



Department of Health & Social Care

DH Procurement Services
39 Victoria Street
Westminster
London
SW1H 0EU
19/02/2018

BDO LLP
Central Square
29 Wellington Street
Leeds
LS1 4DL

Dear **FOI 40**

Invitation to Tender for: Procure22 Specialist VAT Recovery Service Framework

Bravo Reference Number: ITT 66

Dear Sir / Madam

Thank you for tendering for the above contract. The Authority has now completed its evaluation (of all the Tenders received) and writes to inform you that you have been successful.

This letter and the documents listed below form the binding contract between yourselves and the Authority.

- (i) This Agreement Letter;
- (ii) The Invitation to Tender ITT66 for Procure22 Specialist VAT Recovery Service Framework
- (iii) Your Tender response dated 18/01/2018
- (iv) Procure 22 Specialist VAT Recovery Advice Services Framework Agreement
- (v) Procure 22 Specialist VAT Recovery Advice Services call-off contract
- (vi) The Authority's response to clarification against the tender documentation (attached as Appendix A); and
- (vii) Your response to clarification questions regarding your Tender (attached as Appendix B).

It is agreed that:

1. The Contract effected by the signing of this Agreement Letter constitutes the entire Agreement between the Parties relating to the subject matter of

- the Contract and supersedes all prior negotiations, representations or understandings whether written or oral.
2. In this Agreement words and expressions shall have either the same meanings as are assigned to them herein or in Condition 1 of the Terms and Conditions of Contract, as appropriate.
 3. The Contractor shall provide the goods and services in accordance with the Contract.
 4. The Parties shall be entitled to such rights and be subject to such obligations as are imposed by the Contract.
 5. The period of the Contract will commence on 01/04/2018 and terminate on 31/03/2021.
 6. The maximum day rate provided for this contract is **FOI 43 (2)**, exclusive of Value Added Tax.
 7. Suppliers must be in possession of a written Purchase Order (PO), before commencing any work under this contract. The PO number must be quoted on all invoices.

The Contractor should sign, scan and return this Agreement Letter to acknowledge the formation of the contract using the Bravo messaging facility.

On receipt of a signed copy, the Authority will arrange to add its signature and return the Agreement Letter for your file.

Please contact Cliff Jones on receipt of this Agreement Letter to organise the commencement of the work.

It is important to note that the Agreement Letter (and by implication the Contract) must be signed unaltered in any way. Any amendment without the prior written approval of the Authority will render the document void.

The Authority looks forward to working with you and your team.

For the Contractor

Signed:	FOI 40
Full Name:	FOI 40
Position:	TAX PAINTER
Date:	17/4/18

For: the Secretary of State for Health

Signed:	FOI 40
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ACTING STRATEGIC PROCUREMENT
 SENIOR MANAGER
 20/4/18

DATED

05/03/2018

(1) THE SECRETARY OF STATE FOR HEALTH

and

(2) BDO LLP

**Procure 22 Specialist VAT Recovery Advice Services
Framework Agreement**

Terms and Conditions

These Conditions of contract may only be varied with the written agreement of the Authority. No Terms or Conditions put forward by the Contractor shall form any part of the Framework Agreement.

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THIS AGREEMENT is dated 05/03/2018

PARTIES

- (1) THE SECRETARY OF STATE FOR HEALTH (the **Authority**), and
- (2) BDO LLP incorporated and registered in England and Wales with company number 735751781 whose registered office is at 55 Baker Street, London, Middlesex, W1U 7EU (the **Contractor**)

BACKGROUND

- A On 14/12/2017 the Department of Health on behalf of the Secretary of State and other Contracting Authorities, listed in the OJEU dated 14/12/2017 issued an invitation to tender (the "ITT") in respect of the provision of specialist VAT Recovery Advice to Customers identified in the OJEU notice under a single supplier framework agreement.
- B On the basis of the Contractor's Tender, the Authority selected the Contractor to enter into a single supplier framework agreement to provide services to those Customers who place Orders in accordance with this Framework Agreement.
- C This Framework Agreement sets out the procedure for ordering Services, the terms and conditions for the provision of the Services and the obligations of the Contractor under this Framework Agreement.
- D It is the parties' intention that Customers have no obligation to place Orders with the Contractor under this Framework Agreement or at all.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Framework Agreement unless the context requires otherwise the following definitions shall be used for the purposes of interpreting the Framework Agreement. Other definitions that are not of general application are stated in the clause where the definition first appears and shall apply only to that clause unless otherwise shown below:

"Approval"	Means the prior written approval of the Authority
"Authority"	means the Secretary of State for Health
"Authority's Representative"	means the person authorised to act for the Authority named in the Form of Agreement this person's name is shown in Schedule 5 - Administrative Instructions
"Call-off terms and conditions"	Means the terms and conditions in Schedule 5
"Commencement Date"	means the date performance of the Framework Agreement is to begin
"Commercially Sensitive Information"	means the information listed in Schedule 4 and is comprised of information: <ul style="list-style-type: none"> a) that constitutes a trade secret; and/or b) the disclosure of which would be likely to cause prejudice or would cause actual prejudice to the commercial interests of the Contractor

	or the Authority
“Confidential Information”	<p>means any information (for the sake of clarity includes oral, written or electronic information) which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> a) was public knowledge at the time of disclosure (otherwise than by breach of clause 17 (Confidential Information)); b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or d) is independently developed without access to the Confidential Information
“Consent”	<p>means</p> <ul style="list-style-type: none"> (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by law for or in connection with the performance of the Services; and/or (ii) any necessary consent or agreement from any third party needed either for the performance of the Contractors obligations under this agreement or for the provision by the Contractor of the Services in accordance with this Framework Agreement
"Contract"	means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Customer and the Contractor comprising/consisting of the Order Form, its appendices and the Call-Off terms and conditions,
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015,
"Contractor"	means the supplier with whom the Authority enters into the Framework Agreement,
"Contractor's Representative"	means the individual authorised to act for the Contractor for the purposes of the Framework Agreement,
"Contractor's Staff" or “Staff”	means all employees, staff, other workers, agents and consultants of the Contractor including the Key Person who are engaged in the provision of the Services from time to time

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“Crown”	means the government of the United Kingdom (including the governments of Northern Ireland, Scotland, and Wales), including, but not limited to, government ministers, government departments, government agencies and particular bodies
“Customer”	Means a Contracting Authority (as defined in regulation 3 of the Regulations) described in the OJEU Notice and which is an NHS trust or organisation undertaking a scheme or project using the Procure22 National Framework or any successor framework agreement and engaging with the Contractor to provide the Services set out in the Specification
“Default”	means any breach of the obligations of the relevant Party (including but not limited to a material breach or breach of a material term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject matter of the Framework Agreement and in respect of which such Party is liable to the other
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
“Equipment”	means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Framework Agreement
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this 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”	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Contractor’s organisation
“Framework Agreement”	means this Framework Agreement consisting of a Form of Agreement and General Conditions of contract and all Schedules to this agreement
“Framework Agreement Period”	means the period from the Commencement Date to: a) the date of expiry set out in clause 2 (Initial Framework Agreement Period), or b) following an extension pursuant to clause 3 (Extension Beyond Initial Framework Agreement Period), the date of expiry of the extended period, or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Framework Agreement
“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the

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	Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
“Information”	has the meaning given under section 84 of the FOIA
"Initial Framework Agreement Period"	means the period for which the Framework Agreement is originally let
“Intellectual Property Rights”	includes but is not limited to patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, rights in software programmes, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, the Common Law including but not limited to any judgment of a relevant court of law, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply
“Monitoring Schedule”	means Schedule 3 containing details of the monitoring arrangements
"Month"	means calendar month
“Order”	Means an order for Services sent by any Customer to the Contractor in accordance with the award procedures in clause 5
“Order Form”	Means a document setting out details of an Order in the form set out in Schedule 4
"Party"	means a party to the Framework Agreement
"Person"	where the context allows, includes a corporation or an unincorporated association
“Premises”	Means the Authority premises
“Price”	Means the price (exclusive of any applicable VAT) payable to the Contractor by the Authority under the Framework Agreement, as set out in Schedule 2 (Pricing Schedule) for the full and proper performance by the Contractor of its obligations under the Framework Agreement and under each Contract [but before taking into account the effect of any adjustment of price in accordance with clause 9 (Price Adjustment on Extension Beyond Initial Framework Agreement Period)]
“Procure22 National Framework”	The framework agreement between the Authority and a number of principal supply chain partners relating to the procurement and

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	construction of healthcare facilities
"Pricing Schedule"	means the pricing schedule containing details of the Price at Schedule 2
"Regulations"	Means the Public Contracts Regulation 2015 (SI 2015/102)
"Replacement Contractor"	means any third party contractor of Replacement Services appointed by the Authority from time to time
"Replacement Services"	means any services which are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Contractor
"Schedule" or "Section"	means a schedule or section attached to, and forming part of, the Framework Agreement
"Specification"	means the description of the Services to be supplied under the Framework Agreement as set out in the Specification Schedule
"Specification Schedule"	means the Schedule containing details of the Specification
"Tender"	Means the tender submitted by the Contractor to the Authority on 18/01/2018
"Term"	Means the period commencing on the Commencement Date and ending on 31 st March 2020 (unless the contract is extended as per clause 3) or on earlier termination of this Framework Agreement.
"Termination Date"	Means the date of expiry or termination of this Framework Agreement
"Transferring Employees"	means those employees of the Contractor whose contract of employment will be transferred to the Authority or a Replacement Contractor pursuant to the TUPE Regulations on expiry or termination of this Framework Agreement
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006
"Variation"	has the meaning given to it in clause 4.1 (Variation)
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means a day (other than a Saturday or Sunday or Bank Holiday or other public holiday) on which retail banks are open in London

1.2 The interpretation and construction of this Framework Agreement shall be subject to the following provisions:

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

2. INITIAL FRAMEWORK AGREEMENT PERIOD

The Framework Agreement shall start on the Commencement Date and shall end on 31st March 2021, unless it is otherwise terminated in accordance with the provisions of this Framework Agreement, or otherwise lawfully terminated, or extended under clause 3.1 (extension beyond Initial Framework Agreement Period).

