

## **DOCUMENT 2 – FRAMEWORK AGREEMENT**

(1) **THE WELSH MINISTERS**

(2) **PROVIDER**

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**Framework Agreement For the  
Supply and Distribution of Fresh Food and Beverages  
(Including Frozen Meat)  
Contract Number NPS-Food-0068-16  
Applicable to All Awarded Lots and Geographical Zones**

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**THIS FRAMEWORK AGREEMENT is made the date of the Final Award Letter issued by the Client to the Successful Bidder**

BETWEEN –

- (1) WELSH MINISTERS of Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the “**Welsh Ministers**”); and
- (2) **Provider** as described in the final award letter issued by the Client

(Each of them a “**Party**” and together “**the Parties**”),

### **RECITALS**

WHEREAS:-

- (A) The Welsh Ministers placed a contract notice dated 12<sup>th</sup> May 2017 in the Official Journal of the European Union (“**the OJEU Notice**”) in respect of an Invitation to Tender (“**the ITT**”) for the provision of goods and/or services within the Lots as defined herein;
- (B) The Provider submitted a tender (“**the Tender**”) in response to the OJEU Notice and the ITT;
- (C) On the basis of the Provider’s Tender, the Provider was selected to enter a framework agreement to provide goods and/or services to the Participating Organisations in accordance with this Framework Agreement;
- (D) This Framework Agreement sets out the procedure for ordering goods and/or services, the main terms and conditions for the provision of the goods and/or services and the obligations of the Provider under this Framework Agreement.
- (E) It is the Parties’ intention that the Participating Organisations have no obligation to invite Providers to participate in a Call-Off Procedure under this Framework Agreement or at all.

### **FRAMEWORK AGREEMENT**

In consideration of the payment of the sum of £1.00 (one pound) by the Welsh Ministers to the Provider, receipt of which is hereby acknowledged by the Provider, **IT IS AGREED** as follows:-

**1. INTERPRETATION**

1.1 In this Framework Agreement the following definitions shall have the following meanings unless the context otherwise provides:

“Account Manager”	means The Provider’s Nominated Manager for the Overarching Framework Agreement ;
“Framework Agreement”	means this Framework Agreement including its Recitals, Schedules and the Annexe;
“Associate Company”	means, in respect of the Provider, a company that is a subsidiary, a holding company (each as defined in the Companies Act 1985) or a company that is a subsidiary of the ultimate or any intermediate holding company of the Provider;
“Change in Control”	means any sale or other disposal of any legal, beneficial or equitable interest by an owner of at least 20% of, or a controlling interest in, the equity share capital of the Provider (or any company (other than a public quoted company whose equity securities are listed on a recognised investment exchange, as defined in section 207(1) of the Financial Services Act 1986) of which the Provider is a subsidiary) including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors;
“Call-Off Contract”	means the contract set out at Schedule 5 to this Framework Agreement and awarded following a Call-Off Procedure;
“Call-Off Procedure”	Means either the Direct Award or the Mini-Competition Procedure by means of which the Participating Organisations may contract with the Provider to provide the goods and/or services as set out in Schedule 6;
“Commencement Date”	means the date identified in the Final Award Letter;

“Community Benefits Information”	means the community benefits information set out in Specification and the tender response or such other community benefits information as the Welsh Ministers may notify to the Provider from time to time;
“Confidential Information”	means information (however it is conveyed or on whatever media it is stored), the disclosure of which would constitute an actionable breach of confidence, and which has either been designated as confidential by either Party in writing or which ought to be considered as subject to a duty of confidentiality and includes but is not limited to information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, clients and consultants of either Party;
“Dispute Resolution Procedure”	means the procedure for resolving disputes and differences between the Parties as set out in Clause 17 below;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry as detailed in the Final Award letter or as extended by the Client unless terminated earlier in accordance with the provisions of this Framework Agreement;
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any natural or man-made disaster. It does not include any industrial action occurring within the Provider’s organisation or within any sub-contractor’s organisation.
“Framework Contract Manager”	means the nominated National Procurement Service official or such other person or persons as the Welsh Ministers shall nominate from time to time;

“Geographical Zones”	Means those geographical regions which the Lots have been sub-divided into and which are set out in Schedule 1 to this Framework Agreement;
“Goods”	means the goods to be provided in the Lots in Schedule 1 where applicable;
“Good Industry Practice”	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of goods and/or services of a similar type to the goods and/or services to be supplied under the Framework Agreement;
“Guidance”	means any guidance issued or updated by the UK government from time to time in relation to the PCR2015(as amended);
“Intellectual Property Rights”	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain rights, trade or business names, moral rights and any other similar rights or obligations whether registrable or not in any country (including but not limited to the UK) and the right to sue for passing off;
“Key Performance Indicators”	means the key performance indicators set out in in the Specification or such other key performance indicators as the Welsh Ministers may notify to the Provider from time to time;
“Key Personnel”	means the Personnel named by the Provider as providing the goods and/or services in respect of each Call-Off Contract;
“Law”	means - <ul style="list-style-type: none"> <li>• any applicable statute or proclamation or any delegated or subordinate legislation;</li> <li>• any enforceable Community Right within the</li> </ul>

meaning of section 2(1) of the European Communities Act 1972;

- any applicable guidance, direction or determination with which a Party is bound to comply; and
- any applicable judgment or decision of a court of competent jurisdiction which is a binding precedent in England and Wales,

in each case in force in England and Wales.

“Lots”	means the Lots set out in Schedule 1;
“Management Information”	means the management information set out in Schedule 7 or such other management information as the Welsh Ministers may notify to the Provider from time to time;
“Mini-Competition”	means a mini-competition undertaken in accordance with the Mini-Competition Procedure;
“Mini-Competition Procedure”	means the procedure for mini-competitions as set out in Schedule 6;
“Necessary Consents”	Means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the Framework Provider to participate in this Framework Agreement;
“Order”	means an order for goods and/or services by a Participating Organisation sent to the Provider in accordance with the award procedures in clause 4 of this Framework Agreement;
“Order Form”	means the form attached at Schedule 4;
“Participating Organisation”	means such organisation as is entitled to Call-Off the goods and/or services under this Framework Agreement and the details of which organisations are

set out in Part 2 of Schedule 1;

“PCR 2015”	means the Public Contract Regulations 2015 (as amended) ;
“Personnel”	means any agent, employee, servant or sub-contractor of the Provider or other person acting for or on behalf of the Provider or with the Provider’s authority (including without limitation implied, apparent or ostensible);
“Price”	means the price payable for the goods and/or services as set out in Schedule 3 or as ascertained following a Mini-Competition;
“Services”	means the services to be delivered in the Lots in Schedule 1 where applicable;
Specification	means the specification of the Goods or Services as set out in the Tender Documents
“Staff”	means any and all individuals who are employed or engaged by the Provider or any subcontractor who at any time is concerned with all or any of the goods and/or services or any part thereof;
“Tender Documents”	means the documents included in the Electronic Tender;
“Total Price”	means the total price to be charged by the Provider to a Participating Organisation in respect of the provision of the goods and/or services under this Framework Agreement and any VAT or other tax payable stated as a separate element.
“Working Days”	means any day other than a Saturday, Sunday or public holiday in Wales on which banks are generally open for business;

1.2 In this Framework Agreement unless the context otherwise requires:

1.2.1 references to a statute or statutory provision shall be construed as a reference to the same as it is from time to time amended, consolidated, modified, extended, re-enacted



or replaced. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;

1.2.2 words in the singular shall include the plural and vice versa and a reference to a gender shall include a reference to all genders;

1.2.3 a reference to a person shall include a reference to a firm, a body corporate and unincorporated association or to a person's executors or administrators;

1.2.4 a reference to a Clause or Schedule or Annexe shall be a reference to a Clause or Schedule or Annexe (as the case may be) of or to this Framework Agreement;

1.2.5 the headings are for convenience only and shall not affect the interpretation of any provision of this Framework Agreement.

