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| **FRAMEWORK AGREEMENT** |

**National framework for Professional Services in Construction and Premises**

**2020**

**FRAMEWORK START DATE: 12 April 2020**

**FRAMEWORK REFERENCE: AVP-TEA-2001**

**FRAMEWORK PERIOD: 3 years plus 1-year OTE**

**ORGANISATION NAME:**

**CONTACT NAME:**

**CONTACT NUMBER:**

**CONTACT EMAIL:**

**Added Value Portal Limited (T/A Pagabo)**

19 Bowlalley Lane
Hull
HU1 1XR

**Telephone: 01482 975883**

**Contact E-mail: tenders@pagabo.co.uk**

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**THIS AGREEMENT** is made on [Date \*\*\* \*\*\* 20\*\*]

**BETWEEN**:-

(1) **The Education Alliance,** whose registered office is at East Dale Road, Melton East Riding of Yorkshire HU14 3HS (the "**Contracting Authority**"); and

(2) [Insert Framework Consultant name] (Company Number: [Insert]) whose registered address is at [Insert address] (the "**Consultant**"); and

(3) **ADDED VALUE PORTAL LIMITED t/a Pagabo** (company registered no. 08787322) whose registered office is at 19 Bowlalley Lane, Hull. HU1 1XR (“the Framework Manager”).

**BACKGROUND**

(A) The Contracting Authority placed a contract notice in the Official Journal of the European Union seeking expressions of interest from Consultants for the provision of Services to the Contracting Authority and Client Organisations under a framework agreement.

(B) The Consultant submitted its response to the contract notice.

(C) The Contracting Authority invited potential Consultants to tender for the provision of the Services.

(D) The Consultant submitted a tender for the provision of the Services.

(E) On the basis of the Consultant's tender, the Contracting Authority selected the Consultant to enter a framework agreement to provide Consultancy Services to the Contracting Authority and Client Organisations on a call-off or further competition basis in respect of the Services in accordance with this Framework Agreement.

(F) This Framework Agreement sets out the award and ordering procedure for Services which may be required by the Contracting Authority and Client Organisations, the main terms and conditions for any Call-Off Contract which the Contracting Authority and Client Organisations may conclude, and the obligations of the Consultant during and after the term of this Framework Agreement.

(G) It is the Parties' intention that there will be no obligation for the Contracting Authority or any Client Organisation to award any orders under this Framework Agreement during its Term.

(H) The Framework Manager is a party to this Framework Agreement for the purposes of the management and collection of the Framework Rebate which is payable by the Consultant.

**IT IS AGREED** as follows: -

1. **INTERPRETATION**

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"**Approval**" means the prior written approval of the Contracting Authority;

"**Audit**" means an audit carried out pursuant to Clause 17 (Records and Audit);

"**Auditor**" means the Contracting Authority's internal auditor and/or an auditor appointed by the Audit Commission as the context requires;

“**Client Organisation Data**” means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Consultant by or on behalf of the Client Organisation; or

(ii) which the Consultant is required to generate, process, store or transmit pursuant to this Framework Agreement; or

(b) any Personal Data for which the Contracting Authority is the Data Controller;

 “**Breach(es) of Security**” the occurrence of any:

(a) unauthorised access to or use or disclosure of; and/or

(b) loss and/or unauthorised disclosure of, any aspect of the Services and all processes associated with delivery of the Services including without limitation, any ICT, information and data (including the Confidential Information) used by the Contracting Authority or Client Organisations or the Consultant in connection with this Framework or any Call-Off Contract;

"**Call-Off Contract**" means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Client Organisation and the Consultant comprising an Order Form and the Call Off Terms and Conditions as may be amended pursuant to Clause 7.3.6;

"**Call-Off Terms and Conditions**" means the terms and conditions in Schedule 5 (Call-Off Terms and Conditions);

**“Client Access Agreement”** means an agreement entered into between the Contracting Authority, the Framework Manager and any other Client Organisation permitting such Client Organisation to contract with the Consultant pursuant to the procedures contained within the Framework Agreement;

"**Client Organisation**" means (in addition to the Contracting Authority) any contracting authority (as defined in the Public Contracts Regulations 2015) described or listed within the OJEU notice who has entered into a Client Access Agreement;

"**Commencement Date**" means 12th April 2020;

"**Commercially Sensitive Information**" means any Confidential Information comprised of information:

(a) which is provided in writing by the Consultant to the Contracting Authority in confidence and designated as Commercially Sensitive Information (including without limitation any such information listed in Schedule 7 (Commercially Sensitive Information)); and/or

(b) that constitutes a trade secret;

"**Complaint**" means any formal complaint raised by any Client Organisation in relation to the performance of the Framework Agreement or any Call-Off Contract in accordance with Clause 37 (Complaints Handling and Resolution);

"**Confidential Information**" means:

(a) any information belonging to the Client Organisation (for the avoidance of doubt not the Consultant or any third party) and which has been designated as confidential by the Client Organisation in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including without limitation information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of the Client Organisation and all personal data and sensitive data within the meaning of the DPA; and

(b) the Commercially Sensitive Information;

“**Contracting Authority**” means the Contracting Authority that placed the OJEU notice;

**“Consultant”** means the organisation offering Services;

**“Data Controller”** means the person who, alone or jointly with others, determines the purposes for which and the manner in which any Personal Data are processed;

**“Data Processor”** means any person (other than an employee of a Data Controller) who processes Personal Data on behalf of a Data Controller;

**“Data Protection Laws”** means all applicable EU laws and regulations governing the use or processing of Personal Data, including (where applicable) the European Union Directive 95/46/EC (until and including 24 May 2018), European Union Regulation 2016/679 (from and including 25 May 2018) and any national laws implementing or supplementing the foregoing or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data; as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) any code of practice or guidance published by the ICO or any other relevant Regulator from time to time;

**“Data Subject”** has the meaning given to it in the definition of “Personal Data”;

"**Environmental Information Regulations**" mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;

“**Expiry Date**” means the date of expiry of the Framework Agreement as set out in Clause 3.1;

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

"**Framework Agreement**" means this agreement and all Schedules to this agreement;

"**Framework Agreement Variation Procedure**" means the procedure set out in Schedule 8 (Framework Agreement Variation Procedure);

**“Framework Insertion Fee”** means the fee set out within Schedule 9;

**“Framework Rebate”** means the sum or sums calculated at the rates set out in Schedule 9;

"**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 Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Client Organisation;

"**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;

"**Guidance**" means any guidance issued or updated by the UK Government from time to time in relation to the Regulations;

"**Information**" has the meaning given under Section 84 of the Freedom of Information Act 2000;

"**Intellectual Property Rights**" means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

"**ITT**" means the invitation to tender issued by the Contracting Authority in respect of the provision of Services;

"**Law**" means 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;

"**Management Information**" means the management information specified in Schedule 6 (Management Information Requirements);

"**Material Default**" means any breach of Clause 7 (Award Procedures), Clause 9 (Corrupt Gifts and Payments of Commission), Clause 11 (Safeguard Against Fraud), Clause 14 (Statutory Requirements), Clause 15 (Non-discrimination), Clause 16 (Provision of Management Information), Clause 17 (Records and Audit Access), Clause 18 (Confidentiality), Clause 20 (Data Protection), Clause 21 (Freedom of Information) and Clause 29 (Transfer and Sub-contracting); "Month" means a calendar month;

"**OJEU Notice**" means the contract notice published in the Official Journal of the European Union by the Contracting Authority in respect of the provision of Services;

"**Order**" means an order for Services served by any Client Organisation on the Consultant in accordance with the Ordering Procedures;

"**Order Form**" means a document setting out details of an Order in the form set out in Schedule 4 (Order Form);

"**Ordering Procedures**" means the ordering and award procedures specified in Clause 7 (Award Procedures);

"**Other Client Organisations**" means all Client Organisations except the Contracting Authority;

"**Parent Company**" means any company which is the ultimate Holding Company of the Consultant and which is either responsible directly or indirectly for the business activities of the Consultant or which is engaged in the same or similar business to the Consultant. The term "Holding Company" shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;

"**Party**" means the Contracting Authority and/or the Consultant and/or the Framework Manager;

**“Personal Data”** means all Customer Data: (i) which relates to an identified or identifiable natural person (the “Data Subject”); and (ii) in respect of which the Customer is the Data Controller; and (iii) which will be processed by the Consultant in connection with this Agreement.

"**ITT Response**" means the response submitted by the Consultant to the invitation to tender issued by the Contracting Authority in respect of the provision of Services;

"**Pricing Schedules**" means the Pricing Schedules set out in Schedule 3 (Pricing Schedules);

"**Regulations**" means the Public Contracts Regulations 2015;

"**Regulatory Bodies**" means 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 this Framework Agreement or any other affairs of the Contracting Authority;

"**Requests for Information**" means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;

“**Specification**” means the Specification for the Services set out at Schedule 1 (Specification)

"**Staff**" means all persons employed by the Consultant together with the Consultant's servants, agents, suppliers and sub-Consultants used in the performance of its obligations under this Framework Agreement or Call-Off Contracts;

"**Tender**" means the tender submitted by the Consultant to the Contracting Authority in respect of the provision of Services and set out at Schedule 2 (Tender);

"**Term**" means the period commencing on the Commencement Date and ending on the Expiry Date or on earlier termination of this Framework Agreement;

"**Working Days**" means any day other than a Saturday, Sunday or public holiday in England and Wales;

"**Services**" means the consultancy Services to be supplied as set out in in Schedule 1 (Specification);

"**Services Framework Lots**" means the lots advertised in the OJEU Notice;

"**Services Framework Consultants**" means the Consultants appointed as framework Consultants for the Services;

and

"**Year**" means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all 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 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

1.2.4 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;

1.2.5 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;

1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

1.2.7 references in this Framework Agreement 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 this Framework Agreement so numbered;

1.2.8 references in this Framework Agreement to any paragraph or subparagraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant schedule to this Framework Agreement so numbered;

1.2.9 reference to a clause is a reference to the whole of that clause unless stated otherwise; and

1.2.10 in the event and to the extent only of any conflict between the clauses and the remainder of the schedules, the clauses shall prevail over the remainder of the schedules.