3. EXTENSION BEYOND INITIAL FRAMEWORK PERIOD

3.1 The Authority may, by giving written notice to the Contractor of not less than 1 Months’ notice prior to the last day of the Initial Framework Agreement Period, extend the agreement for an additional 12 (twelve) Month extension options (making the total contractual period up to 36 months). The provisions of the Framework Agreement will apply (subject to any Variation or adjustment to the Framework Agreement Price pursuant to clause 7 (Price adjustment on extension of the Initial Framework Agreement Period)) throughout any such extended period.

4. VARIATION

4.1 A Variation means a change to the Services or to the Terms and Conditions which does not amount to a material change to the Services or the Terms and Conditions. Such a change is hereinafter called a “Variation”.

4.2 The Framework Agreement shall not be varied unless such variation is agreed in writing by the Parties and recorded, for example, on a Variation to contract Form as set out at Appendix A to

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Schedule 5 - Administrative Instructions. All Variations shall be successively numbered with the first numbered 1, the second 2 and so on and so forth.

4.3 In the event of an emergency the Authority shall have the right to vary the Framework Agreement by the Authority's Representative giving oral instructions, which shall be confirmed by the issue of a written Variation to contract Form – Appendix A to Schedule 5 - Administrative Instructions - within 7 days.

4.4 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, and no such Variation shall vitiate the Framework Agreement.

4.5 The Contractor may request a Variation provided that:

4.5.1 the Contractor shall notify the Authority's Representative in writing of any additional or changed requirement which it considers should give rise to a Variation within seven days of such occurrence first becoming known to the Contractor;

4.5.2 Any proposed Variation shall be fully supported by a quotation as detailed in clause 4.6.

4.6 The Contractor, within 14 days of being requested by the Authority's Representative or where requesting a Variation pursuant to clause 4.5, shall submit a quotation to the Authority, such quotation to contain at least the following information:

4.6.1 A description of the variation required together with the reason for the proposed variation;

4.6.2. The price, where applicable;

4.6.3 Details of the impact, if any, on other aspects of the Framework Agreement.

4.7 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:

4.7.1 Using the price or rates;

4.7.2 Prices pro-rata to the prices or rates;

4.7.3 Prices based on the prices or rates.

4.8 The Authority shall either approve or reject any variation proposed by the Contractor.

4.9 In the event that the Contractor contends that a proposed variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed variation every Month and shall send the updated information to the Authority.

4.10 The Parties shall be able to vary these Terms and Conditions only where there is no material change to the Services and/or the Terms and Conditions.

5. SCOPE OF FRAMEWORK AGREEMENT

5.1 This Framework Agreement governs the relationship between the Authority and the Contractor in respect of the provision of the Services by the Contractor to Customers.

- 5.2 The Authority appoints the Contractor as a provider of the Services and the Contractor shall be eligible to receive Orders for such Services from Customers during the Term.
- 5.3 Customers may at their absolute discretion and from time to time order Services from the Contractor in accordance with the ordering procedure set out in clause 6 during the Term. The Parties acknowledge and agree that the Customers have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in *clause 6.1*.
- 5.4 If and to the extent that any Services under this Framework Agreement are required each and every Customer shall:
- 5.4.1 Enter into a contract with the Service Provider for these Services materially in accordance with the terms of the Contract; and
 - 5.4.2 Comply with the ordering procedure in *clause 6*.
- 5.5 The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority and/or a Customer for the Services and that the Authority and the Customers are at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
- 5.6 Subject to clause 8.2, the Authority shall be responsible to the Contractor for payment of the Services provided to each Customer under a Contract.

6. AWARD PROCEDURE

Awards under the Framework Agreement

- 6.1 If a Customer decides to source Services through the Framework Agreement then it shall:
- 6.1.1 Send an Order to the Contractor in the form attached at [Schedule 4]
 - 6.1.2 Following receipt of an Order, the Contractor shall promptly and in any event within 10 (ten) days, acknowledge receipt of the Order and sign and return the Order Form to the Customer.
- 6.2 Nothing in this Framework Agreement shall oblige any Customer to place any Order for Services
- 6.3 The Contractor acknowledges that each Customer is independently responsible for the conduct of its award of Contract under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- 6.3.1 The conduct of Customers in relation to the Framework Agreement; or
 - 6.3.2 The performance or non-performance of any Contracts between the Contractor and Customers entered into pursuant to the Framework Agreement.
 - 6.3.3. Any claims made by a Customer in respect of Services received from the Contractor.
- 6.4 The Parties acknowledge and agree that the placement of an Order is an “invitation to treat” by the Customer. Accordingly, the Contractor shall sign and return the Order Form which shall constitute its offer to the Customer. The Customer shall signal its acceptance of the Contractor’s offer and the formation of a contract by counter-signing the Order Form.

7. FRAMEWORK AGREEMENT PRICE

- 7.1 The prices offered by the Contractor for Services to be provided to Customers shall be the prices listed within the Pricing Schedule set out at Schedule 2.
- 7.2 In consideration of the Contractor's performance of its obligations under the Framework Agreement, the Authority shall pay the price due to the Contractor in respect of each Contract in accordance with clause 8 (Payment and VAT). The Price shall remain firm for the Initial Framework Agreement Period. For the avoidance of doubt, the Authority (not the Customer) shall be responsible for payment of the Price to the Contractor for services provided to a Customer under each Contract.
- 7.3 The Authority shall, in addition to the Framework Agreement Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Framework Agreement.
- 7.4 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable under the Framework Agreement and payable by the Authority to the Contractor in addition to the Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under clause 15 (Recovery of Sums Due).

8. PAYMENT AND VAT

- 8.1 Subject to clause 8.2, the Authority shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted monthly in arrears.
- 8.2 The Contractor agrees and acknowledges that it shall notify the Authority of each project(s) where VAT recovery advice has been processed and of the time spent processing each claim for verification prior to issuing the invoice.
- 8.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice. Where travel and subsistence is claimed all claims must comply with the provisions of the Pricing Schedule and must be accompanied by receipts to cover the total amount claimed.
- 8.4 The Contractor shall add VAT to the Framework Agreement Price at the prevailing rate as applicable.
- 8.5 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Framework Agreement. Any amounts due under this clause 8.6 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- 8.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Framework Agreement under clause 40 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any

undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

9. PRICE ADJUSTMENT ON EXTENSION BEYOND INITIAL CONTRACT PERIOD

9.1 The Price shall apply for the Initial Framework Agreement Period. In the event that the Authority agrees to extend the Initial Framework Agreement Period pursuant to clause 3 (extension beyond Initial Framework Agreement Period) the Authority shall, in the 6 month period prior to the expiry of the Initial Framework Agreement Period or as the case may be, in such other period as may be appropriate, enter into discussion in good faith with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Price.

9.2 If the Parties are unable to agree a variation in the Price in accordance with clause 9.1, the Framework Agreement shall terminate at the end of the Initial Framework Agreement Period.

9.3 If a variation in the Price is agreed between the Authority and the Contractor, the revised price will take effect from the first day of any period of extension and shall apply during such period of extension.

9.4 Any increase in the Price pursuant to clause 9.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index as may be specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Framework Agreement Period.

10. CONTRACTOR'S STATUS

10.1 Nothing in this Framework Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor. Accordingly:

10.1.1 the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and

10.1.2 nothing in this Framework Agreement shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of this Framework Agreement or any negligence on the part of the Authority, his staff or agents.

11 CONTRACTOR'S STAFF

11.1 The Contractor shall ensure that an agreed named individual (the "Key Person") shall provide the Services and agrees and acknowledges that it shall obtain the prior approval of the Authority to change that Key Person.

11.2 At all times, the Contractor shall ensure that:

11.2.1 each of the Contractor's Staff is suitably qualified, adequately trained and have completed the appropriate revalidation by the appropriate professional regulatory body and is capable of providing the applicable Services in respect of which they are engaged;

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- 11.1.2 only those people who are authorised by the Contractor are involved in providing the Services; and
 - 11.1.4 all of the Contractor's Staff comply with all of the Authority's policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for conduct when at or outside the Authority's Premises.
 - 11.1.5 are covered by the Contractor's indemnity arrangements as set out in clause 23 and clause 24.
- 11.3 The Contractor shall comply with the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's procedures for the vetting of personnel.

