

Contract Conditions

Appointment and Affiliates

1. The Recipient appoints the Supplier, and the Supplier agrees to act, as the Supplier to the Recipient in the delivery of the Services for the Operative Period on the terms of this Agreement.

Supplier responsible

2. The Supplier shall be liable for the acts and omissions of any person who may be engaged by the Supplier (or on its behalf) in the delivery of the Services from time to time (and such acts or omissions shall be deemed to be its own). The Supplier shall ensure that any person engaged by the Supplier is properly qualified and suitably skilled and experienced to competently perform the tasks given to them in delivering the Services and that they are engaged and used in accordance with all relevant legislation. If in the course of delivering the Services, there is a legal requirement to seek a Disclosure and Barring Service check (or replacement or analogous body) for any person engaged by the Supplier, the Supplier shall fully comply with the same.

Recipient Obligations to Funders

3. The Supplier will at all times act in good faith to ensure that none of its actions or omissions cause or contribute to the failure of Recipient to comply with its obligations to its funders (and in particular, without prejudice to the generality of the foregoing, its public funding reporting and audit compliance obligations), and the Supplier will do or procure to be done such acts and things, and execute such documents or procure the provision of such information as Recipient may from time to time require to assist Recipient in compliance with such obligations (or in rectifying or ameliorating any failure to comply).

Sub-Contracting

4. Unless prior and specific written consent is obtained from the Recipient Contact to the contrary, the Supplier shall not sub-contract delivery of any of the Services or any of its other obligations under the Framework Agreement and shall perform the same personally and shall not assign or transfer any of its rights or obligations under the Framework Agreement.

Contract Manager

5. The Supplier shall appoint a person to liaise with the Recipient and to manage delivery of its obligations under the Agreement (the "Contract Manager"). This shall initially be the person named in the Summary as the Supplier's Contact. The Supplier shall notify the Recipient of a change to the Supplier's Contact.

Suppliers Obligations

6. During the Operative Period (and, where relevant, after termination or expiry of this Agreement for those clauses which apply both during the Operative Period and after the termination of this Agreement including but not limited to clauses 6.4, 6.11, 6.12, 6.18 and 6.20):
 - 6.1. The Supplier will perform delivery of the Services, comply with any obligations arising under TUPE related to the same, and perform its other obligations under the Framework Agreement (together "**the Obligations**") in accordance with all applicable laws and regulations from time to time in force, to the highest standards of honesty, diligence, care and skill and in accordance with the terms of the Framework Agreement and (unless to do so would conflict with specific terms of the Framework Agreement) in accordance with best practice and Recipient's applicable policies (as made available to the Supplier from time to time);
 - 6.2. The Supplier shall document the delivery process through which it will fulfil the Framework Agreement, and, if not already denoted in the schedule documents, identify the responsible individuals and the competencies required to fulfil the Framework Agreement, undertake staff development to ensure its staff possess the necessary competencies, and, identify and put in place the staffing and physical resources and the methods desirable to fulfil the Framework Agreement;
 - 6.3. The Supplier shall replace any of the Supplier's Employees who Recipient reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Employees for any reason, the Supplier shall ensure such person(s) are replaced promptly with another person with the necessary skills, experience and attributes to meet the requirements of the Services.
 - 6.4. The Supplier shall document the system through which it monitors progress and performance and the key stages at which it will review progress. The Supplier shall comply with agreed Recipient requirements to review and report its progress;
 - 6.5. In supplying the Services, the Supplier shall:

- 6.5.1. ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require, and which are necessary to enable it to comply with its obligations under the Framework Agreement;
- 6.5.2. provide all equipment, tools, vehicles and other items required to provide the Services; and
- 6.5.3. not do or omit to do anything which may cause the Recipient to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- 6.6. The Supplier will meet with Recipient or their nominated representatives forthwith upon request to discuss any matters arising out of the provision of the Services or otherwise in relation to the Framework Agreement and will co-operate in good faith with Recipient in respect of the same;
- 6.7. The Supplier will provide Recipient with the documents, reports and information required at its own cost and in such format as Recipient requires in a timely manner;
- 6.8. The Supplier shall permit and shall ensure that all of its sub-contractors shall permit Recipient staff and/or representatives of any relevant public authority or regulatory body or other Relevant Funding Body (which term means any public body or agency or similar organisation who supplies funding used by Recipient for the Framework Agreement from time to time (and including their successor organisations) to inspect its accounts, premises and records relevant to the Framework Agreement at any time and shall provide and shall ensure that all of its sub-contractors shall provide all reasonable assistance during such inspection.
- 6.9. The Supplier shall make pension provision for any employee who is a member of a local authority or other final salary pension scheme and who has their contract of employment transferred to the Supplier as a result of the Framework Agreement or provision of the Services so as to compensate that employee in full for the current or future benefits, entitlements or rights lost by him or her as a result of such transfer.
- 6.10. The Supplier will itself comply with and will take all required steps within its power to assist Recipient to comply with all applicable intellectual property rights, data protection and freedom of information obligations placed upon it or upon Recipient and arising in connection with the Framework Agreement or provision of the Services (and Recipient shall in no event be liable to the Supplier for any loss or damage howsoever caused, arising from or in connection with the disclosure under the data protection legislation or FOIA of any information relating to the Framework Agreement or the Services); in particular, the Supplier agrees, and will procure that all of its sub-contractors agree, to process the personal data that it will be processing on behalf of learners/customers only as is necessary for the purposes of the Framework Agreement and shall not carry out any other processing, use or disclosure using such personal data.
- 6.11. The Supplier will provide (forthwith upon request) such documents, reports and information and such other evidence of delivery of the Services, TUPE compliance, and performance of its other obligations under the Framework Agreement (together **“the Obligations”**) as may be requested by Recipient from time to time (and the Supplier shall not destroy or delete the same until after, and the obligations in this sub-clause shall not expire until the tenth anniversary of the Effective Date or such other date as may be notified by Recipient to the Supplier at any time before the tenth anniversary of the Effective Date (the **“Document Retention Period”**));
- 6.12. The Supplier will at all times ensure that all documents, reports and information and evidence provided by it related to the Obligations are satisfactory to Recipient and to any Relevant Funding Body or regulatory body, and are complete, accurate and not misleading, and will advise Recipient forthwith in writing if it discovers that any of the same is unsatisfactory, materially incomplete, inaccurate or misleading in any way (and the obligations in this sub-clause shall not expire until the end of the Document Retention Period);
- 6.13. The Supplier will seek Recipient's prior written consent in respect of any change in its method or manner of delivery of Services under the Framework Agreement;
- 6.14. The Supplier will immediately inform Recipient in writing of any breach of the Obligations or any significant development and/or problem that the Supplier encounters in performing its Obligations;
- 6.15. The Supplier will work within Recipient and any Relevant Funding Body's logo use and branding guidelines;
- 6.16. In carrying out the Framework Agreement the Supplier agrees to comply in all respects with all relevant legislation and in particular: -

- 6.16.1. not commit an act of discrimination rendered unlawful by the latest issue of the Sex Discrimination Act or the Race Relations Act or the Disability Discrimination Act or the Human Rights Act or the Equality Act;
 - 6.16.2. comply at all times with the Data Protection Legislation and shall not perform its obligations under this Framework Agreement in such a way as to cause Recipient to breach any of its applicable obligations under Data Protection Legislation.
 - 6.16.3. comply with all relevant requirements contained in or having effect under the legislation relating to health, safety and welfare at work; and
 - 6.16.4. comply if relevant with the latest issue of the Public Contracts Regulations;
 - 6.16.5. where any of the Supplier's obligations under the Framework Agreement are carried out by sub-contractors, the Supplier shall ensure that in carrying out those obligations the sub-contractors comply with the provisions of 6.16.1, 6.16.2 and 6.16.3
- 6.17. Any public announcement issued or publicity activity carried out by the Supplier (or on its behalf) concerning the Services must be agreed in advance in writing with Recipient;
- 6.18. The Supplier shall ensure that it has and maintains in force adequate insurance from a reputable insurer against any actions, claims or demands which may be brought by any person (including without limitation Recipient) injured or suffering damages or loss in connection with its activities in carrying out the Agreement. In particular, and without prejudice to the generality of the foregoing, the Supplier shall carry appropriate professional indemnity, public liability and employer's liability insurance (from a reputable insurer) at all times until the end of the Document Retention Period. The level of cover shall be at least £5 million for employer's liability (where required) and £1 million per event for professional indemnity and £1 million per event for public liability; the Supplier shall give Recipient not less than thirty days' notice in writing of any alteration or cancellation of such insurance cover.
- 6.19. The Supplier shall employ only people legally permitted to work in the UK and shall use all reasonable endeavours to ensure that the Supplier's employees are not claiming any government benefits to which they are not entitled because of their employment and the Supplier shall co-operate fully with the Recipient in the identification and reporting of people who may fall into either such category;
- 6.20. The parties agree that on termination or expiry of the Framework Agreement for any reason, the continuity of the Services is of paramount importance. The Supplier shall do its utmost to minimise disruption caused to users of the Services and to assist the implementation of any contingency plan proposed by Recipient either prior to or after the termination or expiry of the Framework Agreement, to deal with the effects of such termination or expiry in so far as it is practicable to do so;
- 6.21. The Supplier must not and must use all reasonable endeavours to procure that the Supplier's suppliers and sub-contractors shall not, knowingly, do or omit to do anything in relation to the Services or under the Framework Agreement or in the course of their other activities that may bring the standing of Recipient or its funders into disrepute or attract adverse publicity;
- 6.22. The Supplier shall at its own expense make good any Services which are found by Recipient to be below the standards required by Recipient.
- 6.23. The Supplier shall systematically evaluate its delivery of the Services and feed evaluation results back into its own and Recipient's review processes. The Supplier shall operate a system for collecting end-user feedback on the Services it delivers and the processes through which it delivers them. This feedback will lead to appropriate action to deal with suggestions or criticisms.
- 6.24. Where the Supplier goes into administration or liquidation any Relevant Funding Body must be assumed to be a creditor of the Supplier. The Supplier must take steps to ensure that the chief executive of any such body is provided with details of the administrator or liquidator and receives notifications of any creditors' meetings.
- 6.24.1. It is not intended for there to be any mutuality of obligations between the Recipient and the Supplier either during the Operative Period or upon termination. The Recipient is under no obligation to offer future contracts to the Supplier and if it does make any such offer the Supplier is not obliged to accept it;
 - 6.24.2. The Recipient shall have no right to, nor shall seek to, exercise any direction, control, or supervision over the Supplier or its staff in the manner, execution or provision of the Services. The Supplier shall endeavour to co-operate with the Recipient's reasonable requests within the scope of the services, however it is acknowledged that the Supplier shall have autonomy over their working methods.
 - 6.24.3. The Supplier may at any time and without giving the Recipient prior notification, make any changes to the Service which are necessary and which do not materially affect the nature or quality of the Service.