2. **STATEMENT OF INTENT**

2.1 In delivering the Services, the Consultant shall operate at all times in accordance with any and all of the Contracting Authority's published objectives and in accordance with paragraph 1 of the Specification.

2.2 The Consultant acknowledges that it has been appointed and the Contracting Authority has entered into this Framework Agreement on the basis of the Consultant's response to the ITT and, in particular, the representations made by the Consultant to the Contracting Authority in relation to its competence, professionalism and ability to provide the Services in an efficient and cost-effective manner.

2.3 This Clause 2 is an introduction to this Framework Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to this Clause 2.

**PART ONE: FRAMEWORK AGREEMENT AND AWARD PROCEDURE**

3. **TERM OF FRAMEWORK AGREEMENT**

3.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate:

3.1.1 on 11th April 2024; or

3.1.2 (where the Parties agree to extend the Framework Agreement beyond the date specified in Clause 3.1.1 in accordance with Clause 3.2) at the end of the period of extension.

3.2 In the event that the Contracting Authority requires that the Framework Agreement be extended for a further period of twelve (12) months beyond the date specified in Clause 3.1.1 then the Framework Agreement may be extended by agreement of both Parties, such extension to be evidenced in writing.

3.3 Where the Framework Agreement is extended as referred to in Clause 3.2, the terms of the Framework Agreement shall apply to any such period of extension.

4. **SCOPE OF FRAMEWORK AGREEMENT**

4.1 This Framework Agreement governs the relationship between the Contracting Authority and the Consultant in respect of the provision of the Services by the Consultant to the Contracting Authority and to Client Organisations.

4.2 The Contracting Authority and (subject to the following provisions of this Clause 4.2) Client Organisations may at their absolute discretion and from time to time order Services from the Consultant in accordance with the Ordering Procedure during the Term. The Parties acknowledge and agree that the Client Organisations have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the Ordering Procedure. If there is a conflict between Clause 7 (Award Procedures) and the Regulations and the Guidance, the Client Organisation shall comply with the Regulations and the Guidance.

4.3 The Consultant acknowledges that there is no obligation for the Contracting Authority and for any Client Organisation to purchase any Services from the Consultant during the Term.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contracting Authority and/or any Other Client Organisation in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Consultant acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

5. **CONSULTANT'S APPOINTMENT**

5.1 The Contracting Authority appoints the Consultant as a potential provider of the Services and the Consultant shall be eligible to be considered for the award of Orders for such Services by the Contracting Authority and Other Client Organisations during the Term.

5.2 The Consultant shall perform its obligations under this Framework Agreement in accordance with the Specification, the Tender, the Law and Good Industry Practice.

5.3 In the event of and only to the extent of any conflict between the clauses of this Framework Agreement and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -

5.3.1 the clauses of the Call Off Contract;
5.3.2 the Order Form;
5.3.3 the clauses of the Framework Agreement;
5.3.4 the Specification and the Pricing Schedules;
5.3.5 any schedule of this Framework Agreement (excluding the Specification, Pricing Schedules and the Tender).

5.4 In the event that any matter or proposal in the Tender exceeds the relevant obligation specified in the Specification:

5.4.1 the higher standard in the Tender shall be deemed to be the applicable standard for the Specification;

5.4.2 the Consultant shall be obliged to provide to the higher standard at all times; and

5.4.3 such matter or proposal shall not be deemed to be inconsistent with any such obligation for the purpose of Clause 5.3 of this Framework Agreement.

6. **NON-EXCLUSIVITY**

The Consultant acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Contracting Authority and/or Other Client Organisations for Services from the Consultant and that the Contracting Authority and/or Other Client Organisations are at all times entitled to enter into other contracts and agreements with other providers for the provision of any or all Services which are the same as or similar to the Services.

7. **AWARD PROCEDURES**

**Awards under the Framework Agreement**

7.1 If the Contracting Authority or any Client Organisation decides to source Services through the Framework Agreement then it may:

7.1.1 award its Services requirements in accordance with the terms laid down in Schedule 5 of this Framework Agreement without reopening competition; or

7.1.2 award its Services requirements (where all the terms may not be laid out in this Framework Agreement) following a Further Competition conducted in accordance with the requirements of the Regulations and the Guidance.

**Awards without re-opening Competition**

7.2 Any Client Organisation ordering Services under the Framework Agreement without re-opening competition shall:

7.2.1 identify the relevantFramework Lot which its Services requirements fall into;

7.2.2 and then the Client Organisation shall either:

(a) Client identifies the relevant Framework Consultant to provide the required Service(s). Scope of services to be discussed and developed with the identified Framework Consultant, or;

(b) The Client Organisation use the tendered day rates and quality scores of the available Framework Consultants capable of providing the required services to identify a suitable Framework Consultant.

7.2.3 place an Order (in accordance with Clause 7.7) with the successful Services Framework Consultant which:

(a) states the Services requirements;

(b) states the price payable for the Services requirements; and

(c) incorporates the Call-Off Terms and Conditions.

**Awards following Further Competitions**

7.3 Any Client Organisation competing Services under the Framework Agreement shall:

7.3.1 identify the relevant Framework Lot which its requirements fall into;

7.3.2 identify the Consultants capable of performing the Call-Off Contract for their requirements;

7.3.3 supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

7.3.4 invite tenders by conducting a Further Competition for its requirements in accordance with the Regulations and Guidance and in particular: -

(a) consult in writing the Consultants capable of performing the Call-Off Contract for the requirements and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;

(b) the Call-Off Contract is to be conducted on a mixture of Quality : Price ratio that is +/- 20% of the original 60% quality and 40% price

Where a Client Organisation wishes to utilise the tendered framework responses for the quality element of the further competition, then the Client Organisation will still need to indicate the percentage of the award being attributed to the quality element of the score. Should the Client Organisation wish to use a percentage higher or lower than 60%, then the Consultants tendered quality score will be adjusted on a pro-rata basis. The Client Organisation will then be able to request the invited Consultants to just submit a price for the competiton.

(c) set a time limit for the receipt by it of the tenders which considers factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and

(d) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders;

7.3.5 apply the Award Criteria, as indicated in the Further Competition document, to the Framework Consultants' compliant tenders submitted through the Further Competition as the basis of its decision to award a Call-Off Contract for its requirements; and

7.3.6 place an Order (in accordance with Clause 7.7) with the successful Services Framework Consultant which:

(a) states the Client’s Service requirements;

(b) identifies the Services for which the award is made;

(c) states the price payable in accordance with the tender submitted by the successful Services Framework Consultant; and

(d) incorporates the Call-Off Terms and Conditions applicable to the provision of the Services

7.4 The Consultant agrees that all tenders submitted by the Consultant in relation to a Further Competition held pursuant to this Clause 7 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued by the relevant Client Organisation in accordance with the Ordering Procedure).

7.5 Notwithstanding the fact that the Client Organisation has followed the procedure set out above in this Clause 7, the Client Organisation shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige any Client Organisation to place any Order.

**Responsibility for Awards**

7.6 The Consultant acknowledges that each Client Organisation is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Contracting Authority is not responsible or accountable for and shall have no liability whatsoever in relation to: -

7.6.1 the conduct of Other Client Organisations in relation to the Framework Agreement; or

7.6.2 the performance or non-performance of any Call-Off Contracts between the Consultant and Other Client Organisations entered into pursuant to the Framework Agreement.

**Form of Order**

7.7 Subject to Clauses 7.1 to 7.6 above, each Client Organisation may place an Order with the Consultant by serving an Order in writing as the form set out in Schedule 4 (Order Form) or such similar or analogous form agreed with the Consultant including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 7.7 shall not constitute an Order under this Framework Agreement.

**Accepting and Declining Orders**

7.8 Following receipt of an Order, the Consultant shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Client Organisation and notified to the Consultant in writing at the same time as the submission of the Order (which in any event shall not exceed five (5) Working Days) acknowledge receipt of the Order and either:-

7.8.1 notify the relevant Client Organisation that it declines to accept the Order; or

7.8.2 notify the relevant Client Organisation that it accepts the Order by signing and returning the Order Form.

7.9 If the Consultant:

7.9.1 notifies the Client Organisation that it declines to accept an Order; or

7.9.2 the time-limit referred to in Clause 7.8 has expired; then the offer from the Client Organisation to the Consultant shall lapse and the relevant Client Organisation may offer that Order to the Services Framework Consultant that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria.

7.10 The Consultant in agreeing to accept such an Order pursuant to Clause 7.8 above shall enter a Call-Off Contract as set out in the Order with the relevant Client Organisation for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Client Organisation's receipt of the signed Order Form provided by the Consultant (or such similar or analogous form agreed with the Consultant) pursuant to Clause 7.8.2.