12 SUSTAINABILITY AND ENVIRONMENTAL REQUIREMENTS

- 12.1 The Contractor shall perform its obligations under the Framework Agreement so as to promote sustainability and to protect the environment.

13 CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 13.1 The Contractor shall perform all Contracts entered into with a Customer in accordance with:
- 13.1.1 The requirements of this Framework Agreement;
 - 13.1.2 The terms and conditions of the respective Contracts;
 - 13.1.3 And Good Industry Practice
- 13.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- 13.2.1 The clauses of the Contract;
 - 13.2.2 The terms of the Framework Agreement, the Schedules to the Framework Agreement and, the Contractor's Tender, and
 - 13.2.3 Any other document referred to in the clauses of the Contract.

14 EQUIPMENT

- 14.1 The Contractor shall provide all Equipment necessary for the supply of the Services.
- 14.2 Any Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment.

15 RECOVERY OF SUMS DUE

- 15.1 Wherever under the Framework Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Framework Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor

under the Framework Agreement or under any other agreement or contract with the Authority or with any other department or agent of the Crown.

16 MANNER OF CARRYING OUT THE SERVICES

- 16.1 The Contractor shall at all times comply with the Quality Standards, "Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry, business sector or healthcare provider as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Framework Agreement, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Framework Agreement in accordance with Good Industry Practice.
- 16.2 The Contractor shall ensure that all Contractor's Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills, experience and competencies as are necessary for the proper supply of the Services.
- 16.3 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Framework Agreement at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with the Specification.
- 16.4 The Authority shall have complete discretion to use the information provided by the Contractor in any report to any official or regulatory body including any NHS Body, Care Quality Commission, or any government body, office or agency of the Crown.

17 CONFIDENTIAL INFORMATION

- 17.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:
- 17.1.1 Treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 17.1.2 Not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 17.2 Clause 17.1. shall not apply to the extent that:
- 17.2.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations;
 - 17.2.2 The information is contained in the Framework Agreement and is to be disclosed under the Coalition Government's Transparency policy;

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- 17.2.3 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 17.2.4 Such information was obtained from a third party without obligation of confidentiality;
 - 17.2.5 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or
 - 17.2.6 It is independently developed without access to the other party's Confidential Information.
- 17.3 The Contractor may only disclose the Authority's Confidential Information to the Contractor's Staff directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor's Staff are aware of and shall comply with these obligations as to confidentiality.
- 17.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Framework Agreement.
- 17.5 At the written request of the Authority, the Contractor shall procure that Contractor's Staff identified in the Authority's request shall sign a confidentiality undertaking prior to commencing any work in accordance with this Framework Agreement.
- 17.6 Nothing in this Framework Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 17.6.1 to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
 - 17.6.2 To any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
 - 17.6.3 for the purpose of the examination and certification of the Authority's accounts; or
 - 17.6.4 for any 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
- 17.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 17.6 is made aware of the Authority's obligations of confidentiality.
- 17.8 Nothing in this clause 17 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement in the course of its normal

business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

18 CONTRACT MANAGEMENT AND MONITORING OF PERFORMANCE

18.1 The Parties shall each appoint a contract manager to be known respectively as the Authority's Representative and the Contractor's Representative. The contract managers shall meet [monthly/quarterly] or whenever the Authority may require to discuss the Contractor's performance and governance and any other matters connected to the delivery of the Service. The parties' discussions may include but will not be limited to lessons learned and how these may be implemented into the conduct of the Service.

18.2 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under this Framework Agreement.

18.3 At the Authority's request, the Contractor shall supply management information within 5 Working Days to the Authority.

18.4 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance.

18.5 The Contractor shall meet with the Authority following the completion of the provision of the Services to discuss:

18.5.1 Whether the Contractor believes the objectives of the Framework Agreement were achieved;

18.5.2 How far the intended benefits sought in the Authority's scope of work document and that had been forecast in the Contractor's tender response were achieved; and

18.5.3 To identify any lessons learnt for future projects.

18.6 The Authority shall be able to share and use any information arising from such meetings referred to in clause 18.5.1 - 18.5.3 as it sees fit.

18.7 The Contractor shall comply, as the Authority shall require, with the monitoring arrangements set out in the Monitoring Schedule 3 including, but not limited to, providing such data and information as the Contractor may be required to produce under the Framework Agreement.

19 OFFICIAL SECRETS ACTS

19.1 The Contractor shall comply with, and shall ensure its Staff comply with, the provisions of the Official Secrets Acts 1911 to 1989.

19.2 The Authority may terminate the Framework Agreement immediately by giving notice to the Contractor if it does not comply with clause 19.1.

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 All Intellectual Property Rights in any guidance, specifications, instructions, analysis, report, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):
- 20.1.1. furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
 - 20.1.2. created during the agreement by the Contractor for the Authority's use, or intended use, shall belong to the Authority;
 - 20.1.3. And the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the agreement) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
- 20.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 20.1.2. This assignment shall take effect on the date of the Framework Agreement or date of the IP Material coming into existence or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
- 20.3 The Authority hereby grants a royalty free, non-exclusive, licence (with no right to sub licence) for the duration of the Framework Agreement Period to the Contractor to use all Intellectual Property which may subsist in the IP Materials prepared in accordance with clause 20.1.2. This licence shall take effect on the date of the Framework Agreement.
- 20.4 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of this Framework Agreement including the Services provided.
- 20.5 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Framework Agreement or the performance of the Framework Agreement.
- 20.6 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Framework Agreement grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.
- 20.7 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Framework Agreement Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and

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other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- 20.7.1 Items or materials based upon designs supplied by the Authority; or
 - 20.7.2 The use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Framework Agreement.
- 20.8 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 20.9 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- 20.9.1 Shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 20.9.3 Shall take due and proper account of the interests of the Authority; and
 - 20.9.3 Shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 20.10 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Framework Agreement and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 20.6.1 or 20.6.2.
- 20.11 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Framework Agreement.
- 20.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Framework Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 20.12.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

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20.12.2 Procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

20.12.3 And in the event that the Contractor is unable to comply with clauses 20.12.1 or 20.12.2 within 20 Working Days of receipt of the Contractor's notification the Authority may terminate the agreement with immediate effect by notice in writing.

21 PUBLICITY

21.1 The Contractor shall not make any public statement relating to the existence or performance of the Framework Agreement without the Authority's prior approval in writing, which shall not be unreasonably withheld.

21.2 The Contractor shall not refer to the Authority in any advertisement without the Authority's written consent.

21.3 The provisions of this clause 21 shall apply during the continuance of this Framework Agreement and after its termination howsoever arising, without limitation of time.

22 RIGHT OF AUDIT

22.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Framework Agreement, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

22.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Framework Agreement.

22.3 For the purpose of:

22.3.1 The examination and certification of the Authority's accounts; or

22.3.2 Any 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

22.3.3 The Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

23 LIABILITY, INDEMNITY AND INSURANCE

23.1 Neither Party excludes or limits liability to the other Party for:

23.1.1 Death or personal injury caused by its negligence; or

23.1.2 Fraud; or

- 23.1.3 Fraudulent misrepresentation.
- 23.2 Subject to clauses 23.3 and 23.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Framework Agreement, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 23.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Framework Agreement.
- 23.4 Subject always to clause 23.1, the liability of the Contractor for Defaults shall be subject to the following financial limits:
- 23.4.1 the aggregate liability of the Contractor for all Defaults resulting in direct loss of or damage to the property of the Authority under or in connection with the Framework Agreement shall in no event exceed five million pounds (£5,000,000); and
- 23.4.2 The annual aggregate liability under the Framework Agreement of the Contractor for all Defaults (other than a Default governed by clauses 23.6 (Intellectual Property Rights) or 23.4.1) shall in no event exceed the greater of one hundred per cent (100%) of the Price payable by the Authority to the Contractor in the year in which the liability arises.
- 23.5 Subject always to clause 23.1, in no event shall the Contractor be liable to the Authority for any:
- 23.5.1 Loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or
- 23.5.2 Loss of savings (whether anticipated or otherwise); and/or
- 23.5.3 Indirect or consequential loss or damage.
- 23.6 The Contractor shall not be able to exclude liability to the Authority for additional operational, administrative costs and/or expenses or wasted expenditure which the Authority incurs resulting from the direct Default of the Contractor.
- 23.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Framework Agreement, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Framework Agreement Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Framework Agreement.
- 23.8 The Contractor shall hold employer's liability insurance in respect of Contractor's Staff in accordance with any legal requirement from time to time in force.

- 23.9 The Contractor shall give the Authority, on request, evidence to demonstrate that the appropriate insurance cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Framework Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 23.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Framework Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 23.2.

24. PROFESSIONAL INDEMNITY

- 24.1 The Contractor shall, where appropriate, effect and maintain appropriate professional indemnity insurance cover during the Framework Agreement Period and shall ensure that all agents and professional consultants involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent or consultant involved in the supply of the Services has a limit of indemnity of not less than one million pounds (£5,000,000) for each individual claim or such higher limit as the Authority may reasonably require. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Framework Agreement.
- 24.2 Where the Contractor or its agents and professional consultants, do not hold professional indemnity insurance which the Authority believes is reasonably required, the Authority shall request that the Contractor forthwith provide appropriate insurance. If such insurance is not taken out the Authority may terminate this Agreement immediately by giving notice in writing.