Evaluation by Recipient and Continuous Improvement

7. Recipient reserves the right to seek all necessary information to evaluate the Supplier's performance relative to the Framework Agreement from any source whatsoever. Action recommended as a result may be used for future reference. The Supplier shall operate systems for dealing with any shortfalls in Service delivery. The Supplier shall review its management system annually.

8. Recipient Remedies

- 8.1. If the Supplier fails to perform the Services to an acceptable standard or in a timely manner, Recipient shall, without limiting its other rights or remedies, have one or more of the following rights:
 - 8.1.1. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 8.1.2. to recover from the Supplier any costs incurred by Recipient in obtaining substitute services from a third party;
 - 8.1.3. where Recipient has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
 - 8.1.4. to claim damages for any additional costs, loss or expenses incurred by Recipient which are in any way attributable to the Supplier's failure to meet such standard, dates or times.
- 8.2. The provisions of the Framework Agreement and any relevant Services Order shall apply to any substituted or remedial services provided by the Supplier.

Payment

9. Payment is based upon and shall be paid in accordance with the Schedules subject to the Summary and to the following:
 - 9.1. Recipient shall be entitled to deduct from payments otherwise due or which at a later time may become due, under the Framework Agreement or under any other agreement or contract with the Supplier or with any company in the Supplier's group, such amounts in its reasonable discretion as it believes in good faith is or may become the subject of an indemnity claim against the Supplier under clause 10 below and/or is or may become the subject of a claim by Recipient (or any Affiliate) against the Supplier (or another company in the same group of companies as the Supplier);
 - 9.2. Unless specifically agreed to the contrary in writing by the Recipient Contact, the amounts set out in the Schedules shall include all associated costs and expenses;
 - 9.3. Unless specifically agreed to the contrary in writing by the Recipient Contact, the contract value set out in the Summary represents the total consideration excluding any VAT payable by Recipient and all Affiliates to the Supplier under the Framework Agreement and cannot be exceeded;
 - 9.4. Payments made to the Supplier by Recipient which have been funded by a Relevant Funding Body may not be used for: -
 - 9.4.1. expenditure on activities of an extremist, political or exclusively religious nature;
 - 9.4.2. fund matching for any regional fund, EU or similar government-funded application or project; or
 - 9.4.3. expenditure supported from public sources, where the total support would account for more than 100% of the scheme or project costs;
 - 9.4.4. expenditure on works or activities which any person has a statutory duty to undertake;
 - 9.4.5. any other use forbidden for such public funds by a Relevant Funding Body.
 - 9.5. Unless otherwise written within the Framework Agreement Recipient shall make payments to the Supplier 30 days from receipt of a valid invoice. No payments will be made without proof that the Supplier's obligations have been fully met. Recipient has the right to vary payments at its discretion where it judges that the Supplier has not met its obligations.
 - 9.6. The Recipient may deduct from payments due to the Supplier any amount which is due in respect of a liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Supplier in respect of the Services, where such recovery is not prohibited by law.

