

Framework Services Agreement
BETWEEN:-

(1) APM (the Contractor)

and

(2) You (The Service Provider)

BACKGROUND

(A) This Framework Agreement sets out the award and ordering procedure for employment related support services which may be required by the Contractor, and the obligations of the Service Provider during and after the term of this Framework Agreement.

(B) It is the Parties' intention that there will be no obligation for the Contractor to award any orders under this Framework Agreement during its Term.

IT IS AGREED as follows:

1. INTERPRETATION

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

"Award" means the confirmed award of a contract to the Service Provider and/or the Contractor whether provisionally awarded via an LOI or not

"Authority" any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 and/or any other body with whom the Contractor contracts to receive payment for delivering a service

"Affiliate" means, in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time

"Approval" means the prior written consent of the Contractor and/or the Authority

"Audit" means any audit carried out pursuant to this Framework Agreement and/or any Call Off Contract

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or any internal auditor or any other body appointed by the Contractor and/or the Authority

"Authority and/or Contractor 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 Service Provider by the Contractor and/or the Authority (on behalf of the Authority or otherwise); or

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

or

(b) any Personal Data for which the Authority and/or the Contractor is the Data Controller

"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 Contractor and the Service Provider

"Commencement Date" means the date of agreement to these terms and/or any Call Off Agreement

"Commercially Sensitive Information" means the information notified to the Contractor in writing during the Tender Process which has been clearly marked as Commercially Sensitive Information comprised of information:-

(a) which is provided in writing by the Service Provider to the Contractor in confidence for the period set out in the notification; and/or
(b) that constitutes a trade secret

"Competed Services" means any competed services for which the Service Provider is required to submit a Tender to the Contractor

"Competed Services Award Criteria" means the award criteria to be applied to tenders received through mini-competitions held for the award of Call-Off Contracts for Competed Services

"Complaint" means any formal complaint raised by any person in relation to the performance under the Framework Agreement or any Call-Off Contract

"Confidential Information" means:-

(a) any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor and/or Service Provider, including IPRs, together with all information derived from the above and;

(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; and all personal data and sensitive data within the meaning of the DPA but excluding this Framework Agreement and any Call-Off Contract in accordance with clause 24

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and "Crown Body" shall be construed accordingly

"Change of Circumstance" Means a material change to the Service Provider's circumstance such that it no longer meets APM's minimum pre-qualification standards, in the sole reasonable opinion of APM, for being awarded a place on the framework or being awarded any Call off Contract

"Due Diligence Checks" Means the checks of the Service Provider's business affairs carried out by the Contractor in line with clause 15

"Deliverable" means an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Service Provider at any stage during the performance of this Framework Agreement or any Call-Off Contract;

"DPA" means the Data Protection Act 1998 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

"Directive" means the European Directive 2001/23/EC as amended

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

"FOIA" means the Freedom of Information Act 2000 and any amendments and/or 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 deed as amended and re-issued from time to time

"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 and/or any Call-off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown

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

"Guidance" means any guidance issued or updated by the Contractor, the Authority and/or the Crown from time to time in relation to or relevant to the provision of the Services

"Incumbent Subcontractor" means any Service Provider delivering the Services who will be replaced by the Award of a contract to the Service Provider

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

"Intellectual Property Rights" means patents, inventions, trade-marks, 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 any invitation to tender issued by the Contractor to the Service Provider from time to time

"Supply Chain Initiation Process" means the process followed by the Contractor to implement, with the Preferred Supply Chain, a Call off Contract newly won from the Authority

"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

"Letter of Intent" means the official; mutually signed letter sent to the Service Provider by the Contractor during the Supply Chain Initiation Process which informs the Service Provider of the Contractor's intent to enter into a Call off Agreement with them (Subject to Due Diligence Checks)