25. PREVENTION OF BRIBERY

- 25.1 The Contractor shall:
- 25.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 25.1.2 Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 25.1.3 Comply with Contractor's Ethics, Anti-bribery and Anti-corruption Policies (**Relevant Policies**) at all
 - 25.1.4 have and shall maintain in place throughout the term of this Framework 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, the Relevant Policies and clause 25.4.2, and will enforce them where appropriate;

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25.1.5 Immediately notify the Authority (in writing) if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor;

For the purpose of this clause 25.1, 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.

Breach of this clause 25 shall be deemed a material breach where the Authority may terminate by service of 30 days notice.

26 FRAUD

26.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Contractor's Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

26.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

26.3 If the Contractor or Contractor's Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

26.3.1 terminate the Framework Agreement immediately by giving notice in writing and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Framework Agreement Period; or

26.3.2 Recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause 26.

27 NON-SOLICITATION

27.1 Except in respect of any transfer of staff pursuant to Schedule 7, neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Authority) in the receipt of the Services at any time during the Framework Agreement Period or for a further period of 12 months after the termination of this Framework Agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

27.2 If either the Contractor or the Authority commits any breach of clause 27.1 the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

28 CONFLICT OF INTEREST

28.1 "Conflict of Interest" means a situation in which the Contractor or a member of Contractor's Staff has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provision of the Services.

28.2 The Contractor shall ensure that there is no Conflict of Interest as to be likely to prejudice his independence and objectivity in performing the Framework Agreement, and undertakes that upon becoming aware of any such Conflict of Interest during the performance of the Framework Agreement (whether the conflict existed before the award of the Framework Agreement or arises during its performance), he shall immediately notify the Authority 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 the Authority may reasonably require.

28.3 Where the Authority is of the opinion that the Conflict of Interest notified to it under clause 28.2 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

28.3.1 if the Contractor fails to comply with the Authority's requirements in this respect; or

28.3.2 if, in the opinion of the Authority, compliance does not avoid or remove the conflict,

the Authority may terminate the Framework Agreement immediately by giving notice in writing and recover from the Contractor the amount of any loss from such termination

28.4 Where the Authority is of the opinion that the Conflict of Interest which existed at the time of the award of the Framework Agreement could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Framework Agreement immediately by giving notice in writing for breach of a fundamental condition and without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

29 WARRANTIES AND REPRESENTATIONS

29.1 The Contractor warrants and represents that:

29.1.1 It has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;

29.1.2 In entering the Framework Agreement it has not committed any Fraud;

29.1.3 as at the Commencement Date, all information contained in the tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement;

29.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or

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threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Framework Agreement;

29.1.5 It is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement;

29.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

29.1.7 It owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Framework Agreement;

29.1.8 In the three 3 years prior to the date of the Framework Agreement:

29.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

29.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

29.1.9 It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Framework Agreement.

30 EQUALITY AND HUMAN RIGHTS

30.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in sex, age, race, gender, religion or belief, disability, sexual orientation, gender reassignment, maternity, pregnancy, marriage, civil partnership or otherwise) in employment.

30.2 The Contractor shall not, except where permitted by the Law, discriminate on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or otherwise in the provision of the Services.

30.3 The Contractor shall take all reasonable steps (at his own expense) to secure the observance of this clause 30 by all servants, employees, workers, or agents of the Contractor engaged in performance of this Framework Agreement.

30.4 The Contractor shall provide to the Authority any information required to enable the Authority to monitor access to the Services for the purposes of fulfilling its obligations under the Law.

30.5 The Authority and Contractor shall each have and at all times maintain an Equality Impact Assessment in accordance with the Law.

30.6 The Contractor shall notify the Authority immediately of any complaint, investigation or proceedings against the Contractor under the Equality Act 2006 and shall cooperate fully and

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promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

- 30.7 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2006 due directly or indirectly to any act or omission by the Contractor, its agents, employees, workers, servants or sub-contractors.
- 30.8 The Contractor shall (and shall use its reasonable endeavours to procure that its employees, workers, servants, agents and sub-contractors shall) at all times act in a way which is compatible with the Human Rights Act 1998 in the performance of this Framework Agreement.
- 30.9 The Contractor shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 30.10 Subject to clause 23 (Liability, Indemnity and Insurance), the Contractor agrees to indemnify and keep indemnified the Authority against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under clause 30.

31. HEALTH AND SAFETY

- 31.1 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.
- 31.2 The Contractor shall promptly notify the Authority of any health and safety risks or hazards which may arise in connection with the performance of the Services and will undertake where appropriate risk assessments relating to the provision of the Service and in particular the environment which the Contractor staff shall carry out the Service. The Contractor shall manage risks and provide evidence by providing to the Authority within a reasonable time of request an up to date risk register.
- 31.3 Whilst on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of persons working on those Premises.
- 31.4 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

32 TRANSFER AND ASSIGNMENT

- 32.1 The Contractor shall not assign, sub-contract or in any other way dispose of its interest in the Framework Agreement or any part of it.
- 32.2 On giving notice to the Contractor of not less than 30 days and subject to clause 32.4 the Authority shall be entitled to:
- 32.2.1 assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any Contracting Authority, provided

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that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations pursuant to this Framework Agreement; or

32.2.2 novate this Framework Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority.

32.3 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, affect the validity of this Framework Agreement. In such circumstances, this Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.

32.4 If the Framework Agreement is novated to a body which is not a Contracting Authority pursuant to clause 32.3.2 or if a successor body which is not a Contracting Authority becomes the Authority pursuant to clause 32.5 (in the remainder of this clause both such bodies are referred to as the "transferee"):

32.4.1 The rights of termination of the Authority shall be available to the Contractor in clause 40 in the event of the insolvency of the transferee and clause 41 for Default of the transferee;

32.4.2 The transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof with the prior consent in writing of the Contractor;

32.4.3 The following clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the Framework Agreement had been amended by the Parties.

In clause 15.1 - Recovery of Sums Due - the words "or with any department or agent of the Crown" shall be deleted;

In clause 22 - Right of Audit - ceases to be applicable in the event that the Framework Agreement is novated to a private sector body;

In clause 25.1 – Prevention of Bribery, the word "Crown" shall be replaced with the word "Authority".

32.5 The Authority shall be entitled to disclose to any transferee any Confidential Information of the Contractor, which relates to the performance of the Services by the Contractor. In such circumstances the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.

33 SERVICE OF NOTICES AND COMMUNICATIONS

33.1 Except as otherwise expressly provided within the Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party concerned.

33.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party as set out in Schedule 5 Administrative Instructions. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

34 SEVERABILITY

34.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Framework Agreement shall continue in full force and effect as if the Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

35 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

35.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Framework Agreement, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 40 (Termination on Default) of the Framework Agreement.

35.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Framework Agreement by the Contractor, then the Authority may, without prejudice to its rights under clause 41 (Termination on Default), do any of the following:

35.2.1 without terminating the Framework Agreement, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Framework Agreement;

35.2.2 without terminating the whole of the Framework Agreement, terminate the Framework Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

35.2.3 terminate, in accordance with clause 41 (Termination on Default), the whole of the Framework Agreement.

35.3 Without prejudice to its right under clause 15 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the

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Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement services.

35.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Framework Agreement and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

35.5 In the event that:

35.5.1 The Contractor fails to comply with clause 35.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

35.5.2 The Contractor persistently fails to comply with clause 35.4 above,

The Authority may terminate the Framework Agreement with immediate effect by giving notice in writing.

36 REMEDIES CUMULATIVE

36.1 Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

37 WAIVER

37.1 The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

37.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 33 (Service of Notices and Communications).

37.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Framework Agreement.

38 ENTIRE AGREEMENT

38.1 The Framework Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Framework Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

39 EMPLOYMENT EXIT AND HANDOVER PROVISIONS

- 39.1 This Framework Agreement envisages that the identity of the provider of the Services or any part of the Services may change (whether as a result of termination of this Framework Agreement, or part of this Framework Agreement, or otherwise) resulting in a transfer of the Services in whole or in part. If a Service Transfer constitutes a relevant transfer, as defined under the TUPE Regulations and/or if the provisions of the Cabinet Office Statement of Practice in relation to Staff Transfers in the Public Sector apply ("Relevant Transfer") then as the case may be either the Authority or the Replacement Contractor will inherit liabilities in respect of the Transferring Employees. The provisions in paragraphs 2.5 to 2.9(inclusive) of Schedule 7 shall apply to a Relevant Transfer.
- 39.2 Paragraph 2.10 of Schedule 7 shall apply to a Service Transfer which is not a Relevant Transfer.
- 39.3 Paragraphs 2.1 to 2.4 (inclusive) of Schedule 7 shall apply to all Service Transfers whether or not they are a Relevant Transfer.
- 39.4 Save as set out in clauses 41 (Termination on Default clause) and 42 (Break clause), where no Relevant Transfer occurs upon the termination of all (or part) of this Framework Agreement the Contractor will be liable in all respects for the continuing engagement and/or termination of any of the Contractor's Staff who have been engaged in the Services (or any part thereof) and the Authority will bear no liability, financial or otherwise, in respect of the Contractor's Staff.
- 39.5 The Contractor shall assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
- 39.6 The Contractor shall promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.
- 39.7 Where the end of the Framework Agreement Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 39.5 and 39.6 free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to keep such costs to the minimum.

