‘Important’ within 30 days of release and all ‘Other’ within 60 Working Days of release, except where:

* + 1. the Service Provider can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Service Provider asserts cannot be exploited within the context of a Service must be remedied by the Service Provider within the above timescales if the vulnerability becomes exploitable within the context of the Service;
    2. the application of a ‘Critical’ or ‘Important’ security patch adversely affects the Service Provider’s ability to deliver the Services in which case the Service Provider shall be granted an extension to such timescales of 5 days, provided the Service Provider had followed and continues to follow the security patch test plan agreed with the Authority; or
    3. the Authority agrees a different maximum period after a case-by-case consultation with the Service Provider under the processes defined in the ISMS.

The Service Provider Solution and Implementation Plan shall include provisions for major version upgrades of all Service Provider COTS Software and Third Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the ‘n-1 version’) throughout the Framework Period unless:

* + 1. where upgrading such Service Provider COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version ; or
    2. is agreed with the Authority in writing.

The Service Provider shall:

* + 1. implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
    2. ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
    3. ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the term of this Framework Agreement;
    4. pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under paragraph 3.3.5;
    5. from the date specified in the Security Management Plan provide a report to the Authority within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
    6. propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
    7. remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and
    8. inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.

If the Service Provider is unlikely to be able to mitigate the vulnerability within the timescales under this paragraph 9 of Framework Schedule 25, the Service Provider shall immediately notify the Authority.

A failure to comply with paragraph 9.3 shall constitute a Notifiable Default, and the Service Provider shall comply with the Rectification Plan Process.

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ANNEX 1: BASELINE SECURITY REQUIREMENTS

Higher Classifications

The Service Provider shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Service Provider shall seek additional specific guidance from the Authority.

End User Devices

When Contracting Authority Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group (“CESG”) to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme (“CPA”).

Devices used to access or manage Contracting Authority Data and services must be under the management authority of Authority or Service Provider and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Service Provider devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (https://www.gov.uk/government/collections/end-user-devices-security-guidance--2). Where the guidance highlights shortcomings in a particular platform the Service Provider may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Service Provider wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

Data Processing, Storage, Management and Destruction

The Service Provider and Authority recognise the need for the Authority’s information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Service Provider must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority Data will be subject to at all times.

The Service Provider shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Contracting Authority Data is only carried out offshore within:

* + 1. the European Economic Area (EEA);
    2. in the US if the Service Provider and or any relevant Sub-Contractor have signed up to the US-EU Privacy Shield Register; or
    3. in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.

The Service Provider shall:

* + 1. provide the Authority with all Contracting Authority Data on demand in an agreed open format;
    2. have documented processes to guarantee availability of Contracting Authority Data in the event of the Service Provider ceasing to trade;
    3. securely destroy all media that has held Contracting Authority Data at the end of life of that media in line with Good Industry Practice; and
    4. securely erase any or all Contracting Authority Data held by the Service Provider when requested to do so by the Authority.

Networking

The Authority requires that any Contracting Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network (“PSN”) framework (which makes use of Foundation Grade certified products).

The Contracting Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

Security Architectures

The Service Provider shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Contracting Authority Data.

When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) the Service Provider shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider).

Personnel Security

Service Provider Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.

The Service Provider shall agree on a case by case basis Service Provider Personnel roles which require specific government clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Contracting Authority Data.

The Service Provider shall prevent Service Provider Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Contracting Authority Data except where agreed with the Authority in writing.

All Service Provider Personnel that have the ability to access Contracting Authority Data or systems holding Contracting Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Contracting Authority in writing, this training must be undertaken annually.

Where the Service Provider or Sub-Contractors grants increased ICT privileges or access rights to Service Provider Personnel, those Service Provider Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

Identity, Authentication and Access Control

The Service Provider shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) are uniquely identified and authenticated when accessing or administering the Services. Applying the ‘principle of least privilege’, users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Service Provider shall retain an audit record of accesses.

Audit and Monitoring

The Service Provider shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Service Provider audit records should (as a minimum) include:

* + 1. Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider). To the extent the design of the Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
    2. Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Service Provider) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

The Service Provider and the Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

The Service Provider shall retain audit records collected in compliance with this paragraph 8 of Framework Schedule 25 for a period of at least 6 months.

ANNEX 2: SECURITY POLICY

This is to be provided by the Service Provider within the first 6 weeks from Framework Commencement Date i.e. week commencing (26th February 2018)

ANNEX 3: SECURITY MANAGEMENT PLAN

This is to be provided by the Service Provider within the first 6 weeks from Framework Commencement Date i.e. week commencing (26th February 2018)

framework schedule 26: testing

INTRODUCTION

This Framework Schedule 26 sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans. The Primary Purpose of Testing shall be to demonstrate to the Authority’s satisfaction that the End to End Solution and Public Sector Resourcing Model including any technology systems have been implemented in accordance with the requirements of this Framework Agreement, that all of the required processes and functionality is present, functioning correctly, reliably and robustly, and that it is ready for operational use in support of provision of the Services. This Framework Schedule 26 also applies to any agreed changes, updates or new functionality and processes introduced throughout the Framework Period.

TESTING OVERVIEW

All Tests conducted by the Service Provider shall be conducted in accordance with the Test Strategy and the Test Plans.

Any disputes between the Service Provider and the Authority regarding this Testing shall be referred to the Dispute Resolution Procedure.

TEST STRATEGY

The Service Provider shall develop the final Test Strategy as soon as practicable but in any case no later than the date specified in the Implementation Plan after the Framework Commencement Date.

The final Test Strategy shall include:

* + 1. an overview of how Testing will be conducted in relation to the Implementation Plan;
    2. the process to be used to capture and record Test results and the categorisation of Test Issues;
    3. the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
    4. the procedure to be followed to sign off each Test; and
    5. the process for the production and maintenance of reports relating to Tests.

TEST PLANS

The Service Provider shall develop Test Plans for the approval of the Authority as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

Each Test Plan shall include as a minimum:

* + 1. the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;
    2. a detailed procedure for the Tests to be carried out, including:
       1. the timetable for the Tests including start and end dates;
       2. the Testing mechanism and the detailed success criteria ;
       3. dates and methods by which the Authority can inspect Test results;
       4. the mechanism for ensuring the quality, completeness and relevance of the Tests;
       5. the process with which the Authority will review Test Issues and progress on a timely basis; and
       6. the re-Test procedure, the timetable and the resources which would be required for re-Testing.

The Authority shall not unreasonably withhold or delay its approval of the Test Plans and the Service Provider shall implement any reasonable requirements of the Authority in the Test Plans.

TESTING

When the Service Provider has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not achieved the Authority shall be entitled to recover from the Service Provider, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.

