

**DATED 12 JANUARY 2026**

**LEICESTERSHIRE COUNTY COUNCIL,  
TRADING AS ESPO  
and**

**[INSERT NAME OF SUPPLIER]**

**FRAMEWORK AGREEMENT FOR  
MANAGED LEARNING SERVICES**

**Agreement Ref: 383\_25**

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Guidance contained in this document is intended for use by ESPO employees however it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

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**THIS FRAMEWORK AGREEMENT** is made on 12 January 2026

BETWEEN:

- (1) Leicestershire County Council, trading as ESPO of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES ("**ESPO**"); and
- (2) **Supplier Name** which is a **[LLP/company/etc]** registered in **[England and Wales/Scotland/Northern Ireland/etc]** under registration number **[registration number]** and whose **[registered/principal]** office is at **[registered/principal office address]** ("**Supplier**").

**BACKGROUND**

- A) ESPO placed a Tender Notice 2025/S 000-051022 on 22 August 2025 on the central digital platform operated pursuant to section 95(4) of the PA23 seeking expressions of interest from providers of managed learning services to Customers as identified in the Tender Notice under a framework arrangement.
- B) ESPO issued an Invitation to Tender (**ITT**) for the provision of the Goods and/or Services.
- C) The Supplier represented to ESPO that it is capable of delivering the Goods and/or Services in accordance with ESPO's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to ESPO in the Tender in relation to its competence, professionalism and ability to provide the Goods and/or Services in an efficient and cost-effective manner.
- D) On the basis of the Tender, ESPO selected the Supplier to enter into a framework agreement, along with a number of other Suppliers appointed to the Framework, to provide the Goods and/or Services to Customers on a call off with or without further competitive selection basis in accordance with this Framework Agreement.
- E) This Framework Agreement sets out the award and ordering procedure for Goods and/or Services which may be required by Customers, the main terms and conditions for any Contract which Customers may conclude and the obligations of the Supplier during and after the Term of this Framework Agreement.
- F) Leicestershire County Council enters into this Framework Agreement in its capacity as servicing authority to a joint committee known as ESPO.
- G) ESPO is established as a joint committee under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000.
- H) ESPO makes no guarantee that Customers will place orders with the Supplier for Goods and/or Services under this Framework Agreement.

**IT IS AGREED** as follows:

## **1. INTERPRETATION**

1.1 In this Framework Agreement, the following expressions shall have the following meanings:

<b>“Adjustment Date”</b>	means the date agreed as being the effective date for the price variation under Framework Schedule 2 (Charging Structure);
<b>“Affected Party”</b>	means the Party seeking to claim relief in respect of a Force Majeure Event;
<b>“Approval”</b>	means the prior written consent of ESPO, which may be subject to such conditions that ESPO may in writing require, including the payment, in advance or otherwise, to ESPO of a reasonable sum in respect of time and expense which may be incurred by ESPO in considering the matter; such consent and conditions may be at ESPO’s absolute discretion, except consent must not be withheld or conditions must be reasonable where it is stated in this Framework Agreement that consent must not be unreasonably withheld; and “Approve” and “Approved” shall be construed accordingly;
<b>“Associated Person”</b>	has the meaning ascribed to it in section 26(4) of the PA23;
<b>“Conduct Policy”</b>	means ESPO’s policy, as amended from time to time, comprising: its Modern Slavery Statement published at <a href="https://www.espo.org/Modern-Slavery-Statement">https://www.espo.org/Modern-Slavery-Statement</a> ; its Supplier Code of Conduct published at <a href="https://www.espo.org/supplier-code-of-conduct">https://www.espo.org/supplier-code-of-conduct</a> ;and its Whistleblowing Policy published at <a href="https://www.leicestershire.gov.uk/jobs-and-volunteering/working-for-the-council/whistleblowing-policy">https://www.leicestershire.gov.uk/jobs-and-volunteering/working-for-the-council/whistleblowing-policy</a> ;
<b>“Audit”</b>	means an audit carried out pursuant to clause 17 (Records and Audit Access);
<b>“Auditors”</b>	shall have the meaning set out in clause 17.3;
<b>“Call- Off Terms”</b>	means the terms on which the Supplier shall provide the Goods and/or Services to the Customers as set out at Framework Schedule 3, but subject to any variations agreed in writing by the Customer and the Supplier and listed in the Master Contract Schedule;
<b>“CEDR”</b>	means the Centre for Effective Dispute Resolution;
<b>“Change in Law”</b>	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Contracts which comes into force after the Commencement Date;
<b>“Change of Control”</b>	shall have the meaning set out in clause 26.13 (Termination on Change of Control);

<b>“Charges”</b>	means the Contract Charges payable by Customers in accordance with the terms of their Contracts;
<b>“Commencement Date”</b>	means 02 January 2026 or, if this date is not completed in this Framework Agreement, it shall be the date stipulated in writing by ESPO by letter to the Supplier;
<b>“Commercially Sensitive Information”</b>	means the Confidential Information relating to the Supplier: a) that is its IPR or its business or information which the Supplier has indicated to ESPO that, if disclosed by ESPO, would cause the Supplier significant commercial disadvantage or material financial loss; or b) that constitutes its trade secret; and otherwise to the extent listed in the Master Contract Schedule and/or any other Contract Document and Schedule 9 (Confidential Information) of the Framework Agreement.
<b>“Comparable Supply”</b>	the supply of goods and/or services to a potential customer by a potential supplier that are the same or substantially similar to the Goods and/or Services;
<b>“Complaint”</b>	means any complaint raised by a Customer in relation to the performance of this Framework Agreement or any Contract in accordance with clause 34 (Complaints Handling and Resolution);
<b>“Confidential Information”</b>	means ESPO’s Confidential Information and/or the Supplier's Confidential Information;
<b>“Connected Person”</b>	has the meaning ascribed to it in paragraph 45, Part 3, Schedule 6 of the PA23
<b>“Consistent Failure”</b>	means any of: a) two (2) or more failures by the Supplier to comply with the Standards in any period of twelve (12) consecutive Months; b) two (2) or more consecutive failures by the Supplier to provide the Management Information by the Reporting Date at any time during the Term; c) any two (2) or more failures by the Supplier to meet the [KPIs (whether the failures relate to the same or different KPIs) in relation to one or more Contracts in any period of twelve (12) consecutive Months;
<b>“Continuous Improvement Plan”</b>	means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Schedule 6 of the Framework Agreement;
<b>“Contract”</b>	means the contract entered into by the Customer and the Supplier pursuant to the Ordering Procedure at Framework Schedule 4 comprising of the Form of Contract Document, the Master Contract Schedule, the Call-Off Terms, the schedules of the Call-Off Terms, and any other Contract Document;

<b>“Contract Documents”</b>	means all documents listed in the Form of Contract Document and/or within a schedule referred to in the Form of Contract Document;
<b>“Contract Year”</b>	means each consecutive twelve (12) Month period during the Term commencing on the Commencement Date;
<b>“Contracting Authority”</b>	means a contracting authority as defined in section 2 of the PA23;
<b>“Customer”</b>	means ESPO and any other Contracting Authority (as defined in section 2 of the PA23) described in the Tender Notice that is an authorised user of this Framework Agreement;
<b>“Customer Satisfaction Survey”</b>	shall have the meaning set out in clause 18.1 (Customer Satisfaction Monitoring);
<b>“Control”</b>	means control as defined in section 1124 of the Corporation Tax Act 2010;
<b>“Controller”</b>	has the meaning set out under the Data Protection Legislation;
<b>“Data Protection Legislation”</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority which are applicable to a Party;
<b>“Data Subject”</b>	has the meaning set out under the Data Protection Legislation;
<b>“Debarment List”</b>	means the list of suppliers referred to in section 62 of the PA23;
<b>“Default”</b>	means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement in connection with or in relation to the subject-matter of this Framework Agreement;
<b>“Discretionary Exclusion Ground”</b>	means any of the circumstances listed in Schedule 7 of the PA23;
<b>“Employment Checks”</b>	means the pre-appointment checks that are required by Law and applicable guidance, including, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
<b>“Equality Legislation”</b>	means the Equality Act 2010 and such other acts, legislation and other Law relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) and to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of

	reasonable adjustments for people with disabilities; and equality in employment;
<b>"Equivalent Goods and/or Services"</b>	shall have the meaning set out in clause 6.2 (Formation of a Contract");
<b>"ESPO Representative"</b>	means the representative appointed by ESPO from time to time as its representative in relation to this Framework Agreement;
<b>"ESPO's Confidential Information"</b>	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, Framework Suppliers and other suppliers of ESPO, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
<b>"Excludable Supplier"</b>	has the meaning given to it in section 57 of the PA23;
<b>"Excluded Supplier"</b>	has the meaning given to it in section 57 of the PA23;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under that 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;
<b>"Force Majeure Event"</b>	means any act, event, omission, happening, non-happening or cause not within an Affected Party's reasonable control affecting the performance by that Party of its obligations including any arising from: a) epidemic or pandemic; b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of government, local government or Regulatory Bodies; d) fire or flood; e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available, but excluding: i) any industrial dispute relating only to the Supplier or the Sub-Contractor; and ii) any event or occurrence which is attributable to a wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;
<b>"Framework"</b>	means the framework arrangements established by ESPO for the provision of the Goods and/or Services to Customers by Framework Suppliers;
<b>"Framework Agreement"</b>	means the clauses of this Framework Agreement together with the Framework Schedules and annexes to it;