40 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 40.1 The Authority may terminate the Framework Agreement with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor and:
- 40.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 40.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- 40.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 - 40.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 40.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 40.1.6 it is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 40.1.7 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
 - 40.1.8 any event similar to those listed in 40.1.1 – 40.1.7 occurs under the law of any other jurisdiction.
- 40.2 Separate provisions on insolvency and change of control apply where the Contractor is
- 40.2.1 a limited liability partnership; or
 - 40.2.2 a partnership under the Partnership Act 1890; or
 - 40.2.3 an individual.
- 40.3 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 ("change of control"). The Authority may terminate the Framework Agreement by notice in writing with immediate effect within six months of:
- 40.3.1 Being notified that a change of control has occurred; or
 - 40.3.2 Where no notification has been made, the date that the Authority becomes aware of the change of control, but shall not be permitted to terminate where the Authority agreed in writing prior to the change of control.

41 TERMINATION ON DEFAULT

- 41.1 The Authority may terminate the Framework Agreement, or terminate the provision of any part of the Services, immediately by giving notice in writing to the Contractor with immediate effect if the Contractor is in Default of any obligation under the Framework Agreement and:
- 41.1.1 the Contractor has not remedied the Default to the satisfaction of the Authority within 30 days, or such other period as may be specified by the Authority, after service of written notice specifying the Default and requiring it to be remedied; or
 - 41.1.2 The Default is not capable of remedy.

41.2 If the Authority fails to pay the Contractor undisputed sums of money after 30 days of having received a valid invoice, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Framework Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clauses 15.1 (Recovery of Sums Due).

42 BREAK

42.1 The Authority may terminate the Framework Agreement, or terminate the provision of any part of the Services, at any time by giving 1 Months' notice in writing to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice.

43 CONSEQUENCES OF EXPIRY OR TERMINATION

43.1 Where the Authority terminates the Framework Agreement under clause 40 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Framework Agreement Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Framework Agreement is terminated under clause 41 (Termination on Default), no further payments shall be made by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Framework Agreement but where the payment has yet to be made by the Authority), until the Authority has established the final cost of arranging an alternative supplier of the Services.

43.2 Subject to clause 23 (Liability, Indemnity and Insurance), where the Authority terminates the Framework Agreement under clause 42 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Framework Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and cost list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 42 (Break).

43.3 The Authority shall not be liable under clause 43.2 to pay any sum which:

43.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

43.3.2 when added to any sums paid or due to the Contractor under the Framework Agreement, exceeds the total sum that would have been payable to the Contractor if the Framework Agreement had not been terminated prior to the expiry of the Framework Agreement Period; or

43.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Framework Agreement.

43.4 Save as otherwise expressly provided in the Framework Agreement:

43.4.1 termination or expiry of the Framework Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Framework Agreement prior to termination or expiration and nothing in the Framework Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

43.4.2 termination of the Framework Agreement shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 8 (Payment and VAT), 15 (Recovery of Sums Due), 25 (Prevention of Bribery), 19 (Official Secrets Acts), 17 (Confidential Information), 48 (Freedom of Information), 20 (Intellectual Property Rights), 22 (Right of Audit), 36 (Remedies Cumulative), 23 (Liability, Indemnity and Insurance), 24 (Professional Indemnity), 43 (Consequences of Expiry or Termination), 45 (Recovery upon Termination) and 51 (Law and Jurisdiction).

44 DISRUPTION

44.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

44.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Framework Agreement.

44.3 In the event of industrial action by the Contractor's Staff, the Contractor shall seek approval to its proposals to continue to perform its obligations under the Framework Agreement.

44.4 If the Contractor's proposals referred to in clause 44.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Framework Agreement may be terminated with immediate effect by the Authority by notice in writing.

44.5 If the Contractor is temporarily unable to fulfil the requirements of the Framework Agreement owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

45 RECOVERY UPON TERMINATION

45.1 On the termination of the Framework Agreement for any reason, the Contractor shall:

45.1.1 Immediately return to the Authority all Confidential Information, and IP Materials in its possession or in the possession or under the control of any permitted suppliers, which was obtained or produced in the course of providing the Services; and

45.1.2 Immediately deliver to the Authority all property (including materials, documents and information) provided to the Contractor under this agreement). Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear).

45.2 If the Contractor fails to comply with clause 45.1.1 and 45.1.2, the Authority may recover possession of the items mentioned in those clauses. The Contractor shall grant a licence to the Authority for its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor where any such items may be held.

46 FORCE MAJEURE

46.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Framework Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of 6 Months, either Party may terminate the Framework Agreement with immediate effect by giving notice in writing.

46.2 Any failure or delay by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by an agent or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

46.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 46.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

47 DISPUTE RESOLUTION

47.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to senior management of each Party.

47.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 47.3 If the dispute cannot be resolved by the Parties pursuant to clause 47.1 the Parties shall refer it to mediation unless the Authority considers that the dispute is not suitable for resolution by mediation; or the Contractor does not agree to mediation.
- 47.4 The obligations of the Parties under the Framework Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Staff shall comply fully with the requirements of the Framework Agreement at all times.
- 47.5 Subject to clause 47.2, the Parties shall not institute court proceedings until the procedures set out in clauses 47.1 and 47.3 have been completed.

48 FREEDOM OF INFORMATION ACT

- 48.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority at the Contractor's expense to enable the Authority to comply with these requirements.

- 48.2 The Contractor shall:

48.2.1 transfer to the Authority forthwith all requests for information that it receives under FOIA and the Environmental Information Regulations ("Requests for Information") that in its opinion are for the Authority consulting the Authority where it has any doubt whether the request is for the Authority as soon as practicable and in any event within two Working Days of receiving a request for information;

48.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days, or such other period as the Authority may specify, of the Authority's request; and

48.2.3 Provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 48.3 The Authority shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in this Framework Agreement or any other agreement, whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

- 48.4 In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Authority.

- 48.5 The Contractor acknowledges that (notwithstanding the provisions of clause 47) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

48.5.1 in certain circumstances without consulting the Contractor; or

48.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 48.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 48.6 The Contractor shall ensure that all Information is retained for disclosure in accordance with clause 22 (Right of Audit) and shall permit the Authority to inspect such records as the Authority requests from time to time.
- 48.7 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 4 of the Framework Agreement is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause 48.5.

49 TRANSPARENCY

49.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and or the Environmental Information Regulations, the content of this Framework Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA and or the Environmental Information Regulations.

49.2 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.

49.3 The Authority may, at its sole discretion, redact information from the Framework Agreement prior to publishing for one or more of the following reasons:

- (a) national security;
- (b) information protected by intellectual property law;
- (c) third party confidential information;
- (d) IT security; or
- (e) prevention of fraud.

49.4 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.

49.5 Notwithstanding any other term of the Framework Agreement, the Contractor hereby gives consent for the Authority to publish the Framework Agreement in its entirety, including from time to time any agreed changes to the Framework Agreement, to the general public

50 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

50.1 Except as expressly provided in this agreement, a person who is not a Party to the Framework Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

51 LAW AND JURISDICTION

51.1 This Framework Agreement is made under, governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

SCHEDULE 1

SPECIFICATION

The Authority is seeking to appoint a Specialist VAT Recovery Service framework agreement with one supplier, to provide the VAT Recovery Advice Services under the master Procure22 Framework agreement, for those NHS clients undertaking a Procure22 construction project that has been registered within the Procure22 databases.

The following services shall be required from the provider:

- Provide any NHS client undertaking a Procure22 construction project upon request, a VAT consultancy service to ensure that it realises the allowable amount of VAT recoverable within the acceptable HM Revenue & Customs (HMRC) rules as laid down in law.
- To review and if necessary, amend any VAT calculations as prepared by the various NHS bodies.
- To liaise with both those NHS bodies and the HMRC on any matter that is relating to VAT claims.
- To review those claims on conclusion of the construction project, and ensure that the relevant NHS body is fully aware of any further action that may be required.
- Process VAT claims through to HMRC approval and to resolve any issues that arise during the process.
- To liaise with the DH Construction Procurement Team, HMRC and any other body(s) for example, the Health Estates and Facilities Management Association (HEFMA), any working groups in respect of notification of issues, to refine and simplify and generally improving the VAT recovery process.
- To inform the DH Construction Procurement Team of any changes in HMRC policy guidance that may become apparent.
- To provide monthly progress reports (in excel format) to the DH Construction Procurement Team on programme delivery. The reports will include:
 - a) Trust name,
 - b) Project ID,
 - c) Project description,
 - e) Net Contract Value,
 - f) Percentage and amount of VAT recovered,
 - g) Date approved by HMRC,
 - h) Date of final assessment.

These reports will detail the totals of the amount of VAT recovered on a project by project basis for all approvals

- Provide monthly pipeline reports to the DH Construction Procurement Team of planned workload including financial forecasts to allow for budget planning.

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- To undertake additional ad-hoc work for example, input into changes to guidance, or assessment of changes to HMRC rules as instructed by the DH Construction Procurement Team.
- To attend meetings as necessary, at various NHS clients and with the DH Construction Procurement Team as requested.

It is the framework supplier's responsibility to ensure that best practice is followed as agreed between all parties involved, including any arrangements made with HMRC, whilst always seeking to recover the appropriate approval amount in line with HMRC guidelines.