## **2. COMMENCEMENT AND TERM**

2.1 This Framework Agreement shall take effect on the Commencement Date as detailed in the Final Award Letter and shall expire automatically on the Expiry Date, unless it is otherwise extended or terminated in accordance with this Framework Agreement.

## **3. SCOPE OF THE FRAMEWORK AGREEMENT**

3.1 This Framework Agreement governs the relationship between the Welsh Ministers and the Provider in respect of the provision of the goods and/or services by the Provider to the Participating Organisations.

3.2 The Welsh Ministers appoint the Provider as a Framework Provider of the goods and/or services and the Provider shall be eligible to receive invitations to deliver such goods and/or services from Participating Organisations during the Term.

3.3 Participating Organisations may, in their absolute discretion and from time to time, order Services from the Provider in accordance with the Call-Off Procedures set out in Schedule 6 during the Term.

3.4 If and to the extent that any goods and/or services under this Framework Agreement are required a Participating Organisation shall:

3.4.1 enter into a contract with the Provider for these goods and/or services materially in accordance with the terms of the Call-Off Contract; and

3.4.2 comply with the Ordering procedure in clause 4.

3.5 The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Participating Organisations for the goods and/or services and that the Participating Organisations are at all times entitled to enter into other

contracts and arrangements with other Providers for the provision of any or all goods and/or services which are the same as or similar to the goods and/or services.

- 3.6 The Welsh Ministers shall not in any circumstances be liable to the Provider or any Participating Organisations for payment or otherwise in respect of any goods and/or services provided by the Provider to any other Participating Organisation.

#### **4. AWARD PROCEDURES**

- 4.1 If a Participating Organisation decides to source goods and/or services through the Framework Agreement then it may:

4.1.1 satisfy its requirements for goods and/or services by awarding a Call-Off Contract in accordance with the terms laid down in this Framework Agreement at Schedule 6 without re-opening competition; or

4.1.2 satisfy its requirements for goods and/or services by awarding a Call-Off Contract following a Mini-Competition conducted in accordance with terms laid down in this Framework Agreement at Schedule 6.

#### **5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS**

- 5.1 The Provider shall perform all Call-Off Contracts entered into with a Participating Organisation in accordance with:

5.1.1 the requirements of this Framework Agreement;

5.1.2 The Supplementary Terms and Conditions

5.1.3 the Specification; and

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

- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

5.2.1 Any Contract arising from this Procurement between the Bidder and a participating Organisation

5.2.2 NPS Framework Terms and Conditions including the Supplementary Terms

5.2.3 and Conditions (Document 3);

5.2.4 The Specification (Document 4)

5.2.5 The Agreed Specification Document for each individual product as tendered or as amended post award following written agreement by the Client.

- 5.2.6 Any Clarification correspondence issued by the Client during the tender process
- 5.2.7 Any Clarification request received from the Bidder during the tender process amending their response following a query received from the Client
- 5.2.8 The Bidder's response to the Qualification Envelope as returned to the Client with the Bidder's Tender submission;
- 5.2.9 The Bidder's response to the Commercial Envelope (Price Schedule(s)) as returned to the Client with the Bidder's Tender submission;
- 5.2.10 The terms of the Framework Agreement, the Schedules to the Framework Agreement and any appendices thereto;

## 6. PRICES FOR GOODS AND/OR SERVICES AND MANDATORY SUPPLIER REBATE

- 6.1 The Prices offered by the Provider for Call-Off Contracts to the Participating Organisation for goods and/or services procured under a Call-Off Procedure shall be tendered in accordance with the requirements of the direct award or Mini-Competition held pursuant to Schedule 6.
- 6.2 The Welsh Ministers shall charge the Provider a fee equal to the 1% fee payable as the MSR of the total value of goods and/or services provided by the Provider under each Call-Off Contract to which it is a party under the Framework Agreement (the "**Mandatory Supplier Rebate**"). The Welsh Ministers reserve the right to increase the Mandatory Supplier Rebate to an amount not exceeding 2% of the total value of goods and/or services on reasonable notice to the Provider.
- 6.3 Payment of the Mandatory Supplier Rebate will be made in arrears at quarterly intervals following the commencement of the Framework Agreement and will be based upon the overall actual value of business conducted against the agreement (fees actually paid) by the Provider during the preceding period.
- 6.4 The Mandatory Supplier Rebate shall be exclusive of VAT and the Provider shall pay VAT on the Mandatory Supplier Rebate at the rate and in the manner prescribed by law from time to time.
- 6.5 The Welsh Ministers reserve the right to undertake an independent audit of the total value of the goods and/or services provided by the Provider under each Call-Off Contract successfully concluded by it (through invoices raised/delivered) to confirm that the correct Mandatory Supplier Rebate has been charged/paid. Underpaid Mandatory Supplier Rebate shall be recovered from the Provider and the Welsh Ministers reserve the right to either:
  - 6.5.1 suspend the Provider from the Framework Agreement until such outstanding payments are made; or
  - 6.5.2 in the event of a continued failure to pay the Mandatory Supplier Rebate terminate the Agreement
- 6.6 The Provider must not issue credit notes to cover the Mandatory Supplier Rebate. Payment will be requested via invoices issued by the Welsh Ministers.

- 6.7 The invoice for the Mandatory Supplier Rebate shall be payable within 30 days of the date of the invoice.
- 6.8 Interest shall be payable on any late payments of the Mandatory Supplier Rebate in accordance with the Late Payments of Commercial Debts (Interest) Act 1998
- 6.9 Without prejudice to any other remedies available to it, the Welsh Ministers reserve the right to recover from the Provider any reasonable administration fees incurred in pursuing unpaid Mandatory Supplier Rebates.