If the Service Provider successfully completes the requisite Tests, the Authority shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Service Provider shall remain solely responsible for ensuring that the Services are implemented in accordance with this Contract.

TEST ISSUES

Where a Test Issue is identified by the Service Provider, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

TEST QUALITY AUDIT

Without prejudice to its rights pursuant to Clause 18 (Records, Audit Access and Open Book Data) the Authority or an agent or contractor appointed by the Authority may perform on-going quality audits in respect of any part of the Testing.

If the Authority has any concerns following an audit in accordance with paragraph 7.1 above the Authority will discuss such concerns with the Service Provider, giving the Service Provider the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Service Provider detailing the same to which the Service Provider shall, within a reasonable timeframe, respond in writing.

In the event of an inadequate response to the written report from the Service Provider, the Authority (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

OUTCOME OF TESTING

The Authority will issue a Satisfaction Certificate when it is satisfied that a Milestone has been achieved.

If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

* + 1. the Service Provider shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
    2. the Parties shall treat the failure as a Service Provider Default

**ANNEX 1: SATISFACTION CERTIFICATE**

To: [insert name of Service Provider]

FROM: Crown Commercial Service

[insert Date dd/mm/yyyy]

Dear Sirs,

**SATISFACTION CERTIFICATE**

Milestones: **[Guidance Note: Insert description of the relevant Deliverables/Milestones]**

We refer to the Framework Agreement (**"Agreement"**) relating to the provision of Vendor Management System, PSR Marketplace, [REDACTED] and any Other Technology Platforms and Services between the ***Crown Commercial Service*** (**"the Authority"**) and ***[Service Provider name]*** (**"Service Provider"**) dated16th January 2018.

The definitions for terms capitalised in this certificate are set out in the Framework Agreement.

[We confirm that all of the Milestones have been successfully achieved by the Service Provider in accordance with the Test relevant to those Milestones.]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of the Authority].

FRAMEWORK SCHEDULE 27: BUSINESS CONTINUITY AND DISASTER RECOVERY

Definitions

* 1. In this Framework Schedule 27, the following definitions shall apply:

|  |  |
| --- | --- |
| "Business Continuity Plan" | 1. has the meaning given to it in paragraph 2.2.1(b) of this Framework Schedule 27; |
| "Disaster Recovery Plan" | 1. has the meaning given to it in 2.2.1(c) of this Framework Schedule 27; |
| "Disaster Recovery System" | 1. means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster; |
| "Review Report" | 1. has the meaning given to it in paragraph 6.2 of this Framework Schedule 27; |
| "Service Provider's Proposals" | 1. has the meaning given to it in paragraph 6.2.3 of this Framework Schedule 27; |

BCDR PLAN

* 1. Within thirty [30] Working Days from the Framework Commencement Date the Service Provider shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Service Provider shall follow to:
     1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
     2. the recovery of the Services in the event of a Disaster.
  2. The BCDR Plan shall:
     1. be divided into three parts:
        1. Part A which shall set out general principles applicable to the BCDR Plan;
        2. Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and
        3. Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**); and
     2. unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.
  3. Following receipt of the draft BCDR Plan from the Service Provider, the Authority shall:
     1. review and comment on the draft BCDR Plan as soon as reasonably practicable; and
     2. notify the Service Provider in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
  4. If the Authority rejects the draft BCDR Plan:
     1. the Authority shall inform the Service Provider in writing of its reasons for its rejection; and
     2. the Service Provider shall then revise the draft BCDR Plan (taking reasonable account of the Authority’s comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority’s notice of rejection. The provisions of [paragraph](http://uk.practicallaw.com/0-202-4551?q=outsourcing#a372155)s 2.3 and 2.4 of this Framework Schedule 27 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

* 1. Part A of the BCDR Plan shall:
     1. set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
     2. provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any goods and/or services provided to the Authority by a Related Service Provider;
     3. contain an obligation upon the Service Provider to liaise with the Authority and (at the Authority’s request) any Related Service Providers with respect to issues concerning business continuity and disaster recovery where applicable;
     4. detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Provider in each case as notified to the Service Provider by the Authority from time to time;
     5. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
     6. contain a risk analysis, including:
        1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
        2. identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
        3. identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Service Provider; and
        4. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
     7. provide for documentation of processes, including business processes, and procedures;
     8. set out key contact details (including roles and responsibilities) for the Service Provider (and any Sub-Contractors) and for the Authority;
     9. identify the procedures for reverting to “normal service”;
     10. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
     11. identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
     12. provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.
  2. The BCDR Plan shall be designed so as to ensure that:
     1. the Services are provided in accordance with this Framework Agreement at all times during and after the invocation of the BCDR Plan;
     2. the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
     3. it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
     4. there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
  3. The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.
  4. The Service Provider shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Service Provider of this Framework Agreement.

BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

* 1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
     1. the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
     2. the steps to be taken by the Service Provider upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
  2. The Business Continuity Plan shall:
     1. address the various possible levels of failures of or disruptions to the provision of Services;
     2. set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
     3. specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
     4. clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

* 1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Service Provider ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
  2. The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
  3. The Disaster Recovery Plan shall include the following:
     1. the technical design and build specification of the Disaster Recovery System;
     2. details of the procedures and processes to be put in place by the Service Provider in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
        1. data centre and disaster recovery site audits;
        2. backup methodology and details of the Service Provider's approach to data back-up and data verification;
        3. identification of all potential disaster scenarios;
        4. risk analysis;
        5. documentation of processes and procedures;
        6. hardware configuration details;
        7. network planning including details of all relevant data networks and communication links;
        8. invocation rules;
        9. Service recovery procedures; and
        10. steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;
     3. any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
     4. details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
     5. access controls to any disaster recovery sites used by the Service Provider in relation to its obligations pursuant to this Framework Schedule 27; and
     6. testing and management arrangements.