If specialist external advice on any particular issue is considered necessary, this will first be discussed with and agreed with the DH Construction Procurement Team in advance of any engagement of such specialist organisations.

Historically there have been up to thirteen (13) VAT recovery approval claims processed per month with the average being eight (8) per month. Although there is no guarantee of any future work, it is anticipated that there may be around one hundred (100) VAT recovery approval claims that will need to be processed annually. The rate charged will reflect the actual time taken to process the claim.

1. AUTHORITY RESPONSIBILITIES

The Department will not accept any liability in respect of any advice given to the NHS by the Contractor, and will not be responsible for any claims made by the NHS in respect of any advice given.

Payment will be made on the following basis:

On notification of projects where VAT Recovery services has been processed and time spent processing each claim must be sent to the DH Construction Procurement Team for verification prior to the invoice being raised and submitted to all for timely receipting and payment.

The notification should clearly detail which projects have received VAT approval and any associated additional expenses for example, travel and subsistence claims in accordance with DH policy that are associated with the processing of the VAT claim(s).

Invoices should then be submitted by the Contractor on a monthly basis to the Authority's accounts team who will then process them.

For avoidance of doubt those NHS clients who enter into a call off agreement with the supplier, will not be responsible for the payment of invoices. It is the Authority who is responsible for all payments associated with the service(s) identified within 'Attachment 3 - Specification'

2. CONTRACTOR RESPONSIBILITIES

In order to manage the Framework agreement appropriately in line with the Authority's requirements the Contractor shall:

- To accept liability in respect of any advice given to the NHS and will be responsible for any claims made by the NHS client in respect of any advice given.
- To appoint a Contract Manager to oversee the work and liaise with the Authority's Contract Manager.
- To engage in regular communication with the Authority's Contract Manager.
- To engage in post task evaluation and act on feedback from the Authority's Contract Manager.
- To perform quality assurance on all aspects of work.
- To provide cost updates on a monthly basis.
- To submit monthly reports as describe in 'Section 1 - The Requirement', to the DH Construction Procurement Team to allow it to ascertain that the service continues to deliver the benefits identified.

Deliver any Key Performance Indicators as agreed at the outset of each piece of work.

SCHEDULE 2
PRICING SCHEDULE

- 1.1 The rates contained within the Pricing Schedule are, unless otherwise expressly agreed between the parties, firm.
- 1.2 The rates entered shall be deemed to include complete provision for full compliance with the requirements of the Framework Agreement.
- 1.3 The rates exclude VAT.
- 1.4 The rates entered in the Pricing Schedule should be based on a Daily Rate, excluding Travel and Expenses costs. Travel and Subsistence costs will be authorised by the Authority and paid in line addition to the daily rate.
- 1.5 Expenses will only be approved if supported by original receipts. The Authority will only pay for expenses claimed that are in line with the Authority's guidelines for expenses. The original receipts will need to be provided to support any claim.
- 1.6 The Authority will only make payment for overnight stays that have been authorised beforehand in writing by the Authority's Representative.
- 1.7 Any extra expenses other than travel and subsistence must be priced separately in the Pricing Schedule. The Department will only pay for expenses claimed that are included in this pricing schedule and are deemed to be reasonable for delivery of the requirement.
- 1.8 Tenderers must include in the pricing schedules any discounts or any reduced pricing they are proposing to offer to the Authority in delivery of this requirement.
- 1.9 Please see Table one for completion of Pricing Proposals that must be returned as part of the tender.

Project Value	Time taken to progress the claim
Up to £5 million	0.5 days
Up to £20 million	Between 1 and 2 days
Over £20 million	2 - 4 (4 days being the exception for the highest valued projects)

Pricing Schedule

Table One

Pricing Schedule for:
BDO LLP

Information Request	Tenderers are required to complete the pricing table below.
Evaluation Considerations	The Authority will use these values in the manner described in the ITT documentation

Supplier Response

Description of Services		
(i)	Service Delivery Costs	Cost per day including profit margin
FOI 43 (2)		
Cost per day (evaluation price) - maximum day rate		FOI 43 (2)

Exclusions and Caveats
Guidance to suppliers: please detail all exclusions and caveats upon which your response is based

FOI 43 (2)

£	
FOI 40	=
FOI 40	=
FOI 40	=
	FOI 43 (2)
Total	FOI 43 (2)
•	FOI 43 (2)

SCHEDULE 3 - ORDER FORM

ORDER FORM

Framework Agreement

FROM

Customer:	
P22 Project Reference	
Service address:	
Invoice address:	
Authorised Representative:	Ref: Phone: E-mail:
Order number:	To be quoted on all correspondence relating to this Order:
Order date:	

TO

Contractor	
For the attention of:	
E-mail:	
Telephone number:	
Address:	

1. SERVICES REQUIREMENTS
(1.1) Services required: VAT recovery service as per Specification
(1.2) Service Commencement Date:
(1.3) Price payable by Customer and payment profile: [Insert price] Payment for the Services will be made by the Authority in accordance with clauses 7 and 8 of the Framework Agreement and the Pricing Schedule.
(1.4) Completion date (including any extension period or periods) The completion date will be the date on which written agreement is received by the Customer from HMRC confirming the final VAT recovery assessment for the project.

2. PERFORMANCE OF THE SERVICES
(2.1) Key person/personnel of the Service Provider to be involved in the Services [insert name] The Services shall be delivered by the Key Person/Personnel in accordance with the Specification
(2.2) Contract monitoring arrangements: [insert any arrangements]

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BY SIGNING AND RETURNING THIS ORDER FORM THE CONTRACTOR AGREES to enter a legally binding contract with the Customer to provide to the Customer the Services specified in this Order Form incorporating the rights and obligations in the Call-off Terms and Conditions set out in the

Framework Agreement entered into by the Contractor and the Authority on [DATE].

For and on behalf of the Contractor:

Name and title	
Signature	
Date	
Contractor's Authorised Representative for the Contract (if different)	[NAME]

For and on behalf of the Customer:

Name and title	
Signature	
Date	

SCHEDULE 4
CALL-OFF TERMS AND CONDITIONS

As attached below

SCHEDULE 5
MONITORING SCHEDULE

In order to manage the Framework agreement appropriately in line with the Authority's requirements the Contractor shall:

- To accept liability in respect of any advice given to the NHS and will be responsible for any claims made by the NHS client in respect of any advice given.
- To appoint a Contract Manager to oversee the work and liaise with the Authority's Contract Manager.
- To engage in regular communication with the Authority's Contract Manager.
- To engage in post task evaluation and act on feedback from the Authority's Contract Manager.
- To perform quality assurance on all aspects of work.
- To provide cost updates on a monthly basis.
- To submit monthly reports as describe in 'Section 1 - The Requirement', to the DH Construction Procurement Team to allow it to ascertain that the service continues to deliver the benefits identified.
- Deliver any Key Performance Indicators as agreed at the outset of each piece of work.
- **Frequency of contract management meetings:** to be confirmed
- **Location of contract management meetings:** Department of Health, Quarry House, Quarry Hill, LEEDS, LS2 7UE or by teleconference or VC as agreed between Authority and Contractor

SCHEDULE 6

COMMERCIALLY SENSITIVE INFORMATION



SCHEDULE 7

SCHEDULE 7 EMPLOYMENT EXIT PROVISIONS

1 INTERPRETATION

The definitions and rules of interpretation in this paragraph apply in this Schedule 7.

Contractor's Final Staff List: the list of all the Contractor's Staff engaged in or wholly or mainly assigned to the provision of the Services (or the part thereof which will be subject to the Relevant Transfer) at the Service Transfer Date.

Contractor's Provisional Staff List: a list prepared and updated by the Contractor of all the Contractor's Staff engaged in, or wholly or mainly assigned to, the provision of the Services (or the part thereof which will be subject to the Relevant Transfer) at the date of preparation of the list.

Employee Liability Information: in respect of each of the Contractor's Staff engaged in, or wholly or mainly assigned to, the provision of the Services (or the relevant part thereof which will be subject to the Relevant Transfer):

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the Contractor within the previous two years; and
- (e) information about any collective agreement which will have effect after the Service Transfer Date in relation to the Employee pursuant to Regulation 5 of the TUPE Regulations.

Service Transfer Date: the date on which the Services (or any part of the Services), for whatever reason transfer from the Contractor to the Authority or any Replacement Contractor.

Staffing Information: in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Authority may reasonably request, including but not limited to, in an anonymised format:

- (f) their ages, dates of commencement of employment or engagement and gender;
- (g) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (h) the identity of their employer or relevant contracting party;
- (i) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (j) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (k) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Authority car schemes applicable to them;

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- (l) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (m) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (n) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

2 EMPLOYMENT EXIT PROVISIONS

2.1 The Contractor agrees that, subject to compliance with the Data Protection Legislation:

2.1.1 within 20 days of the earliest of:

- (i) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer; or
- (ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or
- (iii) the date which is 6 months before the expiry of the Initial Contract Period or any renewal term,

and, in any event, on receipt of a written request of the Authority at any time, it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Authority or, at the direction of the Authority, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List when reasonably requested by the Authority or, any Replacement Contractor;

2.1.2 at least 14 days prior to the Service Transfer Date, the Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's Staff named are Transferring Employees;

2.1.3 the Authority shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any Tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and

2.1.4 upon reasonable request by the Authority the Contractor shall provide the Authority or at the request of the Authority, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Authority reasonably requests.