## **7. WELSH MINISTERS' POSITION**

- 7.1 The Provider acknowledges and agrees that Participating Organisations are under no obligation to issue invitation under this Framework Agreement. The Provider acknowledges that any data or information given to it by the Welsh Ministers in respect of the anticipated volume of invitations to be issued under this Framework Agreement are estimates only, based on historical data, and that the Welsh Ministers cannot be held responsible for the actual number or value of Call-Off Contracts placed under this Framework Agreement. The Provider therefore agrees that the Welsh Ministers have no liability to it in respect of or arising out of the number or value of Call-Off Contracts (or lack of Call-Off Contracts) under this Framework Agreement.
- 7.2 The Welsh Ministers have established this Framework Agreement for the benefit of such Participating Organisations as may from time to time wish to issue invitations under this Framework Agreement. The contract which arises when an Invitation is issued by a Participating Organisation will be between that Participating Organisation and the Provider. Accordingly (other than in respect of a Call-Off Contract arising as a result of the Welsh Ministers, acting as a Participating Organisation, issuing an Invitation), the Welsh Ministers shall not be a party to any Call-Off Contract nor shall the Welsh Ministers have any liability arising out of the acts or omissions or negligence or default of Participating Organisations in connection with Call-Off Contracts or in connection with the issuing of invitations.

## **8. TERMINATION**

### **Termination on Default**

- 8.1 The Welsh Ministers may terminate the Framework Agreement by serving written notice on the Provider with effect from the date specified in such notice:
  - 8.1.1 where the Provider commits a material breach and:
    - 8.1.1.1 the Provider has not remedied the material breach to the satisfaction of the Welsh Ministers within 30 Working Days, or such other period as

may be specified by the Welsh Ministers, after issue of a written notice specifying the material breach and requesting it to be remedied; or

8.1.1.2 the material breach is not, in the reasonable opinion of the Welsh Ministers, capable of remedy; or

8.1.2 where the Welsh Ministers or any Participating Organisation terminates a Call-Off Contract awarded to the Provider under this Framework Agreement as a consequence of Default by the Provider.

8.2 For the purposes of clause 8.1 “**Material Breach**” shall mean a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Welsh Ministers would otherwise derive from:

8.2.1 a substantial portion of this Framework Agreement; or

8.2.2 any of the obligations set out in clauses 11, 19, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32 , over the term of this Framework Agreement.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap mistake or misunderstanding.

8.3 The Welsh Ministers may terminate this Framework Agreement on thirty (30) days written notice to the Provider in any of the following circumstances:

8.3.1 The Agreement has been subject to substantial modification as to its scope and value such that a new procurement exercise would be required to be conducted in accordance with the provisions of Regulation 72(9) of PCR 2015;

8.3.2 The Provider, at the time that the Tender was awarded to the Provider, had been convicted of any one or more of the mandatory grounds for exclusion from participation in the Tender as those grounds are set out in Regulation 57 of PCR 2015; and

8.3.3 The Tender should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union (**the TFEU**) and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

#### **Termination on insolvency and Change of Control**

8.4 Without affecting any other right or remedy available to it, the Welsh Ministers may terminate this Framework Agreement with immediate effect by giving written notice to the Provider if:

- 8.4.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** if a partnership) has any partner to whom any of the foregoing apply;
- 8.4.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 8.4.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company);
- 8.4.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- 8.4.5 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 8.4.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- 8.4.7 the Provider (being an individual) is the subject of a bankruptcy petition or order;
- 8.4.8 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
- 8.4.9 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.4.1 to clause 8.4.8 (inclusive);
- 8.4.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 8.4.11 any warranty given by the other party in clause 19 of this Framework Agreement is found to be untrue or misleading.

8.5 The Provider shall notify the Welsh Ministers immediately if the Provider undergoes a Change of Control. The Welsh Ministers may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:

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

8.5.2 where no notification has been made, the date that the Welsh Ministers becomes aware of the Change of Control;

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

#### **Termination by Welsh Ministers for convenience**

8.6 The Welsh Ministers 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 30 days' written notice to the Provider.

### **9. SUSPENSION OF PROVIDER'S APPOINTMENT**

Without prejudice to the Welsh Ministers' rights to terminate the Framework Agreement in clause 8 above, if a right to terminate this Framework Agreement arises in accordance with clause 8, or if the Provider should fail to respond to more than three invitations issued to participate in a Mini-Competition, the Welsh Ministers may suspend the Provider's right to receive requests to participate in Call-Off Procedures from Participating Organisations in any or all Provider's Lots by giving notice in writing to the Provider. If the Welsh Ministers provide notice to the Provider in accordance with this clause 9, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Welsh Ministers in writing from time to time.

## **10. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 10.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider 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 10.
- 10.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Call-Off Contract made under the Framework Agreement. 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.
- 10.3 Within 14 Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return or destroy at the request of the Welsh Ministers any data, personal information relating to the Welsh Ministers or its personnel or Confidential Information belonging to the Welsh Ministers in the Provider's possession, power or control, either in its then current format or in a format nominated by the Welsh Ministers (in which event the Welsh Ministers will reimburse the Provider'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 Welsh Ministers.
- 10.4 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 before termination or expiry.
- 10.5 The provisions of clause 10 (consequences of Termination and Expiry), clause 19 (Warranties and Representations), clause 23 (Confidentiality) clause 24 (Data Protection), clause 25 (Freedom of Information), clause 28 (Records and Access) and Clause 37 (Costs) 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.

## **11. ASSIGNMENT, SUB-CONTRACTING AND CHANGE IN CONTROL**

- 11.1 The Welsh Ministers may transfer, assign, novate, dispose or sub-contract the whole or any part of this Framework Agreement to another contracting authority constituted or authorised to discharge the functions and/or responsibilities of the Welsh Ministers. The Welsh Ministers shall be entitled to disclose to any successor, assignee, transferee or any other person or body entitled to the benefit of this Framework Agreement (each of the foregoing being referred to as "a transferee" in this Clause 11.1) any Confidential Information of the Provider. In such



circumstances the Welsh Ministers shall authorise the transferee to use such Confidential Information only for purposes relating to this Framework Agreement and/or any Call-Off Contract and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by a confidentiality undertaking substantially similar to that in Clause 23 (Confidentiality) in relation to such Confidential Information.

11.2 The Provider shall not assign, novate, charge, transfer or otherwise dispose of this Framework Agreement, in whole or in part, without the prior written consent of the Welsh Ministers.

11.3 The Provider shall not sub-contract the whole or any part of its obligations under this Framework Agreement without the prior written consent of the Welsh Ministers, not to be unreasonably withheld or delayed. No sub-contracting arrangement shall in any way reduce affect or diminish the Provider's liability under this Framework Agreement.

11.4 No Change in Control shall be permitted without the prior written approval of the Welsh Ministers.

## **12. ENTIRE FRAMEWORK AGREEMENT**

12.1 This Framework Agreement constitutes the entire Framework Agreement and understanding of the Parties and supersedes any previous Framework Agreement between the Parties relating to the subject matter of this Framework Agreement.

12.2 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 understanding (whether negligently or innocently made) of any person (whether party to this Framework Agreement or not) other than as expressly set out in this Framework Agreement.