<b>“Framework Fee”</b>	means the sum payable by the Supplier to ESPO in accordance with the provisions of clause 16, being such a rate as is specified in paragraph 1 of Framework Schedule 2 (Charging Structure), throughout the Term and thereafter in respect of any extant Contract(s);
<b>“Framework Price(s)”</b>	means the price(s) applicable to the provision of the Goods and/or Services set out in Framework Schedule 2 (Charging Structure) and as may be varied from time to time in accordance with the provisions set out in Schedule 2 (Charging Structure);
<b>“Framework Supplier(s)”</b>	means the Supplier(s) (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
<b>“Fraud”</b>	means any offence in respect of a fraudulent act or omission, defrauding, attempting to defraud or a conspiracy to defraud in relation to this Framework Agreement and/or any other contract with ESPO and/or a Customer under: (i) the Fraud Act 2006; (ii) other Laws or (iii) at common law;
<b>“Further Competitive Selection Process Award Criteria”</b>	means the award criteria set out in Framework Schedule 5 Further Competitive Selection Process Award Criteria;
<b>“Further Competitive Selection Process Procedure”</b>	means the ordering procedure of Framework Schedule 4 (Ordering Procedure);]
<b>“GDPR”</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679 as it forms part of the Law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018;
<b>“General Change in Law”</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>“GHG Emissions”</b>	means emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended from time to time including carbon dioxide (CO <sub>2</sub> ), methane (CH <sub>4</sub> ), nitrous oxide (N <sub>2</sub> O), nitrogen trifluoride (NF <sub>3</sub> ), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride (SF <sub>6</sub> ), each expressed as a total in units of carbon dioxide equivalent;
<b>“Good Industry Practice”</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged within the relevant industry or business sector;

<b>“Goods and/or Services”</b>	means the goods and/or services which the Supplier shall make available to Customers specified in Framework Schedule 1 (Goods and/or Services);
<b>“Goods and/or Services Requirements”</b>	means the requirements of any Customer (as appropriate) for the Goods and/or Services from time to time;
<b>“Guarantee”</b>	means (a) the deed of guarantee in favour of ESPO entered into by the Guarantor on or after the entry into this Framework Agreement which is in the form (i) set out in Schedule 11, or (ii) such form, as ESPO shall, in its absolute discretion require from time to time, or (b) such other type of security as ESPO shall, in its absolute discretion require on or after the entry into this Framework Agreement and from time to time;
<b>“Guarantor”</b>	means [name and number of guarantor with registered or principal office address and] such person who meets the requirements of the ITT and this Framework Agreement or is agreed upon by ESPO at the relevant time in its absolute discretion;
<b>“Guidance”</b>	means any guidance issued by the UK Government from time to time in relation to the PA23 and the Regulations;
<b>“Information”</b>	has the meaning given under section 84 of the FOIA;
<b>“Intellectual Property Rights” or “IPR”</b>	means: a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction and the right to sue for passing off;
<b>“Invitation to Tender” or “ITT”</b>	means the Invitation to Tender issued by ESPO and referred to in Background paragraph “B)” above as amended by clarification(s) contained in a clarification log issued at any time(s) prior to the entry into this Framework Agreement by ESPO via its online portal for the Framework;
<b>“Key Performance Indicators or KPIs”</b>	shall have the meaning set out in clause 7.1.11;

<b>"Key Personnel"</b>	means the individuals (if any) identified in section 3 of the Master Contract Schedule and/or any other Contract Document;
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Supplier's or ESPO's possession before the Commencement Date;
<b>"Law"</b>	means any law, act of parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, regulation, order, regulatory policy, mandatory guidance or industry code of practice, judgment of a relevant court of law, directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>"Lot"</b>	means any of the lots specified in Framework Schedule 1 (Goods and/or Services) to this Framework Agreement and "Lots" shall be construed accordingly;
<b>"Management Information"</b>	means the management information specified in Framework Schedule 7 (Management Information Requirements);
<b>"Mandatory Exclusion Ground"</b>	means any of the circumstances listed in Schedule 6 of the PA23;
<b>"Master Contract Schedule"</b>	means the form of Master Contract Schedule as set out in Framework Schedule 3 (Form of Contract and Call-Off Terms) to be used by a Customer to order the Goods and/or Services;
<b>"Mediator"</b>	shall have the meaning set out in clause 35.5.1;
<b>"MI Default"</b>	has the meaning in Framework Schedule 7 (Management Information);
<b>"MI Report"</b>	means a report containing Management Information submitted to ESPO in accordance with Framework Schedule 7 (Management Information);
<b>"MI Reporting Template"</b>	means the form of report set out in the Annex to Framework Schedule 7 (Management Information) setting out the information the Supplier is required to supply to ESPO;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"Normal Business Hours"</b>	means 8.00 am to 5.30 pm local UK time, each Working Day;
<b>"Ordering Procedure"</b>	means the ordering and award procedures specified in clause 6 (Formation of a Contract) and Framework Schedule 4 (Ordering Procedure);
<b>"PA23"</b>	means the Procurement Act 2023;

<b>“Party”</b>	means ESPO or the Supplier and <b>“Parties”</b> shall be interpreted accordingly;
<b>“Personal Data”</b>	has the meaning set out under the Data Protection Legislation;
<b>“Processor”</b>	has the meaning set out under the Data Protection Legislation;
<b>“Prohibited Act”</b>	means: <ol style="list-style-type: none"><li>1) to directly or indirectly offer, promise or give any person working for, or engaged by, a Customer and/or ESPO a financial or other advantage to:<ol style="list-style-type: none"><li>a) induce that person to perform improperly a relevant function or activity; or</li><li>b) reward that person for improper performance of a relevant function or activity; or</li></ol></li><li>2) to commit any offence:<ol style="list-style-type: none"><li>a) under the Bribery Act 2010 or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption;</li><li>b) under legislation creating offences concerning fraudulent acts or omissions;</li><li>c) at common law concerning fraudulent acts relating to this Framework Agreement and/or any other contract with ESPO and/or a Customer;</li><li>d) defrauding, attempting to defraud or conspiring to defraud ESPO and/or a Customer; or</li><li>e) involving slavery or human trafficking.</li></ol></li></ol>
<b>“Quarter”</b>	means the 3-Month period starting on the Commencement Date of the framework and each successive 3 Month period, and <b>“Quarterly”</b> shall be interpreted accordingly;
<b>“Regulated Activity”</b>	means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;
<b>“Regulations”</b>	means The Procurement Regulations 2024;
<b>“Regulatory Bodies”</b>	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 ESPO;
<b>“Relevant Person”</b>	means any employee, agent, servant, or representative of ESPO, any other public body or person employed by or on behalf of ESPO, or any other UK public body;

<b>“Reporting Date”</b>	means during Normal Working Hours on the 14 <sup>th</sup> day of each Month following the Quarter to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
<b>“Request for Information”</b>	means a request for information or an apparent request relating to this Agreement under the FOIA or the EIR;
<b>“Supplier’s Representative”</b>	means the representative appointed by the Supplier from time to time as its representative in relation to this Framework Agreement;
<b>“Supplier’s Staff” or “Supplier’s Personnel”</b>	means all or any of its directors, LLP members, officers and persons employed by the Supplier together with, to the extent used in the performance of its obligations under this Framework Agreement or any Contracts, the Supplier's agents, service providers and Sub-Contractors;
<b>“Supplier's Confidential Information”</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and service providers of the Supplier, including IPRs, together with information derived from the above, and 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;
<b>“Specification”</b>	means the specification in Framework Schedule 1 (Goods and/or Services);
<b>“Specific Change in Law”</b>	a Change in Law that relates specifically only to the Supplier’s business of the supply of the Goods and/or Services by the Supplier to Customers and which is not a General Change in Law;
<b>“Staff”</b>	means all or any of the relevant Party’ directors, LLP members, officers and persons employed by the Supplier together with, to the extent used in the performance of its obligations under this Framework Agreement or any Contracts, the Supplier's agents, service providers and Sub-Contractors;
<b>“Standards”</b>	means the British Standards (produced by the BSI Group) and international standards, ESPO’s reasonable internal policies and procedures, Government codes of practice and guidance referred to in Framework Schedule 1 (Goods and/or Services) together with any other specified policies or procedures identified in Framework Schedule 1 (Goods and/or Services);
<b>“Statement of Requirements”</b>	means a statement issued by any Customer detailing its Goods and/or Services requirement issued in accordance with the Ordering Procedure;
<b>“Statement of Work”</b>	means the statement submitted by a Framework Supplier as part of a further competitive selection process as described in Framework Schedule 4 (Ordering Procedure);

<b>"Sub-Contract"</b>	means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services or any part thereof or facilities or goods and/or services necessary for the provision of the Goods and/or Services or any part thereof;
<b>"Sub-Contractor"</b>	means the third party with whom the Supplier enters into a Sub-Contract or its servants or agents in connection with the provision of the Goods and/or the Services;
<b>"Tender"</b>	means the tender submitted by the Supplier to ESPO in response to the ITT and subject to the terms of the ITT;
<b>"Term"</b>	means the Initial Term and any Extended Term(s) as provided in clause 2 of this Framework Agreement;
<b>"Third Party"</b>	shall have the meaning set out in clause 37.1;
<b>"Transparency Information"</b>	means: (a) any information, including the contents of this Framework and any amendments to it, permitted or required by the PA23 and the regulations published under it (subject to any exemptions set out in section 94 and section 99 of the PA23); and (b) any information about the Framework, including the content of the Framework and any amendments to it, requested under FOIA or the EIR (subject to any relevant exemptions).
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Working Day"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales; and
<b>"Year"</b>	means a calendar year.

- 1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
  - 1.2.3 the words "include", "includes" "including" "for example" and "in particular" and words of similar effect shall 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 Framework Schedule without further designation shall be construed as a reference to the clause or sub-clause of, 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 Framework 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 Framework Schedules, the clauses shall prevail over the remainder of the Framework Schedules.