Indemnity

10. The Supplier undertakes to indemnify, and to keep indemnified, Recipient against all losses, liabilities, demands, costs, expenses and penalties resulting from:

- 10.1. any breach by the Supplier of the Framework Agreement and/or negligence of the Supplier connected with performing (or failing to perform) the Services;
- 10.2. any Relevant Funding Body making a claim against Recipient or clawing back funding already provided in relation to the Services or refusing to fund or to continue to provide funding for the Services at the anticipated level, or varying its funding arrangements to the detriment of Recipient by reason of failure to meet standards, in any case due to the default of the Supplier in complying with the provisions of the Framework Agreement. Any payment made in respect of a claim under this indemnity shall include an amount in respect of all costs and expenses incurred by Recipient in relation to the bringing of the claim (including a reasonable amount in respect of management time);
- 10.3. any breach of or indemnity claim made against Recipient relating to TUPE or contracts of employment which are alleged to have or have transferred to or from Recipient under TUPE, but only to the extent to which such claims arise as result of the acts or omissions of the Supplier;
- 10.4. any claim made by a third party against Recipient (or its officers, staff or workers) based on any breach or claimed breach of intellectual property rights, failure to comply with its obligations in relation to data protection or freedom of information or for breach of confidence, to the extent to which the same arise from the acts or omissions of the Supplier;
- 10.5. any inspection carried out in accordance with 6.7 above;
- 10.6. as a result of or in connection with any claim brought against Recipient for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables;
- 10.7. any transfer of staff to Recipient under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced from time to time) upon termination of this agreement;
- 10.8. This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Recipient for and in respect of:
 - 10.8.1. any income tax, employee National Insurance contributions and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Supplier in respect of the Services, where such recovery is not prohibited by law;
 - 10.8.2. all reasonable costs, expenses and any penalty fine or interest incurred or payable by the Recipient in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arises out of the Recipient's negligence or wilful default;
 - 10.8.3. any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier or against the Recipient arising out of or in connection with the provision of the Services.
- 10.9. any crystallisation of or increase in the Recipient's liability to contribute to or make payments in relation to pension schemes or plans arising as a result of the conduct of the Supplier under the Agreement or otherwise in connection with the Services or Staff Transfer.
- 10.10. The Recipient may at its own option satisfy any of the indemnities in clause 11 (in whole or in part) by way of deduction from payments due to the Supplier.
- 10.11. For the avoidance of doubt, references to 'the Supplier' in clause 11 shall include the conduct, acts or omissions of the Supplier's employees and other workers, officers, agents and sub-contractors (Staff) and the conduct, acts or omissions of the Staff of any company in the same group of companies as the Supplier at the relevant time.

Use of Information

11. The Supplier shall at all times comply (and shall take all reasonable steps within its power to enable the Recipient to comply) with any applicable obligations related to the Services or otherwise arising in connection with the Agreement with regard to intellectual property, data protection, confidential information and freedom of information.

Each Party agrees to comply with its obligations as set out in Schedules 1A and 1B of this Agreement

Copyrights and Deliverables etc.

12. The Supplier assigns to Recipient all copyrights and other intellectual property rights comprised in the Deliverables (being all products, materials, services and knowledge supplied to Recipient pursuant to the Framework Agreement)

Title to any Deliverables that are goods or in any physical media on which Deliverables are stored shall pass to Recipient on the earlier of their delivery to the Recipient or payment for them. The Supplier warrants that it has full, clear and unencumbered title to all such items, and that at the date of the transfer of title, it will have full and unrestricted rights to transfer all such items to Recipient.

Termination

13. Without prejudice to any accrued rights or remedies:
 - 13.1. either party may give notice in writing to the other terminating the Framework Agreement immediately if:
 - 13.1.1. the other party commits a material breach of the Framework Agreement and (if such breach is remediable) fails to remedy that breach within a specified time period of being notified in writing to do so or such other time period agreed between the parties;
 - 13.1.2. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
 - 13.1.3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party; or
 - 13.1.4. Recipient's funding for the Services is materially reduced or terminated and it gives notice of the same to the Supplier under this clause 13.1.4.
 - 13.2. the Framework Agreement may be terminated at any time by Recipient by giving the Supplier at least one month's notice in writing, without the need to give any reason. For the avoidance of doubt, payment for the Services will be for work carried out up to termination date.
 - 13.3. On receiving notice of termination of the Framework Agreement, the Supplier shall, and shall ensure that any of its sub-contractors shall, at no cost to Recipient, promptly provide such assistance and comply with such timetable as Recipient may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of relevant services. This shall include the supply or delivery to Recipient as soon as reasonably practicable of all documents, data and information relating to the provision of the Services, including statistical information relating to the terms of employment of the Supplier's and any sub-contractor's employees, accrued entitlements and benefits and any other liabilities of the Supplier and of any sub-contractors to employees engaged in provision of Services provided under the Framework Agreement.
 - 13.4. Termination shall not discharge any rights or obligations under this Framework Agreement which are specified or are intended, in the reasonable opinion of Recipient, to continue in affect after the end of the Operative Period.