2.2 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information will be true and accurate in all material respects.

2.3 From the date of the earliest event referred to in paragraph 2.1.1 of this Schedule 7, the Contractor agrees that it shall not without the prior written consent of the Authority, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

2.3.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Authority;

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- 2.3.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
- 2.3.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's Staff save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
- 2.3.4 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 Contractor's Provisional Staff List; and
- 2.3.5 replace any of the Contractor's Staff listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.

The Contractor will promptly notify the Authority or, at the direction of the Authority, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.

- 2.4 At least 14 days before the expected Service Transfer Date, the Contractor shall provide to the Authority or any Replacement Contractor, in respect of each person (subject to compliance with Data Protection Legislation) on the Contractor's Final Staff List who is a Transferring Employee, their:
 - 2.4.1 pay slip data for the most recent month;
 - 2.4.2 cumulative pay for tax and pension purposes;
 - 2.4.3 cumulative tax paid;
 - 2.4.4 tax code;
 - 2.4.5 voluntary deductions from pay; and
 - 2.4.6 bank or building society account details for payroll purposes.
- 2.5 In connection with a Relevant Transfer, the parties agree that:
 - 2.5.1 the Contractor shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date.
 - 2.5.2 The Contractor shall indemnify the Authority and any Replacement Contractor in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Authority or any Replacement Contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - 2.5.2.1 the Contractor's failure to perform and discharge any such obligation;
 - 2.5.2.2 any act or omission by the Contractor on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
 - 2.5.2.3 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;

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- 2.5.2.4 any claim arising out of the provision of, or proposal by the Contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;
 - 2.5.2.5 any claim made by or in respect of any person employed or formerly employed by the Contractor other than a Transferring Employee for which it is alleged the Authority or any Replacement Contractor may be liable by virtue of this Contract and/or the TUPE Regulations;
 - 2.5.2.6 any act or omission of the Contractor in relation to its obligations under Regulation 11 of the TUPE Regulations, or in respect of an award of compensation under Regulation 12 of the TUPE Regulations except to the extent that the liability arises from the Authority or Replacement Contractor's failure to comply with Regulation 11 of the TUPE Regulations; and
 - 2.5.2.7 any statement communicated to or action done by the Contractor or in respect of, any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Authority in writing.
- 2.6 The Contractor shall indemnify the Authority and any Replacement Contractor in respect of any claims arising from any act or omission of the Contractor in relation to any other Contractor's Staff who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
- 2.7 The Authority shall indemnify the Contractor against all claims arising from the Authority's failure to perform and discharge any obligation and against any Claims in respect of any Transferring Employees arising from or as a result of:
- 2.7.1 any act or omission by the Authority relating to a Transferring Employee occurring on or after the Service Transfer Date; and
 - 2.7.2 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.
 - 2.7.3 any claim arising out of the provision of, or proposal by the Authority to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or after the Service Transfer Date; and
 - 2.7.4 any act or omission of the Authority in relation to its obligations under Regulation 11 of the TUPE Regulations.
- 2.8 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer will be fulfilled.
- 2.9 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 2.4 to 2.8 (inclusive) to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.10 If, in the event of a Service Transfer to which the TUPE Regulations do not apply the following provisions shall apply:

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- 2.10.1 the Authority or the Replacement Contractor can, at its discretion, make an offer in writing to any of the employees listed on the Contractor's Provisional Staff List or any Contractor's Staff assigned to the Services, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
- 2.10.2 when the offer has been made by the Authority or Replacement Contractor and accepted by any employee or worker, the Contractor shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
- 2.10.3 if the employee does not accept an offer of employment made by the Authority or Replacement Contractor, the employee shall remain employed by the Contractor and all claims in relation to the employee shall remain with the Contractor; and
- 2.10.4 if the Authority or the Replacement Contractor does not make an offer to any employee on the Contractor's Provisional Staff List or any Contractor's Staff, then that employee and all claims in relation to that employee remains with the Contractor.

SCHEDULE 8 ADMINISTRATIVE INSTRUCTIONS

For the purposes of clause 32.2, the address of each Party shall be:

(a) For the Authority:

Cliff Jones
Department of Health & Social Care
Quarry House
Quarry Hill
Leeds
LS2 7UE

Email: Cliff.Jones@dh.gsi.gov.uk

(b) For the Contractor:

FOI 40

BDO LLP
Central Square
29 Wellington Street
Leeds
LS1 4DL
Tel:
Email:

SCHEDULE 9 – Key Personnel

As outline in the tender response, the key people shall be:

FOI 40
[Redacted]

DATED

2018

(1) [NHS TRUST/ORGANISATION]

and

(2) BDO LLP

**Procure 22 Specialist VAT Recovery Advice Services
Call-Off Contract**

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ANNEX

ANNEX A. FRAMEWORK AGREEMENT SPECIFICATION26

ANNEX B. COMPLETED ORDER FORM27

PARTIES

- (1) [NAME OF NHS Trust/Organisation] whose principal place of business is at [ADDRESS] (**Customer**).
- (2) BDO LLP incorporated and registered in England and Wales with company number 735751781 whose registered office is at 55 Baker Street, London, Middlesex, W1U 7EU (**Contractor**).

BACKGROUND

- (A) The Authority following a tender process in line with the EU procurement regulations selected the Contractor to enter into a single supplier framework agreement to provide services to Customers who will place Orders in accordance with the Framework Agreement.
- (B) The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Contractor under the Framework Agreement.
- (C) The Customer is a Contracting Authority, as specified in the OJEU Notice. It has selected the Contractor to provide the Services and the Contractor is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

GENERAL PROVISIONS

1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Approval: the prior written approval of the Customer.

Auditor: the National Audit Office or an auditor appointed by the Audit Commission as the context requires.

Authority: the Secretary of State for Health that established the Framework Agreement.

Confidential Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights or know-how of either Party.

Contract: the written agreement between the Customer and the Contractor consisting of the Order Form and these terms and conditions.

Contract Period: the period from the Service Commencement Date to:

- (a) the date of expiry set out in clause 3; or
- (b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Year: a period of 12 months, commencing on the Service Commencement Date.

Contracting Authority: any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2015 (*SI 2015/102*).

Crown: 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.

Customer: a Contracting Authority which is an NHS trust or organisation undertaking a scheme or project using the Procure22 National Framework or any successor framework agreement and which is a potential purchaser of Services under the Framework Agreement.

Default: any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or their Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Dispute Resolution Procedure: the dispute resolution procedure in clause 34.

Environmental Information Regulations: the Environmental Information Regulations 2004 (*SI 2004/3391*), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Contractor's organisation.

Framework Agreement: the framework agreement for the provision of VAT Advisory Recovery Services between the Authority and the Contractor dated 05/03/2018.

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Information: has the meaning given under section 84 of the FOIA.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Key Person or Personnel: any individual identified in the Order Form as being the key person/personnel.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

Month: calendar month.

Order: the order placed by the Customer to the Contractor in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the timeframe and the Quality Standards.

Order Form: the document used to place an Order.

Party: the Contractor or the Customer and “Parties” shall mean both the Contractor and the Customer.

Premises: the Customer’s premises

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) 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 Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;

- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

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

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Service Commencement Date: the service commencement date set out in the Order Form.

Services: the VAT recovery specialist advice services to be supplied as per the Framework Agreement specification and set out in the Order Form.

Staff: all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's agents and suppliers used in the performance of its obligations under the Contract and including for the avoidance of doubt, the Key Person.

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

2. INTERPRETATION

The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment,

order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
- (j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

3. CONTRACT PERIOD

The Contract shall take effect on the Service Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract.

4. CONTRACTOR'S STATUS

At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

5. MISTAKES IN INFORMATION

The Contractor shall be responsible for the accuracy of all documents and information supplied to the Customer by the Contractor in connection with the supply of the Services and shall pay the Customer any costs occasioned by any discrepancies, errors or omissions therein.

SUPPLY OF SERVICES

6. SERVICES

- 6.1 The Contractor shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration of payment of the nominal sum of £1. The Customer may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.
- 6.2 The Contractor shall:
- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body; and
 - (b) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 6.3 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

STAFFING

7. CONTRACTOR'S STAFF

- 7.1 The Contractor agrees and acknowledges that the agreed named individual ("the Key Person") shall deliver the Services and that the prior approval of the Authority shall be required to change that Key Person.
- 7.2 At the Customer's written request, the Contractor shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

CONSIDERATION

8. CONTRACT PRICE

- 8.1 In consideration of the Contractor's performance of its obligations under the Contract, the Customer shall pay the nominal sum of £1.

STATUTORY OBLIGATIONS AND REGULATIONS

9. CONFLICTS OF INTEREST

- 9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the

Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Customer under the provisions of the Contract.

9.2 The Contractor shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 9.1 above arises or is reasonably foreseeable.

9.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

10. PREVENTION OF BRIBERY

10.1 The Contractor:

- (a) shall not, and shall procure that the Staff shall not, in connection with this Contract commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.