**PART TWO: CONSULTANT'S GENERAL FRAMEWORK OBLIGATIONS**

8. **WARRANTIES AND REPRESENTATIONS**

8.1 The Consultant warrants and represents to the Contracting Authority that:

8.1.1 it has full capacity and Contracting Authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;

8.1.2 this Framework Agreement is executed by a duly authorised representative of the Consultant;

8.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;

8.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender response (including statements made in relation to the categories referred to in Regulations 24, 25 and 26 of the Regulations) for the Services are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Contracting Authority prior to the execution of this Framework Agreement and it will promptly advise the Contracting Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

8.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;

8.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 8.1.5 above;

8.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Framework Agreement;

8.1.8 it has not committed any offence under the Bribery Act 2010;

8.1.9 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 any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Contracting Authority or Other Client Organisations;

8.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Contracting Authority or Other Client Organisations;

8.1.11 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 Consultant 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 Consultant's assets or revenue; and

8.1.12 in the three (3) years prior to the date of this Framework Agreement: -

(a) 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;

(b) it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and

(c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Consultant's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

* + 1. only process the Personal Data in accordance with the reasonable lawful written instructions of the Contracting Authority in compliance with all Data Protection Laws. In the event that the Consultant is under a legal obligation to Process the Personal Data other than under the instructions of the Contracting Authority, it shall inform the Contracting Authority prior to such processing, except to the extent prohibited by law;
		2. implement appropriate technical and organisational measures to:
			1. ensure a level of security appropriate to the risks that are presented by processing (in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data) and any other level of security set out in the Specification, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Personal Data, as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects; and
			2. insofar as it is possible, assist the Contracting Authority in the fulfilment of its obligations to respond to requests for the exercising by a Data Subject of its rights under the applicable Data Protection Laws;
		3. provide to the Contracting Authority, on request, a written description of the technical and organisational measures implemented pursuant to paragraph 8.1.14;
		4. in the case of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data arising from any act or omission of Consultant or any of its sub-Consultants (a “**Security Breach**”):
			1. notify the Contracting Authority without undue delay after having become aware of the Security Breach and
			2. provide the Contracting Authority, on request, with such information and co-operation as may reasonably be required in relation to such Security Breach,
			3. provided that such notification and co-operation is required under applicable Data Protection Laws.
		5. promptly notify the Contracting Authority in writing if it receives:
			1. any complaint, notice or communication from any supervisory or government body which relates directly to the processing of the Personal Data or to either party's compliance with applicable Data Protection Laws; and
			2. any request made by a Data Subject which relates to the Personal Data and is pursued in accordance with their rights under Data Protection Laws, which may include any Data Subject request to know whether their Personal Data is being processed, for access to their Personal Data or for rectification, deletion or erasure of their Personal Data;
		6. subject to paragraph 8.13, provide the Contracting Authority, on request, with such information and co-operation, as may reasonably be required in relation to any complaint, notice, communication or request which is notified to the Contracting Authority pursuant to paragraph 8.1.17; and
		7. subject to paragraph 8.2, provide to the Contracting Authority, on request, such other assistance as may reasonably be required by the Contracting Authority to comply with its own obligations under applicable Data Protection Laws in relation to their use of the Services.
		8. Consultant shall ensure that all of its employees:
			1. are informed of the confidential nature of the Personal Data;
			2. have undertaken training in the laws relating to handling Personal Data; and
			3. are aware both of the Consultant's duties and their personal duties and obligations under such laws and this Agreement
		9. provide reasonable assistance to the Contracting Authority in relation to its completion of a data protection impact assessment as required by applicable Data Protection Laws in so far as the completion of such data protection impact assessment relates to this amendment.

8.2 Any assistance provided by the Consultant to the Contracting Authority pursuant to paragraphs 8.1.18 and 8.1.19 shall be subject to payment of a separate fee, as agreed between the parties

8.3 The Consultant warrants and represents the statements in Clause 8.1 above to each of the Other Client Organisations.

9. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

9.1 The Consultant shall not (directly or indirectly) offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Authority or any other public body or person employed by or on behalf of the Contracting Authority or any other public body any gift or consideration or financial or other advantage of any kind which could act as an inducement or reward for:

9.1.1 doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the Contracting Authority or any other public body or person employed by or on behalf of the Contracting Authority or any other public body (including its award to the Consultant, execution or any rights and obligations contained in it); or

9.1.2 showing or refraining from showing favour or disfavour to any person in relation to any such contract; or

9.1.3 improperly performing a relevant function or activity. The attention of the Consultant is drawn to the criminal offences under the Bribery Act 2010.

9.2 The Consultant warrants that it has not paid commission or agreed to pay any commission to the Contracting Authority or any other public body or any person employed by or on behalf of the Contracting Authority or any other public body in connection with this Framework Agreement, any Call-Off Contract or any other contract with the Contracting Authority or any other public body or person employed by or on behalf of the Contracting Authority or any other public body.

9.3 In the event that the Consultant, its Staff or any person acting on the Consultant's behalf, whether or not acting with the Consultant’s knowledge, engages in conduct prohibited by Clauses 9.1 or 9.2 above or commits any offence:

(a) under the Bribery Act 2010;

(b) under legislation creating offences concerning fraudulent acts;

(c) under section 117(2) of the Local Government Act 1972;

(d) at common law concerning fraudulent acts relating to the Framework Agreement, any Call-Off Contract or any other contract with the Contracting Authority or any other public body or person employed by or on behalf of the Contracting Authority or any other public body; or

(e) defrauding, attempting to defraud or conspiring to defraud the Contracting Authority or any other public body or person employed by or on behalf of the Contracting Authority or any other public body, the Contracting Authority may without prejudice to any right or remedy which has already accrued or subsequently accrues to the it under the Framework Agreement:-

9.3.2 terminate the Framework Agreement with immediate effect by giving notice in writing to the Consultant and recover from the Consultant the amount of any loss suffered by the Contracting Authority resulting from the termination; or

9.3.3 recover in full from the Consultant and the Consultant shall indemnify the Contracting Authority in full from and against any other loss sustained by the Contracting Authority in consequence of any breach of this Clause, whether or not the Framework Agreement has been terminated.

9.4 The Consultant will upon request provide the Contracting Authority with all reasonable assistance to enable the Contracting Authority to perform any activity required for the purposes of complying with the Bribery Act 2010, as may be required of the Contracting Authority by any relevant government or agency in any relevant jurisdiction. Should the Contracting Authority request such assistance the Contracting Authority shall pay the reasonable expenses of the Consultant arising as a result.

9.5 The Consultant will have in place an anti-bribery policy for the purpose of preventing any of its Staff from committing any act in contravention of the Bribery Act 2010. Such policy shall be disclosed to the Contracting Authority and enforced by the Consultant where appropriate.

9.6 Should the Consultant become aware of or suspect any breach of this Clause 9 it will notify the Contracting Authority immediately. Following notification, the Consultant will respond promptly and fully to the enquiries of the Contracting Authority, cooperate with any investigation undertaken by the Contracting Authority and allow the Contracting Authority to audit any books, records and other relevant documentation. The Consultant’s obligations under this Clause 9.5 shall survive the expiry or termination of the Framework Agreement for a further period of six (6) years.

10. **CONFLICTS OF INTEREST**

10.1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any Staff are placed in a position where (in the reasonable opinion of the Contracting Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or Staff or any other client of the Consultant and the duties owed by the Consultant to the Contracting Authority and Other Client Organisations under the provisions of this Framework Agreement or any Call-Off Contract.

10.2 The Consultant shall promptly notify and provide full particulars to the Contracting Authority or the relevant Other Client Organisation if such conflict as referred to in Clause 10.1 above arises or is reasonably foreseeable to arise.

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

11. **SAFEGUARD AGAINST FRAUD**

The Consultant shall take all reasonable steps, in accordance with Good Industry Practice, including all preliminary enquiries and investigations to safeguard the Contracting Authority and any Other Client Organisation against Fraud generally and, in particular, Fraud on the part of the Consultant, its Staff and sub-Consultants. The Consultant shall notify the Contracting Authority or the relevant Other Client Organisation immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

12. **CALL-OFF CONTRACT PERFORMANCE**

12.1 The Consultant shall perform all Call-Off Contracts entered into with the Contracting Authority or any Other Client Organisation in accordance with: -

12.1.1 the requirements of this Framework Agreement; and

12.1.2 the terms and conditions of the respective Call-Off Contracts.

12.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

13. **PRICES FOR SERVICES**

13.1 The prices offered by the Consultant for Call-Off Contracts to Client Organisations for Services shall be the prices listed in the Pricing Matrix for the relevant Services and such prices shall be adjusted annually in accordance with the provisions of Clauses 13.3 to 13.7

13.2 The prices offered by the Consultant for Call-Off Contracts to Client Organisations for Services following a Further Competition shall be based on the prices set out in the Pricing Schedules and tendered in accordance with the requirements of the Further Competition held pursuant to Clause 7 (Award Procedures).

13.3 Consultants are able to request price increases on an annual basis. Submitted price increases must be based on the average CPI for the 12 month prior to the submission of request for the price increase.

13.4 It is the responsibility of the Consultant to request a price increase. The request is to be submitted to the Contract Managers no earlier than 60 days and no later than 30 days before each anniversary date of the framework.