## **PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE**

### **2. TERM OF FRAMEWORK AGREEMENT**

2.1 This Framework Agreement shall take effect on the Commencement Date and shall continue, unless terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law, for two (2) Years (**Initial Term**), when it shall terminate automatically without notice, unless, in respect of all or some of the Lots no later than three (3) Months or such shorter period as ESPO shall in its absolute discretion determine ("the **Extension Agreement Date**") before the end of the Initial Term (or any extended period agreed under this clause) the parties agree in writing that the term of this Framework Agreement shall be extended for any period or periods up to a maximum period of two (2) Years (**Extended Term**), in which case, the Framework Agreement shall terminate automatically without notice at the end of the Extended Term. ESPO may choose not to agree any such extension in its absolute discretion, which might be because: (i) ESPO is in its reasonable opinion, at the time of the Extension Agreement Date entitled to terminate this Framework Agreement; or (ii) of any other reason chosen by ESPO. ESPO may choose not to agree such an extension whether or not it chooses to agree an extension to any other party's Framework Agreement under the Framework.

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

3.1 The Supplier shall comply with the obligations contained in the ITT and Tender] which are expressed to apply to the Supplier upon and after entry into this Framework Agreement, and, subject thereto, this Framework Agreement governs the relationship between ESPO and the Supplier in respect of the provision of the Goods and/or Services by the Supplier to Customers, provided that, if there is a

conflict between the provisions of this Framework Agreement and the ITT and Tender, this Framework Agreement shall prevail.

- 3.2 Customers may, at their absolute discretion and from time to time during the Term, order Goods and/or Services from the Supplier pursuant to a Contract entered into pursuant to clause 6.1 (Formation of a Contract) in accordance with the Ordering Procedure.
- 3.3 The Supplier acknowledges that there is no obligation whatsoever on ESPO or on any Customer to invite or select the Supplier to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Framework Agreement except pursuant to any Contract entered into by the Supplier and the Customer. There is no obligation on the Supplier to contract with a Customer to supply any Goods and/or Services under this Framework Agreement except pursuant to any Contract entered into by the Supplier and the Customer, but the Supplier shall ensure that it shall have the capability and resources to enter such contracts with Customers in the normal course of business.
- 3.4 No undertaking or any form of statement, promise, representation or obligation has been made, or shall be deemed to have been made, by any Customer in respect of the total quantities or values of the Goods and/or Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.5 Any additions or amendments to Goods and/or Services specified in Schedule 1 shall be subject to Approval in ESPO's absolute discretion.
- 3.6 The Supplier acknowledges that each Customer is independently responsible for the conduct of its award of any Contract under this Framework Agreement and that ESPO (except to the extent that ESPO shall in the future have entered into a Contract) is not responsible or accountable for, and shall have no liability whatsoever in relation to:
  - 3.6.1 the conduct of a Customer in relation to this Framework Agreement; or
  - 3.6.2 the performance or non-performance of any of the Contracts between the Supplier and the Customer entered into pursuant to this Framework Agreement.

#### **4. SUPPLIER'S APPOINTMENT**

- 4.1 In consideration of:
    - 4.1.1 the Parties' respective obligations herein; and
    - 4.1.2 the payment by ESPO to the Supplier of the sum of £1 (the receipt of which is acknowledged by the Supplier, whether tendered or not);
- the Supplier shall be eligible to be considered for the entry into Contracts for the Goods and/or Services by Customers during the Term.

#### **5. NON-EXCLUSIVITY**

- 5.1 The Supplier acknowledges that, in entering into this Framework Agreement, no form of exclusivity or volume guarantee has been, or will be, granted by ESPO or

Customers for the purchase of Goods and/or Services from the Supplier, and that ESPO and Customers are at all times entitled to enter into other contracts and agreements with other providers for the provision of any or all goods or services which are the same as or similar to the Goods and/or Services.

## **6. FORMATION OF A CONTRACT**

- 6.1 The Supplier shall be entitled at any time during only the Term to enter into a Contract with the Customers for the supply, which may or may not extend beyond the Term, of the Goods and/or Services to the Customers in accordance with Framework Schedule 4 (Ordering Procedure). It is a condition that any such Contract shall be on the terms of the Form of Contract including the Master Contract Schedule and Call-Off Terms.
- 6.2 In the event that any Customer makes an approach to the Supplier with a request for the supply of goods and/or services which are the same as or similar to the Goods and/or Services ("**Equivalent Goods and/or Services**"), the Supplier shall promptly and in any event within five (5) Working Days of the request by the Customer, and before any supply of Equivalent Goods and/or Services is made, inform such Customer of the existence of this Framework and its ability to enter into Contracts for the supply of the Goods and/or Services pursuant to it.

## **PART TWO: SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS**

### **7. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 7.1 The Supplier warrants, represents and undertakes to ESPO that:
- 7.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Framework Agreement;
  - 7.1.2 this Framework Agreement is executed by a duly authorised representative of the Supplier;
  - 7.1.3 in entering into this Framework Agreement, it has not committed any Prohibited Act or Fraud;
  - 7.1.4 all information, statements, warranties and representations contained in the Tender and (unless otherwise agreed) any other document provided by the Supplier which resulted in the entry into this Framework Agreement for the Goods and/or Services are true, accurate, and not misleading, save as may have been specifically disclosed in writing to ESPO prior to the execution of this Framework Agreement, and it will promptly advise ESPO 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;
  - 7.1.5 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 this Framework;

- 7.1.6 it has not caused or induced any person to enter such agreement referred to in clause 7.1.5 above;
- 7.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done, or causing or having caused to be done, any act or omission in relation to any other tender or proposed tender for Goods and/or Services under this Framework;
- 7.1.8 it has not in any way breached the Bribery Act 2010 or caused an offence under section 117(2) of the Local Government Act 1972;
- 7.1.9 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/or any Contract which may be entered with Customers;
- 7.1.10 it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this Framework Agreement and/or any Contract which may be entered with Customers;
- 7.1.11 in connection with the exercise of its rights and performance of its obligations pursuant to this Framework Agreement, it will at all times meet or exceed the Key Performance Indicators as set out in Annex A of Framework Schedule 10 (Framework Management including service levels and key performance indicators) ("**Key Performance Indicators**");
- 7.1.12 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to the Supplier or any of the Supplier's assets or revenue;
- 7.1.13 in the three (3) Years prior to the date of this Framework Agreement (or, if the Supplier 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;
  - (b) it has been in full compliance with all applicable securities Laws and regulations in the jurisdiction in which it is established; and
  - (c) it has not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an

ongoing business concern or its ability to fulfil its obligations under this Framework Agreement; and

- 7.1.14 it has not been convicted of any offence involving slavery and human trafficking; and it has not been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 7.2 Each time a Contract is entered into, the warranties, representations and undertakings in clause 7.1 shall be deemed to be repeated in favour of ESPO by the Supplier with reference to the circumstances existing at the time that they are deemed to be repeated.
- 7.3 The fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination ESPO may have in respect of breach of that provision by the Supplier.
- 7.4 The Supplier acknowledges and agrees that ESPO has been induced into entering into this Framework Agreement in reliance upon the warranties, representations and undertakings contained in this Framework Agreement.
- 7.5 The Supplier acknowledges and agrees that any Goods supplied to the Customers pursuant to a Contract shall conform to a Specification and the Call-Off Terms.
- 7.6 The Supplier undertakes to ESPO that it shall promptly notify ESPO in writing if, during the Term:
  - 7.6.1 any Mandatory Exclusion Ground applies to the Supplier or any of the Supplier's Connected Persons or Associated Persons;
  - 7.6.2 any Discretionary Exclusion Grounds applies to the Supplier or any of the Supplier's Connected Person or Associated Persons; or
  - 7.6.3 the Supplier, and of the Supplier's Connected Persons or Associated Persons are placed on the Debarment List.

## **8. FRAMEWORK AGREEMENT MANAGEMENT**

- 8.1 The Parties shall manage this Framework Agreement in accordance with Framework Schedule 10 (Framework Management including Service Levels and Key Performance Indicators).

## **9 PREVENTION OF BRIBERY AND CORRUPTION**

- 9.1 The Supplier shall, and shall procure that the Supplier's Personnel and Sub-Contractor(s) shall:
  - 9.1.1 not offer or give, or agree to give, to any employee, agent, servant or representative of ESPO or the Customer, or any Relevant Person, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Framework Agreement;
  - 9.1.2 not engage in, relating to this Framework Agreement, a Prohibited Act; and

- 9.1.3 not be involved in commission of any offence under section 117 (2) of the Local Government Act 1972.
- 9.2 The Supplier warrants, represents and undertakes to ESPO that it has not:
  - 9.2.1 in entering into this Framework Agreement, breached the undertakings in clause 9.1. Each time a Contract is entered into, this warranty shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time that the warranty is deemed to be repeated; and
  - 9.2.2 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with this Framework Agreement; and
  - 9.2.3 entered into this Framework Agreement with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by ESPO or the Customer or any other public body or any person employed by or on behalf of ESPO or the Customer in connection with this Framework Agreement, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and ESPO before execution of this Framework Agreement;
- 9.3 The Supplier shall, and shall procure that the Supplier's Personnel and Sub-Contractor(s) shall:
  - 9.3.1 in relation to this Framework Agreement, act in accordance with any published reasonable policy of ESPO or the Customer in relation to the Bribery Act 2010;
  - 9.3.2 notify the Customer and ESPO if it reasonably suspects or becomes aware of any breach of this clause 9 or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Framework Agreement and any Contract made under it;
  - 9.3.3 so far as is reasonable in accordance with the Law: (i) respond promptly to any of ESPO's or the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause, and the Supplier shall co-operate with any investigation; and (ii) allow ESPO to audit the Supplier's books, records and any other relevant documentation in connection with the breach.
- 9.4 Any audit conducted pursuant to clause 9.3.3 shall be in addition to the audits permitted under clause 17 of this Framework Agreement.
- 9.5 If the Supplier, the Supplier's Staff, consultants, agents or Sub-Contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge, breaches:
  - 9.5.1 this clause 9; or

9.5.2 the Bribery Act 2010 in relation to this Framework Agreement or any other contract with ESPO or the Customer or any person employed by or on behalf of ESPO or the Customer or any Relevant Person,

ESPO shall be entitled to terminate this Framework Agreement and each Contract by written notice with immediate effect in accordance with clause 26.1 (Termination on Corruption).