10.2 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

10.3 If any breach of clause 10.1 is suspected or known, the Contractor must notify the Customer immediately.

10.4 If the Contractor notifies the Customer that it suspects or knows that there may be a breach of clause 10.1, the Contractor must respond promptly to the Customer's enquiries and co-operate with any investigation. This obligation shall continue for 3 (three) years following the expiry or termination of this Contract.

10.5 The Customer may terminate this Contract by written notice with immediate effect if the Contractor and/or its Staff (in all cases whether or not acting with the Contractor's knowledge) breaches clause 10.1.

10.6 Any notice of termination under clause 10.5 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

10.7 Despite clause 34, any dispute relating to:

- (a) the interpretation of clause 10; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Customer and its decision shall be final and conclusive.

10.8 Any termination under clause 10 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

11. DISCRIMINATION

11.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

11.2 The Contractor shall take all reasonable steps to secure the observance of clause 11 by all servants, employees or agents of the Contractor.

INFORMATION

12. CONFIDENTIALITY

12.1 Subject to clause 12.2, the parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

12.2 Clause 12.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 14 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
- (c) that is reasonably required by the Authority;
- (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 12.1;
- (e) by the Customer of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;

- (f) to enable a determination to be made under clause 34;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Customer relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure.

12.3 On or before the expiry of the Contract, the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Customer are delivered up to the Customer or securely destroyed.

13. OFFICIAL SECRETS ACTS 1911 TO 1989

13.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

13.2 In the event that the Contractor or its Staff fail to comply with this clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Contractor.

14. FREEDOM OF INFORMATION

14.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer (at the Contractor's expense) to enable the Customer to comply with these information disclosure requirements.

14.2 The Contractor shall:

- (a) transfer the Request for Information to the Customer as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the

time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

14.3 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Customer.

14.4 The Contractor acknowledges that the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Contractor; or
- (b) following consultation with the Contractor and having taken its views into account,

provided always that where clause 14.4(b) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

14.5 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

14.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with clause 14.4.

15. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

15.1 The Contractor shall not make any press announcements or publicise the Contract in any way without the Customer's prior written Approval.

15.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer, including any examination of the Contract by the Auditor.

15.3 The Contractor shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 The Contractor shall retain ownership of all Intellectual Property created by the Contractor or any Staff:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services.

16.2 The Contractor hereby grants, or shall procure the direct grant, to the Customer of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Customer to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Customer provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party.

16.3 The Contractor shall indemnify the Customer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

17. RECORDS AND AUDIT ACCESS

17.1 The Contractor shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it and the Contracts entered into with the Customer.

17.2 The Contractor shall keep the records and accounts referred to in clause 17.1 above in accordance with good accountancy practice.

17.3 The Contractor shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.

17.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Contract Period and for a period of 6 (six) years after the expiry of the Contract Period to the Customer and the Auditor.

17.5 The Contractor shall keep records relating to claims for 12 (twelve) months after approval of the final claim review has been given by HMRC.

17.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services, except insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

- 17.7 Subject to the Customer's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Customer within the scope of the audit;
 - (b) reasonable access to sites controlled by the Contractor in the provision of the Services; and
 - (c) access to Staff.
- 17.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 17, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

18. REPLACEMENT OF CORRUPTED DATA

If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

CONTROL OF THE CONTRACT

19. MONITORING OF CONTRACT PERFORMANCE

The Contractor shall comply with any monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

20. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 20.1 Where there is a complaint about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Customer may take reasonable steps to investigate the complaint.
- 20.2 The Contractor agrees and acknowledges that it shall notify and provide the Authority with all relevant details of each complaint made against it.
- 20.3 If the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Customer may, without prejudice to its rights under clause 30, do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have

demonstrated to the reasonable satisfaction of the Customer that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract; and/or

- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the price to be paid by the Authority for the Services shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.

20.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten Working Days of the Customer's instructions or such other period of time as the Customer may direct.

20.5 If the Contractor:

- (a) fails to comply with clause 20.4 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with clause 20.4 above,

the Customer may terminate the Contract with immediate effect by giving the Contractor notice in writing.

21. RIGHTS AND REMEDIES

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

22. TRANSFER AND ASSIGNMENT

22.1 The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it.

22.2 The Customer shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it.

23. WAIVER

23.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

23.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

24. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

24.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

25. SEVERANCE

25.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

25.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

LIABILITIES

26. LIABILITY, INDEMNITY AND INSURANCE

26.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) 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;
- (d) any claim under the indemnity in clause 16.3.

26.2 Subject to clause 26.3 and clause 26.4, the Contractor shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the

Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

26.3 Subject always to clause 26.1 and clause 26.4, the liability of the Contractor for Defaults shall be subject to the following financial limit:

- (a) the aggregate liability of the Contractor for all Defaults resulting in direct loss of or damage to the property of the Customer under or in connection with the Contract shall in no event exceed £1million (one million pounds).

26.4 Subject to clause 26.1, in no event shall the Contractor be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;

26.5 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Contractor to any other person.

27. INSURANCES

27.1 The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract and for a minimum of 6 years following the expiration or earlier termination of the Contract.

27.2 The Contractor shall hold employer's liability insurance in respect of its Staff in accordance with any legal requirement from time to time in force.

27.3 The Contractor shall ensure that it has in place professional indemnity insurance with a limit of indemnity of not less than £5 million (five million pounds) in relation to any one claim or series of claims and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover; together. Such policy shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

- 27.4 The Contractor shall give the Customer, on request, evidence to demonstrate that the appropriate insurance cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 27.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Contract, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 27.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 27.7 The Contractor shall hold and maintain the any insurance's required by the provisions of this Contract for a minimum of six years following the expiry or earlier termination of the Contract.

28. WARRANTIES AND REPRESENTATIONS

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Contractor;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

DEFAULT, DISRUPTION AND TERMINATION

29. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

29.1 Without affecting any other right or remedy available to it, the Customer may terminate this Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Contractor with one or more other companies or the solvent reconstruction of the Contractor];
- (c) 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 the Contractor (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor];
- (d) 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 Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (g) [the Contractor (being an individual) is the subject of a bankruptcy petition or order;]
- (h) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within [14] days;

- (i) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

29.2 The Contractor shall notify the Customer immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Customer may terminate the Contract by notice in writing with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

30. TERMINATION ON DEFAULT

30.1 The Customer may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a material breach and if:

- (a) the Contractor has not remedied the material breach to the satisfaction of the Customer within 20 Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- (b) the material breach is not, in the opinion of the Customer, capable of remedy.

30.2 The Customer may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract.

31. CONSEQUENCES OF TERMINATION OR EXPIRY

31.1 Where the Customer terminates the Contract under clause 30 and then makes other arrangements for the supply of Services, the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 30, no further payments shall be payable by the Authority to the Contractor until the Customer has established the final cost of making those other arrangements.

31.2 Except as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor under clause 8, clause 9, clause 12, clause 13, clause 14, clause 16, clause 17, clause 21, clause 26, clause 27, clause 31, clause 33, and clause 38.

32. DISRUPTION

- 32.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 32.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 32.3 In the event of industrial action by the Staff, the Contractor shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 32.4 If the Contractor's proposals referred to in clause 32.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:
 - (a) require the Contractor to provide alternative proposals; or
 - (b) undertake the services itself and recover from the Contractor the costs incurred in the process.

Subject to clause 32.5, nothing in this clause shall release the Contractor from the proper performance of its obligations under the Contract.

- 32.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer.

33. RECOVERY ON TERMINATION

- 33.1 On the termination of the Contract for any reason, the Contractor shall:
 - (a) immediately return to the Customer all Confidential Information, and any other data/information in its possession or in the possession or under the control of any permitted suppliers, which was obtained or produced in the course of providing the Services; and

- (b) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer to conduct due diligence.

33.2 If the Contractor fails to comply with clause 33.1(a), the Customer may recover possession thereof and the Contractor grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers where any such items may be held.

33.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 33.1(b) free of charge.

34. DISPUTE RESOLUTION

34.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to senior management of each Party.

34.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

34.3 If the dispute cannot be resolved by the Parties pursuant to clause 34.1 the Parties shall refer it to mediation unless the Customer considers that the dispute is not suitable for resolution by mediation; or the Contractor does not agree to mediation.

34.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

34.5 Subject to clause 34.2, the Parties shall not institute court proceedings until the procedures set out in clauses 34.1 and 34.3 have been completed.

35. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three months, the party not affected may terminate this Contract by giving thirty days written notice to the affected party.

36. ENTIRE AGREEMENT

- 36.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 36.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract, provided that nothing in this clause 36 shall operate to exclude any liability for fraud.
- 36.3 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

37. NOTICES

- 37.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 37.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 37.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of fax or e-mail, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.
- 37.3 For the purposes of clause 37.2 the address of each Party shall be:
- (a) for the Customer: the address set out in the Order Form.
 - (b) for the Contractor: the address set out in the Order Form.
- 37.4 Either Party may change its address for service by serving a notice in accordance with this clause.

38. GOVERNING LAW AND JURISDICTION

- 38.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Authorised to sign for and on behalf of the Customer

Signature.....

Date.....

Name in capitals.....

Address.....

Authorised to sign for and on behalf of the Contractor

Signature.....

Date.....

Name in capitals.....

Address.....

.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Annex A. Framework Agreement Specification

Annex B. Completed Order Form

Completed Order Form