Disputes

14. The parties agree that they will use all reasonable endeavours to settle any disputes they have between them whether in relation to amounts payable or in relation to any of the terms of the Framework Agreement by discussions and negotiations between them in good faith. In the event that the parties are unable to settle such a dispute an expert will be appointed to resolve the matter, acting as expert not arbitrator. The expert's ruling will be binding on both of the parties in the absence of fraud or manifest error. If the parties are unable to agree who the expert should be, then either may apply to the President for the time being of the Manchester branch of the Law Society to appoint an expert. Each of the parties will pay its own costs in respect of the resolution of any dispute and the Expert's fees shall be paid as the Expert from time to time directs.

Entire Agreement

15. The Framework Agreement and the documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each party acknowledges that, in entering into the Framework Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in the Framework Agreement or those documents. Nothing in this clause operates to limit or exclude any liability for fraud.

Further Assurance

16. The Supplier shall do or procure to be done all such further acts and things, and execute or procure the execution of all such other documents, as Recipient may from time to time reasonably require in order to give Recipient the full benefit of the Framework Agreement.

Novation on Recipient reconstruction

17. If Recipient or an Affiliate undergoes a reconstruction or transfers its business in whole or part to another entity and wishes to transfer its rights and obligations under the Framework Agreement or a Services Order to another entity as part of the same then, upon notice from Recipient requesting the same in good faith, the Supplier shall novate the Framework Agreement into the name of the new entity.

Change of Name/Control

18. The Supplier must notify Recipient if there is a change in its name and/or ownership. Recipient reserves the right to terminate the Framework Agreement and any contracts made under it if it considers in its absolute discretion that the change in ownership would prejudice the Supplier's ability to deliver the Services.

No Partnership

19. Nothing in the Framework Agreement creates a partnership, a joint venture, the relationship of employer and employee, or establishes a relationship of principal and agent or other fiduciary relationship between any of the parties to it and no party will describe themselves or hold themselves out as the other's agent or representative.

Corrupt gifts or payments

20. The Supplier shall not offer or give, or agree to give, to any member, employee or representative of Recipient, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or having done any act in relation to the obtaining or execution of this or any other contract with Recipient or any associated company of Recipient, or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.

21. Conflict of Interest

- 21.1 The Supplier shall ensure that there is no conflict of interest likely to prejudice its (or its key staff or sub-contractor's) independence and objectivity in providing the Services and undertakes that upon becoming aware of any such conflict of interest during the performance of the Services (whether the conflict existed before the date of this Framework Agreement or afterwards) it shall immediately notify Recipient in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as Recipient may reasonably require.

21.2 Where Recipient is of the opinion:

- 21.2.1 that the conflict of interest notified to it under the sub-clause above is reasonably capable of being avoided or removed, Recipient may require the Supplier to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and if the Supplier fails to comply with Recipient requirements in this respect, or
- 21.2.2 that the conflict of interest notified to it under the sub-clause above is not reasonably capable of being avoided or removed, the Recipient may terminate this Agreement in its absolute discretion.

Confidentiality

22. Unless Recipient notifies the Supplier otherwise:

22.1. all documents and information received by the Supplier during or in connection with the performance of the Framework Agreement from Recipient, or any person employed by Recipient, shall be held in confidence. Such documents and information shall not be disclosed by the Supplier, its staff or agents to any other person without the permission of Recipient unless a duty to disclose to that person is imposed under statute or by court order. The Supplier shall ensure that its staff and any Contractors are aware of this obligation of confidence and abide by it. All confidential information shall be, at Recipient's option, delivered up to Recipient or erased/destroyed at the end of provision of services under the Framework Agreement.

22.2. the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice. The Supplier will immediately notify Recipient of any breach of security in relation to confidential information and all data obtained in the course of the Services and will keep a record of such breaches. The Supplier will co-operate with Recipient or any funder in any investigation that Recipient or any funder considers necessary to undertake as a result of any breach of security in relation to confidential information or data.

Anti-Bribery

23. The Supplier shall:

- 23.1. comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 23.2. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 23.3. immediately notify Recipient if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign

public officials as officers, employees or direct or indirect owners at the date of the Framework Agreement);

- 23.4. ensure that all persons associated with the Supplier or other persons who are performing services in connection with the Framework Agreement comply with this clause.

Breach of this clause shall be deemed a material breach under clause 13.1.1. For the purpose of this clause, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause a person associated with the Supplier includes any subcontractor of the Supplier.

Criminal Finances

24. Neither party shall take any action which facilitates the evasion of taxes anywhere in the world or which is contrary to any applicable tax evasion facilitation legislation (including, but not limited to, the UK Criminal Finances Act 2017). Any breach of this clause by the Supplier will grant the Recipient the right to terminate this Agreement immediately without notice.