9.6 Without prejudice to its other rights and remedies under this clause, ESPO and the Customer shall be entitled to recover in full from the Supplier, and the Supplier shall on demand indemnify ESPO in full from and against:

9.6.1 the amount of value of any such gift, consideration or commission; and

9.6.2 any other loss sustained by in consequence of any breach of this clause 9.

9.7 The Parties agree that the Framework Fee payable to ESPO in accordance with clause 16 does not constitute a payment of commission for the purposes of this clause.

## **10 CONFLICTS OF INTEREST**

10.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier's Staff are placed in a position where (in the reasonable opinion of ESPO) there is or may be an actual conflict, or a potential conflict, between the professional, pecuniary or personal interests of the Supplier or the Supplier's Staff and the duties owed to ESPO and Customers under the provisions of this Framework Agreement or any Contract.

10.2 The Supplier shall promptly notify and provide full particulars to ESPO and to any relevant Customer if such conflict referred to in clause 10.1 above arises or is reasonably foreseeable.

10.3 ESPO reserves the right to: (i) terminate this Framework Agreement immediately by giving notice in writing to the Supplier; and/or (ii) take such other steps it reasonably deems necessary; where, in the reasonable opinion of ESPO, there is or may be an actual conflict, or a potential conflict, between the professional, pecuniary or personal interests of the Supplier and the Supplier's Staff and the duties owed to ESPO under the provisions of this Framework Agreement or any Contract. The action of ESPO pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to ESPO.

10.4 This clause shall apply during the Term and until the termination or expiry of the last Contract.

## **11 SAFEGUARD AGAINST FRAUD**

11.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier or the Supplier's Staff.

11.2 The Supplier shall, so far as is reasonable in accordance with the Law, notify ESPO immediately if it has reason to suspect that any Fraud has occurred, is

occurring or is likely to occur save, in any event, where complying with this provision would cause the Supplier or its employees to be in contempt of court or commit an offence under the Proceeds of Crime Act 2002, the Terrorism Act 2000 or other Law.

11.3 If the Supplier or the Supplier's Staff commits Fraud, ESPO may:

11.3.1 terminate this Framework Agreement with immediate effect by giving the Supplier notice in writing, and recover from the Supplier the amount of any loss suffered by ESPO resulting from the termination, including the cost reasonably incurred by ESPO of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by ESPO throughout the remainder of the Term; or

11.4 recover in full from the Supplier, and the Supplier shall on demand indemnify ESPO in full from and against, any other loss sustained by ESPO in consequence of any breach of this clause.

## **12 PERFORMANCE OF CONTRACTS AND THIS AGREEMENT**

12.1 The Supplier shall perform all its obligations under all Contracts entered into with any Customer:

12.1.1 in accordance with the requirements of this Framework Agreement;

12.1.2 in accordance with the terms and conditions of the respective Contract;

12.1.3 in accordance with Good Industry Practice;

12.1.4 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and

12.1.5 in compliance with all applicable Law.

12.2 For the purposes of sub-clause 12.1 if there is any conflict between the requirements of the Contract Documents, the conflict shall be resolved in accordance with the following order of precedence:

12.2.1 this Framework Agreement (excluding Framework Schedule 3);

12.2.2 Framework Schedules 1- 2, 4-10;

12.2.3 the Form of Contract;

12.2.4 the Master Contract Schedule;

12.2.5 the Call-Off Terms;

12.2.6 any other Contract Document (not including this Framework Agreement and the Invitation to Tender);

12.2.7 the Tender;

12.2.8 the Invitation to Tender.

- 12.3 In performing its obligations under this Framework Agreement, the Supplier shall and shall procure that all Supplier's Personnel and Sub-contractor(s) shall:
  - 12.3.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015 and the Conduct Policy;
  - 12.3.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - 12.3.3 include in contracts with its suppliers and any Sub-Contractors provisions which are at least as onerous as those set out in this clause 12.4;
  - 12.3.4 implement a system of training for Supplier's Staff to ensure compliance with the Conduct Policy and shall keep a record of all training offered and completed by Supplier's Staff to ensure compliance with the Conduct Policy and shall make a copy of the record available to ESPO and each Customer on request; and
  - 12.3.5 notify ESPO as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement.
- 12.4 The Supplier shall ensure that its operations comply with all applicable environmental Law, including in relation to GHG Emissions, waste disposal, and the handling of hazardous and toxic materials; and
  - 12.4.1 the goods it manufactures (including the inputs and components that it incorporates into its goods) comply with all applicable environmental Law; and
  - 12.4.2 it will only use packaging materials that comply with all applicable environmental Law.
- 12.5 The Supplier shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:
  - 12.5.1 assess the environmental impact of all past, current and future operations;
  - 12.5.2 specify steps to continuously improve environmental performance, and reduce GHG Emissions, pollution and waste;
  - 12.5.3 specify measures to reduce the use of all raw materials, energy and supplies; and
  - 12.5.4 require the Supplier's Staff to be trained in environmental matters.
- 12.6 The Supplier shall, in performing its obligations under this Framework Agreement minimise the release of GHG Emissions, air pollutants and other substances damaging to health and the environment in performing this Framework Agreement, taking into account relevant factors such as the locations from which

materials are sourced, transport of materials, work-related travel by the Supplier's Staff and emissions from the Supplier's offices and equipment.

- 12.7 On each anniversary of the Commencement Date, the Supplier shall complete and submit to ESPO a written report in relation to the performance of this Framework Agreement, which shall be in a form reasonably acceptable to ESPO and contain information on:
  - 12.7.1 the Supplier's GHG Emissions, using the most recent government conversion factors for greenhouse gas reporting; and
  - 12.7.2 the overall sustainability impact of the Supplier's performance of this Framework Agreement, including improvements identified by the Supplier, new policies or targets adopted to reduce the environmental impact of the Supplier's operations and contributions towards ESPO's environmental policies or targets.
- 12.8 ESPO may audit the Supplier's compliance with clauses 12.5 to 12.7 (inclusive) in accordance with clause 17.
- 12.9 The Supplier shall comply with the Supplier Code of Conduct.
- 12.10 The Supplier shall work with ESPO and Customers to promote Social Value in accordance with the Social Value Act 2012 and the current National Procurement Policy Statement ([National Procurement Policy Statement - GOV.UK](#)) particularly within the Supplier's local economy.

### **13 STATUTORY REQUIREMENTS AND STANDARDS**

- 13.1 The Supplier shall be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Framework Agreement and any Contract.
- 13.2 The Supplier shall comply with the Standards and the Law in performing its obligations under this Framework Agreement.
- 13.3 Where the provision of the Goods and/or Services requires any of the Supplier's Personnel or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Supplier will make checks in respect of such employees and volunteers with the Disclosure & Barring Service for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and will make the appropriate check of the Children's Barred List relating to the protection of children.
- 13.4 The Supplier will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 in respect of such employees and volunteers that work in a Regulated Activity.
- 13.5 The Supplier will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three Years.
- 13.6 The Supplier will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such

activities under the Safeguarding of Vulnerable Groups Act 2006 and will notify ESPO immediately of any decision to employ such a person in any role connected with this Framework Agreement or any other agreement or arrangement with ESPO.

13.7 Where the provision of the Goods and/or Services does not require any of the Supplier's employees or volunteers to work in a Regulated Activity but where the Supplier's employees or volunteers may nonetheless have contact with children and/or vulnerable adults, the Supplier will in respect of such employees and volunteers:

13.7.1 carry out Employment Checks; and

13.7.2 carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Term.

## **14 NON-DISCRIMINATION**

14.1 The Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation.

14.2 The Supplier shall take all reasonable steps to secure the observance of clause 14.1 by all Supplier's Staff employed in performance of this Framework Agreement.

14.3 The Supplier shall, so far as is reasonable in accordance with the Law, notify ESPO forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Supplier under Equality Legislation.

14.4 Where any investigation is undertaken by a person empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of this Framework Agreement which is alleged to be in contravention of Equality Legislation, the Supplier shall, free of charge:

14.4.1 provide any information requested in the timescale allotted;

14.4.2 attend any meetings as required and permit the Supplier's Staff to attend;

14.4.3 promptly allow access to and investigation of any documents or data deemed to be relevant;

14.4.4 allow the Supplier and any of the Supplier's Staff to appear as witness in any ensuing proceedings; and

14.4.5 cooperate fully and promptly in every way reasonably required by the person conducting such investigation during the course of that investigation, provided that there shall be no obligation to disclose any information to the extent only which it is subject to legal professional or litigation privilege.

14.5 Where any investigation is conducted or proceedings are brought under Equality Legislation which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or the Supplier's Staff, and where there

is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify ESPO with respect to all costs, charges and expenses (including legal costs and disbursements on a solicitor and client basis and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment ESPO may have been ordered or required to pay to a third party.

- 14.6 The Supplier must ensure that all written information produced or used in connection with this Framework Agreement is as accessible as reasonably possible to people with disabilities.
- 14.7 The Supplier acknowledges that any Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Goods and/or Services, and the Supplier shall provide all necessary assistance and information to ESPO as may be required in relation to the performance of an impact analysis by ESPO. The Supplier shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by ESPO.

### **PART THREE: SUPPLIER'S INFORMATION AND PAYMENT OBLIGATIONS**

#### **15 PROVISION OF MANAGEMENT INFORMATION**

- 15.1 The Supplier shall, at no charge to ESPO, submit to ESPO complete and accurate Management Information in accordance with the provisions of the Framework Schedule 7 (Management Information Requirements).
- 15.2 The Supplier grants ESPO a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to use and to share with Customers or Relevant Person any Management Information supplied to ESPO for ESPO's normal operational activities, including monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 15.3 In the event ESPO shares the Management Information, ESPO shall ensure that any Customer receiving such information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any other person (unless required to do so by Law).