"Material Default" means any breach of the following Clauses (or any part thereof): Clause 7 (Award Procedures); Clause 9 (Conflicts of Interest, Fraud & Competition Law); Clause 11 (Statutory Requirements, Contractor Code of

Conduct and Merlin Standard); Clause 12 (Non-Discrimination); Clause 14 (TUPE Compliance (General) and Employment Matters); Clause 15 (Provision of Management Information and Due Diligence); Clause 24 (Data Protection); Clause 21 (Freedom of Information); Clause 23 (Security Requirements); Clause 27 (Transfer and Sub-contracting);

"Merlin Standard" means the Authority's standard and accreditation process in respect of supply chain management (as further detailed in the ITT, the Implementation Process and/or the Call-Off Terms and Conditions) which shall apply to this Framework Agreement and any Call-Off Contract made between the Contractor and the Service Provider

"Month" means a calendar month

"Ordering Procedures" means the procedures followed by the Contractor during the Tender and award stage of a Subcontract

"Official Order" means the Letter of Intent signed by both parties

"Other Contracting Bodies" means all Contracting Bodies except the Authority and/or the Contractor

"Parent Company" means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider. 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

"Participants" means the customers who are directly in receipt of the Services

"Party" means the Authority and/or the Contractor and/or the Service Provider

"Pre-Existing IPR" shall mean any Intellectual Property Rights vested in or licensed to the Authority, the Contractor or the Service Provider prior to or independently of the performance by the Contractor or the Service Provider of their obligations under the Framework Agreement and/or any Call-Off Contract made between the Contractor and the Service Provider and in respect of the Authority and/or the Contractor includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs

"Premises" means the location where the Services are to be supplied, as set out in the Service Provider's Expression of Interest, Tender Response and/or the Call-Off Terms and Conditions

"Preferred Supply Chain" Means the Service Provider's chosen by the Contractor for the delivery of the Services on a specific Call Off Contract

"Service Provider's Group" means the Service Provider, its ultimate holding company and all subsidiaries of its ultimate holding company, the definitions of holding company and subsidiary being those set out in Section 1159 of the Companies Act 2006

"Service Provider's Lots" means any lots which the Service Provider has been appointed to under any Call of Contract with the Contractor

"Service Provider Software" means software which is proprietary to the Service Provider, including software which is or will be used by the Service Provider for the purposes of providing the Services

"Service Provider System" means any such electronic or hard copy system/process utilised in the delivery of the Services and that is used to transfer, disclose, receive or store Authority and/or Contractor Data including, but not limited to, any web enabled system, database, electronic media, e-mail or hard copy system

"Project Specific IPRs" means:-

(a) IPRs in items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the performance by the Contractor or the Service Provider of their obligations under the Framework Agreement and/or any Call-Off Contract made between the Contractor and the Service Provider including, any Deliverables and all updates and amendments of these items; and/or

(b) IPRs arising as a result of the performance of the Service Provider's obligations under the Framework Agreement and/or any Call-Off Contract made between the Contractor and the Service Provider

"Regulations" means the Public Contracts Regulations 2006 (as amended) as applicable

"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 Authority and/or the Contractor

"Relevant Employees" means the employees who are the subject of a Relevant Transfer

"Relevant Transfer" means a relevant transfer for the purposes of the TUPE Regulations

"Replacement Subcontractor" means any third party service provider appointed by the Contractor to supply any services which are substantially similar to any of the Services and which the Contractor receives in substitution for any of the Services following the expiry, termination or partial termination of a Call-Off Contract

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

"Security Plan" means the Service Provider's security plan prepared in line with the Implementation Process

"Security Policy" means the Contractor's Security Policy as updated from time to time

"Services" means the services detailed in an Invitation to Tender and/or Call Off Contract which may be required by the Contractor from time to time

"Services Framework Lots" means the Services divided into allotments which may be required by the Contractor from time to time and the details of which will be used to identify eligible Services Framework Providers