Non-solicitation

25. During the term of the Agreement and for a period of 12 months after its End Date, the Supplier will not unless agreed in writing with Recipient offer employment to, enter into a contract for the services of, or attempt to entice away from Recipient or another company in the same group of companies as the Recipient, any individual who is employed or directly or indirectly engaged in a senior or key position with the Recipient or other group company or procure or facilitate the making of any such offer or attempt by any other person.

Amendment or variation

26. The terms of the Framework Agreement may only be varied by a written variation order between persons duly authorised by the parties.

Notice

27. Any notice or other communication requiring to be served under or in connection with the Framework Agreement shall be in writing and shall be delivered by hand or sent by recorded first class post or by email and shall be deemed to have been given or received if delivered by hand, when left at the proper address for service; if given or made by pre-paid first class post, 48 hours after being posted (excluding Saturdays, Sundays and Public Holidays), or for email will be deemed to have been served on the day of despatch if sent before 5pm, or on the following working day, if sent after 5pm.

Other activities

28. Nothing in this Agreement shall prevent the Supplier from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Operative Period provided that the Supplier shall not during the Operative Period engage in any such activity which is in any way competitive with the Recipient without the prior written consent of the Recipient prior to commencing such activity.

Compliance with anti-slavery and human trafficking laws

29. The In performing its obligations under the agreement, the Supplier shall:
- comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - comply with the Modern Slavery Procedure (as provided by the Recipient to the Supplier from time to time); and
 - not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 29; and
 - notify the Recipient as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement; and
 - maintain records to trace the supply chain of all goods and services provided to the Recipient in connection with this Agreement; and permit the Recipient and its third party representatives to inspect the Supplier's premises, records in accordance with clause 6.7 of this Agreement to audit the Supplier's compliance with its obligations under this clause 29.

- 29.1 The Supplier represents and warrants that neither the Supplier nor any person engaged by the Supplier or other persons associated with it has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings by any governmental,

administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

29.2 If the Supplier is required by the Modern Slavery Act 2015 to provide a slavery and human trafficking statement, the Supplier shall provide a copy of such statement to the Recipient on or prior to the date of this Agreement and for the duration of this agreement the Recipient may request copies of the Recipient's slavery and human trafficking statements in subsequent financial years.

29.3 The Supplier shall implement reasonable due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

29.4 The Customer may terminate the Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 29.

Force Majeure

30. Neither party shall be deemed in default of its obligations under this Contract or shall be liable to the other to the extent that it is unable to perform all or any of its obligations under this Contract by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war or act of God or any ordinance or law or any executive or judicial orders (whether imposed by a national, international or other public authority or by any national or international court of competent jurisdiction).

Joint and Several

31 If a party hereto is more than one person all covenants, agreements, undertakings, representations and warranties on the part of such party contained herein shall be joint and several.

Counterpart

32 The Agreement may be signed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same contract.

Severance

33 Each of the provisions of the Agreement is separate and distinct from the others and if any of them is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected.

Right to enforce the Agreement

34 A Relevant Funding Body may enforce the obligations of the Supplier under the Agreement as if that Relevant Funding Body were a party to it.

English Law

35 The Agreement is governed by English Law.

SCHEDULE 1A

1. DEFINITIONS

In this Schedule 1A the following definitions shall apply:

"Applicable EU Law"	means any law of the European Union (or the law of one or more of the Member States of the European Union)
"Controller", "Processor" and "Data Subject"	shall have the meaning given to those terms in the applicable Data Protection Laws;
"Data Protection Impact Assessment"	means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data;
"Data Protection Laws"	means (a) any law, statute, declaration, directive, regulation, or other legislative enactment (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject, including the GDPR or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data; as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003; and; (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time;
"Data Processing Particulars"	means, in relation to any Processing under this Agreement: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects; as set out in Schedule 1B.
"Data Subject Request"	means an actual or purported request from a Data Subject exercising his rights under the Data Protection Laws in relation to Personal Data including without limitation: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to data portability and the right to object;
"GDPR"	means the General Data Protection Regulation (EU) 2016/679;
"ICO"	means the UK Information Commissioner's Office, or any successor or replacement body from time to time;
"ICO Correspondence"	means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of Personal Data;
"Losses"	means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Permitted Purpose"	means the purpose of the Processing as specified in the Data Processing Particulars;

"Personal Data"	means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement, and for the purposes of this Agreement includes Sensitive Personal Data (as such Personal Data is more particularly described in Schedule 1B (<i>Data Processing Particulars</i>));
"Personal Data Breach"	has the meaning set out in the Data Protection Laws;
"Personal Data Breach Particulars"	means the information that must be included in a Personal Data Breach notification, as set out in Article 33(3) of the GDPR;
"Personnel"	means all persons engaged or employed from time to time by the Supplier in connection with this Agreement, including employees, consultants, contractors and permitted agents;
"Processing"	has the meaning set out in the Data Protection Laws (and "Process" and "Processed" shall be construed accordingly);
"Restricted Country"	means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with Article 25(2) of the DP Directive and/ or Article 45(1) of the GDPR (as applicable);
"Security Requirements"	means the requirements regarding the security of Personal Data, as set out in the Data Protection Laws (including, in particular, the seventh data protection principle of the DPA and/ or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable;
"Sensitive Personal Data"	means Personal Data that reveals such special categories of data as are listed in Article 9(1) of the GDPR; and
"Third Party Request"	means a written request from any third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law or regulation.