#### **16 FRAMEWORK FEE AND OTHER FEES**

- 16.1 In consideration of the entry into of this Framework Agreement, the Supplier shall pay to ESPO the Framework Fee in accordance with this clause 16. The Framework Fee shall become due upon the date the Supplier invoices each of the Customers for the Contract Charges for each of the Goods and/or Services supplied to each of the Customers in accordance with the Contracts. The Supplier shall invoice each of the Customers the Contract Charges immediately when permitted by the Contracts.
- 16.2 ESPO shall submit invoices to the Supplier in respect of the Framework Fee due Quarterly based on the Management Information provided pursuant to Framework Schedule 7 (Management Information Requirements), and adjusted pursuant to paragraph 4 of that Framework Schedule 7 to take into account any under-payment of the Framework Fee and any Default Framework Fee (as defined in Schedule 7) payable pursuant to that Schedule.

- 16.3 The Supplier shall pay the amount stated in any invoice submitted under clause 16.2 within thirty (30) days of the date of issue of the invoice.
- 16.4 All Framework Fees and other fees shall be paid by the Supplier to ESPO without any abatement, set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law). If any such withholding or deduction of tax is required, the Supplier shall, when making the payment to which the withholding or deduction relates, pay to ESPO such additional amount as will ensure that ESPO receives the same total amount that it would have received if no such withholding or deduction had been required.
- 16.5 The Contract Charges shall be the full amount of the Charges payable by the Customers for the Goods and/or Services bought by the Customers from the Supplier pursuant to the Contracts as invoiced by the Supplier to the Customer as specified in each and every Contract, and shall not be reduced as a result of any reduction in the Charges due to the application of any Service Credits (as defined in the Contracts) and/or any other deductions made under any Contract.
- 16.6 The Framework Fee shall be exclusive of VAT. The Supplier shall pay the VAT on the Framework Fee at the rate and in the manner prescribed by Law from time to time.
- 16.7 Interest shall be payable on any late payments of the Framework Fee under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 16.8 The Framework Fee shall remain payable throughout the duration of any Contracts irrespective of the termination for any reason of this Framework Agreement including the effluxion of time and whether or not the Supplier succeeds in being awarded any subsequent renewal of this Framework Agreement.

## **17 RECORDS AND AUDIT ACCESS**

- 17.1 The Supplier shall keep and maintain for the Term and six (6) Years after the date of termination or expiry of this Framework Agreement, full and accurate records and accounts (together with copies of the Supplier's management and published accounts) to provide evidence relating to compliance with this Framework Agreement and of the operation of this Framework Agreement, including the Goods and/or Services provided under it, the Contracts entered into with Customers, and the amounts paid and payable by each Customer and the Supplier, and records to trace the supply chain of all Goods and/or Services provided to each Customer in connection with each Contract.
- 17.2 The Supplier shall keep the records and accounts referred to in clause 17.1 above in accordance with Good Industry Practice.
- 17.3 The Supplier shall afford ESPO and/or ESPO's representatives ("**Auditors**") access to the records and accounts referred to in clause 17.1 at the Supplier's premises or elsewhere reasonably requested by ESPO and/or provide copies of such records and accounts and permit the Auditors to meet the Supplier's Staff, as may be required by ESPO from time to time, and otherwise provide reasonable co-operation in order that ESPO may carry out an inspection including for the following purposes:

- 17.3.1 to verify the accuracy of the Charges (and proposed or actual variations to them in accordance with this Framework Agreement);
  - 17.3.2 to review the Supplier's compliance with its obligations set out in Framework Schedule 6 (Value for Money); and/or
  - 17.3.3 to ensure that the Supplier is complying with its obligations under this Framework Agreement and any Contract, including its obligations thereunder relating to the Modern Slavery Act 2015 and the Conduct Policy.
- 17.4 The Supplier shall provide such records and accounts on request during the Term and for a period of six (6) Years after expiry of the Term to ESPO (or relevant Customer) and its internal and external auditors.
- 17.5 ESPO shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services pursuant to the Contracts, save in so far as the Supplier accepts that control over the conduct of Audits carried out by the National Audit Office is outside of the control of ESPO.
- 17.6 If an Audit reveals that the Supplier has at any time underpaid an amount equal to or greater than one per cent (1%) of the Framework Fee due in respect of a Contract Year, then the Supplier shall reimburse ESPO its reasonable costs incurred in relation to the Audit.
- 17.7 If an Audit reveals that the Supplier has at any time underpaid an amount equal to or greater than five per cent (5%) of the Framework Fee, due in respect of a Contract Year, ESPO shall (in addition to the right in clause 17.7) be entitled to exercise its rights to terminate this Framework Agreement pursuant to clause 26.
- 17.8 Except as otherwise set out in this clause 17, the Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 17.

## 18 CUSTOMER SATISFACTION MONITORING

- 18.1 ESPO may from time to time undertake (or procure the undertaking of) a Customer satisfaction survey ("**Customer Satisfaction Survey**") the purpose of which shall include:
- 18.1.1 assessing the level of satisfaction among Customers with the supply of Goods and/or Services (including the way in which the Goods and/or Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the supply of the Goods and/or Services;
  - 18.1.2 monitoring the compliance by the Supplier with this Framework Agreement; and
  - 18.1.3 such other assessment as it may deem appropriate for monitoring Customer satisfaction.

18.2 ESPO and any Customer shall be entitled, but not obliged, to use the results of the Customer Satisfaction Survey to make decisions under or in relation to this Framework Agreement and the Contracts.

## 19 CONFIDENTIALITY

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

19.1.1 treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

19.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Framework Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Framework Agreement.

19.2 The Supplier shall take all necessary precautions to ensure that all of ESPO's Confidential Information obtained under or in connection with this Framework Agreement:

19.2.1 is given only (except where otherwise Approved) to the Supplier's Staff engaged in connection with this Framework Agreement as is reasonable for the performance of this Framework Agreement; and

19.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any Supplier's Staff otherwise than for the purposes of this Framework Agreement.

19.3 ESPO shall take all necessary precautions to ensure that all of the Supplier's Confidential Information obtained under or in connection with this Framework Agreement:

19.3.1 is given only to ESPO's Staff engaged as is reasonable for the performance of this Framework Agreement; and

19.3.2 is treated as confidential and not (without the prior consent of the Supplier) disclosed or used by any of ESPO's Staff otherwise than for the purposes of this Framework Agreement.

19.4 Each Party shall ensure that its Staff are aware of its confidentiality obligations under this Framework Agreement and shall use its reasonable endeavours to ensure that its Staff comply with its confidentiality obligations under this Framework Agreement.

19.5 At the written request of either Party (which shall not be made unreasonably), the other Party shall promptly procure that members of the other Party's Staff whom the requesting Party may reasonably nominate from time to time, sign a confidentiality undertaking in a form reasonably acceptable to the requesting Party.

19.6 Each Party shall not use any of the other Party's Confidential Information received otherwise than for the purposes of this Framework Agreement.

- 19.7 In the event that any default, act or omission of any Supplier's Staff causes or contributes (or could cause or contribute) to the Supplier's breaching its obligations as to confidentiality under or in connection with this Framework Agreement, the Supplier shall take such action as may be appropriate in the circumstances. To the fullest extent permitted by its own obligations of confidentiality to any such Staff, the Supplier shall provide such evidence to ESPO as ESPO may reasonably require to demonstrate that the Supplier is taking appropriate steps to comply with this clause.
- 19.8 In the event that any default, act or omission of any of ESPO's Staff causes or contributes (or could cause or contribute) to ESPO's breaching its obligations as to confidentiality under or in connection with this Framework Agreement, ESPO shall take such action as may be appropriate in the circumstances. To the fullest extent permitted by its own obligations of confidentiality to any of such Staff, ESPO shall provide such evidence to the Supplier as the Supplier may reasonably require to demonstrate that ESPO is taking appropriate steps to comply with this clause.
- 19.9 The above provisions shall not apply to any Confidential Information received by one Party from the other which:
  - 19.9.1 is or becomes public knowledge (otherwise than by breach of this clause 19);
  - 19.9.2 was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - 19.9.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 19.9.4 is independently developed without access to the Confidential Information; or
  - 19.9.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under clause 20 (Transparency) and/or the FOIA, or EIR pursuant to clause 22 (Freedom of Information) and/or the PA23.
- 19.10 Nothing in this Framework Agreement shall prevent ESPO from disclosing the Supplier's Confidential Information (including the Management Information obtained under clause 15):
  - 19.10.1 for the purpose of the examination and certification of ESPO's accounts;
  - 19.10.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which ESPO has used its resources; or
  - 19.10.3 to any government department or a Customer to which the Supplier's Confidential Information relates, and the Supplier hereby acknowledges that all Customers receiving such Supplier's Confidential Information may further disclose the Supplier's Confidential Information to other government departments or Customers on the

basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Customer.

- 19.11 Nothing in clauses 19.1 to 19.5 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under this Framework Agreement or any Contracts in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 19.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Framework Agreement or Contracts, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 19.13 The Supplier will immediately notify ESPO of any breach of security in relation to ESPO's Confidential Information obtained in the performance of this Framework Agreement and all Contracts and will keep a record of such breaches. The Supplier will use its best endeavours to recover such ESPO's Confidential Information. This obligation is in addition to the Supplier's obligations under clauses 19.1 to 19.5. The Supplier will co-operate with ESPO in any investigation that ESPO considers necessary to undertake as a result of any breach of security in relation to ESPO's Confidential Information.