12.3 The only remedy available to a Party in respect of any such statement representation warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

12.4 Nothing in this sub-clause shall operate to exclude or limit any liability for fraud.

## **13. DENIAL OF PARTNERSHIP**

The Parties acknowledge and agree that this Framework Agreement shall not constitute, create or otherwise give effect to a joint venture, pooling arrangement or partnership or similar arrangement between them. Nothing in this Framework Agreement is intended or shall be construed to create a relationship of agency between the Parties. Accordingly, except as expressly authorised herein, neither Party shall have any authority to act or make representations on behalf of the other Party, and nothing herein shall impose any liability on

either Party in respect of any liability incurred by the other party to any third party.

#### **14. NOTICES AND PARTIES' REPRESENTATIVES**

14.1 Any demand or notice to be given or made in writing under this Framework Agreement will be deemed to have been duly given or made as follows:-

14.1.1 if sent by prepaid first class post on the second working day after the date of posting; or

14.1.2 if delivered by hand upon delivery at the address provided for in this Framework Agreement; or

14.1.3 if sent by email and confirmed by registered first class post or recorded delivery to the address provided by the Party concerned. Notices sent by e-mail shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next Working Day, provided that no error report is generated and confirmation by registered post or recorded delivery is sent the same day.

14.2 Any such demand or notice will be addressed to and sent to the recipient at:

Welsh Ministers:

c/o Welsh Government,  
Director of Legal Services,  
Cathays Park,  
Cardiff, CF10 3NQ

(with a copy to the Framework Contract Manager)

Provider: As detailed in the Final Award Letter unless the details are otherwise amended and agreed in writing

(with a copy to the Account Manager)

or at such other address or fax number as may from time to time be notified in writing by the Parties as being the address for service provided that in the case of a company it may instead (at the option of the sender) be addressed to the registered office for the time being.

14.3 Save for the demands and notices referred to in clauses 14.1 and 14.2 above, the Framework Contract Manager shall be the representative of the Welsh Ministers in connection with the administration and management of this Framework Agreement and all correspondence shall

be addressed to them.

14.4 The Account Manager shall act as the Provider's representative in connection with the administration and management of this Framework Agreement.

14.5 The Provider shall notify the Welsh Ministers in writing in advance of any proposed change to the person nominated as the Account Manager.

## **15. WAIVER**

15.1 The failure to exercise or delay in exercising a right or remedy provided by this Framework Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Framework Agreement or of a default under this Framework Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Framework Agreement. A waiver of a breach of any of the terms of this Framework Agreement or of a default under this Framework Agreement will not prevent a Party from subsequently requiring compliance with the waived obligation.

15.2 The rights and remedies provided by this Framework Agreement are cumulative and (subject as otherwise provided by this Framework Agreement) are not exclusive of any rights or remedies provided by law or in equity.

## **16. SEVERANCE**

16.1 If any term or provision in this Framework Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Framework Agreement but the validity and enforceability of the remainder of this Framework Agreement shall not be affected.

16.2 Each undertaking in this Framework Agreement shall be construed as a separate undertaking and if one or more of the undertakings contained in this Framework Agreement is found to be unenforceable or in any way an unreasonable restraint of trade the remaining undertakings shall continue to bind the Parties.

## **17. DISPUTE RESOLUTION**

17.1 In the event that any Party considers there to be a dispute with the other Party arising out of this Framework Agreement it shall, as soon as reasonably practicable, notify the other Party in writing, clearly setting out the nature and extent of the dispute. The Parties shall use all reasonable endeavours to negotiate in good faith and settle any dispute as soon as practicable. Such negotiations shall take place in the first instance at an operational level within each of the Parties. In the event that any dispute is not resolved at that level the matter

shall be escalated by each Party to an appropriate senior level within its respective organisation for further such negotiations.

- 17.2 If, following escalation pursuant to clause 17.1, of this Framework Agreement the dispute has not been settled within [21] days of the date of the notice referred to in clause 17.1 (or sooner if the nature of the dispute so requires), the Parties shall discuss, in relation to the dispute in question, the relative advantages and disadvantages of any appropriate methods of dispute resolution (other than litigation through the courts) with a view to agreeing the most appropriate method of dispute resolution and the rules and procedures which shall apply thereto no later than [28] days of the date of such notice (or sooner if the nature of the dispute so requires.)
- 17.3 Nothing in this clause shall prevent any Party at any time from referring any dispute to the courts of England and Wales, save only where the parties have agreed an appropriate method of dispute resolution and the rules and procedure applying thereto in accordance with Clause 17.2 and the agreed process has commenced. For the avoidance of doubt, this clause shall not prevent any of the Parties from so referring any dispute if the agreed process has been applied but the dispute has not been resolved.
- 17.4 The Parties acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. The Parties agree that nothing contained or implied in , or arising under or in connection with, this Framework Agreement shall in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

## **18. WELSH LANGUAGE OBLIGATIONS**

- 18.1 Without prejudice to the generality of any other provision of the Framework Agreement, the Provider covenants that it will not supply the Goods and or Services in breach of the Welsh Language Obligations, nor in such a way as to render the Authority in breach of its Welsh Language Obligations. In this clause “Welsh Language Obligations” means the obligations of the Authority from time to time in respect of the use of the Welsh language, whether under any Law, under any Welsh language scheme made under the Welsh Language Act 1993, under any Welsh language standards with which the Authority is under a duty to comply under the Welsh Language (Wales) Measure 2011 and any regulations made under it.
- 18.2 Without prejudice to the generality of any other provision of the Framework Agreement, the Supplier covenants that it will perform and comply with any specific obligations and

requirements in respect of the use of the Welsh language in connection with the supply of Goods or Services which are set out in the Specification.

- 18.3 Without prejudice to Clause 18.1 or 18.2, where, under this Framework Agreement, the Supplier is carrying out an activity or providing a service on behalf of the Authority, the Supplier covenants that it will do so in accordance with all Welsh Language Standards with which the Authority must comply under the Welsh Language (Wales) Measure 2011 and any regulations made under it. The Supplier acknowledges that its failure to do so may give rise to an investigation or enforcement action against the Authority by the Welsh Language Commissioner, and the Supplier hereby covenants that it will indemnify the Authority and keep the Authority indemnified against all costs, expenditure, sanctions or other consequences of the Supplier's failure to comply with this Clause 18.3

## **19. GOVERNING LAW AND JURISDICTION**

- 19.1 This Framework Agreement shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales.
- 19.2 Any dispute or difference whatsoever between the Parties arising under or in connection with this Framework Agreement shall be dealt with in accordance with the Dispute Resolution Procedure.
- 19.3 Without prejudice to Clause 18.2, each Party irrevocably agrees to submit to the non-exclusive jurisdiction of the Courts of England and Wales in relation to any claim dispute or difference concerning this Framework Agreement and any matter arising from or in connection with it. Either Party may apply to the Courts for mandatory, injunctive or emergency relief and other relief as may be ancillary to a claim for such mandatory, injunctive or emergency relief or necessary in order to found such a claim.