"Service Providers" means the providers appointed by the contractor as Services Providers under the Framework Agreement and who may be eligible to compete for Service Framework Lots from time to time at the Contractor's sole discretion

"Staff" means all persons employed or engaged by the Service Provider (and/or each Sub-contractor) to perform its obligations under this Framework Agreement and/or any Call-Off Contract together with the Service Provider's servants, consultants, agents, volunteers, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement and/or any Call-Off Contract

"Subcontract" means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof

"Subcontractor" means the third party with whom the Contractor enters into a Subcontract or its servants or agents and any third party with whom that third party enters into a Subcontract or its servants or agents

"Tender" means the Invitation to Tender and/or the Tender Response

"Tendering Procedures" means the process followed by the Contractor and the Service Provider during the bidding process

"Tender Documentation" means the paperwork made available to eligible Service Providers for each bid which must be completed fully by the Service Provider and returned to the Contractor by a set deadline in order to be scored and considered for Competed Services

"Tender Scoring Mechanism" the process used by the Contractor in line with Merlin standards to score submissions fairly

"Term" means the period commencing on the Commencement Date and ending on termination of this Framework Agreement and/or a call off Contract

"Third Party Software" means software which is proprietary to any third party which is or will be used by the Contractor and/or the Service Provider for the purposes of providing the Services

"Transfer Date" means the date the Transferring Employee is transferred to the employment of the Service Provider

"Transferring Employee" means an employee of an Incumbent Subcontractor whose contract of employment becomes, by virtue of the application of the TUPE Regulations in relation to what is done for the purposes of carrying out a Call-Off Contract between the Contractor and the Service Provider, a contract of employment with someone other than the Incumbent Contractor

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended)

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

"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 used herein regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

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 sub-paragraph 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 Service Provider shall operate at all times in accordance with any and all of the Contractors published objectives and in accordance with the following objectives and statement of intent:-

2.1.1 the Contractor wishes to establish a framework agreement for the provision of employment related support services, helping people to select, train for, obtain and retain employment suitable for their ages and capacities; and

2.1.2 the Service Provider has completed the Expression of Interest and wishes to enter into this Framework Agreement on the basis that they will be considered for future call off Contracts for Services from time to time

2.2 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 Clause 2.

3. TERM OF FRAMEWORK AGREEMENT

3.1 The Framework Agreement shall take effect on the Commencement Date and shall be terminated in accordance with the terms of this Framework Agreement

4. SCOPE OF FRAMEWORK AGREEMENT

4.1 This Framework Agreement governs the relationship between the Contractor and the Service Provider in respect of the provision of the Services by the Service Provider to the Contractor and to the Authority.

4.2 The Contractor may at its absolute discretion and from time to time order Services from the Service Provider in accordance with The Tendering Procedures during the Term.

4.3 The Service Provider acknowledges that there is no obligation for the Contractor to purchase any Services from the Service Provider during the Term of this agreement.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contractor in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Service Provider acknowledges and agrees that it has not entered into this Framework

Agreement on the basis of any such undertaking, statement, promise or representation.

5. SERVICE PROVIDER 'S APPOINTMENT

5.1 The Contractor shall use the Expression of Interest questionnaire to identify suitable Service Providers as potential providers of the Services referred to in the Tender Documentation and suitable Service Providers shall be eligible to be considered for the award of call off Contracts for such Services by the Contractor.