## **20 TRANSPARENCY**

- 20.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, EIR, the PA23, the Transparency Information is not Confidential Information. ESPO shall be responsible for determining in its absolute discretion whether any of the Transparency Information is exempt from disclosure in accordance with the provisions of the FOIA, EIR and the PA23.
- 20.2 Notwithstanding any other term of this Framework Agreement, the Supplier hereby gives its consent for ESPO to publish the Transparency Information in its entirety, (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA, EIR or the PA23) to the general public.
- 20.3 ESPO may consult with the Supplier to inform its decision regarding any exemptions under clause 20.1, but ESPO shall have the final decision in its absolute discretion.
- 20.4 The Supplier shall assist and cooperate with ESPO to enable ESPO to publish this Framework Agreement.
- 20.5 ESPO will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide an explanation to the Supplier. If ESPO determines that publication of any element of the Transparency Information would be contrary to the public interest, ESPO shall be entitled to exclude such information from publication. The Supplier acknowledges that ESPO would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.

- 20.6 ESPO shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Transparency Information being published to ensure the public obtain a fair view on how the Framework Agreement is being performed.
- 20.7 The Supplier acknowledges that ESPO may be required to provide and publish information and to publish notices under the PA23 and any supporting legislation during the lifetime of the Framework Agreement. The Supplier consents and agrees to such publication and to fully cooperate with ESPO where it is required in order to publish such information or notice in accordance with the PA23 and any supporting legislation and also agrees to provide all reasonable assistance that may be necessary to enable ESPO to do so. The Supplier also agrees to coordinate and respond to ESPO in relation to this clause 20.6 in a timely manner.
- 20.8 Where this Framework Agreement is terminated or expires and falls into any of the scenarios listed in section 80(3) of the PA23, the Supplier agrees to cooperate with and provide ESPO with all relevant information it may hold that may need to be provided in any termination notice, that ESPO is required to publish in accordance with section 80(1) of the PA23 as soon as reasonably practicable.

## **21 DATA PROTECTION**

- 21.1 ESPO and the Supplier acknowledge that each Party is individually a Controller in respect of any Personal Data processed by it and each agrees to comply with its obligations under the Data Protection Legislation accordingly.
- 21.2 The Parties agree that it is necessary to exchange limited Personal Data for the purpose of fulfilling the Parties' obligations under this Framework Agreement and that they shall each ensure their full compliance with the Data Protection Legislation.
- 21.3 The Supplier shall and shall procure that any of the Supplier's Staff involved in the provision of this Framework Agreement and any Sub-Contractor shall comply with their obligations under the Data Protection Legislation and shall enter into appropriate arrangements with third parties.
- 21.4 Upon the termination or expiry of this Framework Agreement, each Party shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of services to the other Party or to a third party to be achieved, then the transferring Party shall, having first satisfied itself that such transfer is compliant with all Laws, transfer current and required Personal Data to the other Party or to the third party in a secure manner, and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.
- 21.5 Historical Personal Data shall be retained by the Supplier in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with the Data Protection Legislation.
- 21.6 Neither Party is a Processor on behalf of the other Party in furtherance of its obligations under this Framework Agreement. In the event it is established at any time during this Framework Agreement that Personal Data is to be processed by the Supplier under this Framework Agreement on behalf of ESPO,

then the Supplier shall immediately enter into a data processing agreement with ESPO on reasonable terms to be determined by ESPO to ensure full compliance with the Data Protection Legislation.

- 21.7 Each Party (the indemnifying Party) agrees to fully indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages, liabilities, fines, penalties, interest, expenses or otherwise incurred by the other Party or for which the other Party may become liable due to any failure by the indemnifying Party or its employees, agents, or Sub-Contractors to comply with their obligations under this clause 21.
- 21.8 The provisions of this clause shall apply during the Term and indefinitely after its expiry or termination.

## **22 FREEDOM OF INFORMATION**

- 22.1 The Supplier acknowledges that ESPO may be subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("**EIR**") and shall assist and co-operate with ESPO to enable ESPO to comply with their Information disclosure obligations.
- 22.2 The Supplier shall, and shall procure that its Sub-Contractors shall:
- 22.2.1 transfer to ESPO all Requests for Information that it receives as soon as practicable, and in any event within five (5) Working Days of receiving a Request for Information;
  - 22.2.2 provide ESPO with a copy of all Information, relevant to a Request for Information, in its or such Sub\_Contractor's possession or power, in the form that ESPO reasonably may request within five (5) Working Days of ESPO's request; and
  - 22.2.3 provide all necessary assistance reasonably requested by ESPO to enable ESPO to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 22.3 ESPO may determine in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 22.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by ESPO, such authorisation not to be unreasonably withheld.
- 22.5 The Supplier acknowledges that, notwithstanding the provisions of this clause, ESPO may, acting in accordance with the FOIA or the EIR be obliged to disclose information concerning the Supplier or the Goods and/or Services (including any Confidential Information):
- 22.5.1 without consulting or obtaining the consent of the Supplier; or
  - 22.5.2 following consultation with the Supplier and having taken its views into account;

provided always in any such case that where this clause 22.5 applies, ESPO shall take reasonable steps, where appropriate, to give the Supplier reasonable advanced notice, or failing that, to draw the disclosure to the Supplier's attention reasonably promptly after any such disclosure, provided that ESPO may in its absolute discretion decide whether any Confidential Information is exempt from disclosure in accordance with the FOIA or the EIR.

- 22.6 The Supplier acknowledges that the Confidential Information listed in Framework Schedule 9 (Confidential Information) is of indicative value only and that ESPO may be obliged to disclose any or all of it in accordance with this clause 22 and the Law.

## **23 PUBLICITY AND MARKETING**

- 23.1 Subject to clause 23.4, the Supplier shall not make any press announcements or publicise this Framework Agreement or its contents in any way without Approval.
- 23.2 ESPO shall be entitled to publicise this Framework Agreement.
- 23.3 The Supplier shall not do anything, or permit or cause anything to be done, which may damage the reputation of ESPO or its Customers or bring ESPO or its Customers into disrepute.
- 23.4 The Supplier shall undertake marketing of this Framework Agreement and the Goods and/or Services to Customers in accordance with the provisions of Framework Schedule 8 (Marketing) during the Term, provided that all marketing material shall be legal, decent, honest and truthful.

## **24 USE OF BRAND NAMES**

- 24.1 The Supplier hereby acknowledges that the Tender has been submitted and accepted on the understanding that, where specific brand or trade names are mentioned within the item descriptions and specifications, this should not be taken to imply that other brands or makes of product would be unacceptable. Rather it is simply an indication of the brands which may have proved to be acceptable for ESPO. The Supplier may offer alternative brands which meet the stated requirements.
- 24.2 The Supplier acknowledges and agrees that ESPO may use any brand or trade names and/or descriptions of Goods and/or Services supplied or to be supplied under this Framework Agreement in communications with Customers. Such communication may include, among other things, documents published periodically by ESPO.
- 24.3 If the Supplier ceases (for any reason) to supply the Goods and/or Services under this Framework Agreement, or on expiry of this Framework Agreement fails to secure a new supply arrangement, the Supplier accepts that ESPO gives no guarantee that brand or trade names previously published in the manner described in clause 24.2 above will be withdrawn or deleted except as required by ESPO.
- 24.4 The above provisions will prevail whether or not the Supplier is the owner of the brand(s) or trade name(s) concerned.

- 24.5 Where the Supplier is not the owner of the brand(s) or trade name(s) concerned, the Supplier: (i) warrants that it has secured the owners' agreement to their use and (ii) will indemnify ESPO against any expense (including reasonable legal expenses), liability, loss, claim or proceedings whatsoever arising from the use by ESPO of such brand(s) or trade name(s) in accordance with this clause 24.

## **25 INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**

- 25.1 Save as granted under this Framework Agreement, neither Party acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 25.2 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 25.3 The Supplier warrants and represents that:
- 25.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Framework Agreement, and any Contract;
  - 25.3.2 it has taken, and shall continue to take, all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or ESPO's Confidential Information (held in electronic form) owned by or under the control of, or used by ESPO and/or Customers;
- 25.4 The Supplier shall during and after the Term indemnify and keep indemnified ESPO on demand in full from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis and administrative expenses), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 25.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and
  - 25.4.2 performance of the Supplier's responsibilities and obligations hereunder.
- 25.5 The Supplier shall promptly notify ESPO if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Supplier's responsibilities and obligations hereunder.
- 25.6 If a claim or demand is made or action brought to which clause 25.4 and/or 25.5 may apply, or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier shall at its own expense and within a reasonable time either:

- 25.6.1 modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply *mutatis mutandis* to such modified or substituted goods and/or services and such substitution shall not increase the burden on Customers to a Contract; or
- 25.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to ESPO; and
- 25.6.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

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

### **26 TERMINATION**

#### **Termination on Corruption**

- 26.1 ESPO may terminate this Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the conduct prohibited in clause 9 (Prevention of Bribery and Corruption) has occurred.

#### **Termination in relation to Conflict of Interest**

- 26.2 ESPO may terminate this Framework Agreement in accordance with clause 10.3 by serving notice on the Supplier in writing with effect from the date specified in the notice pursuant to clause 10.3 (Conflict of Interest).

#### **Termination in relation to Fraud**

- 26.3 ESPO may terminate this Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in the notice where the conduct prohibited in clause 11.3 (Safeguard against Fraud) has occurred.

#### **Termination on Failure to Agree Variation**

- 26.4 ESPO may terminate this Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Parties fail to agree to a variation pursuant to clause 32.1.2 (Variations to this Framework Agreement).

#### **Termination on Default**

- 26.5 ESPO may terminate this Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice where an amount which has fallen due under; (i) this Framework Agreement or (ii) another current or past contract between ESPO and the Supplier; and which , remains unpaid for at least 30 days after service of a written notice served on the Supplier which contains a warning of ESPO's intention to terminate this Agreement failing payment in full.

26.6 ESPO may terminate this Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice where the Supplier commits :

26.6.1 a material Default and has not remedied the material Default to the reasonable satisfaction of ESPO within thirty (30) days (or such other reasonable period specified by ESPO) after issue of a written notice specifying the Default, with reasonable details, and requesting it to be remedied; or

26.6.2 commits a material Default which is not, in the reasonable opinion of ESPO, capable of remedy.