## **20. WARRANTIES AND REPRESENTATIONS**

- 20.1 The Provider hereby warrants and represents that to the Welsh Ministers that:
- 20.1.1 it has full capacity and all Necessary Consents to enter into and perform this Framework Agreement and that this Framework Agreement is executed by the duly authorised representatives of the Provider;
- 20.1.2 in entering into this Framework Agreement or any Call-Off Contract, it has not committed any Prohibited Act;
- 20.1.3 it is has and will have throughout the duration of this Framework Agreement the

necessary capability and capacity to supply the goods and/or services required under any Call-Off Contracts;

- 20.1.4 as at the Commencement Date all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed to the Welsh Ministers prior to the conclusion of the Framework Agreement. The Provider shall promptly notify the Welsh Ministers immediately of any fact or circumstance of which it may become aware which would render any information statement or representation to be false or misleading;
- 20.1.5 it has made and will make its own enquiries to satisfy itself as to the accuracy of any information supplied to it by the Welsh Ministers and that where the Welsh Ministers have provided the Provider with incorrect or insufficient information the Provider shall not be relieved from any obligation under this Framework Agreement, nor be entitled to claim against the Welsh Ministers, except where such information is a fraudulent misrepresentation by the Welsh Ministers;
- 20.1.6 it will perform its obligations under this Framework Agreement and under any Call-Off Contract in accordance with and so as not to infringe any Law, and so as not to cause the Welsh Ministers or any Participating Organisation to infringe any Law;
- 20.1.7 it employs people based on their individual capabilities and skills regardless of marital status, sex, sexual orientation, race, colour, religion, national origin, age and in accordance with its statutory obligations in respect of mental and physical disability;
- 20.1.8 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Framework Agreement or any Call-Off Contract;
- 20.1.9 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 that 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 Participating Organisations;
- 20.1.10 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;

20.1.11 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 Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

20.1.12 the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this clause) in accordance with its own established internal procedures; and

20.1.13 For the avoidance of doubt, all representations and warranties set out in this Framework Agreement shall survive the execution of this Framework Agreement and shall be deemed repeated on each day throughout the term of this Framework Agreement, with reference to the facts and circumstances then prevailing.

## **21. STATUTORY OBLIGATIONS**

21.1 In performing this Framework Agreement, the Provider shall comply with all applicable statutory obligations for the time being in force including, but without prejudice to the generality of the foregoing, those relating to health, safety and welfare, environment, modern slavery, employment rights and relations, data protection, working rights human rights race relations, sexual discrimination and equality.. The Provider shall take all reasonable steps to ensure the observance of these provisions by all employees, agents or sub-contractors of the Provider employed or engaged in the execution of the Framework Agreement. The Provider shall indemnify the Welsh Ministers and the Crown against all actions, claims, losses, demands, costs and expenses which the Welsh Ministers may suffer or incur as a result of or in connection with any breach of any statutory obligation.

21.2 The Provider warrants and represents that all the information contained in its tender remains true, accurate and not misleading except as may have been specifically disclosed in writing to and accepted by the Welsh Ministers prior to the commencement date.

21.3 The Provider shall not operate its business in a manner which may in the opinion of the Welsh Ministers bring the Welsh Ministers into disrepute.

21.4 The Provider shall ensure that its subcontractors and suppliers have accepted obligations equivalent to those set out in clauses 21.1 to 21.3 of this Framework Agreement

- 21.5 The Welsh Ministers may terminate the Contract by notice with immediate effect if the Provider is the subject of a claim for breach of the Human Rights Act.
- 21.6 The Welsh Ministers may terminate the Contract by notice with immediate effect if the Provider is the subject of formal investigation, or the subject of a claim arising, in connection with its statutory obligations relating to employment rights, employment relations, working rights or equality.
- 21.7 The Welsh Ministers may terminate the Contract by notice with immediate effect if the Provider is the subject of formal investigation for or is the subject of prosecution for any offence under the Modern Slavery Act 2015

## **22. LIMITATION OF LIABILITY**

- 22.1 Nothing in this Framework Agreement shall limit or exclude a Party's liability for:
- 22.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 22.1.2 fraud or fraudulent misrepresentation; or
  - 22.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 22.2 Subject to clause 22.1, neither Party to this Framework Agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Framework Agreement.
- 22.3 The Welsh Ministers accepts no liability for the performance by any Participating Organisation of any Call-Off Contract entered into by such Participating Organisation.
- 22.4 This clause 21 shall survive termination of the framework agreement.

## **23. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**

- 23.1 The Provider undertakes to abide by, and to ensure that all employees, agents or sub-contractors abide by, the provisions of:
- 23.1.1 the Official Secrets Acts 1911 to 1989; and



- 23.2 Section 182 of the Finance Act 1989 (disclosure of information relating to tax and other matters).
- 23.3 In the event that the Provider and/or any Personnel fail to comply with this Clause 22, the Welsh Ministers reserve the right to terminate this Framework Agreement by giving notice in writing to the Provider. The provisions of Clause 22.1 shall apply during the continuance of this Framework Agreement and indefinitely after its expiry or termination.

## **24. CONFIDENTIALITY**

- 24.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Provider acknowledges that any Confidential Information obtained from or relating to the Welsh Ministers, the Crown, and its or their employees, servants, agents or sub-contractors, is the property of the Welsh Ministers or the Crown as the case may be.
- 24.2 Each Party shall:
- 24.2.1 maintain in confidence any information or materials provided to it directly or indirectly by the other Party under, or in anticipation of this Framework Agreement, taking such reasonable security measures as it takes to protect its own confidential information and trade secrets;
  - 24.2.2 treat all Confidential Information obtained as secret and confidential and safeguard it accordingly, and only use it for the purpose of this Framework Agreement;
  - 24.2.3 not disclose any Confidential Information to any other person other than to Personnel who have accepted obligations of confidentiality equivalent to this Clause 20 and who need to have access to such information or materials in connection with the performance of this Framework Agreement.
- 24.3 Without prejudice to Clause 23.2.3 of this Framework Agreement neither Party shall disclose any Confidential Information to any other person whatsoever without the prior written consent of the Party supplying it.
- 24.4 The Provider shall provide all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (without the Welsh Ministers' prior approval in writing) or used other than for the purpose of this Framework Agreement by any Personnel.

- 24.5 Without prejudice to the generality of the foregoing neither the Provider nor any Personnel shall use the Confidential Information for the solicitation of business from the Welsh Ministers its employees, servants, agents or sub-contractors or the Crown.
- 24.6 Where it is considered necessary in the opinion of the Welsh Ministers, the Provider shall ensure that all Personnel or any other person engaged by it in connection with this Framework Agreement shall sign a confidentiality undertaking in a form specified by the Welsh Ministers before commencing work in connection with this Framework Agreement.
- 24.7 The provisions of this Clause 23 shall not apply to any information which:
- 24.7.1 is or becomes public knowledge (otherwise than by breach of this Framework Agreement); or
  - 24.7.2 which is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; or
  - 24.7.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
  - 24.7.4 which is independently developed without access to the Confidential Information; or
  - 24.7.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure including any requirements on the Welsh Ministers for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and pursuant to Clause 25 (Freedom of Information).
- 24.8 Nothing in this Clause 23 shall prevent the Provider from:
- 24.8.1 disclosing any Confidential Information which is required to be disclosed by an order of court or other competent tribunal or required to be disclosed by any applicable legal requirement; or
  - 24.8.2 disclosing such Confidential Information as is strictly necessary for the purpose of obtaining legal advice or for the examination or preparation of the Provider's accounts to its legal advisors and accountants, provided that such legal advisors and accountants are bound by a professional duty of confidence.