6. NON-EXCLUSIVITY

6.1 The Service Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Contractor for Services from the Service Provider and that the Contractor is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services

6.2 The Service Provider acknowledges that in entering this Framework Agreement, no form of volume guarantee has been granted by the Contractor in respect of the number or volume of Participants during the Term. The Service Provider acknowledges that any volumes referred to by the Contractor shall be indicative only and shall not be binding on the Contractor

6.3 The Service Provider acknowledges that the volume of Participants may fluctuate.

7. AWARD PROCEDURES

Awards under the Framework Agreement

7.1 If the Contractor decides to source Services through the Framework Agreement then it may award its Call off Contract following a mini-competition conducted in accordance with the Tender Procedures

Competed Services

7.2 When ordering Competed Services under the Framework Agreement the Contractor shall:-

7.2.1 identify the relevant Services Framework Lot which its Competed Services requirements fall into; and

7.2.2 identify the Services Providers capable of performing the Call-Off Contract for the Competed Services requirements; and

7.2.3 invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:

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

b) set a time limit for the receipt by it of the Tender Documentation which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and

c) keep each tender confidential until the expiry of the time limit for the receipt by it of Tender Documentation;

7.2.5 apply the Tender Scoring Mechanism Criteria to the Service Providers' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its Competed Services requirements; and

7.2.6 award its Competed Services requirements by informing the successful services Framework Provider that they have

been successful via an LOI in line with the Ordering Process; and

7.2.7 Prepare contractual paperwork which;

a) states the Competed Services requirements; and

b) identifies the Services Framework Lot or Framework Lots for which the award is made; and

c) (where appropriate) states the price payable for the Competed Services requirements in accordance with the tender submitted by the successful Services Framework Provider; and

d) incorporates the Call-Off Terms and Conditions applicable to that Services Framework Lot as modified pursuant to the Competed Services requirements.

7.3 The Service Provider agrees that all tenders submitted by the Service Provider in relation to a mini-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 Contractor in accordance with the Tendering Procedures).

7.4 Notwithstanding the fact that the Contractor has followed the procedure set out in this Clause 7 the Contractor shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this Framework Agreement shall oblige The Contractor, The Authority and/or any Contracting Body to place any Award and/or Order for Services.

Responsibility for Awards

7.5 The Service Provider acknowledges that the Contractor is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

7.5.1 the conduct of the Contractor in relation to the Framework Agreement; or

7.5.2 the performance or non-performance of any Call-Off Contracts between the Service Provider and the Contractor entered into pursuant to the Framework Agreement.

Supply chain initiation:

7.6 The Award of a contract for the Services by the Authority to the Contractor shall trigger the Supply Chain Initiation process which shall include (but will not be limited to) the following steps;

a) Supply Chain Pre Mobilisation Meeting

b) Due Diligence Process

c) Official Order via Letter of Intent

Accepting and Declining Awards

7.7 Following receipt of an Official Order, the Service Provider shall promptly and in any event within the time period set out in the Official Order (which in any event shall not exceed three (3) Working Days) acknowledge receipt of the Order and notify the relevant Contractor that it accepts the Order by signing and returning the Letter of Intent.

7.8 If the Service Provider:

7.8.1 notifies the Contractor that it declines to accept an Order; or

7.8.2 the time-limit referred to in Clause 7.7 has expired; then the offer from the Contractor to the Service Provider shall lapse and the Contractor may offer that Order to the Services Framework Provider that submitted the next highest scoring

tender in accordance with the relevant Competed Services Award Criteria.

7.9 The Service Provider in agreeing to accept such an Order pursuant to Clause 7.7 above shall (subject to the Contractor entering into a binding Contract with the Authority and the Service Provider passing all Due Diligence scoring) enter a Call-Off Contract with the Contractor for the provision of Services referred to in that Order pursuant to the Tender Documentation.

8. WARRANTIES AND REPRESENTATIONS

8.1 The Service Provider warrants and represents to the Contractor that:

8.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement and any Call Off Contract it may submit a Tender for with the Contractor;

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

8.1.3 in completing the Expression of Interest, entering into this Framework Agreement, submitting any Tender response or entering 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 Expression of Interest and all related clarifications are true, accurate and not misleading save as may have been specifically disclosed in writing to the Contractor prior to the execution of this Framework Agreement and it will promptly advise the Contractor 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 and will not offer or agree 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 Prevention of Corruption Acts 1889 to 1916;

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 Contractor

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 Contractor;

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 Service Provider or for its dissolution

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

8.1.12 in performing its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Contractor all Service Provider Software and Third Party Software will:-

a) be currently supported versions of that software;

b) perform in all material respects in accordance with its specification; and

c) be Euro Compliant.