REVIEW AND AMENDMENT OF THE BCDR PLAN

* 1. The Service Provider shall review the BCDR Plan (and the risk analysis on which it is based):
     1. on a regular basis and as a minimum once every six (6) months;
     2. within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
     3. where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.1and 6.1.2 of this Framework Schedule 27) by notifying the Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Authority’s written requirements. Prior to starting its review, the Service Provider shall provide an accurate written estimate of the total costs payable by the Authority for the Authority’s approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Service Provider shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority’s prior written approval.
  2. Each review of the BCDR Plan pursuant to paragraph 6.1 of this Framework Schedule 27 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Service Provider within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a **“Review Report”**) setting out:
     1. the findings of the review;
     2. any changes in the risk profile associated with the provision of Services; and
     3. the Service Provider's proposals (the **“Service Provider's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Service Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
  3. Following receipt of the Review Report and the Service Provider’s Proposals, the Authority shall:
     1. review and comment on the Review Report and the Service Provider’s Proposals as soon as reasonably practicable; and
     2. notify the Service Provider in writing that it approves or rejects the Review Report and the Service Provider’s Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.
  4. If the Authority rejects the Review Report and/or the Service Provider’s Proposals:
     1. the Authority shall inform the Service Provider in writing of its reasons for its rejection; and
     2. the Service Provider shall then revise the Review Report and/or the Service Provider’s Proposals as the case may be (taking reasonable account of the Authority’s comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Service Provider’s Proposals to the Authority for the Authority’s approval within twenty (20) Working Days of the date of the Authority’s notice of rejection. The provisions of [paragraphs](http://uk.practicallaw.com/0-202-4551?q=outsourcing#a372155) 6.3 and 6.4 of this Framework Schedule 27 shall apply again to any resubmitted Review Report and Service Provider’s Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
  5. The Service Provider shall as soon as is reasonably practicable after receiving the Authority’s approval of the Service Provider's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Service Provider's Proposals. Any such change shall be at the Service Provider’s expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

TESTING OF THE BCDR PLAN

* 1. The Service Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Framework Schedule 27, the Authority may require the Service Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
  2. If the Authority requires an additional test of the BCDR Plan, it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Authority’s requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
  3. The Service Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
  4. The Service Provider shall ensure that any use by it or any Sub-Contractor of “live” data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
  5. The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
     1. the outcome of the test;
     2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
     3. the Service Provider's proposals for remedying any such failures.
  6. Following each test, the Service Provider shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Service Provider, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
  7. For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan’s procedures) shall not relieve the Service Provider of any of its obligations under this Framework Agreement.
  8. The Service Provider shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

INVOCATION OF THE BCDR PLAN

* 1. In the event of a complete loss of service or in the event of a Disaster, the Service Provider shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Service Provider shall invoke or test the BCDR Plan only with the prior consent of the Authority.

Framework SCHEDULE 28: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. SCOPE

This Framework Schedule 28 (Service Levels, Service Credits and Performance Monitoring) sets out the Service Levels which the Service Provider is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Service Provider's performance in the provision by it of the Services will be monitored.

This Framework Schedule 28 comprises:

* + 1. Part A: Service Levels and Service Credits;
    2. Annex 1 to Part A - Service Levels and Service Credits Table;
    3. Annex 1 to Part B: Performance Monitoring; and
    4. Annex 2 to Part B: Additional Performance Monitoring Requirements.

**PART A: SERVICE LEVELS AND SERVICE CREDITS**

GENERAL PROVISIONS

The Service Provider shall provide a suitably qualified nominated Framework Manager, as well as a suitably qualified deputy to act in their absence, who will take over all responsibility for delivering the Services required within this Framework Agreement and ensuring that all the Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout the Framework Period.

The Service Provider shall within five (5) working days of the Framework Commencement Date send to the Authority the name and contact details (including email address and telephone numbers) of the nominated Framework Manager and deputy Framework Manager. The Service Provider shall have arrangements in place to deal with annual leave or any other (un)planned absence.

The Service Provider shall communicate any change in Framework Manager or deputy Framework Manager to the Authority, no less than one (1) month in advance of the planned change.

The Service Provider shall provide a managed service through the provision of a dedicated Framework Manager where required on matters relating to:

* + 1. Supply performance;
    2. Quality of the Services;
    3. Contracting Authority support;
    4. Complaints handling; and
    5. Accurate and timely invoices.

The Service Provider accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Framework Schedule 28 will result in Service Credits being issued.

PRINCIPAL POINTS

The objectives of the Service Levels and Service Credits are to:

* + 1. ensure that the Services are of a consistently high quality;
    2. provide a mechanism whereby the Authority can attain meaningful recognition of inconvenience and/or loss resulting from the Service Provider’s failure to deliver the level of service for which it has contracted to deliver; and
    3. incentivise the Service Provider to comply with and to expeditiously remedy any failure to comply with the Service Levels.

SERVICE LEVELS

Annex 1 to this Part A of this Framework Schedule 28 sets out the Service Levels the performance of which the Parties have agreed to measure.

The Service Provider shall monitor its performance of this Framework Agreement by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Framework Schedule 28 (the “Service Level Performance Criteria”) and shall send the Authority a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Framework Schedule 28.

The Service provider shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.

If the level of performance of the Service provider of any element of the provision by it of the Services during the Framework Agreement term:

* + 1. is likely to or fails to meet any Service Level Performance Measure; or
    2. is likely to cause or causes a Critical Service Level Failure to occur;
    3. the Service provider shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without prejudice to any other of its rights howsoever arising may:
       1. require the Service Provider to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
       2. if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Authority shall be entitled to instruct the Service Provider to comply with the Rectification Plan Process; or
       3. if a Service Level Failure has occurred, deduct from the Charges the applicable Service Level Credits payable by the Service Provider to the Authority in accordance with the calculation formula set out in Annex 1 of this Part A of this Framework Schedule 28; or
       4. if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 55 (Service Levels and Service Credits) of this Framework Agreement.

Approval and implementation by the Authority of any Rectification Plan shall not relieve the Service Provider of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Contracting Authority.

SERVICE CREDITS

Annex 1 to this Part A of this Framework Schedule 28 sets out the formula used to calculate a Service Credit payable to the Authority as a result of a Service Level Failure in a given service period which, for the purpose of this Framework Schedule 28, shall be a recurrent period of one Year (starting from the Service Commencement Date) during the Framework Agreement term (the “Service Period”).

Annex 1 to this Part A of this Framework Schedule 28 includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Service Provider.

The Contracting Authority shall use the Performance Monitoring Reports supplied by the Service Provider under Part B (Performance Monitoring) of this Framework Schedule 28 to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.

Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT.

The Authority shall notify the Service Provider of any Service Credits that are due, in writing, and the Service Provider shall pay the amounts due in the time and manner specified by the Authority in accordance with the Framework Agreement.

NATURE OF SERVICE CREDITS

The Service Provider confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Framework Agreement Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

1. critical service level failure

A Critical Service Level Failure under this Framework Agreement applies to the Routes of Talent Service Level in Annex 1 to Part A of this Framework Schedule 28.

If the Service Provider achieves 50% or less of the Routes of Talent Service Level target of 95% this shall be deemed to be a Critical Service Level Failure.

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE CREDITS TABLE

**[REDACTED]**

ANNEX 1 TO PART B: PERFORMANCE MONITORING

PRINCIPAL POINTS

Annex 1 to Part B of this Framework Schedule 28 provides the methodology for monitoring the provision of the Services:

* + 1. to ensure that the Service provider is complying with the Service Levels; and
    2. for identifying any failures to achieve Service Levels in the performance of the Service provider and Services ("**Performance Monitoring System**").