- 24.9 In the event that the Provider fails to comply with this Clause 23, the Welsh Ministers reserve the right to terminate this Framework Agreement by notice in writing with immediate effect.
- 24.10 The provisions of this Clause 23 shall apply during the continuance of this Framework Agreement and indefinitely after its termination howsoever arising.

## **25. DATA PROTECTION**

- 25.1 The Provider shall (and shall procure that any of the Personnel involved in the provision of the Framework Agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their respective obligations under the DPA, which arise in connection with the Framework Agreement.
- 25.2 Notwithstanding the general obligation in clause 24.1, where the Provider is processing the Personal Data as a Data Processor for the Welsh Ministers, the Provider shall:
- 25.2.1 ensure that it has in place appropriate organisational and technical and measures to ensure the security of the Personal Data and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data);
  - 25.2.2 take reasonable steps to ensure the reliability of employees who have responsibility for the Personal Data;
  - 25.2.3 act only in accordance with instructions given by the Welsh Ministers;
  - 25.2.4 provide the Welsh Ministers with such information as the Welsh Ministers may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
  - 25.2.5 promptly notify the Welsh Ministers of any breach of the security measures required to be put in place pursuant to this clause 24;
  - 25.2.6 inform the Welsh Ministers promptly and in any event within 48 hours of its receipt of any statutory request made by any data subject pursuant to Part II of the DPA and offer the Welsh Ministers such assistance as is necessary for the Welsh Ministers to respond to any such request;
  - 25.2.7 not transfer any of the Personal Data to a country outside the European Economic Area without the Welsh Ministers express consent;

- 25.2.8 not engage any subcontractor to process the Personal Data without the written consent of the Welsh Ministers;
- 25.2.9 ensure that any subcontractor that is engaged to process the Personal Data is subject to obligations in respect of the Personal Data that are equivalent to those imposed on the Provider under this clause 24.2; and
- 25.2.10 ensure it does not knowingly or negligently do or omit to do anything which places the Welsh Ministers in breach of the Welsh Ministers obligations under the DPA.

## **26. FREEDOM OF INFORMATION**

- 26.1 The Provider acknowledges that the Welsh Ministers are subject to the requirements of the Code of Practice on Access to Information published by the Welsh Ministers (“the WG Code”), the Freedom of Information Act (“the FOIA”) and the Environmental Information Regulations 2004 (“EIR”).
- 26.2 The Provider acknowledges that the Welsh Ministers shall be responsible for determining in its absolute discretion whether:
  - 26.2.1 to disclose any information which it has obtained under or in connection with the Framework Agreement to the extent that the Welsh Ministers is required to disclose such information to a person making a disclosure request under the FOIA or the EIR (“an RFI”);
  - 26.2.2 any information is exempt from disclosure under the WG Code, the FOIA or the EIR.
- 26.3 The Provider acknowledges that the Welsh Ministers may be obliged under the WG Code, the FOIA or the EIR to disclose information subject to an RFI:
  - 26.3.1 following consultation with the Provider carried out in accordance with the DCA Code;
  - 26.3.2 without consulting with the Provider where this is not required by the WG Code.
- 26.4 Where the Provider is consulted in accordance with Clause 25.3.1 then the Provider shall respond with any views within five (5) working days.
- 26.5 In no event shall the Provider respond directly to an RFI unless expressly authorised in writing to do so by the Welsh Ministers.

26.6 The Provider shall promptly provide all necessary assistance as reasonably required by the Welsh Ministers to respond to an RFI by providing such information and access to documents and records as the Welsh Ministers reasonably requires in order to answer a disclosure request within the time for compliance set out in Section 10 of the FOIA.

26.6.1 For the purposes of this clause 26, “**reasonable assistance**” shall include the redaction of documentation within five (5) days of a request from the Welsh Ministers to do so.

26.7 The provisions of this Clause 25 shall apply during the continuance of this Framework Agreement and indefinitely after its expiry or termination.

## **27. PUBLICITY**

27.1 The Provider shall participate in promotional events at the request of the Welsh Ministers and/or the Participating Organisation.

27.2 The Provider shall report all new business arising from any marketing activities required by Clause 27 to the relevant Participating Organisation and also to the Welsh Ministers.

27.3 Except with the prior written consent of the Client’s Account Manager and the Participating Organisation, the Provider shall not make any press announcement or publicise this Framework Agreement, any Direct Award or any Call-Off Contract in any way.

27.4 The Provider shall provide the Welsh Ministers and the Participating Organisation with a copy of all marketing and promotional material relating to this Framework Agreement for approval before any such material is published and shall not publish such material without the Welsh Ministers’ and Participating Organisation’s prior written approval.

27.5 The Provider shall ensure the observance of the provisions of Clause 27.1, 27.2, and 27.3 by all relevant Personnel.

27.6 If the Welsh Ministers have not given prior written consent pursuant to clause 27.3 or where the Welsh Ministers agree with the Provider pursuant to Clause 27.4 text to be used by the Provider in marketing its products and/or services, such Framework Agreement may be suspended if the text becomes incorrect, incomplete or misleading, in which case the Provider shall forthwith cease using such text.

27.7 The Provider must use the branding provided by the Welsh Ministers and/or the Participating Organisation in all its materials when delivering the goods and/or services and must comply

with the Welsh Ministers' and/or the Participating Organisation's branding guidelines and/or any other guidance issued by the Welsh Ministers and/or the Participating Organisation from time to time.

- 27.8 The Provider agrees that the Welsh Ministers may include details about the Provider's organisation and business, the Framework Agreement and the goods and/or services in Welsh Government promotional materials and the Provider further agrees to cooperate with the Welsh Ministers' reasonable requests to achieve the production of such materials.
- 27.9 The provisions of this Clause 27 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

## **28. THE HUMAN RIGHTS ACT 1998**

- 28.1 The Provider shall, and shall use reasonable endeavours to ensure that the Provider and all Personnel shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998. The Provider agrees to indemnify and keep indemnified the Welsh Ministers against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Provider of its obligations under this Clause 28.

## **29. RECORDS AND AUDIT ACCESS**

- 29.1 The Provider shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records of the Framework Agreement and of any Call-Off Contract including the goods and/or services provided, all expenditure reimbursed by the Participating Organisation, all payments made by the Participating Organisation, and of the costs incurred in connection with the Framework Agreement or any Call-Off Contract until such time as notified to the Provider by the Welsh Ministers.
- 29.2 The Provider shall on request afford the Participating Organisation or its auditors or representatives such access to those records as may be required by the Participating Organisation. The provisions of this Clause 29 shall apply during the continuance of this Framework Agreement and shall survive its expiry or termination.
- 29.3 Failure by the Provider to provide the required access and information in accordance with this clause 29 shall be a material breach of this Agreement for the purposes of clause 8.