2. DATA PROTECTION

2.1 Arrangement Between the Parties

- 2.1.1 The Parties shall each Process the Personal Data. The Parties acknowledge that the factual arrangements between them dictate the classification of each Party in respect of the Data Protection Laws. Notwithstanding this, the Parties anticipate that, in respect of the Personal Data, as between Recipient and the Supplier for the purposes of this Agreement, Recipient shall act as the Controller and the Supplier shall act as the Processor, as follows:
- a) Recipient shall be the Controller where it is Processing Personal Data in relation to the Permitted Purpose; and
 - b) the Supplier shall be the Data Processor where it is Processing Personal Data in relation to the Permitted Purpose in connection with the performance of its obligations under this Agreement.
- 2.1.2 Each of the Parties acknowledges and agrees that Schedule 1B (*Data Processing Particulars*) to this Agreement is an accurate description of the Data Processing Particulars.
- 2.1.3 Nothing within this Agreement relieves the Supplier of its own direct responsibilities and liabilities under the Data Protection Laws.
- 2.1.4 Each Party shall make due notification to any relevant regulator.
- 2.1.5 the Supplier undertakes to Recipient that it will take all necessary steps to ensure that it operates at all times in accordance with the requirements of the Data Protection Laws and the

Supplier will, at its own expense, assist Recipient in discharging its obligations under the Data Protection Laws as detailed in this Paragraph 2. The Supplier shall not, whether by act or omission, cause Recipient to breach any of its obligations under the Data Protection Laws.

2.2 Data Processor Obligations

To the extent that the Supplier Processes any Personal Data as a Processor for and on behalf of Recipient (as the Controller) it shall:

- a) only Process the Personal Data for and on behalf of Recipient for the purposes of performing its obligations under this Agreement, and only in accordance with the terms of this Agreement and any documented instructions from Recipient;
- b) keep a record of any Processing of the Personal Data it carries out on behalf of Recipient;
- c) unless prohibited by law, notify Recipient immediately (and in any event within twenty-four (24) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable EU Law to act other than in accordance with the instructions of Recipient, including where it believes that any of Recipient's instructions under Paragraph 2.2.1(a) infringe any of the Data Protection Laws;
- d) take, implement and maintain appropriate technical and organisational security measures which are sufficient to comply with:
 - (i) at least the obligations imposed on Recipient by the Security Requirements; and

and where requested provide to Recipient evidence of its compliance with such requirements.

- e) within thirty (30) calendar days of a request from Recipient, allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by Recipient (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Paragraph 2, and provide reasonable information, assistance and co-operation to Recipient, including access to relevant Personnel and/ or, on the request of Recipient, provide Recipient with written evidence of its compliance with the requirements of this Paragraph 2;
- f) not disclose Personal Data to a third party (including a sub-contractor) in any circumstances without Recipient's prior written consent, save in relation to Third Party Requests where the Supplier is prohibited by law or regulation from notifying Recipient, in which case it shall use reasonable endeavours to advise Recipient in advance of such disclosure and in any event as soon as practicable thereafter;
- g) promptly comply with any request from Recipient to amend, transfer or delete any Personal Data;
- h) notify Recipient promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or ICO Correspondence and shall:
 - (i) not disclose any Personal Data in response to any Data Subject Request or ICO Correspondence without first consulting with and obtaining Recipient's prior written consent; and
 - (ii) provide Recipient with all reasonable co-operation and assistance required by Recipient in relation to any such Data Subject Request or ICO Correspondence;
- i) notify Recipient promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach in relation to the Personal Data (and follow-up in writing) and shall:
 - (i) conduct or support Recipient in conducting such investigations and analysis that Recipient reasonably requires in respect of such Personal Data Breach;