8.1.13 it will not do anything (and shall ensure that none of its Staff do anything) which constitutes an offence under the Computer Misuse Act 1990;

8.1.14 it has appropriate security measures in place to prevent and/or detect unlawful use of its information technology systems;

8.1.15 it is not, and has not been, in default of any obligations to which it is subject, by reason of membership of any association or body;

8.1.16 in the three (3) years prior to the date of this Framework Agreement (or, if the Service Provider has been in existence for less than three (3) years, in the whole of such shorter period) it has:-

a) 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; and

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

8.1.17 it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Service Provider's position as an on-going business concern or its ability to fulfil its obligations under this Framework Agreement.

8.2 Each time a Call-Off Contract is entered into the warranties, representations and undertakings in Clause 8.1 shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time that they are deemed to be repeated.

8.4 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Contractor may have in respect of breach of that provision by the Service Provider.

8.5 The Service Provider acknowledges and agrees that:

8.5.1 the warranties, representations and undertakings contained in this Framework Agreement are material and are designed to induce the Contractor into entering into this Framework Agreement and to induce the Contractor and to enter into Call-Off Contracts;

8.5.2 the Contractor has been induced into entering into this Framework Agreement and in doing so has relied upon the warranties, representations and undertakings contained in this Framework Agreement; and

8.5.3 on each and every occasion that it enters into a Call-Off Contract be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in this Framework Agreement.

9. CONFLICTS OF INTEREST, FRAUD AND COMPETITION LAW

9.1 The Service Provider shall take all appropriate steps to ensure that neither it nor any employee, servant, agent, supplier or

subcontractor is placed in a position where there is or may be an Actual conflict or potential conflict between the pecuniary or personal interests of the Service Provider or such persons and duties owed to the contractor under the provisions of this framework agreement and/or any Call off Contract. The Service Provider shall disclose to the Contractor full particulars of any such conflict of interest which may arise.

9.2 The Service Provider warrants that it has engaged in no price fixing, bid rigging, illegal price information exchange agreement or other arrangement in breach of UK, EU or other competition laws relevant to this Framework agreement and/or any Call off Contract

9.3 Any act of Fraud or irregularity committed by the Service Provider whether under this Framework Agreement, any Call-Off Contract or any other contract with the Contractor and/or the Authority or other public body or person employed by or on behalf of the Contractor and/or Authority shall entitle the Contractor to:

9.3.1 terminate the Framework Agreement and any other contract the Contractor has with the Service Provider , without liability to the Contractor, with immediate effect by giving notice in writing to the Service Provider and recover from the Service Provider the amount of any loss suffered by the Contractor resulting from the termination;

9.3.2 recover in full from the Service Provider and the Service Provider shall indemnify the Contractor in full from and against any other loss sustained by the Contractor in consequence of any breach of this Clause 11, whether or not the Framework Agreement has been terminated; and/or

9.3.3 where the Contractor finds that the Service Provider has deliberately submitted a false claim for payment in relation to any contract entered into with the Contractor with the knowledge of its senior officers, recover in full from the Service Provider the amount or value of such payment.

10. CALL-OFF CONTRACT PERFORMANCE

10.1 The Service Provider shall perform all Call-Off Contracts entered into with the Contractor in accordance with:

10.1.1 the requirements of this Framework Agreement; and

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

10.2 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 the Call-Off Contract shall prevail.

11. STATUTORY REQUIREMENTS, CONTRACTOR CODE OF CONDUCT - THE MERLIN STANDARD

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

11.2 Any breach by the Service Provider of this Clause 11(including, for the avoidance of doubt, any part thereof) shall be a Material Default for the purposes of Clause 24 (Termination) and shall entitle the Contractor (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause 24.1.