13.5 If a Consultant misses an opportunity to request a price increase, then they can’t claim that annual increase in any future price increase requests.

13.6 The Contract Managers will review and either approve of reject, in writing, any price increases submitted by a Consultant, no later than 14 days before the anniversary date of the framework.

13.7 Any approved price increases will take effect from the anniversary date of the framework

14. **STATUTORY REQUIREMENTS**

The Consultant shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

15. **NON-DISCRIMINATION**

15.1 The Consultant shall not unlawfully discriminate either directly or indirectly within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, colour, ethnic or national origin, gender, religion or belief, disability, sexual orientation, age or otherwise) and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or any other relevant legislation, or any statutory modification or re-enactment thereof.

15.2 The Consultant shall take all reasonable steps to secure the observance of Clause 15.1 by all Staff, servants, employees or agents of the Consultant and all suppliers and sub-Consultants employed in the execution of the Framework Agreement and shall comply with any Contracting Authority policy on the matters set out in Clause 15.1 as reasonably directed by the Contracting Authority.

15.3 **Human Rights**

15.3.1 The Consultant shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

15.3.2 The Consultant shall not do or permit or allow anything to be done which may result in the Contracting Authority acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

15.3.3 The Consultant shall indemnify the Contracting Authority against any loss claims and expenditure resulting from the Consultant’s breach of this Clause 15.3.

**PART THREE: CONSULTANT'S INFORMATION OBLIGATIONS**

16. **PROVISION OF MANAGEMENT INFORMATION**

16.1 This Clause 16 (and Schedule 6) only applies if there is a requirement to submit management information in the Specification.

16.2 The Consultant shall submit Management Information to the Framework Manager in the form set out in Schedule 6 (Management Information Requirements) throughout the Term on the last day of every Month in respect of any Call-Off Contract entered into with any Client Organisation.

16.3 The Framework Manager may share the Management Information supplied by the Consultant with any Client Organisation.

16.4 The Framework Manager may make changes to the Management Information which the Consultant is required to supply and shall give the Consultant at least one (1) month's written notice of any changes.

16.5 The Consultant shall pay the Framework Rebate and the Framework Insertion Fee to the Framework Manager at such intervals and on such basis as are set out within Schedule 9.

16.6 The Framework Manager shall submit a VAT invoice to the Consultant in accordance with the payment intervals set out within Schedule 9 in respect of the Framework Rebate and the Framework Insertion Fee payable pursuant to Clause 16.5.

16.7 The Consultant accepts that in the event of a breach of its obligations in respect of the provision of Management Information (such that it prevents the Framework Manager from ascertaining the proper amount of the Framework Rebate) or a breach of its obligations to pay the Framework Rebate or the Framework Insertion Fee it shall not be entitled to receive any further payments under the Framework Agreement or in respect of any Orders until such breach has been remedied to the Framework Manager's satisfaction.

16.8 The Consultant acknowledges that the Framework Manager and/or the Contracting Authority shall be entitled to enforce the Consultant's obligations under this Clause 16.

16.9 In the event that any instalment of the Framework Rebate or the Framework Insertion Fee becomes overdue the Consultant shall in addition be liable to pay interest on the overdue amount at the rate of 3% above the Bank of England's base rate applicable during the period when such payment is overdue.

17. **RECORDS AND AUDIT ACCESS**

17.1 The Consultant shall (and shall procure that its sub-Consultants shall) keep and maintain until six (6) years after the date of termination or expiry of the Term (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Call-Off Contracts entered into with Client Organisations and the amounts paid by each Client Organisation.

17.2 The Consultant shall (and shall procure that its sub-Consultants shall) keep the records and accounts referred to in Clause 17.1 above in accordance with good accountancy practice.

17.3 The Consultant shall (and shall procure that its sub-Consultants shall) afford the Contracting Authority (or relevant Client Organisation) and/or the Auditor such access to such records and accounts as may be required from time to time.

17.4 The Consultant shall (and shall procure that its sub-Consultants shall) provide such records and accounts (together with copies of the Consultant's published accounts) during the Term and for a period of six (6) years after expiry of the Term to the Contracting Authority (or relevant Client Organisation) and the Auditor.

17.5 The Contracting Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Consultant or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Consultant accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Contracting Authority.

17.6 Subject to the Contracting Authority's rights of confidentiality, the Consultant shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including: -

17.6.1 all information requested by the Auditor within the scope of the Audit;

17.6.2 reasonable access to sites controlled by the Consultant and to equipment used in the provision of the Services; and

17.6.3 access to the Staff.

17.7 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 Consultant in which case the Consultant shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the Audit.

18. **CONFIDENTIALITY**

18.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

18.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

18.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

18.2 Clause 18.1 shall not apply to the extent that:

18.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 21.5 (Freedom of Information);

18.2.2 such information was in the possession of the receiving Party, without obligation of confidentiality, prior to its disclosure by the disclosing Party;

18.2.3 such information was obtained from a third party without obligation of confidentiality;

18.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or

18.2.5 it is independently developed without access to the other Party's Confidential Information.

18.2.6 where the receiving Party is the Contracting Authority and the Confidential Information is or is related to an item of business at a meeting of the Contracting Authority or of any committee, sub-committee or joint committee of the Contracting Authority or is related to an executive decision and it is not reasonably practicable for that item of business to be transacted or for that executive decision to be 28 made without reference to the Confidential Information PROVIDED THAT where the Confidential Information is exempt information within the meaning of section 101 of the Local Government Act 1972 (as amended) the Contracting Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in so doing shall give due weight to the interests of the Consultant and where reasonably practicable shall consider any representations made by the Consultant.

18.3 The Consultant may only disclose the Contracting Authority’s Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

18.4 The Consultant shall not, and shall procure that its Staff do not, use any of the Client Organisations’ Confidential Information received otherwise than for the purposes of this Framework Agreement.

18.5 At the written request of the Contracting Authority, the Consultant shall procure that those members of the Staff identified in the Contracting Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Framework Agreement.

18.6 Nothing in this Agreement shall prevent the Contracting Authority from disclosing the Consultant's Confidential Information:

18.6.1 to any department, office or agency of the Contracting Authority or any government department, regulatory Contracting Authority or body (“Crown Bodies”) 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;

18.6.2 to any Consultant, Consultant or other person engaged by the Contracting Authority conducting a gateway review on the Authorities behalf;

18.6.3 for the purpose of the examination and certification of the Contracting Authority's accounts;

18.6.4 for any examination pursuant to Local Government Act 1999 or Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.

18.7 The Contracting Authority shall use all reasonable endeavours to ensure that any Crown Bodies, Contracting Authority, employee, third party or sub-Consultant to whom the Consultant's Confidential Information is disclosed pursuant to Clause 18.2 is made aware of the Contracting Authority’s obligations of confidentiality.

18.8 Nothing in this Clause 18 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.

18.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Framework Agreement or the Call-Off Contracts, the Consultant shall maintain adequate security arrangements in accordance with this Framework Agreement, any Call-Off Contracts, the Law and Good Industry Practice.

18.10 The Consultant shall notify the Contracting Authority promptly in writing of any breach of security (including any Breach of Security) in relation to Confidential Information and all data obtained in the performance of this Framework Agreement and the Call-Off Contracts and will keep a written record of such breaches, including the date, the data involved, other relevant circumstances, the action taken to address the issue and the results of such action. The Consultant shall use all reasonable endeavours to recover such Confidential Information and data. This obligation is in addition to the Consultant's obligations under this Clause 18 and the Call-Off Contracts. The Consultant shall cooperate with the Contracting Authority in any investigation that the Contracting Authority undertakes into any breach of security (including any Breach of Security) in relation to Confidential Information and/or data.

18.11 The Consultant shall, at its own expense, alter any security systems used in connection with the performance of this Framework Agreement or Call Off Contract at any time during the Term at the Contracting Authority's request if the Contracting Authority believes (acting reasonably) the Consultant has failed to comply with Clause 18.9.

19. **LEGISLATIVE CHANGE**

19.1 The Consultant shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are relevant to this Agreement and any amendments thereto except that where any such amendment necessitates a change to the performance of this Agreement and provided that such amendment could not have reasonably been foreseen by the Consultant at the date hereof the Parties shall enter good faith negotiations to make such adjustments to the charges as may be necessary to compensate the Consultant for such additional costs as are both reasonably and necessarily incurred by the Consultant in accommodating such amendments.

20. **GDPR**

20.1

20.2 The Consultant shall (and shall procure that all of its Staff and sub-Consultants) shall comply with any notification requirements under the GDPR and both Parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement.

20.3 Notwithstanding the general obligation in Clause 20.2, where the Consultant is Processing Personal Data as a Data Processor for the Contracting Authority the Consultant shall: -

20.3.1 process the Personal Data only in accordance with instructions from the Contracting Authority as set out in this Framework Agreement or as otherwise notified by the Contracting Authority;

20.3.2 comply with all applicable laws;

20.3.3 process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Consultant's obligations under the Framework Agreement;

20.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;

20.3.5 take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;

20.3.6 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Contracting Authority;

20.3.7 not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Contracting Authority or in compliance with a legal obligation imposed upon the Contracting Authority; and

20.3.8

20.3.9 notify the Contracting Authority within five (5) Working Days if it receives:

(a) a request from a Data Subject to have access to that person’s Personal Data; or

(b) a complaint or request relating to the Contracting Authority’s obligations under the GDPR.