- (ii) implement any actions or remedial measures necessary to restore the security of compromised Personal Data; and
 - (iii) assist Recipient to make any notifications to the ICO and affected Data Subjects;
- j) comply with the obligations imposed upon a Processor under the Data Protection Laws;
- k) use all reasonable endeavours to assist Recipient to comply with the obligations imposed on Recipient by the Data Protection Laws, including:
 - (i) compliance with the Security Requirements;
 - (ii) obligations relating to notifications required by the Data Protection Laws to the ICO and/ or any relevant Data Subjects;
 - (iii) undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Laws, consulting with the ICO and/or any other relevant Regulator in respect of any such Data Protection Impact Assessments); and
 - (iv) without undue delay and where feasible not later than 72 hours after having become aware of it notify Personal Data Breaches to the ICO unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons;
- l) Upon the earlier of:
 - (i) termination or expiry of this Agreement (as applicable); and
 - (ii) the date on which Personal Data is no longer relevant to, or necessary for, the Permitted Purpose,

the Supplier shall cease Processing all Personal Data and return and/ or permanently and securely destroy so that it is no longer retrievable (as directed in writing by Recipient) all Personal Data and all copies in its possession or control and, where requested by Recipient, certify that such destruction has taken place except to the extent required by Applicable EU Law to retain the Personal Data;

- m) not make (nor instruct or permit a third party to make) a transfer of any Personal Data to a Restricted Country;

2.3 Supplier Personnel

- 2.3.1 The Supplier shall take all reasonable steps to ensure the reliability and integrity of any of the Personnel who shall have access to Personal Data (including, without limitation, ensuring such Personnel shall have undergone reasonable levels of training in Data Protection Laws and in the care and handling of Personal Data), and ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings.

2.4 Appointing Sub-contractors

- 2.4.1 The Supplier shall be permitted to appoint a sub-contractor in accordance with this Paragraph 2.4 and to disclose Personal Data to such sub-contractor for Processing in accordance with the Supplier 's obligations under this Agreement, provided always that:
 - a) the Supplier undertakes thorough due diligence on the proposed sub-contractor, including a risk assessment of the information governance-related practices and processes of the proposed sub-contractor, which shall be used by the Supplier to inform any decision on appointing the proposed sub-contractor;
 - b) the Supplier provides Recipient with full details of the proposed sub-contractor including the results of the due diligence undertaken in accordance with Paragraph

2.4.1(a) before its appointment and Recipient has consented to such appointment in writing;

- c) the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in this Schedule 1A;
- d) the sub-contractor's right to Process Personal Data terminates automatically on expiry or termination of this Agreement for whatever reason.

2.4.2 Notwithstanding any consent or approval given by Recipient under Paragraph 2.4.1, the Supplier shall remain primarily liable to Recipient for the acts, errors and omissions of any sub-contractor to whom it discloses Personal Data, and shall be responsible to Recipient for the acts, errors and omissions of such sub-contractor as if they were the Supplier's own acts, errors and omissions to the extent that the Supplier would be liable to Recipient under this Agreement for those acts, errors and omissions.

2.4.3 Notwithstanding anything in this Agreement to the contrary, this Schedule 1A shall continue in full force and effect for so long as the Supplier Processes any Personal Data.

3 RECOVERABLE LOSS

3.1 Notwithstanding any other clause, Recipient shall not be prevented from recovering any Losses it incurs.

4 INDEMNITY

4.1 The Supplier shall indemnify on demand and keep indemnified Recipient from and against:

- 4.1.1 any monetary penalties or fines levied by the ICO on Recipient;
- 4.1.2 the costs of an investigative, corrective or compensatory action required by the ICO and or of defending proposed or actual enforcement taken by the ICO;
- 4.1.3 any Losses suffered or incurred by, awarded against, or agreed to be paid by, Recipient pursuant to a claim, action or challenge made by a third party against Recipient (including by a Data Subject); and
- 4.1.4 except to the extent that Paragraphs 4.1.1 and/ or 4.1.2 and/ or 4.1.3 apply, any Losses suffered or incurred, awarded against, or agreed to be paid by, Recipient,

in each case to the extent arising as a result of a breach by the Supplier (or its sub-contractors) of this Agreement and/ or their respective obligations under the Data Protection Laws.

4.2 Nothing in this Agreement will exclude, limit or restrict the Supplier 's liability under the indemnity set out in Paragraph 4.1.

5 INSURANCE

5.1.1 The Supplier agrees to obtain and keep in full force and effect at all times a policy or policies of insurance to cover all liabilities under this Agreement:

- a) it must cover liability for damage arising to any person;
- b) it must apply in relation to the Processing of Personal Data; and
- c) it must have policy limits and provisions conforming to such requirements as Recipient may from time to time reasonably prescribe;

5.1.2 to deliver to Recipient upon request:

- a) copies of all applicable insurance policies taken out pursuant to the provisions of this Agreement; and

b) evidence of premiums paid in relation to such insurance; and

5.1.3 to ensure that Recipient shall be entitled to the benefit under such insurance and that Recipient's interest will be noted on the policy.

Schedule 1B

(The following is services specific and will be completed on finalisation of Contract)

The subject matter of the Processing	
The nature of the Processing	
The duration of the Processing	
The purpose of the Processing	
The type of Personal Data being Processed	
The categories of Data Subjects	

Schedule 1C

INFORMATION SECURITY

[Guidance Note: include details of information sharing arrangements/technical security requirements if applicable.]