Within twenty (20) Working Days of the Framework Service Commencement Date the Service provider shall provide the Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

REPORTING OF SERVICE FAILURES

The Service provider shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Authority in accordance with the processes agreed in paragraph 1.2 of Annex 1 to Part B of this Framework Schedule 28 above.

PERFORMANCE MONITORING AND PERFORMANCE REVIEW

The Service provider shall provide the Authority with performance monitoring reports (“Performance Monitoring Reports”) in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Annex 1 to Part B of this Framework Schedule 28 above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

* + 1. for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
    2. a summary of all failures to achieve Service Levels that occurred during that Service Period;
    3. any Critical Service Level Failures and details in relation thereto;
    4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
    5. the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
    6. such other details as the Authority may reasonably require from time to time.

The Parties shall attend meetings to discuss Performance Monitoring Reports ("Performance Review Meetings") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Service provider and the Contracting Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

* + 1. take place within one (1) week of the Performance Monitoring Reports being issued by the Service provider;
    2. take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;
    3. be attended by the Service Provider's Representative and the Authority's Representative; and
    4. be fully minuted by the Service Provider. The prepared minutes will be circulated by the Service Provider to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Service Provider's Representative and the Authority's Representative at each meeting.

The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

The Service Provider shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Service Provider and the calculations of the amount of Service Credits for any specified Service Period.

The Service Provider shall manage the Framework Agreement by utilising the Authorities tiered Service provider Relationship Management (SRM) approach as set out in clause 3.6, which provides escalation routes and enables development of the key strategies at senior levels.

The Service Provider shall agree the level of engagement and frequency with Authorities within one (1) month of the Framework Commencement Date, but as a minimum this shall include:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Frequency | Status | Format | Attendees | Information Required |
| Monthly | Operational | Meeting or telephone conference | To be agreed at Implementation | Monthly MI  Highlight Report |
| Quarterly | Operational | Meeting | To be agreed at Implementation | Highlight Report  Dashboard  Continuous Improvement Plan |
| Bi-annually | Operational / Strategic | Meeting | To be agreed at Implementation | Dashboard, Mid-Year Review and Forecast Report |
| Annually | Strategic | Meeting | To be agreed at Implementation | Dashboard, End of Year Review and Forecast Report |

The Service Provider’s Framework Manager shall ensure where Service Levels are not being met, that appropriate extra resources are committed promptly and action is taken to resolve any issues to the satisfaction of the Authority which may include a Performance Improvement Plan (PIP).

SATISFACTION SURVEYS

In order to assess the level of performance of the Service Provider, the Authority may undertake satisfaction surveys in respect of the Service Provider's provision of the Services.

The Authority shall be entitled to notify the Service provider of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Framework Agreement.

All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 15 of this Framework Agreement (Continuous Improvement).

12/08/2013

ANNEX 2 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

Introduction

In this Annex 2 to Part B of this Framework Schedule 28, the following definitions shall apply:

|  |  |
| --- | --- |
| **"Project Manager"** | means the manager described in paragraph 2 of this Annex. |

MANAGEMENT OF THE SERVICES

The Service Provider and the Authority shall each appoint a Project Manager for the purposes of this Framework Agreement through whom the provision of the Services shall be managed at a day-to-day.

Both Parties shall ensure that appropriate resource is made available on a regular basis including, for example, a Joint Governance Board such that the aims, objectives and specific provisions of this Framework Agreement can be fully realised.

jOINT GOVERNANCE BOARD

The Joint Governance Board shall be established by the Authority for the purposes of this Framework Agreement on which the Service Provider and the Authority shall be represented.

The Joint Governance Board members, frequency and location of board meetings and planned start date by which the board shall be established shall be agreed during Service Mobilisation.

In the event that either Party wishes to replace any of its appointed board members, that party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority board member has at all times a counterpart Service provider board member of equivalent seniority and expertise.

Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member’s attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Joint Governance Board meeting in his/her place (wherever possible) is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.

The Joint Governance Board shall be accountable to the Project Managers for oversight of the technology used by the Service provider and ensuring that technological choices are made to maximise the long term value of the Services.

The Joint Governance Board shall:

* + 1. assure compliance with the overall technical architecture of the Contracting Authority and with Government IT Strategy (as defined at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85968/uk-government-government-ict-strategy_0.pdf>);
    2. grant dispensations for variations from such compliance where appropriate;
    3. assure the coherence and consistency of the systems architecture for the provision of the Services;
    4. monitor developments in new technology and reporting on their potential benefit to the provision of the Services;
    5. provide advice, guidance and information on technical issues; and
    6. assure that the technical architecture for the provision of the Services is aligned to the requirements specified in Framework Schedule 2 (Services and Key Performance Indicators) and has sufficient flexibility to cope with future requirements of the Authority.

12/08/2013

FRAMEWORK Schedule 29: Vendor Management System, PSR Marketplace, [REDACTED] and Other Technology Platforms LICENCEs (CORPORATE)

**Vendor Management System, PSR Marketplace, [REDACTED] and any *Other Technology Platforms* Licences (Corporate)**

This Licence is made between ***[insert name of Service Provider]*** of ***[address of Service Provider]*** ("**Licensor**") and the person(s) named in the paragraph 17.1.2 of this Licence ("**Licensee**").

The defined terms used in this agreement shall have the meaning set out in Paragraph 16.

Background

The Authority has established the Framework Agreement for the provision of Services.

The System is an internet-based common technology platform provided by the Licensor on behalf of the Authority to facilitate the placement of Workers by the Service Provider in accordance with Requisitions. The System provides Contracting Authorities with a single point of access to the Framework Agreement.

This licence agreement ("Licence") governs access to and the use of the System by the Licensee in connection with the Framework Agreement.

The Licensee shall only use the System in accordance with this Licence and any further rules expressed and presented in the System. In the event that there is any conflict between this Licence and any such further rules, then the provisions of this Licence shall take precedence.

Licence and Permitted Use

In consideration of the Licensee agreeing to abide by the terms of this Licence, the Licensor grants to the Licensee and its Users, a free of charge, non-exclusive, revocable licence to access and use the System solely for the purpose of processing transactions relating to the Framework Agreement as set out in paragraph 2.2 below.