12. NON-DISCRIMINATION

12.1 The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

13. ENVIRONMENTAL REQUIREMENTS

13.1 The Service Provider shall, when working on the Premises, perform its obligations under any Call-Off Contract entered into with the Contractor in accordance with the Contractors environmental principles which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

14. TUPE COMPLIANCE

14.1 The Service Provider warrants that it shall comply with all requirements under the TUPE regulations for the duration of this framework agreement and/or any and all Call Off Contracts .

14.2 The Service provider shall seek independent legal advice regarding its TUPE obligations and the Contractor shall not be held in any way liable for any act or omission by the Service Provider with regard to such advice sought or lack thereof, including any alleged representations made by or alleged advice given by the Contractor.

15. PROVISION OF MANAGEMENT INFORMATION AND DUE DILIGENCE

15.1 The Service Provider shall provide to the Contractor (in the format and to the timescales specified by the Contractor at the Contractors sole discretion) such information as the Contractor shall from time to time reasonably require, this may include but shall not be limited to:

- a) Copies of insurance documents showing the required framework amounts
- b) Copies of the Service Provider s Policies and Processes
- c) Business Continuity and Security Plans
- d) Financial records and the Service Provider warrants and represents that all information provided during the Expression of Interest process relevant to this clause 15.1 is true, up to date and accurate at the time of execution of this Framework Agreement. The Service Provider further warrants and represents that it will ensure that the Contractor is informed immediately of any changes to this information and is provided with replacement paperwork incorporating the changes where requested.

16. COSTS AND EXPENSES

16.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

17. CONFIDENTIALITY

17.1 Any documents provided by the Contractor and information which the Service Provider may acquire as a result of this framework agreement and/or any call off Contract shall, to the extent that they are not in the public domain or required to be

disclosed by operation of Law, remain confidential to the Contractor and shall not be disclosed, disposed of or used for any purpose without prior written consent from the Contractor.

17.2 Nothing in this Clause 21 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

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

18. OFFICIAL SECRETS ACT

18.1 The Service Provider shall comply with and shall ensure that its Staff comply with, the provisions of:

18.1.1 the Official Secrets Act 1911 to 1989; and

18.1.2 Section 182 of the Finance Act 1989.

18.2 In the event that the Service Provider or its Staff fail to comply with this Clause 22, the Contractor reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Service Provider .

19. DATA PROTECTION

19.1 The Contractor shall (and shall procure that any of its staff involved in the provision of the Services) comply with any requirements under the Data Protection Act for the duration of this Framework Agreement and/or any and all Call Off Contracts.

20. INTELLECTUAL PROPERTY RIGHTS

20.1 Save as granted elsewhere under this Framework Agreement, neither the Contractor nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.

20.2 The Service Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Framework Agreement) without Approval, use or disclose any Contractor Pre-Existing IPR or the Project Specific IPRs to any third party.

20.3 Prior to using any third party Intellectual Property Rights, the Service Provider shall obtain Approval. The Service Provider shall provide the Contractor with details of any third party licence required by the Service Provider and/or the Contractor in order for the Service Provider to carry out its obligations under this Framework Agreement or any Call-Off Contract which may be entered into with the Contractor using the third party Intellectual Property Rights. The Contractor reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.

20.4 Where the Service Provider is granted Approval by the Contractor to use the third party rights, the Service Provider shall procure that the owner of third party rights grants to the Contractor a licence upon the terms informed to the Contractor when seeking the Approval.

21. FREEDOM OF INFORMATION

21.1 The Service Provider acknowledges that the Contractor is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contractor to enable the Contractor to comply with its Information disclosure obligations.

21.2 As part of the Contractor's duties under the regulations, it may be required to disclose information forming part of this Framework Agreement and/or any Call off Contract to anyone who makes a reasonable request. The Contractor has absolute discretion to apply or not to apply any exemptions under the regulations.