## **30. MONITORING**

- 30.1 The Provider shall comply with such monitoring arrangements as the Welsh Ministers may

from time to time require including without limitation compliance with EU Structural Funds legislation and in any event shall provide such data and information (including Management Information and Community Benefits Information) relating to the Provider's performance of this Framework Agreement and any Call-Off Contract as the Welsh Ministers may reasonably require.

- 30.2 The Provider shall, at no additional cost to the Welsh Ministers attend such meetings as the Welsh Ministers may reasonably require, including but not limited to a Provider performance review meeting quarterly.
- 30.3 The Welsh Ministers may elect to conduct the meeting referred to in Clause 28.2 by audio or video conference.
- 30.4 The Provider shall upon request assist the Contract Manager to develop and circulate to Participating Organisations annual performance management questionnaires.
- 30.5 A failure by the Provider to attend meetings and provide the information required under this clause 29 shall be a material breach of this Agreement for the purposes of clause 8.

## **31. CORRUPT GIFTS OR PAYMENTS**

- 31.1 The Provider shall not offer or give, or agree to give, to any employee, servant, agent or representative of the Welsh Ministers any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Framework Agreement or any Call-Off Contract or any other contract with the Welsh Ministers or any other contracting Welsh Ministers or for showing or refraining from showing favour or disfavour to any person in relation to this Framework Agreement or any Call-Off Contract. The attention of the Provider is drawn to the criminal offences created by the Bribery Act 2010.
- 31.2 The Provider shall not enter into this Framework Agreement if in connection with it commission has been paid or is agreed to be paid to any employee, servant, agent or representative of the Welsh Ministers by the Provider or on the Provider's behalf, unless before this Framework Agreement is made particulars of any such commission and of the terms and conditions of any Framework Agreement for the payment thereof have been disclosed in writing to the Welsh Ministers.
- 31.3 Where the Provider or any Personnel breaches the provisions of Clauses 31.1 and 31.2 in relation to this or any other contract with the Welsh Ministers or another contracting Welsh Ministers, the Welsh Ministers has the right to:

- 31.3.1 terminate the Framework Agreement with immediate effect and recover from the Provider the amount of any loss suffered by the Welsh Ministers resulting from the termination;
  - 31.3.2 recover from the Provider the amount or value of any such gift, consideration or commission; and
  - 31.3.3 recover in full from the Provider any other loss suffered by the Welsh Ministers in consequence of any breach of this Clause 31, whether or not the Framework Agreement has been terminated.
- 31.4 In exercising its rights or remedies under this Clause 31, the Welsh Ministers shall:
- 31.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
  - 31.4.2 give all due consideration, where appropriate, to action other than termination of the Framework Agreement.

## **32. FRAUD**

- 32.1 The Provider shall safeguard this Framework Agreement against fraud generally and, in particular, fraud on the part of the Provider or any Personnel. The Provider shall notify the Welsh Ministers immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **33. CONFLICTS OF INTEREST**

- 33.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or any Personnel and the duties owed to the Welsh Ministers under this Framework Agreement. The Provider will disclose to the Welsh Ministers full particulars of any such conflict of interest which may arise as soon as possible after becoming aware of it. The provisions of this Clause 33 shall apply during the continuance of this Framework Agreement and indefinitely after expiry or termination.

## **34. SUSTAINABILITY**

- 34.1 The Provider shall perform this Framework Agreement in accordance with the Welsh Ministers' environmental policies as notified to the Provider from time to time.



34.2 The Provider shall, for the duration of this Framework Agreement and each Call-Off Contract, maintain the environmental, ethical and sustainable standards required of it as set out in the Tender.

**35. AMENDMENT AND VARIATION**

35.1 No amendment, variation or other change to this Framework Agreement shall be valid unless made in writing and signed by the duly authorised representative of the Parties.

**36. EXCLUSION OF THIRD PARTY RIGHTS**

36.1 Nothing in this Framework Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to this Framework Agreement and no supplemental or ancillary Framework Agreement to this Framework Agreement shall create any such rights unless expressly so stated in any such Framework Agreement by the Parties to this Framework Agreement. This does not affect any right or remedy of a third party which exists or is available apart from that Act.

36.2 It is acknowledged that Clauses 3, 26.2, 26.3, 26.4, 26.5, 26.6 and 26.7 are for the benefit of Participating Organisations who issue invitations to the Provider and who shall be able to enforce it against the Provider.

**37. RIGHTS AND REMEDIES**

Except as expressly provided in this Framework Agreement, the rights and remedies provided under this Framework Agreement are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

**38. COSTS**

Except as provided expressly in this Framework Agreement, each Party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Framework Agreement and any documents referred to in it.

**39. COUNTERPARTS**

This Framework Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Framework Agreement, but all the counterparts shall together constitute the same Framework Agreement. No counterpart shall be effective until each Party has signed at least one counterpart.

**40. EXECUTION**

This agreement will form part of any subsequent Award as detailed in the Final Award Letter which will be executable through authorised signatures provided by both parties.

## Schedules

### Schedule 1

### Goods and/or Services and Lots

#### **Part 1. [Goods and/or Services]**

The Goods and Services that are covered by this Framework Agreement are as issued by the Client in the Tender Documentation, the Bidder's response and any subsequent agreed amendments by the Client.

#### **Part 2. Supplier's Lots**

**The Lot(s) / Geographical Zones that the Supplier has been successful for are as detailed in the Final Award Letter as issued by the Client .**

The Provider's Tender is as submitted via the Etenderwales/Bravo Solution Portal in response to the ITT reference : or as amended following clarification and as detailed in the Final Award letter issued by the Client if that Bidder is successful.

**Schedule 2**

**Award Criteria**

The Award Criteria is as set out in the Tender Documentation by the Client within Document 1 Instructions to Bidders.

## **Schedule 3**

## **Pricing Schedule**

The Pricing Schedules are set out as tendered by the Bidder unless amended following Clarification

### **Pricing revisions**

Details for the submission and review of any proposed pricing revisions are as defined within the pricing documentation

### **Sample Order Form**

A Sample order form is attached at schedule 4. Please note participating organisations may issue their own Order Forms, the format for these must be agreed between the Provider and the Participating Organisation as part of the Framework Mobilisation/Implementation process.