The Licensee agrees that it shall only use the System for the following permitted uses that correspond with the Licensees' classification as either a Contracting Authority, Service Provider, Supplier:

* + 1. Contracting Authority
       1. Contracting Authority may access the System to access, view, print, download, upload, transmit or receive data for any of the following reasons:
          1. Transmitting of Requisitions to the Service Provider for onwards communication to Suppliers as necessary;
          2. Downloading Worker CVs received from Services Provider;
          3. Transmitting acceptance of candidates to Services Provider for onwards communication to Suppliers as necessary;
          4. Accessing, reviewing and approving/rejecting Timesheets and expense forms submitted by Workers; or
          5. Submitting requests for management information to Services Providers and receiving data from the Services Provider.
    2. Service Provider
       1. Service Provider may access the System to access, view, print, download, upload, transmit or receive data for the following reasons:
          1. Accessing, viewing, printing and downloading Requisitions;
          2. Transmitting invitations for Suppliers to offer candidates to the Contracting Authorities;
          3. Accessing, viewing, printing and downloading CVs received from Suppliers;
          4. Transmitting candidate CVs to Contracting Authorities;
          5. Accessing, viewing, printing and downloading candidate acceptance received from Contracting Authorities;
          6. Access and download of Worker Timesheets and expense forms; or
          7. Submitting, supplying and receiving requests for management information and receiving data from Suppliers.
    3. Suppliers
       1. Suppliers may access the System to access, view, print, download, upload, transmit or receive data for the following reasons:
          1. Receiving invitations to offer candidates from the Service Provider;
          2. Transmitting candidates’ CVs to Framework Agreement Service Providers for onwards communication to Customers as necessary;
          3. Receipt of candidate acceptance from the Service Provider; or
          4. Accessing and downloading Temporary Worker Timesheets and expense forms.

All Intellectual Property Rights in the System are owned by, or are under licence to, the Licensor.

The Licensee and its Licensee Users shall not acquire any Intellectual Property Rights in the System, nor shall it have any rights to copy, adapt, modify, reverse engineer, decompile or interfere with the System.

The System may include the Licensor's and/or the Authority's logos and/or trademarks. The Licensee acknowledges that it may not copy, use, alter, amend or mask the Licensor's logo and/or trademarks which appear on the System without the prior consent of the Licensor.

Intellectual Property Rights

The Licensee permits the Licensor to use and copy in electronic format any Intellectual Property Rights subsisting in any Materials placed in the System by the Licensee for the purposes of storing and making the Materials available to the Licensee's intended recipient(s) for use in accordance with paragraph 3.3. For the avoidance of doubt, i) the Licensee's intended recipient(s) shall be those persons described in paragraph 2.2 who operate within or who are acting in connection with the supply of Services as the Licensee himself, and ii) the Licensor shall not use the Materials other than for the purposes specified herein.

The Licensee acknowledges and agrees that the Licensor shall also be permitted to allow the Authority to use, adapt, amend, copy, publish, distribute or otherwise use any Materials placed in the System by the Licensee and sublicense the use of any such Materials for any purpose connected with the Authority's business functions.

The Licensor grants the Licensee (subject to its obligations under paragraph 9) a non-exclusive right to use, view, download, copy and amend any Materials made available to the Licensee by a Worker, Supplier, Service Provider or Contracting Authority (as the case may be) within the System solely for the purpose of requesting, administrating, managing, providing or supplying Workers to Contracting Authorities pursuant to the Framework Agreement.

The Licensee warrants to the Licensor that its use of any Materials loaded into the System in accordance with this Licence by the Licensee will not infringe the Intellectual Property Rights of any third parties.

Registration

In order for the Licensee to be granted access to the System, this Licence must be in force and the Licensee must register individual Users with the Licensor by providing the required registration data. The Licensor will then set up individual User accounts on the System and provide details of the usernames and passwords to the Licensor.

User IDs and passwords are strictly personal to Users and are non-transferable. The Licensee shall ensure that its Users do not divulge or disclose their user IDs or passwords to third parties. In the event the Licensee becomes aware that a user ID and / or password may have been divulged, disclosed or discovered by any third party, they shall immediately notify the Licensor.

The Licensee agrees to designate an administrator within its organisation to manage access to the System by Users and liaise with the Licensor and receive notices in accordance with paragraph 14. The Licensee shall provide contact details for the administrator to the Licensor.

The Licensee must immediately inform the Licensor in the event that any User leaves its employment or no longer requires access to the System.

The Licensor retains the right to deactivate any User account(s) if there has been no access for a period of sixty (60) days.

Helpdesk

The Licensor operates helpdesk facility for enquiries regarding the use of and functionality of System, reporting problems or dealing with User administration. The helpdesk can be contacted by [ ] between [ ].

Licensee's Obligations

The Licensee shall ensure that all Users comply with the terms of this Licence.

The Licensee shall use all reasonable care and skill in performing its obligations under this Licence.

The Licensee shall provide Users with the equipment and software needed to access and use the System.

The Licensee shall deploy security software in accordance with good practice in its IT environments to protect the security and integrity of the System from malicious software when being accessed or used by Users.

The Licensee shall use the System for lawful and proper purposes only and shall, in any event, comply with all relevant laws, regulations and Codes of Practice within the UK or other jurisdiction from which Licensee Users access the System.

In particular, the Licensee agrees that it will not:

* + 1. post, transmit or disseminate any information on or via the System which is or may be harmful, obscene, defamatory or otherwise illegal;
    2. use the System in a manner which causes or may cause an infringement of the rights of any other; and
    3. use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the System, including uploading or making available files containing corrupt data or viruses via whatever means.

The Licensee shall ensure that its Users are made aware of and abide by the terms of this Licence when using the System. The Licensee agrees that it shall be responsible for all acts and omissions of the Users in connection with the use of the System under this Licence as if they were its own.

Data Protection

In their use and access of the System, the Licensor and the Licensee shall comply with the Data Protection Act 1998 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner and the Licensee shall not do or cause or permit to be done anything which may cause or otherwise result in a breach by the Licensor of the same or the Licensor's obligations under the Framework Agreement as notified to the Licensee from time to time.

The Licensor, will collect, hold and use personal data obtained from and about the Users and/or the Workers. The Licensee agrees to such data being collected, held and used in accordance with this Licence, the Privacy Notice and the Licensor's obligations under the Data Protection Act 1998 and the Framework Agreement.

In circumstances where the Licensor processes personal data on behalf of the Licensee, the Licensor shall:

* + 1. do so only in accordance with the instructions of the Licensee;
    2. maintain in place, having regard to the state of technological development and the cost of implementation, all appropriate measures, procedures and policies to protect the security and integrity of any such personal data; and
    3. not do or cause or permit to be done anything which may cause or otherwise result in a breach by the Licensor of the Data Protection Act 1998, and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner, or the Licensor's obligations under the Framework Agreement.

Limitation of Liability

Neither the Licensor nor the Licensee excludes or limits liability to the other for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.