22. PUBLICITY AND VISITS

22.1 The Service Provider shall not:

22.1.1 make any press announcements or publicise this Framework Agreement or its contents in any way and/or the details of any Completed Services and/or the details of any Tender Documentation; or

22.1.2 use the Contractor name or brand in any promotion or marketing or announcement of orders without Approval (which shall not be unreasonably withheld or delayed).

22.2 The Contractor shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Contractor, including any examination of this Framework Agreement by the Contractor or otherwise.

22.3 The Service Provider shall pay the utmost regard to the standing and reputation of the Contractor and shall not do anything (by act or omission) which may damage the reputation of the Contractor; bring the Contractor into disrepute; attract adverse publicity to the Contractor; or harm the confidence of the public in the Contractor in any way.

23. SECURITY REQUIREMENTS

23.1 The Service Provider shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Service Provider in the performance of the Services.

23.2 The Service Provider shall comply, and shall procure the compliance of the Staff, at all times, with the security requirements set out during the Supply Chain Initiation Process.

24. TERMINATION

24.1 The Contractor reserves the right to terminate this Framework Agreement and/or any Call off Contracts held by the Service Provider if the Service Provider is found to be in breach of the clauses of this Framework Agreement.

24.2 In any event The Contractor 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 written notice to the Service Provider and all other Services Framework Providers. The Parties acknowledge that if the Contractor exercises its rights under this Clause 24.2 it shall exercise its equivalent rights under all agreements with the Services Framework Providers.

25. CONSEQUENCES OF TERMINATION AND EXPIRY

25.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Service 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 25.

25.2 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.

25.3 Subject to Clause 25.4, in no event shall either Party be liable to the other for any indirect or consequential loss or damage.

25.4 the Service Provider shall indemnify and keep indemnified the Contractor 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 Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This Clause shall not apply to the extent that the Service 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.

26. INSURANCE

26.1 The Service Provider warrants that it has in place at the time of this agreement and that it shall maintain as a minimum for the duration of this agreement following insurances;

a) Employers Liability Insurance £10,000,000; and

b) Public Liability Insurance £10,000,000; and

c) Professional Indemnity Insurance £5,000,000

For the avoidance of doubt the Contractor reserves the right to request that the Service Provider increases the insurances already held or takes out and maintains further insurances if required for any Call Off Contract.

27. TRANSFER AND SUBCONTRACTING

27.1 The Framework Agreement is personal to the Service Provider and the Service Provider shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Authority. The Service Provider shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

28. VARIATIONS TO THE FRAMEWORK AGREEMENT

28.1 The Contractor reserves the right to make changes to this Framework Agreement at any time and the Service Provider shall be informed of such changes.

29. RIGHTS OF THIRD PARTIES

29.1 Save as otherwise provided in this agreement a person who is not party to this Framework Agreement ("Third Party") has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement without the prior written agreement of the Parties.

30. SEVERABILITY

30.1 If any provision or part of a provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision or part of a 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 or part of a provision eliminated.

30.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Contractor and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

31. CUMULATIVE REMEDIES

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

32. WAIVER

32.1 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.

33. COMPLAINTS HANDLING AND RESOLUTION

33.1 The Service Provider shall notify the Contractor of any Complaint regarding the Tendering Process and/or the Supply Chain Initiation Process within 3 days of such complaint arising

33.2 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

33.3 Nothing in this Clause 40 shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

34. LAW AND JURISDICTION

34.1 Subject to the provisions of Clause 42 and Clause 43, the Contractor and the Service Provider accept the exclusive jurisdiction of the courts of England and Wales and agree that the Framework Agreement is to be governed by and construed in accordance with the law of England and Wales.

This document is executed as a deed and is delivered and takes effect at the point of agreement by the Service Provider