### **Termination on Consistent Failure**

26.7 ESPO may terminate this Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where a Consistent Failure has occurred.

### **Termination on death, incapacity, etc.**

26.8 ESPO may terminate this Framework by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier (being an individual) has died or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation.

### **Termination on Financial Standing**

26.9 ESPO may terminate this Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of ESPO), there is a material detrimental change in the economic and financial standing of the Supplier or any current Guarantor compared with that specified in the ITT (if any) or the credit rating of the Supplier or any current Guarantor compared with that specified in the ITT (if any).

### **Termination on Insolvency, etc.**

26.10 ESPO may terminate this Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where in respect of the Supplier or the Guarantor:

26.10.1 it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

26.10.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up, or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide solvent reconstruction or amalgamation);

- 26.10.3 a petition is presented for its winding up (which is not dismissed within ten (10) Working Days of its service) or an order is made, for its winding up, or an application is made for the appointment of a provisional liquidator (other than as part of, and exclusively for the purpose of, a bona fide solvent reconstruction or amalgamation);
- 26.10.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets or the holder of a qualifying floating charge over its assets has become entitled to appoint an administrative receiver or a person becomes entitled to appoint a receiver over any of its assets;
- 26.10.5 an application or order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- 26.10.6 it 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 as if the words "it is proved to the satisfaction of the court that" did not appear in sections 123(1)(e) or 123(2) 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 IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 26.10.7 an application is made for a moratorium under Part A1 of the Insolvency Act 1986;
- 26.10.8 a creditor or encumbrancer of the other party 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 its assets and such attachment or process is not discharged within ten (10) Working Days;
- 26.10.9 it (being an individual) is the subject of a bankruptcy petition, application or order;
- 26.10.10 any event analogous to any of those listed in clauses 26.11.1 to clause 26.11.10 (inclusive) occurs under the law of any other jurisdiction which relates to it; or
- 26.10.11 it suspends or ceases, or threatens to suspend or cease, to carry on (i) its whole business, or (ii) the part of the business from which the Supplier provides the Goods or Services.

### **Termination on Change of Control**

- 26.11 The Supplier shall notify ESPO immediately in writing if the Supplier has undergone a change of control within the meaning of section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and, to the extent that this does not contravene any Law or any confidentiality obligations of the Supplier, shall, without prejudice to the foregoing, notify ESPO reasonably promptly in writing of any circumstances known by the Supplier suggesting that a Change of

Control is planned or in contemplation by any person. The Supplier shall provide ESPO with such information in relation to the Change of Control, and the person who is to take such control, as is reasonable, and, in advance of ESPO's considering and dealing with such Change of Control, the Supplier shall make payment to ESPO of the sum of £500 or such higher sum as is reasonable in the circumstances (plus applicable VAT) in respect of the time spent by ESPO in considering each such Change of Control. ESPO may terminate this Framework Agreement by giving notice in writing to the Supplier with effect from the date specified in such notice but to take effect no later than six (6) Months after:

- 26.11.1 being notified in writing that a Change of Control has occurred; or
- 26.11.2 where no such notification has been made, the date that ESPO became, or should reasonably have become, aware of the Change of Control,

if ESPO believes, acting reasonably, that the Change of Control is likely to have an adverse effect on the Supplier's ability to perform its obligations under this Framework Agreement, but ESPO shall not be permitted to terminate this Framework Agreement where Approval was granted prior to the same Change of Control.

### **Termination in compliance with the Procurement Act 2023**

26.12 ESPO may terminate this Framework Agreement in accordance with Section 78 of the PA23, and provided that the requirements of Section 78(7) of the PA23 have been met, where:

- i) ESPO considers that this Agreement was awarded or modified in material breach of the PA23 or regulations made under it;
- ii) the Supplier has, since the award of this Agreement become an Excluded Supplier or Excludable Supplier (including by reference to an associated person) and provided that the conditions in Sections 78(8) (where applicable) of the PA23 have been met; or
- iii) any Subcontractor has, since the award of this Agreement become an Excluded Supplier or Excludable Supplier and provided that the conditions in section 78(3) to 78(8) of the PA23 have been met.

### **Termination on Audit**

26.13 ESPO may terminate this Framework Agreement by serving notice in writing with effect from the date specified in such notice in the circumstances set out in clause 17 (Records and Audit Access).

### **Termination by ESPO without Cause**

26.14 ESPO shall have the right to terminate this Framework Agreement by giving at least three (3) Months' written notice to the Supplier which may not expire sooner than twelve (12) Months after the Commencement Date.

### **Termination by agreement**

26.15 The Parties may agree in writing to terminate this Framework Agreement at any time.

### **Partial Termination**

26.16 If ESPO is entitled to terminate this Framework Agreement pursuant to this clause 26, it may (at its absolute discretion) terminate some and not all of the Lots.

### **Termination for continuing Force Majeure Event**

26.17 Either Party may, by serving notice on the other in writing with effect from the date specified in such notice, terminate this Framework Agreement if a Force Majeure Event endures for a continuous period of more than 8 Weeks by serving notice on the other in writing with effect from the date specified in such notice.

## **27 SUSPENSION OF SUPPLIER'S APPOINTMENT**

27.1 Without prejudice to ESPO's rights to terminate this Framework Agreement as set out in this Framework Agreement, if a right to terminate this Framework Agreement occurs, ESPO may suspend the Supplier's right under this Framework Agreement to enter into Contracts with Customers by giving notice in writing of such suspension to the Supplier.

## **28 CONSEQUENCES OF TERMINATION AND EXPIRY**

28.1 Termination or expiry of this Framework Agreement shall not cause any Contract to terminate automatically. All Contracts shall remain in force unless and until they are terminated or expire in accordance with the terms of the Contract and, in accordance with clause 16.4, the Supplier shall continue to pay any Framework Fee due to ESPO in relation to, and for the full duration of such Contracts, notwithstanding the termination or expiry of this Framework Agreement.

28.2 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to ESPO any of ESPO's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format reasonably nominated by ESPO, and any other information and all copies thereof owned by ESPO, save that it may keep copies of any such Confidential Information which is Personal Data for such period as is required to comply with the Data Protection Legislation and otherwise for a period of up to twelve (12) Months, or such other period as is reasonably necessary for such compliance and to comply with its obligations under this Framework Agreement and the Contracts or under any Law.

28.3 ESPO shall be entitled to require access to data or information arising from the provision of the Goods and/or Services by the Supplier until the later of:

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

- 28.3.2 the expiry of a period of three (3) Months following the date on which the Supplier ceases to provide Goods and/or Services under any Contract.
- 28.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies and obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 28.5 The provisions of clauses 3 (Scope of Framework Agreement), 6 (Formation of a Contract), 7 (Warranties, Representations and Undertakings), 9 (Prevention of Bribery and Corruption), 10 (Conflicts of Interest), 11 (Safeguard Against Fraud), 12 (Performance of Contracts and this Agreement), 15 (Provision of Management Information), 16 (Framework Fee and Other Fees), 17 (Records and Audit Access), 19 (Confidentiality), 21 (Data Protection), 22 (Freedom of Information) 28 (Consequences of Termination and Expiry), 29 (Liability), 30 (Insurance), 37 (Rights of Third Parties), 40 (Waiver and Cumulative Remedies) and 44 (Law and Jurisdiction), Framework Schedules 1 (The Goods and/or Services), 2 (Charging Structure), 4 (Ordering Procedure), 7 (Management Information Requirements), 9 (Confidential Information), 10 (Framework Management Including Service Levels and Key Performance Indicators) shall survive the termination or expiry of this Framework Agreement, as well as any other provision of this Framework Agreement which expressly or by implication is to be performed or observed notwithstanding such termination or expiry.

## **PART FIVE: LIABILITY**

### **29 LIABILITY**

- 29.1 Unlimited liability
- 29.1.1 Neither Party excludes or limits its liability for:
- 29.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
- 29.1.1.2 fraud or fraudulent misrepresentation by it or its employees; or any liability to the extent it cannot be excluded or limited by Law.
- 29.1.2 Notwithstanding clause 29.1, nothing shall be taken as limiting the liability of the Supplier in respect of clause 21 (Data Protection).
- 29.2 Subject to clause 29.1 each Party's total aggregate liability in connection with this Framework Agreement in each Contract Year (whether under any indemnity or in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to an amount not exceeding £5,000,000. provided that the Supplier shall be liable in addition to that sum the amount of the Framework Fee payable. The Parties acknowledge and agree that this clause shall not limit either Party's liability under any Contract and that each Party's liability in relation to a Contract shall be as set out in the Contract.
- 29.3 Subject to clauses 29.1 and 29.2, the Supplier shall indemnify and keep indemnified ESPO on demand in full from and against all claims, proceedings, actions, damages, legal costs, expenses (including legal costs and disbursements on a solicitor and client basis and administrative expenses), and any other

liabilities whatsoever arising out of, in respect of or in connection with any death or personal injury or loss of or damage to property, which is caused by any act or omission of the Supplier. This clause 29.3 shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss of or damage to property was not caused or contributed to by its negligence or default, or the negligence or default of the Supplier's Staff or Sub-Contractors.

29.4 Subject to clause 29.1 and clause 16 (Framework Fee and Other Fees) in no event (whether under any indemnity or in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall either Party be liable to the other for any:

29.4.1 loss of profits;

29.4.2 loss of business;

29.4.3 loss of revenue;

29.4.4 loss of or damage to goodwill;

29.4.5 loss of savings (whether anticipated or otherwise); and/or

29.4.6 any indirect, special or consequential loss or damage.