The Licensee acknowledges that the System is provided as-is and without charge and as such the Licensor shall not be liable to the Licensee for any direct loss, indirect loss or damages incurred by the Licensee arising from the use of the System save in respect of paragraphs 7 or 9. The Licensee acknowledges and accepts that:

* + 1. the Licensor reserves the right to interrupt and/or suspend the availability of the System and/or revoke access at any time without incurring any liability;
    2. the Licensor provides the System on an ‘as is’ basis and ‘as available’ basis without any warranty of any kind; and
    3. the Licensor does not accept any liability for any information or links on the System that may refer Users to external sources outside of the Licensor’s reasonable control.

Confidentiality

The Licensor shall:

* + 1. treat all Confidential Information supplied by the Licensee as confidential and safeguard it accordingly;
    2. not (subject to paragraph 9.2 below) disclose the Licensee's Confidential Information to any third party without the Licensee's prior written consent; and
    3. not access or use any Confidential Information supplied by the Licensee other than for the purposes of technical administration or maintenance of the System and making the Confidential Information available in accordance with paragraph 9.2 below.

The Licensor shall be permitted to disclose the Licensee's Confidential Information to the Licensee's intended recipient(s). For the avoidance of doubt, the Licensee's intended recipient(s) shall be the those persons described in paragraph 2.2 who operate within or, who are acting in connection with the supply of contingent labour under the same Lot as the Licensee himself. The Licensee acknowledges and agrees that the Licensor shall also be permitted to disclose any Confidential Information within the System to the Authority who shall be permitted to disclose such Confidential Information to any other Central Government Body.

To the extent that the Licensee is the recipient of any third party Confidential Information disclosed through the System, the Licensee shall take all necessary precautions to ensure that all such Confidential Information obtained from the Licensor under or in connection with this Licence:

* + 1. is given only to such employee, consultant, sub-contractor, professional advisor or agent engaged to advise it in connection with the Framework Agreement and as is strictly necessary for the purpose of requesting, administrating, managing, providing or supplying Workers to Contracting Authorities pursuant to the Framework Agreement; and
    2. is treated as confidential and not disclosed (without prior written approval) or used by any employee, consultant, sub-contractor, professional advisor or agent otherwise than for the purposes of purpose of requesting, administrating, managing, providing or supplying Workers to Contracting Authorities pursuant to the Framework Agreement.

The provisions of this Paragraph 9 shall not apply to any Confidential Information which either party obtains and which is:

* + 1. or becomes public knowledge (otherwise than by breach of the obligations of confidentiality under this Licence);
    2. in the possession of the party concerned, without restriction as to its disclosure, before receiving it from the disclosing party;
    3. received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
    4. independently developed without access to the Confidential Information.

Nothing in this Licence shall prevent either party from disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation parliamentary obligation provided that in disclosing information under this sub-paragraph the relevant party discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

Nothing in this Licence shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Licence in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

The Licensee acknowledges that the Licensor is subject to the requirements of the Data Protection Act 1998 and shall assist and cooperate with the Licensor in meeting its obligations thereunder. The Licensee shall use all reasonable endeavours to ensure the observance of the provisions of this Paragraph 9 by its sub-contractors.

The obligations of Paragraphs 7 and 9 shall survive the expiry of this Licence for a period of 5 years. The Licensee's permission for the Licensor to use any Materials pursuant to clause 3.2 shall endure for term of the relevant Intellectual Property Rights and survive termination or expiry of this Licence.

Rights of Third Parties

The Licensee acknowledges and agrees that the Authority may enforce all and any of the provisions in this Licence as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.

Term, termination and suspension of access

This Licence shall come into force on the later of the dates inserted by the parties' signatures set out in paragraph 17 and shall continue in force until 15/07/2025 unless terminated earlier in accordance with paragraph 11.4 below.

The Licensor may immediately suspend the Licensee's (or any individual Users) access to the System if any of the following events occur:

* + 1. Licensee commits a material breach of any of its obligations under this Licence; or
    2. Licensee fails to remedy, or persists in, any breach of any of its obligations under this Licence after having been notified in writing to remedy or desist such breach within a period of ten (10) Working Days.

The Licensor reserves the right to temporarily suspend access to the System for maintenance or other technical reasons.

The Licensee may terminate this Licence at any time by giving 30 days' notice in writing to the Licensor.

Notwithstanding termination of the Licence the parties agree that paragraphs 7 and 9 shall survive termination of this Licence and continue in full force and effect.

Amendments to Licence

The Licensee acknowledges that the Licensor reserves the right to vary or amend this Licence with the Agreement of the Authority at any time by providing the Licensee with notice in writing.

The Licensee’s continued use of the System following receipt of notice under paragraph 12.1 shall represent its unconditional acceptance of the revisions to this Licence in their entirety.

General

The waiver by either party of any breach of this Licence shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

If at any time any part of this Licence is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Licence and the validity and/or enforceability of the remaining provisions of this Licence shall not in any way be affected or impaired as a result of that omission.

Notices

All communications given under this Licence shall be in writing and shall be:

* + 1. served to the Licensee, via e-mail, to the e-mail address the Licensee has given upon registration [or through the messaging facility available on the System]; or
    2. served on the Licensor, via e-mail, to [ ]; and
    3. deemed to be received by the addressee on the same day as the addressor sending such e-mail, subject to the:
       1. addressor using the addressee’s correct e-mail address; and
       2. addressee, on receipt of such an e-mail, e-mailing an acknowledgement of receipt to the addressor as soon as is practicable and in any event not later than 12:00 of the following Working Day after the addressee received such e-mail. If the addressor fails to receive such acknowledgement by 12:00 of the next Working Day after the addressee received the e-mail, the addressor may also serve the communication by first class registered post to:
          1. the Licensee, to the postal address the Licensee has given upon registration; or
          2. the Licensor, to the postal address in England and Wales the Licensor has given in this Licence,

and shall be deemed to be received by the addressee two Working Days after posting.

Either party to this Licence may change its postal address for notification purposes by giving the other reasonable prior written notice of the new information and its effective date pursuant to this paragraph 14.

Law and Jurisdiction

This Licence and any dispute or claim arising out of or in connection with them shall be governed by, and construed in accordance with, the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales to which the parties irrevocably submit.

Interpretation

The headings to paragraphs are inserted for convenience only and shall not affect the interpretation or construction of this Licence.

Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

All references in this Licence to paragraphs are to the paragraphs to this Licence unless otherwise stated.