20.4 The Consultant whether acting as a Data Processor or a Data Controller shall indemnify and keep indemnified the Contracting Authority in full from and against all claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of, the breach or purported breach of the GDPR or the performance or non-performance by the Consultant of its obligations under the Contract in relation to the GDPR, including loss of or damage to property, financial loss arising from any breach of the GDPR 2018, or any other loss which is caused directly or indirectly by any act or omission of the Consultant. The Consultant shall not be responsible for any loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Authority or by breach by the Contracting Authority of its obligations under this Framework Agreement.

20.5 Contracting Authority Data

20.5.1 The Consultant shall not delete or remove any proprietary notices contained within or relating to the Contracting Authority Data.

20.5.2 The Consultant shall not store, copy, disclose, or use the Contracting Authority Data except as necessary for the performance by the Consultant of its obligations under this Framework Agreement or as otherwise expressly authorised in writing by the Contracting Authority.

20.5.3 To the extent that Contracting Authority Data is held and/or processed by the Consultant, the Consultant shall supply that Contracting Authority Data to the Contracting Authority as requested by the Contracting Authority in the format specified in this Framework Agreement.

20.5.4 Upon receipt or creation by the Consultant of any Contracting Authority Data and during any collection, processing, storage and transmission by the Consultant of any Contracting Authority Data, the Consultant shall take all precautions necessary to preserve the integrity of the Contracting Authority Data and to prevent any corruption or loss of the Contracting Authority Data.

20.5.5 The Consultant shall perform secure back-ups of all Contracting Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Consultant shall ensure that such back-ups are available to the Contracting Authority at all times upon request.

20.5.6 The Consultant shall ensure that any system on which the Consultant holds any Contracting Authority Data, including back-up data, is a secure system that complies with the Specification.

20.5.7 If the Contracting Authority Data is corrupted, lost or sufficiently degraded as a result of the Consultant’s Default so as to be unusable, the Contracting Authority may: (a) require the Consultant (at the Consultant’s expense) to restore or procure the restoration of the Contracting Authority Data and the Consultant shall do so as soon as practicable and within such period as the Contracting Authority requires; and/or (b) itself restore or procure the restoration of the Contracting Authority Data. The Consultant shall reimburse the Contracting Authority for any reasonable expenses incurred in doing so.

20.5.8 If at any time the Consultant suspects or has reason to believe that Contracting Authority Data has or may become corrupted, lost or degraded in any way for any reason, then the Consultant shall notify the Contracting Authority immediately and inform the Contracting Authority of the remedial action the Consultant proposes to take.

* 1. The provisions of this Clause shall apply during the Term and indefinitely after its expiry.
	2. Upon Completion of the Services, the Consultant shall observe faithfully all instructions regarding the treatment of the Personal Data; including destruction or return of such Personal Data as the Client Organisation may direct.
1. **PROCESSING PERSONAL DATA**
	1. The parties acknowledge that, for the purposes of this amendment, the Client Organisation shall be the Data Controller and Consultant shall be the Data Processor in relation to the Personal Data.
	2. Each party warrants that it shall:
		1. maintain such records in relation to the processing of the Personal Data as may be required under applicable Data Protection Laws, and, on request, make those records available to any supervisory authority or government authority within 5 working days;
		2. provide such information as may reasonably be required by the other party to comply with its obligations under paragraph 21.2.1; and
		3. on request, co-operate with any supervisory authority or government authority in relation to the processing of Personal Data pursuant to this Agreement.
2. **CONSULTANT WARRANTIES**
	1. Consultant warrants that it shall:
		1. only process the Personal Data in accordance with the reasonable lawful written instructions of the Client Organisation in compliance with all Data Protection Laws. In the event that the Consultant is under a legal obligation to Process the Personal Data other than under the instructions of the Client Organisation, it shall inform the Client Organisation prior to such processing, except to the extent prohibited by law;
		2. implement appropriate technical and organisational measures to:
3. ensure a level of security appropriate to the risks that are presented by processing (in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data) and any other level of security set out in the Specification, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Personal Data, as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects; and
4. insofar as it is possible, assist the Client Organisation in the fulfilment of its obligations to respond to requests for the exercising by a Data Subject of its rights under the applicable Data Protection Laws;
	* 1. provide to the Client Organisation, on request, a written description of the technical and organisational measures implemented pursuant to paragraph 22.1.2;
		2. in the case of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data arising from any act or omission of Consultant or any of its sub-Consultants (a “**Security Breach**”):
5. notify the Client Organisation without undue delay after having become aware of the Security Breach and
6. provide the Client Organisation, on request, with such information and co-operation as may reasonably be required in relation to such Security Breach,
7. provided that such notification and co-operation is required under applicable Data Protection Laws.
	* 1. promptly notify the Client Organisation in writing if it receives:
8. any complaint, notice or communication from any supervisory or government body which relates directly to the processing of the Personal Data or to either party's compliance with applicable Data Protection Laws; and
9. any request made by a Data Subject which relates to the Personal Data and is pursued in accordance with their rights under Data Protection Laws, which may include any Data Subject request to know whether their Personal Data is being processed, for access to their Personal Data or for rectification, deletion or erasure of their Personal Data;
	* 1. subject to paragraph 22.2, provide the Client Organisation, on request, with such information and co-operation, as may reasonably be required in relation to any complaint, notice, communication or request which is notified to the Client Organisation pursuant to paragraph 22.1.5; and
		2. subject to paragraph 22.2, provide to the Client Organisation, on request, such other assistance as may reasonably be required by the Client Organisation to comply with its own obligations under applicable Data Protection Laws in relation to their use of the Services.
		3. Consultant shall ensure that all of its employees:
10. are informed of the confidential nature of the Personal Data;
11. have undertaken training in the laws relating to handling Personal Data;

and

1. are aware both of the Consultant's duties and their personal duties and obligations under such laws and this Agreement
	* 1. provide reasonable assistance to the Client Organisation in relation to its completion of a data protection impact assessment as required by applicable Data Protection Laws in so far as the completion of such data protection impact assessment relates to this amendment.
	1. Any assistance provided by the Consultant to the Client Organisation pursuant to paragraphs 22.1.6 and 22.1.7 shall be subject to payment of a separate fee, as agreed between the parties
2. **USE OF SUB-CONTRACTORS**
	1. The Consultant may subcontract its processing of the Personal Data, provided that the Consultant shall make available to the Client Organisation on request, a current list of those sub-contractors which are used by the Consultant in its performance of its obligations under this amendment, and the purposes for which they are used.
	2. The Client Organisation is deemed to have approved the use of those sub-contractors set out in Schedule 10 (“**Approved Sub-Contractors**”). The rights afforded to the Client Organisation in paragraph 23.3 shall not apply in relation to Approved Sub-Contractors.
	3. The:
3. Contractor shall notify the Client Organisation of its intention to appoint or use a new sub-contractor (which is not an Approved Sub-Contractor), or to use an Approved Sub-Contractor for a materially different purpose, prior to transferring, or continuing to transfer, any Personal Data to such sub-contractor;
4. If the Client Organisation has a reasonable basis to object to the Consultant’s use of such sub-contractor, and such objection directly relates to the Client Organisation's obligations under Data Protection Laws, the Client Organisation shall notify the Consultant promptly in writing within 10 working days after receipt of the Consultant’s notice;
5. If the Client Organisation makes an objection in accordance with the requirements of paragraph 23.3.2, the Consultant will use reasonable efforts to make available to the Client Organisation an alternative solution or arrangement to avoid the processing of Personal Data by the relevant sub-contractor
6. If the Consultant is unable to make available an alternative solution or arrangement within a reasonable period of time (which shall not exceed 60 days) or the Client Organisation is unwilling to pay any proposed charge by the Consultant to cover the costs of implementing and operating the alternative solution or arrangement, the Client Organisation may, by written notice to the Consultant:
7. discontinue its use of that part of the Service which is impacted by the Client Organisation's objection; or
8. terminate the Schedule 4 Order Form incorporating Schedule 5 Call-Off Terms and Conditions.
9. and in either case the Client Organisation shall be entitled to receive a pro rata refund of any prepaid fees for the period following the effective date of the relevant part of the Service being discontinued or termination (as applicable).
	1. The Consultant shall procure that any sub-contractors engaged pursuant to this paragraph 23 shall enter a written contract with the Consultant which contains obligations for the protection of the Personal Data which are no less onerous than those set out in this amendment, and the Consultant shall be fully liable to the Client Organisation to the extent that any sub-contractor (including but not limited to an Approved-Sub-Contractor) fails to fulfil its data protection obligations under such written contract.
	2. TRANSFERS OF PERSONAL DATA OUTSIDE THE EEA
		1. For any part of the Client Organisation’s operations falling within the scope of (until and including 24 May 2018) European Union Data Protection Directive 95/46/EC (or any implementing national laws) or (from and including 25 May 2018) the European Union Regulation (EU) 2016/679, the Consultant shall only transfer Personal Data to countries outside the European Economic Area, if it has provided appropriate safeguards, as required by such Directive or Regulation (as applicable).
10. **RIGHTS OF AUDIT**
	1. At the Client Organisation's reasonable request and subject to the Client Organisation entering into adequate confidentiality agreements (as required by the Consultant), the Consultant shall:
		1. make available to the Client Organisation such information as may reasonably be necessary to demonstrate compliance with its obligations under this Agreement, including copies of any audit reports demonstrating compliance with paragraph 24.1.2; and
		2. subject to the restrictions in paragraph 24.2 below, allow the Client Organisation (or an independent, third-party professional auditor engaged by it) to conduct an audit, including inspection and penetration testing, of the Consultant’s processing of Personal Data pursuant to this Agreement
	2. When exercising its rights under paragraph 24.1.2 above, the Client Organisation shall:
		1. promptly provide the Consultant with information regarding any non- compliance discovered during the course of an audit;
		2. conduct such audits during reasonable times and for a reasonable duration, which shall not unreasonably interfere with the Consultant’s day-to-day operations; and
		3. if an audit requires the equivalent of more than one business day of time expended by one or more of the Consultant’s employees (or other personnel), the Client Organisation agrees to reimburse Consultant for any additional time expended at Consultant’s then current professional services rates.
	3. In relation to any sub-contractors that are engaged pursuant to paragraph 23, the Client Organisation acknowledges and agrees that it is sufficient, for the purposes of satisfying the requirements of paragraph 23.4, that Consultant has a right to audit those sub-contractors on behalf of the Client Organisation, subject to reasonable restrictions.