**ORDER FORM**

**Framework Agreement**

**FROM**

<b>Customer:</b>	
<b>Service address:</b>	
<b>Invoice address:</b>	
<b>Authorised Representative:</b>	Ref: Phone: E-mail:
<b>Order number:</b>	To be quoted on all correspondence relating to this Order:
<b>NPS Framework Reference Number</b>	
<b>Order date:</b>	

**TO**

<b>Supplier:</b>	[PROVIDER'S NAME]
<b>For the attention of:</b> <b>E-mail:</b> <b>Telephone number:</b>	
<b>Address:</b>	

<b>1. GOODS AND/OR SERVICES REQUIREMENTS</b>
<b>(1.1) GOODS AND/OR SERVICES [and deliverables] required:</b>
<b>(1.2) [Delivery Date/Service Commencement Date]:</b>
<b>(1.3) Price payable by Customer and payment profile:</b>

<b>(1.4) Completion date (including any extension period or periods):</b>

<b>2 MINI-COMPETITION ORDER: ADDITIONAL REQUIREMENTS</b>
<b>(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:</b>
<b>(2.2) Variations to Call-off Terms and Conditions:</b>

<b>3. PERFORMANCE OF THE GOODS/SERVICES [AND DELIVERABLES]</b>
<b>(3.1) Key personnel of the Supplier to be involved in the Goods and/or Services [and deliverables]:</b>
<b>(3.2) [Performance standards]:</b>
<b>(3.3) Location(s) at which the [Services are to be provided/Goods delivered]:</b>
<b>(3.4) Quality standards:</b>
<b>(3.5) Contract monitoring arrangements:</b>
<b>(3.6) Management Information and meetings</b>

**4. CONFIDENTIAL INFORMATION**

**(4.1) The following information shall be deemed Confidential Information:**

**(4.2) Duration that the information shall be deemed Confidential Information:**



**Schedule 5**

**Call-Off Terms and Conditions**

Please refer to Document 3 - Terms and Conditions of supply including supplementary Terms and Conditions

In this Schedule 6 in addition to the terms defined elsewhere in the Framework Agreement (which shall bear the same meaning here) -

**1. Call to Competition**

1.1 For each Call-Off Contract awarded pursuant to this Framework Agreement, Participating Organisation will either:

1.1.1 Award to a single provider for a Call-Off Contract if the lot is ranked or the organisation can evidence from the framework that a provider provides the economically most advantageous offer

1.1.2 Hold a Mini-Competition which takes account of the specific requirements related to the proposed Call-Off Contract

**2. The Mini-Competition Procedure**

2.1 The Mini-Competition Procedure shall be as follows:

**Step 1:** The Participating Organisation shall produce a detailed specification of the goods and/or services required.

**Step 2:** The Participating Organisation shall identify to which Lot or Lots the goods and/or services relate.

**Step 3:** The Participating Organisation shall supplement and refine the Call-Off Contract only to the extent permitted by and in accordance with the requirements of PCR 2015 and Guidance;

**Step 4:** The Participating Organisation shall invite all relevant Providers within the respective Lot or Lots to participate in the Mini-Competition. The Participating Organisation may require the Providers to respond by e-auction. For the avoidance of doubt, Providers may only participate in respect of goods and/or services within the scope of the Lot or Lots to which they have been appointed.

**Step 5:** The Participating Organisation shall send the specification to the Providers and invite the providers to submit tenders in response to the specification within the response time specified by the Participating Organisation. Participating Organisations shall be entitled to adjust the Mini-Competition Award Criteria weightings and/or to introduce sub-criteria which derive from the Mini-Competition Award Criteria provided that these are notified to the Providers at the time the

Providers are invited to submit their proposals. Providers must be aware that the prices tendered in the Framework Agreement may not be exceeded in the tender for the Mini-Competition.

**Step 6:** The Participating Organisation shall evaluate any provider's proposals in accordance with the Mini-Competition Award Criteria and the Participating Organisation's requirements as specifically stated in the specification.

**Step 7:** The Participating Organisation shall, at its sole option, decide whether or not to select a provider to provide the goods and/or services as set out in the specification. If the Participating Organisation decides not to select a provider the Participating Organisation shall notify all potential providers of the same and the Mini-Competition Procedure shall be discontinued. The Participating Organisation may at its option repeat the Mini-Competition Procedure.

**Step 8:** If the goods and/or services required are within a specific local authority area and no proposals are received following a Mini-Competition, the Participating Organisation may identify Providers from neighbouring local authority areas and repeat the Mini-Competition Procedure.

**Step 9:** If the Mini-Competition is successfully completed, the Participating Organisation shall award the tender to the successful Provider to such provider and notify all other potential providers in writing of their failure to be selected. No proposal shall be deemed to have been accepted unless and until an Invitation has been sent to the provider by the Participating Organisation.

### 3. **General**

3.1 The Provider agrees that all tenders submitted by the Provider in relation to a Mini-Competition held pursuant to this Schedule shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the Participating Organisation in accordance with this Schedule 6).

3.2 Notwithstanding the fact that the Participating Organisation has followed the procedure set out above for Mini-Competitions, the Participating Organisations may cancel, postpone, delay or end the procedure without placing an Order for goods and/or services or awarding a Contract. Nothing in this Framework Agreement shall oblige a Participating Organisations to place any Order for goods and/or services.

3.3 The Provider acknowledges that each Participating Organisation is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Welsh Government is not responsible or accountable for and shall have no liability whatsoever in relation to:

- i) the conduct of Participating Organisations in relation to the Framework Agreement; or

- ii) the performance or non-performance of any Call-Off Contracts between the Provider and Participating Organisations entered into pursuant to the Framework Agreement.

#### 4. **Form of Order**

Subject to clause 4.1 above, a Participating Organisation may place an Order with the Provider by serving an order in writing in substantially the form set out in **Error! Reference source not found.** or such similar or analogous form agreed with the Provider including systems of ordering involving fax, e-mail or other online solutions.

#### 5. **Accepting and declining Orders**

- 5.1 Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period determined by the Participating Organisation and notified to the Provider in writing at the same time as the submission of the Order (which in any event shall not exceed two Working Days) acknowledge receipt of the Order and either:

- 5.1.1 notify the Participating Organisation in writing and with detailed reasons that it is unable to fulfil the Order; or

- 5.1.2 notify the Participating Organisation that it is able to fulfil the Order by signing and returning the Order Form.

- 5.2 If the Provider:

- 5.2.1 notifies the Participating Organisation that it is unable to fulfil an Order; or

- 5.2.2 the time limit referred to in clause 5.1 has expired;

then the Order shall lapse Participating Organisation may then send that Order to next ranked or second placed (in the case of a mini competition) Framework Provider in accordance with the procedure set out in section 1

- 5.3 If the Provider modifies or imposes conditions on the fulfilment of an Order, then the Participating Organisation may either:

- 5.3.1 reissue the Order incorporating the modifications or conditions; or

- 5.3.2 treat the Provider's response as notification of its inability to fulfil the Order and the provisions of clause 5.2 shall apply.

- 5.4 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Participating Organisation. Accordingly, the Provider shall sign and return the Order Form which shall constitute its offer to the Participating Organisation. The Participating Organisation shall signal its acceptance of the Provider's offer and the formation of a Contract by counter-signing the Order Form.

**Management Information**

Information in relation to Management Information can be found in Document 4 - Specification, Part 5, Performance Management

**Key Performance Indicators**

Information in relation to Key Performance Indicators can be found in the tender at Document 4 - Specification, Part 5, Performance Management

**Community Benefits Information**

Information in relation to Community Benefits can be found in the tender at Document 4 - Specification, Part 5, Performance Management