The terms and expressions used in this Licence shall have the following meanings:

"**Authority**" has the meaning in paragraph 1.1;

"**Confidential Information**" means secret, confidential, commercial, financial, marketing, technical or other information, knowhow, trade secrets and other information uploaded, transmitted or otherwise disclosed using the System in connection with the Framework Agreement;

"**Framework Agreement"** means an agreement established by the Authority with a Framework Agreement Service Provider for the sourcing of Temporary Workers by the public sector.

"**Contracting Authority**" means the person for whom the Worker supplies the services;

"**Service Provider**" means the Licensor or [insert the name of the Service Provider)]

"**Intellectual Property Rights**" means any patent, copyright, database right, moral right, design right (whether registered or unregistered), trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right.

"**Licence**" has the meaning in paragraph 1.3;

"**Materials**" means information, data including Requisitions, CVs or other material uploaded or otherwise made available within the System;

"**Privacy** **Notice**" means the privacy notice provided by the Licensor explaining how their Personal Data will be collected, held and used and which can be found at [insert URL for privacy notice];

"**Requisition**" means a Customer requirement for the provision of Worker services;

"**Supplier**" means an employment agency or other supplier (and suppliers to such employment agencies and suppliers) who the Service Provider (or such employment agencies and suppliers) contracts with to supply Worker(s) to Contracting Authorities;

"**System**" means the online solution that facilitates the Requisition and supply of Services relating to Workers pursuant to the Framework Agreement;

"**Worker**" means a person supplied to a Contracting Authority to provide certain services pursuant to a Requisition;

”**Timesheet”** means a form detailing the hours during which a Worker has provided services to a Contracting Authority;

"**User**" means in relation to the Vendor Management System, the PSR Marketplace, [REDACTED] and any Other Technology Platforms, the Authority and any employee, subcontractor, consultant, or other individual permitted to access the Vendor Management System, the PSR Marketplace, [REDACTED] and any Other Technology Platforms under a Vendor Management System, the PSR Marketplace, [REDACTED] and any Other Technology Platforms Licence (Corporate) or Vendor Management System and Other Technology Platforms Licence (Temporary Worker) ;

"**Working Day**" means 09:00-17:00 Monday to Friday in the United Kingdom excluding Bank Holidays.

Signatories

The following persons agree to be bound by the terms of this Licence:

The Licensor

**[REDACTED]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director : **[REDACTED]**

Dated : **[REDACTED]**

The Licensee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director :

Dated :

**FRAMEWORK Schedule 30: Vendor Management System, PSR Marketplace, [REDACTED] and Other Technology Platforms Licences (WORKER)**

The defined terms used in this agreement shall have the meaning set out in paragraph 15.

**This page (together with the documents referred to on it) tells you the terms of use on which you may make use of the Vendor Management System, PSR Marketplace, [REDACTED] and any Other Technology Platforms ("System"). Please read these terms of use carefully before you start to use the System. By using the System, you, being a Worker indicate that you accept these terms of use and that you agree to abide by them. If you do not agree to these terms of use you may not use the Vendor Management System, PSR Marketplace, [REDACTED] and any *Other Technology Platforms*.**

This Vendor Management System, PSR Marketplace, [REDACTED] and any Other TechnologyPlatforms is operated by Alexander Mann Solutions Limitedof First Floor, 7-11 Bishopsgate, London, EC2N 3AQ ("**Licensor**"). This Licence creates a legally binding agreement between the Licensor and you.

1. Background

The Authority has established the Framework Agreement for the provision of Services.

The System is an internet-based common technology platform provided by the Licensor on behalf of the Authority to facilitate the placement of Workers by the Labour Service Providers in accordance with Requisitions. The System provides Contracting Authorities with a single point of access to the Framework Agreement.

This Licence governs access to and the use of the System by you in connection with the Framework Agreement.

Please note that use of this System by the users of Contracting Authorities, Suppliers and Service Providers is governed by separate licence terms which such users are required to abide by.

You may only use the System in accordance with this Licence and any further rules expressed and presented in the System. In the event that there is any conflict between this Licence and any such further rules, then the provisions of this Licence shall take precedence.

Licence

In consideration of you agreeing to abide by the terms of this Licence, the Licensor grants you, a free of charge, non-exclusive, revocable licence to access and use the System solely for the purpose of uploading Timesheets and expense forms for review and approval by the Contracting Authority, Supplier and/or Service Provider (as the case may be).

All Intellectual Property Rights in the System are owned by, or are under licence to, the Licensor.

You shall not acquire any Intellectual Property Rights in the System, nor shall you have any rights to copy, adapt, modify, reverse engineer, decompile or interfere with the System.

The System may include the Licensor's and/or the Authority's logos and/or trademarks. You may not copy, use, alter, amend or mask the Licensor's logo and/or trademarks which appear on the System without the prior consent of the Licensor.

Intellectual Property Rights

You permit the Licensor to use and copy in electronic format any Intellectual Property Rights subsisting in any Materials you place in the System for the purposes of storing and making the Timesheets available to the relevant Contracting Authority, the Service Provider and/or the Supplier in connection with the Framework Agreement.

You acknowledge and agree that the Licensor shall also be permitted to allow the Authority to use, adapt, amend, copy, publish, distribute or otherwise use any Materials you place in the System and sublicense the use of any such Materials for any purpose connected with the Authority's business functions.

The Licensor grants you (subject to its obligations under paragraph 8) a non-exclusive right to view, download, copy and amend any Materials made available to you within the System solely to allow you to provide services under the Framework Agreement.

Registration

You must provide your name, email address, and mobile/telephone number as part of the registration process. In addition you will have the option to log your work history and skills, role preferences, and availability.

User IDs and passwords are strictly personal to you and are non-transferable. You shall ensure you do not divulge or disclose your user IDs or passwords to third parties. In the event you become aware that your ID and / or password may have been divulged, disclosed or discovered by any third party, you shall immediately notify the Licensor.

You must immediately inform the Licensor in the event that you no longer require access to the System.

The Licensor retains the right to deactivate your account and terminate this Licence if there has been no access for more than 30 days.

Licensee's Obligations

You shall provide the equipment and software needed to access and use the System.

You shall deploy security software to protect the security and integrity of the System from malicious software when being accessed.

You shall use the System for lawful and proper purposes only.

In particular, you agree that you will not:

* + 1. post, transmit or disseminate any information on or via the System which is or may be harmful, obscene, defamatory or otherwise illegal;
    2. use the System in a manner which causes or may cause an infringement of the rights of any other; and
    3. use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the System, including uploading or making available files containing corrupt data or viruses via whatever means.

Data Protection

The Licensor, will collect, hold, transmit and use personal data obtained from and about you. You agree to such data being collected, held and used in accordance with this Licence, the Privacy Notice and the Licensor's obligations under the Data Protection Act 1998 and the Framework Agreement.