**25. FREEDOM OF INFORMATION**

25.1 The Consultant acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contracting Authority to enable the Contracting Authority to comply with its Information disclosure obligations.

25.2 The Consultant shall and shall procure that its sub-Consultants shall:

25.2.1 transfer to the Contracting Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

25.2.2 provide the Contracting Authority with a copy of all Information in its possession, or power in the form that the Contracting Authority requires within five (5) Working Days (or such other period as the Contracting Authority may specify) of the Contracting Authority’s request; and

25.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting 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.

25.3 The Contracting Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this 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 FOIA or the Environmental Information Regulations.

25.4 In no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Contracting Authority.

25.5 The Consultant acknowledges that (notwithstanding the provisions of Clause 25.2) the Contracting Authority may, acting in accordance with the Secretary of State for 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 Consultant or the Services:

25.5.1 in certain circumstances without consulting the Consultant; or

25.5.2 following consultation with the Consultant and having taken their views into account; provided always that where 25.2 applies the Contracting Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Consultant advanced notice, or failing that, to draw the disclosure to the Consultant’s attention after any such disclosure.

26**. PUBLICITY**

26.1 The Consultant shall not (and shall procure that its Staff, suppliers, sub-Consultants and professional advisers shall not) communicate with representatives of the press, television, radio or other communications media on any matter concerning this Framework Agreement in any way without the Contracting Authority's prior written consent.

26.2 The Consultant shall not (and shall procure that its Staff, suppliers, sub-Consultants and professional advisers shall not) use any crest, logo, livery or trademark of the Contracting Authority without the prior written approval of the Contracting Authority (which may be withheld or given subject to conditions at its absolute discretion).

26.3 The Contracting Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Contracting Authority, including any examination of this Framework Agreement by the Auditor.

26.4 The Consultant shall not do anything which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

**PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**

27. **TERMINATION**

**Termination on Default**

27.1 The Contracting Authority may terminate the Framework Agreement by serving written notice on the Consultant with effect from the date specified in such notice: -

27.1.1 where the Consultant commits a Material Default and: -

(a) the Consultant has not remedied the Material Default to the satisfaction of the Contracting Authority within twenty (20) Working Days, or such other period as may be specified by the Contracting Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

(b) the Material Default is not, in the reasonable opinion of the Contracting Authority, capable of remedy; or

27.1.2 where any Client Organisation terminates a Call-Off Contract awarded to the Consultant under this Framework Agreement as a consequence of default by the Consultant. Termination on Financial Standing

27.2 The Contracting Authority may terminate the Framework Agreement by serving notice on the Consultant in writing with effect from the date specified in such notice where (in the reasonable opinion of the Contracting Authority), there is a material detrimental change in the financial standing and/or the credit rating of the Consultant which adversely impacts on the Consultant's ability to supply Services under this Framework Agreement. Termination on Insolvency and Change of Control

27.3 The Contracting Authority may terminate this Framework Agreement with immediate effect by notice in writing where the Consultant is a company and in respect of the Consultant: -

27.3.1 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

27.3.2 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

27.3.3 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

27.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

27.3.5 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

27.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

27.3.7 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

27.3.8 any event similar to those listed in Clause 27.1.1 to Clause 27.3.7 (inclusive) occurs under the law of any other jurisdiction.

27.4 The Contracting Authority may terminate this Framework Agreement with immediate effect by notice in writing where the Consultant, being an individual, or where the Consultant is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 450 of the Corporation Tax Act 2010, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction. Termination on Breach of Public Contracts Regulations 2015.

27.5 The Contracting Authority may terminate this Framework Agreement with immediate effect by notice in writing where the Consultant, being a company or an individual, or where the Consultant is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 450 of the Corporation Tax Act 2010, shall at any time be convicted of any of the offences set out in Regulation 57 (3-5) of the Public Contracts Regulations 2015.

27.6 The Consultant shall notify the Contracting Authority immediately if the Consultant undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("Change of Control"). The Contracting Authority may terminate the Framework Agreement by giving notice in writing to the Consultant with immediate effect within six (6) Months of: -

27.6.1 being notified that a Change of Control has occurred; or

27.6.2 where no notification has been made, the date that the Contracting Authority becomes aware of the Change of Control but shall not be permitted to terminate where approval of the Contracting Authority was granted to the Consultant prior to the Change of Control. Termination by the Contracting Authority

27.7 The Contracting Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three (3) Months' written notice to the Consultant and all other Services Framework Consultants. The Parties acknowledge that if the Contracting Authority exercises its rights under this Clause 24.5, it shall exercise its equivalent rights under all agreements with the Services Framework Consultants.

27.8 The Consultant shall observe faithfully all instructions regarding the treatment of the Personal Data; including destruction or return of such Personal Data as the Contracting Authority may direct.

28. **SUSPENSION OF CONSULTANT'S APPOINTMENT**

Without prejudice to the Contracting Authority's rights to terminate the Framework Agreement in Clause 27 (Termination) above, if a right to terminate this Framework Agreement arises in accordance with Clause 27 (Termination), the Contracting Authority may suspend the Consultant's appointment to supply any or all of the Services to Client Organisations by giving notice in writing to the Consultant. If the Contracting Authority provides notice to the Consultant in accordance with this Clause 28, the Consultant's appointment shall be suspended for the period set out in the notice or such other period notified to the Consultant by the Contracting Authority in writing from time to time. Upon receiving such a notice, the Consultant will take any action specified, within the timescales set out, at the Consultant’s own cost. Such notice may, but is not required to, include an action plan for remedy by the Consultant and/or measures for monitoring the future performance of the Consultant.

29. **CONSEQUENCES OF TERMINATION AND EXPIRY**

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

29.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

29.3 Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Consultant shall return to the Contracting Authority any data and Confidential Information belonging to the Contracting Authority in the Consultant's possession, power or control, either in its then current format or in a format nominated by the Contracting Authority (in which event the Contracting Authority will reimburse the Consultant's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Contracting Authority, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.

29.4 The Contracting Authority shall be entitled to require access to data or information arising from the provision of the Services from the Consultant until the latest of: -

29.4.1 the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or

29.4.2 the expiry of a period of six (6) Months following the date on which the Consultant ceases to provide Services under any Call-Off Contract.

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

29.6 The provisions of Clauses 8 (Warranties and Representations), 9 (Corrupt Gifts and Payments of Commission), 10 (Conflicts of Interest), 11 (Safeguard against Fraud), 17 (Records and Audit Access), 18 (Confidentiality), 20 (Data Protection), 22 (Freedom of Information), 27 (Liability), 28 (Insurance) and 39 (Law and Jurisdiction) shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

**PART FIVE: INSURANCE AND LIABILITY**

30. **LIABILITY**

30.1 Neither Party excludes or limits its liability for: -

30.1.1 death or personal injury or damage to property caused by its negligence, or that of its Staff;

30.1.2 fraud or fraudulent misrepresentation by it or its Staff; or

30.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

30.2 Subject to Clause 30.1 each Party's total aggregate liability in connection with this Framework Agreement in any twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall not exceed the lesser of Two Million Pounds (£2,000,000) or 200% of total amount invoiced by the Consultant in any twelve (12) month period during the Term for services delivered under all Call Off Contracts placed in accordance with the terms of this Framework Agreement.

30.3 Subject to Clause 30.1 the Consultant shall indemnify and keep indemnified the Contracting Authority in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with 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 Consultant, or any other loss which is caused directly or indirectly by any act or omission of the Consultant or the presence of the Consultant or any Staff on a Client Organisation’s property. This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff, or by any circumstances within its or their control.

30.4 The Contracting Authority may, among other things, recover as a direct loss:

30.4.1 any additional operational and/or administrative expenses arising from the Consultant's Default;

30.4.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Authority arising from the Consultant's Default; and

30.4.3 the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Consultant.

30.5 Nothing in the Contract shall impose any liability on the Contracting Authority in respect of any liability incurred by the Consultant to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Authority to the Consultant that may arise by virtue of either a breach of the Contract or by negligence on the part of the Contracting Authority, or the Contracting Authority's employees, servants or agents.

30.6 For the avoidance of doubt, the Parties acknowledge and agree, this Clause 30 shall not limit either Party's liability under any Call Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

31. **INSURANCE**

31.1 The Consultant shall affect and maintain with a reputable insurance company, policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Consultant under this Framework Agreement including death or personal injury, or loss of or damage to property.

31.2 The Consultant shall affect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement:

31.2.1 public liability insurance with a minimum limit of indemnity of five million pounds (£5,000,000) to cover all risks in the performance of this Framework Agreement from time to time;

31.2.2 employer's liability insurance with a minimum limit of indemnity as required by law from time to time; and

31.2.3 professional indemnity insurance with a minimum limit of indemnity of five hundred thousand pounds (£500,000) in the annual aggregate or such higher limit as a Client Organisation may reasonably require (and as required by law) from time to time.

31.3 Any excess or deductibles under such insurance (referred to in Clause 31.1 and Clause 31.2) shall be the sole and exclusive responsibility of the Consultant.

31.4 The terms of any insurance or the amount of cover shall not relieve the Consultant of any liabilities arising under the Framework Agreement.

31.5 The Consultant shall produce to the Contracting Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

31.6 If, for whatever reason, the Consultant fails to give effect to and maintain the insurances required by the Framework Agreement then the Contracting Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Consultant.

31.7 The Consultant shall maintain the insurances referred to in Clause 31.1 and Clause 31.2 for a minimum of six (6) years following the expiration or earlier termination of the Framework Agreement.

31.8 The Consultant shall procure that Sub-Consultants shall affect and maintain insurances in relation to the performance of their obligations under any Sub-Contract.

**PART SIX: OTHER PROVISIONS**

32. **TRANSFER AND SUB-CONTRACTING**

32.1 The Framework Agreement is personal to the Consultant and the Consultant shall not assign, novate, sub-contract or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Contracting Authority.

32.2 Notwithstanding any sub-contracting permitted hereunder, the Consultant shall remain primarily responsible for the acts and omissions of its sub- Consultants as though they were its own.

32.3 The Contracting Authority shall be entitled to:-

32.3.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Other Client Organisation; or

32.3.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Contracting Authority provided that where such assignment, novation or disposals increases the burden of the Consultant's obligations under the Framework Agreement, the Consultant shall be entitled to such additional charges as may be reasonably agreed by the Parties for such additional burden.

32.4 Any change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 29.5, affect the validity of this Framework Agreement. In such circumstances, the Framework Agreement shall be binding on any successor body to the Contracting Authority.

32.5 If this 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 Contracting Authority pursuant to Clause 32.4 (in the remainder of this Clause both such bodies are referred to as the ‘Transferee’):

32.5.1 the rights of termination of the Contracting Authority in Clauses 27.3 and 27.4 shall be available, mutatis mutandis, to the Consultant in the event of the bankruptcy, insolvency or Default of the Transferee;

32.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Contracting Authority;

32.5.3 the rights of the Contracting Authority under Clause 29 (Consequences of Termination and Expiry) shall cease; and

32.5.4 the Contracting Authority shall be entitled to disclose to any Transferee any Confidential Information of the Consultant which relates to the performance of this Agreement by the Consultant. In such circumstances the Contracting Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of this Framework Agreement and for no other purposes and, for the avoidance of doubt, the Transferee shall be bound by the confidentiality undertaking contained herein in relation to such Confidential Information.

33. **VARIATIONS TO THE FRAMEWORK AGREEMENT**

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 8 (Framework Agreement Variation Procedure).

34. **RIGHTS OF THIRD PARTIES**

Save as provided in Clauses 4 (Scope of the Framework Agreement), 7 (Award Procedure) and 8.2 (Warranties and Representations) and the rights specified in the Framework Agreement for the benefit of Client Organisations, a person who is not party to this Framework Agreement ("Third Party") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.

35. **SEVERABILITY**

35.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed, and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.

35.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Contracting Authority and the Consultant shall immediately commence good faith negotiations to remedy such invalidity.

36. **CUMULATIVE REMEDIES**

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 39 (Notices).

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

38. **ENTIRE AGREEMENT**

38.1 This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

38.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

38.3 Nothing in this Clause 38 shall operate to exclude Fraud or fraudulent misrepresentation.

39. **NOTICES**

39.1 Except as otherwise expressly provided within this 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 sending the communication.

39.2 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, recorded delivery service, facsimile transmission or electronic mail). Such letters shall be addressed to the other Party in the manner referred to in Clause

39.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (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. For the purposes of Clause 39.2, the address of each Party shall be:

39.3.1 For the Contracting Authority: -

For the attention of: Mrs Jennifer Jewitt

Role: Director of Finance and Capital

Address: The Education Alliance, Melton, North Ferriby. HU14 3HS

Tel: 01482 631208

Email: jennifer.jewitt@theeducationalliance.org.uk

39.3.2 For the Consultant: -

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

Role: [\*\*\*]

Address: [\*\*\*]

Tel: [\*\*\*]

Email: [\*\*\*]

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

40. **COMPLAINTS HANDLING AND RESOLUTION**

40.1 The Consultant shall notify the Contracting Authority of any Complaint made by Other Client Organisations within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Consultant's plans to resolve such Complaint.

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

40.3 Within two (2) Working Days of a request by the Contracting Authority, the Consultant shall provide full details of a Complaint to the Contracting Authority, including details of steps taken to its resolution.

41. **DISPUTE RESOLUTION**

41.1 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 twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the relevant chief officers by those persons identified in Clause 39 (Notices) above.

41.2 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.

41.3 If the dispute cannot be resolved by the Parties pursuant to Clause 41.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 41.5 unless: 41.3.1 the Contracting Authority considers that the dispute is not suitable for resolution by mediation; or 41.3.2 the Consultant does not agree to mediation.

41.4 The obligations of the Parties under the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Consultant and its employees, personnel and associates shall comply fully with the requirements of the Framework Agreement at all times.

41.5 The procedure for mediation and consequential provisions relating to mediation are as follows: -

41.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution to appoint a Mediator;

41.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Dispute Resolution to provide guidance on a suitable procedure;

41.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

41.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

41.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and

41.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

42. **LAW AND JURISDICTION**

Subject to the provisions of Clause 40 (Complaints Handling and Resolution) and Clause 41 (Dispute Resolution), the Contracting Authority and the Consultant accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English Law.

43. **AGENCY**

The Consultant is not and shall not in any circumstances hold itself out as being the servant or agent of the Contracting Authority. The Consultant shall not hold itself out as being authorised to enter in any contract on behalf of the Contracting Authority or in any way bind the Contracting Authority to the performance, variation, release or discharge of any obligation to a third party. The Consultant’s Staff shall not hold themselves out to be and shall not be held out by the Consultant as being servants or agents of the Contracting Authority.

44. **NO FETTER OF STATUTORY FUNCTIONS**

44.1 Save as otherwise expressly provided, the obligations of the Contracting Authority under this Framework Agreement are obligations of the Contracting Authority in its capacity as a contracting counterparty and nothing in this Framework Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Contracting Authority in any other capacity (including, without limitation, as planning, highway or social Services Contracting Authority), nor shall the exercise by the Contracting Authority of its duties and powers in any other capacity lead to any liability under this Framework Agreement (howsoever arising) on the part of the Contracting Authority to the Consultant.

44.2 Any consent given by the Contracting Authority in any statutory capacity shall not be deemed to be a consent or waiver under the terms of this Framework Agreement;

45. **PERSONNEL POLICIES AND PROCEDURES**

The Consultant shall and shall procure that there are set up and maintained by it and by all sub-Consultants involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including recruitment, discipline, grievance, equal opportunities and health and safety). The Consultant shall and shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Contracting Authority.

46. **SCRUTINY BOARD/EXECUTIVE BOARD ASSISTANCE**

46.1 It is a condition of this Framework Agreement that if required by the Contracting Authority to do so the Consultant shall throughout the Term and for a period of six (6) years after expiry of this Framework Agreement give all reasonable assistance to the Contracting Authority including attending the Contracting Authority’s Scrutiny and/or Executive Board in order to answer questions pertaining to this Framework Agreement should the need arise.

46.2 In the event that the Contracting Authority requires the Consultant’s assistance after the expiry of this Framework Agreement as referred to in Clause 46.1 the Contracting Authority shall pay the reasonable expenses of the Consultant arising as a result of providing such assistance.

**SIGNED** by or on behalf of the parties on the date which first appears in this Framework Agreement.

**SIGNED** on behalf of **The Education Alliance** by:

Signature:

Name:

Job Title:

**SIGNED** on behalf of **Added Value Portal t/a Pagabo** by:

Signature:

Name:

Job Title:

**SIGNED** by [*Consultant Organisation*]

Signature:

Name: (Director)

in the presence of:

Signature:

Name:

Address:

Occupation:

**SCHEDULE 1**

**FRAMEWORK SERVICES SPECIFICATION**



Which incorportaes Appendix 1 – Consultant Performance



**SCHEDULE 2**

**TENDER**

AS PER CONSULTANT ORGANISATION’S ACCEPTED TENDER SUBMISSION, INCORPORATING ANY CLARIFICATIONS

**SCHEDULE 3**

**PRICING SCHEDULES**

As per Pricing Schedules submitted in Consultant Organisation’s Tender for the Services in relation to each of the lot(s) and region(s) that the Consultant Organisation has been appointed to AS INDICATED IN THE BELOW TABLE:

**SCHEDULE 4**

*Text highlighted in Pink is for guidance and should be removed when completing this form.*

*This typical call off form is drafted on the assumption of the use of NEC4 PSC (long or short form), in the event that another form of contract is used an appropriate call off form should be utilised which refers back to the “National Framework for Professional Services in Construction and Premises (Ref: AVP-TEA-2001) dated 12 April 2020”*

**CALL-OFF CONTRACT**

NEC4 PSC CALL OFF ORDER

This Call Off Order is dated…………………….20[xx]

Pagabo URN: [xxxx]

*This can be obtained by either the consultant or Client from Pagabo and should be inserted prior to execution and a copy of the executed agreement returned to Pagabo*

**Form of Agreement**

Between:

[INSERT CLIENT DETAILS] (the Client)

and

[Insert Consultant company name and address] (the Consultant)

In accordance with the provisions of the National Framework for Professional Services in Construction and Premises (Ref: AVP-TEA-2001) dated 12 April 2020 you are instructed to carry out the *services* as described in this Order.