Limitation of Liability

Neither you nor the Licensor excludes or limits liability to the other for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.

You acknowledge that the System is provided as-is and without charge and as such the Licensor shall not be liable to you for any direct loss, indirect loss or damages incurred by you arising from the use of the System save in respect of paragraphs 6 or 8. You acknowledge and accept that:

* + 1. the Licensor reserves the right to interrupt and/or suspend the availability of the System and/or revoke access at any time without incurring any liability;
    2. the Licensor provides the System on an ‘as is’ basis and ‘as available’ basis without any warranty of any kind; and
    3. the Licensor does not accept any liability for any information or links on the System that may refer Users to external sources outside of the Licensor’s reasonable control.

Confidentiality

The Licensor shall:

* + 1. treat all Confidential Information supplied by you as confidential and safeguard it accordingly;
    2. not (subject to paragraph 8.2 below) disclose your Confidential Information to any third party without your prior written consent; and
    3. not access or use any Confidential Information supplied by you other than for the purposes of technical administration or maintenance of the System and making the Confidential Information available in accordance with paragraph 8.2 below.

The Licensor shall be permitted to disclose your Confidential Information to the Contracting Authority, Suppliers and Service Providers. You acknowledge and agree that the Licensor shall also be permitted to disclose any Confidential Information within the System to the Authority who shall be permitted to disclose such Confidential Information to any Central Government Body.

To the extent that you are the recipient of any third party Confidential Information disclosed through the System, you shall take all necessary precautions to ensure that all such Confidential Information obtained from the Licensor under or in connection with this Licence is treated as confidential and not disclosed (without prior written approval) or used otherwise than for the purposes of requesting, administrating, managing, providing or supplying services to Contracting Authorities pursuant to the Framework Agreement.

The provisions of this Paragraph 8 shall not apply to any Confidential Information which either party obtains and which is:

* + 1. or becomes public knowledge (otherwise than by breach of the obligations of confidentiality under this Licence);
    2. in the possession of the party concerned, without restriction as to its disclosure, before receiving it from the disclosing party;
    3. received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
    4. independently developed without access to the Confidential Information.

Nothing in this Licence shall prevent either party from disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation parliamentary obligation provided that in disclosing information under this sub-paragraph the relevant party discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

Nothing in this Licence shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Licence in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

Rights of Third Parties

You acknowledge and agree that the Authority may enforce all and any of the provisions in this Licence as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.

Term, termination and suspension of access

This Licence shall come into force and shall continue while you continue to operate a user account for the System unless terminated accordance with paragraphs 4.4 or 10.4.

The Licensor may immediately suspend your access to the System if any of the following events occur:

* + 1. you commit a material breach of your obligations under this Licence; or
    2. you fail to remedy, or persist in, any breach of any of your obligations under this Licence after having been notified in writing to remedy or desist such breach within a period of ten (10) Working Days.

The Licensor reserves the right to temporarily suspend access to the System for maintenance or other technical reasons.

You may terminate this Licence at any time by giving notice to the Licensor.

Notwithstanding termination of the Licence the parties agree that paragraph 8 shall survive termination of this Licence and continue in full force and effect for a period of 6 months. Your permission for the Licensor to use any Intellectual Property subsisting in any Timesheets pursuant to clause 3 shall endure for term of the relevant Intellectual Property Rights and survive expiry or termination of this Licence.

Amendments to Licence

You acknowledge that the Licensor reserves the right to vary or amend this Licence with the Agreement of the Authority at any time by providing you with notice in writing.

Your continued use of the System following receipt of notice under paragraph 11.1 shall represent your unconditional acceptance of the revisions to this Licence in their entirety.

General

The waiver by either party of any breach of this Licence shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

If at any time any part of this Licence is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Licence and the validity and/or enforceability of the remaining provisions of this Licence shall not in any way be affected or impaired as a result of that omission.

Notices

All communications given under this Licence shall be in writing and shall be:

* + 1. served to you, via e-mail, to the e-mail address you have given upon registration [or through the messaging facility available on the System]; or
    2. served on the Licensor, via e-mail, to [ Licensor to insert e-mail address ]; and
    3. deemed to be received by the addressee on the same day as the addressor sending such e-mail, subject to the:
       1. addressor using the addressee’s correct e-mail address; and
       2. addressee, receiving a delivery receipt for such an e-mail.

Either party to this Licence may change its email address for notification purposes by giving the other reasonable prior written notice of the new information and its effective date pursuant to this paragraph 13.

Law and Jurisdiction

This Licence and any dispute or claim arising out of or in connection with them shall be governed by, and construed in accordance with, the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales to which the parties irrevocably submit.

Interpretation

The headings to paragraphs are inserted for convenience only and shall not affect the interpretation or construction of this Licence.

Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

All references in this Licence to paragraphs are to the paragraphs to this Licence unless otherwise stated.

The terms and expressions used in this Licence shall have the following meanings:

"**Authority**" has the meaning in paragraph 1.1;

"**Confidential Information**" means secret, confidential, commercial, financial, marketing, technical or other information, knowhow, trade secrets and other information uploaded, transmitted or otherwise disclosed using the System in connection with the Framework Agreement;

" **Framework Agreement**" means an agreement established by the Authority with the Service Provider for the sourcing and recruitment of Workers by the public sector;

"**Contracting Authority**" means the person for whom the Worker supplies the services;

"**Service Provider**" means the Licensor or [*insert the name of the Service Provider)*]

"**Intellectual Property Rights**" means any patent, copyright, database right, moral right, design right (whether registered or unregistered), trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right.

"**Licence**" has the meaning in paragraph 1.3;

"**Materials**" means information, data including Requisitions, CVs or other material uploaded or otherwise made available within the System;

**"Privacy Notice"** means the privacy notice provided by the Licensor explaining how Personal Data will be collected, held and used and which can be found at [***insert URL for privacy notice***];

"**Requisition**" means a Contracting Authority requirement for the provision of Services relating to the Worker;

"**Supplier**" means an employment agency or other supplier (and suppliers to such employment agencies and suppliers) who the Service Provider (or such employment agencies and suppliers) contracts with to supply Worker(s) to Contracting Authorities;

"**System**" has the meaning in the recitals to this Licence;

" **Worker**" means a person supplied to a Contracting Authority to provide certain services pursuant to a Requisition; and

**“Timesheet”** means a form detailing the hours during which a Worker has provided services to a Contracting Authority.

"**Working Day**" means 09:00-17:00 Monday to Friday in the United Kingdom excluding Bank Holidays.

Signatories

The following persons agree to be bound by the terms of this Licence:

The Licensor

**[REDACTED]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director : **[REDACTED]**

Dated : **[REDACTED]**

The Licensee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name :

Dated :