The documents forming this order are:

* This Form of Agreement
* NEC4 Professional Services Contract
* The Contract Data Part One attached at Appendix A
* The Contract Data Part Two attached at Appendix B
* The Scope
* The Activity Schedule attached at Appendix C

In the event of conflicting or ambiguous provisions between these documents, the order of precedence will be as listed above.

Order Summary Table:

|  |  |  |  |
| --- | --- | --- | --- |
| Project Name |  | Contract Value |  |
| Contract Start Date |  | Lot Number(s) |  |
| Contract Duration |  | Service(s) to be Provided |  |

*[It is permissible to execute the agreement under hand, in which case delete the words in square brackets which allow for execution as a deed.]*

Signed [as a deed] on behalf of the CLIENT acting by way of Authorised Signatory [in the presence of an attesting witness].

Authorised Signatory Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signatory Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signatory Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Witness Signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Witness Name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Address of Witness] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

[Occupation of Witness] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed [as a deed] on behalf of the CONSULTANT acting by way of Authorised Signatory [in the presence of an attesting witness].

Authorised Signatory Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signatory Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signatory Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Witness Signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Witness Name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Address of Witness] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

[Occupation of Witness] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 5**

**FURTHER COMPETITION / CALL-OFF TERMS AND CONDITIONS**

**Client Organisations are permitted to use their own preferred terms and conditions of contract for further competitions and shall be referred to in Schedule 4 above.**

The Terms and Conditions that apply for Further Competitions and Call Offs.

* + 1. The Terms and Conditions that govern the framework agreement.
		2. The Terms and Conditions that apply for Further Competitions and Call Offs.

For the purpose of evaluation this Framework Agreement will be based on using NEC4 Professional Services (PSC) form of contracts Option A, C and E. Appointed Consultants will be encouraged to use these when conducting a Further Competition and Call Off’s with Client Organisations.

Where the NEC4 Contract Terms are used, the generic version used in this framework agreement is an unamended version and Client Organisations are able to apply their own ‘Z’, clauses and any other terms that are required specifically to their project.

The NEC4 Professional Services Contract terms form the default basis for call offs from the framework. The following NEC4 terms may be applied, namely the following options;

* + - * [**NEC4: Professional Services Contract Option A, C and E**](https://www.neccontract.com/NEC4-Products/NEC4-Contracts/NEC4-Professional-Services-Contract/NEC4-Professional-Service-Contract)

**SCHEDULE 6**

**MANAGEMENT INFORMATION REQUIREMENTS**

Total Monthly invoiced cost of all Services supplied to each Client Organisation (including the Contracting Authority) under the Framework (exc. VAT)

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Client / Month | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total |
| [Client 1] |  |  |  |  |  |  |  |  |  |  |  |  |  |
| [Client 2] |  |  |  |  |  |  |  |  |  |  |  |  |  |
| [Client 3] |  |  |  |  |  |  |  |  |  |  |  |  |  |
| [Client 4] |  |  |  |  |  |  |  |  |  |  |  |  |  |

**SCHEDULE 7**

**COMMERCIALLY SENSITIVE INFORMATION**

Personal Data (for the Contract Period and for six (6) years thereafter)

Schedule 3 (Pricing Schedules)

|  |  |  |
| --- | --- | --- |
| Information | Details | Dates |
| All Personal Data within the meaning of the General Data Protection Regulation 2018 | All | The duration of the Contract (and for six (6) years thereafter) |
| Details relating to any specific dwelling, tenant or service user of the Contracting Authority | All | The duration of the Contract |
| Contract Identification of employees of the Contracting Authority or Consultant who are transferred under TUPE or employed by either Party | All |  |
| Tender information supplied by the Consultant | save where it forms part of this Contract |  |
| Pricing Schedule | Not including total Contract value, amounts in each invoice or payments, all of which are published by the Contracting Authority |  |

**SCHEDULE 8**

**FRAMEWORK AGREEMENT VARIATION PROCEDURE**

1. **Introduction**

1.1 Schedule 8 details the scope of the variations permitted and the process to be followed where the Contracting Authority proposes a variation to the Framework Agreement.

1.2 The Contracting Authority may propose a variation to the Framework Agreement under Schedule 8 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. **Procedure for proposing a Variation**

2.1 Except where paragraph 5 applies, the Contracting Authority may propose a variation using the procedure contained in this paragraph 2.

2.2 In order to propose a variation, the Contracting Authority shall serve each Services Framework Consultant with written notice of the proposal to vary the Framework Agreement ("Notice of Variation").

2.3 The Notice of Variation shall: -

2.3.1 contain details of the proposed variation providing sufficient information to allow each Services Framework Consultant to assess the variation and consider whether any changes to the prices set out in its Pricing Schedules are necessary; and

2.3.2 require each Services Framework Consultant to notify the Contracting Authority within ten (10) Working Days of any proposed changes to the prices set out in its Pricing Schedules.

2.4 Upon receipt of the Notice of Variation, each Services Framework Consultant has ten (10) Working Days to respond in writing with any objections to the variation.

2.5 Where the Contracting Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Contracting Authority may then serve each Services Framework Consultant with a written agreement detailing the variation to be signed and returned by each Services Framework Consultant within five (5) Working Days of receipt.

2.6 Upon receipt of a signed agreement from each Services Framework Consultant, the Contracting Authority shall notify all Services Framework Consultants in writing of the commencement date of the variation.

3. **Objections to a Variation**

3.1 In the event that the Contracting Authority receives one or more written objections to a variation, the Contracting Authority may: -

3.1.1 withdraw the proposed variation; or

3.1.2 propose an amendment to the variation.

4. **Changes to the Pricing Schedules**

4.1 Where a Services Framework Consultant can demonstrate that a variation would result in a change to the prices set out in its Pricing Schedules, the Contracting Authority may require further evidence from the Services Framework Consultant that any additional costs to the Services Framework Consultant will be kept to a minimum.

4.2 The Contracting Authority may require the Services Framework Consultant to meet and discuss any proposed changes to the Pricing Schedules that would result from a variation.

4.3 Where a change to a Services Framework Consultant's Pricing Schedules is agreed by the Contracting Authority, the Contracting Authority shall notify its acceptance of the change to the Services Framework Consultant in writing.

4.4 In the event that the Contracting Authority and the Services Framework Consultant cannot agree to the changes to the Pricing Schedules, the Contracting Authority may: -

4.4.1 withdraw the variation; or

4.4.2 propose an amendment to the variation.

5. **Variations which are not permitted**

5.1 In addition to the provisions contained in paragraph 1.2, the Contracting Authority may not propose any variation which: -

5.1.1 may prevent one or more of the Services Framework Consultants from performing its obligations under the Framework Agreement; or

5.1.2 is in contravention of any law.

**SCHEDULE 9**

**FRAMEWORK REBATE**

The Framework Rebate shall be calculated of the of the total amount (net of VAT) invoiced by the Consultant to all Client Organisations (including the Contracting Authority) pursuant to the Framework Agreement and all Orders issued under or in connection with it.

The Framework Rebate shall be calculated at monthly intervals on the last working day of each monthly reference to the Management Information provided to the Framework Manager by the Consultant pursuant to Clause 16 of the Framework Agreement.

As soon as the Framework Manager is satisfied that the Management Information has been properly provided so as to allow him to ascertain the total amount (net of VAT) invoiced by the Consultant to all Client Organisations (including the Contracting Authority) pursuant to the Framework Agreement and all Orders issued under or in connection with it he shall raise and submit a VAT invoice for the Framework Rebate at the below rate, accompanied by a breakdown to show the basis of the calculation, and shall submit such invoice to the Consultant (with a copy provided to the Contracting Authority for information)

* **All Lots – 3%**

**FRAMEWORK INSERTION FEE**

The Framework Insertion Fee shall be calculated on the following basis according to which Lot or Lots have been awarded to the Consultant under the Framework Agreement:

* **Lot 1 - £35,000**
* **Lots 2 – 19 - £100 per region per lot**

The Lot 1 reserve Consultant Organisation will not have to pay the Framework Insertion Fee associated with Lot 1 during the life of the framework, but will have to pay the Framework Insertion Fee in relation to any of the regions that they are awarded to on Lots 2 to 19

On each anniversary of the Framework Agreement the Framework Manager shall raise a VAT invoice for the Framework Insertion Fee calculated on the basis of the above rates,accompanied by a breakdown to show the basis of the calculation, and shall submit such invoice to the Consultant (with a copy provided to the Contracting Authority for information).