29.5 Subject to clause 29.2 and notwithstanding clause 29.4, the Supplier shall be liable for the following types of loss, damage, cost or expense, which shall be, for the purposes of clause 29.4, regarded as direct (and not indirect, special or consequential) loss or damage, and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by ESPO) be recoverable by ESPO:

29.5.1 additional operational and/or administrative costs and expenses incurred by ESPO including costs relating to time spent by or on behalf of ESPO in dealing with the consequences of the Supplier's default;

29.5.2 cost of procuring, implementing and operating any substitute goods and/or services;

29.5.3 fines, expenses or other losses arising from a breach by the Supplier of any Laws; and

29.5.4 any wasted expenditure or wasted charges incurred by ESPO arising from the Supplier's Default.

## **30 NOT USED**

## **PART SIX: OTHER PROVISIONS**

### **31 TRANSFER AND SUB-CONTRACTING**

31.1 This Framework Agreement is personal to the Supplier. The Supplier shall not assign, novate, transfer, charge or dispose of or create any trust in relation to any or all rights and obligations under this Framework Agreement or any part thereof unless:

- 31.1.1 the transferee of such rights and obligations fulfils at the relevant time the conditions of participation set out in the Invitation to Tender;
  - 31.1.2 approval in its absolute discretion is given by ESPO for such transfer; and
  - 31.1.3 such transfer is in compliance with the Law.
- 31.2 The Supplier shall ensure that such potential transferee shall provide such information (including copies of relevant transfer document(s) with redactions of confidential information, e.g. about price, as is reasonable) as is reasonably necessary to provide evidence to ensure that such transferee fulfils such conditions of participation and there is full compliance with section 74 of the PA23 and the Law, provided that ESPO shall not be obliged to enter into any confidentiality agreement with such transferee, provided further that ESPO may in its absolute discretion choose to enter into such confidentiality agreement only on such transferee having paid to ESPO the sum of £500 or such higher sum as is reasonable in the circumstances (plus applicable VAT) in advance of ESPO's considering such confidentiality agreement.
- 31.3 As a condition to granting Approval of a proposed transfer of the rights and obligations under this Framework Agreement, ESPO shall be entitled to require the Supplier and the successor to the Supplier to enter into a novation agreement or deed with ESPO in a form required by ESPO and which complies with the Law, and subject to the Supplier's having paid in advance of ESPO's considering such Approval:
  - 31.3.1 in respect of the time spent by ESPO in considering and dealing with such Approval, the sum of £1000 or such higher sum as is reasonable in the circumstances (plus applicable VAT); and
  - 31.3.2 its reasonable external legal costs and expenses relating thereto and any Guarantee required as follows.
- 31.4 If the proposed successor to the Supplier does not, in the absolute opinion of ESPO, at the relevant time meet the economic and financial criteria of the conditions of participation set out in the Invitation to Tender, ESPO shall be entitled to require a Guarantor to provide to ESPO a Guarantee in respect of such successor's obligations to ESPO which is in accordance with clause 33 (Guarantee) no later than the time of entering into the said novation agreement or deed. The Supplier shall use its best endeavours to procure the novation or other transfer of all then extant Contracts from itself to such successor on the effective date of the said novation agreement or deed or as soon as practicable thereafter.
- 31.5 The Supplier undertakes with ESPO that it will not prior to entry into such novation agreement permit any other person to perform in place of the Supplier (or purport to do so), or take the benefit of, any Contract or potential Contract.
- 31.6 Except as agreed in writing by the Parties prior to entry to this Framework Agreement, the Supplier shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement without ESPO's Approval in its absolute discretion. Prior to such Approval being considered the Supplier shall:

- 31.6.1 in respect of the time spent by ESPO in considering and dealing with such Approval, pay to ESPO the sum of £500 or such higher sum as is reasonable in the circumstances (plus applicable VAT); and
- 31.6.2 notify ESPO in writing whether the Supplier considers that a Mandatory Exclusion Ground and/or a Discretionary Exclusion Ground does or may apply to the proposed Sub-Contractor.
- 31.7 ESPO may not Approve a proposed Sub-Contract if the proposed Sub-Contractor is on the Debarment List.
- 31.8 If ESPO gives Approval to the Supplier to sub-contract any part of this Framework Agreement, then the Supplier shall:
  - 31.8.1 ensure that any such Sub-Contract complies with all relevant terms and conditions of this Framework Agreement and procure that the Sub-Contractor complies with such terms (including the payment terms implied by Section 73 of the PA23); and
  - 31.8.2 provide a copy, at no charge to ESPO, of any sub-contract on receipt of a request from ESPO (and shall procure authority for ESPO to publish such sub-contract as necessary to comply with its obligations under the Law (including, but not limited to, as set out in the PA23 or any subordinate legislation made under the PA23)
- 31.9 Notwithstanding any sub-contracting, the Supplier shall remain liable to ESPO and/or the Customer for the proper performance of the Supplier's obligations under this Framework Agreement and the Contracts.
- 31.10 The Supplier shall enter into a legally binding arrangement with any Sub-Contractor if directed to do so by ESPO pursuant to section 72 of the PA23.
- 31.11 ESPO may require the Supplier to terminate a Sub-Contract where:
  - 31.11.1 in ESPO's reasonable opinion the Sub-Contractor may prejudice the provision of the Goods and/or Services or may be acting contrary to the interests of ESPO;
  - 31.11.2 in ESPO's reasonable opinion the Sub-Contractor is materially unreliable;
  - 31.11.3 in ESPO's reasonable opinion the Sub-Contractor employs unfit persons; and/or
  - 31.11.4 a Sub-Contractor becomes an Excluded Supplier or an Excludable Supplier provided that ESPO shall notify the Supplier and allow the Supplier a reasonable opportunity to replace the relevant Sub-Contractor in accordance with clause **Error! Reference source not found.**
- 31.12 In the event that ESPO exercises its right pursuant to clause 31.11, the Supplier shall remain responsible for maintaining the provision of the Goods and/or Services.

31.13 ESPO shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any other body which substantially performs any of the functions that previously had been performed by ESPO, provided that such assignment, novation or disposal shall not unreasonably increase the burden of the Supplier's obligations under this Framework Agreement.

31.14 The Supplier shall enter into such agreement and/or deed as ESPO shall reasonably require so as giving effect to any assignment, novation or disposal made pursuant to this clause 31.13

## **32 VARIATIONS TO THIS FRAMEWORK AGREEMENT**

### **32.1 Variation in General**

32.1.1 Subject to clause 32.2 (Legislative Change) and Framework Schedule 2 (Charging Structure), this Framework Agreement may not be varied except where:

32.1.1.1 ESPO notifies the Supplier that it wishes or agrees to vary the terms of this Framework Agreement and provides the Supplier with full written details of any such proposed change; and

32.1.1.2 the Parties agree to the variation by a written variation agreement which is signed by a director or authorised signatory of each Party.

32.1.2 If, by the date twenty (20) Working Days after notification was given under clause 32.1.1 (a), no agreement is reached by the Parties in relation to any variation requested, ESPO may, by giving written notice to the Supplier:

32.1.2.1 agree that the Parties shall continue to perform their obligations under this Framework Agreement without the variation;

32.1.2.2 agree an alternative compromise; or

32.1.2.3 terminate this Framework Agreement with effect immediately.

### **32.2 Legislative Change**

32.2.1 The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase the Framework Prices or the Charges as the result of:

32.2.1.1 a General Change in Law; or

32.2.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is known at the Commencement Date.

- 32.2.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 32.2.1), the Supplier shall notify ESPO of the likely effects of that change, including whether any change is required to the Goods and/or Services, increase in the Framework Prices, increase in the Charges or this Framework Agreement.
- 32.2.3 As soon as practicable after any notification in accordance with clause 32.2.2, the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:
  - 32.2.3.1 providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - 32.2.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;
  - 32.2.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services;
  - 32.2.3.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
- 32.2.4 Any effects of that change, including whether any change is required to: the Goods and/or Services, increase in the Framework Prices, increase in the Charges, this Framework Agreement or relief from the Supplier's obligations agreed by the Parties pursuant to clause 32.2.3, shall be implemented by a written variation agreement signed by the ESPO Representative and the Supplier's Representative.

### **33 GUARANTEE**

- 33.1 At the request of ESPO when it is entitled to do so pursuant to the ITT or otherwise, including any case where ESPO considers that it is entitled to apply the provisions of clause 26.10, ESPO may require the Supplier to procure forthwith a Guarantor or replacement Guarantor to provide a Guarantee which is enforceable according to its terms
- 33.2 The Supplier shall procure that the Guarantor executes and delivers to ESPO:
  - 33.2.1 a duly executed Guarantee; and
  - 33.2.2 a certified copy extract of the board or other minutes of the Guarantor agreeing to the execution of the Guarantee.
- 33.3 At the request of ESPO, the Supplier shall procure that the Guarantor shall, either
  - 33.3.1 provide at the Guarantor's expense an opinion addressed to ESPO, from lawyers appointed by the Guarantor who are registered in the jurisdiction of the Guarantor, which certifies to ESPO's reasonable satisfaction that the Guarantee executed by the Guarantor is enforceable according to its terms or

33.3.2 reimburse ESPO its reasonable legal costs in ESPO's obtaining such an opinion from lawyers appointed by ESPO.

33.4 In respect of any request by ESPO to the Supplier to procure a Guarantee at any time after (but not prior to) the entry into this Framework Agreement, the Supplier shall, in advance of ESPO's considering and dealing with such Guarantee, pay to ESPO (in respect of the time that may be spent by ESPO in considering and dealing with such Guarantee) the sum of £1000 (plus applicable VAT), and, in the event that the time spent by ESPO in relation to such Guarantee exceeds what ESPO, in its reasonable opinion, considers to be usual, the Supplier shall pay to ESPO promptly on demand by ESPO such additional sum as is reasonable in the circumstances (plus applicable VAT).

## **34 COMPLAINTS HANDLING AND RESOLUTION**

34.1 The Supplier shall notify ESPO of any Complaint made by a Customer which is not resolved to the Customer's satisfaction by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint.

34.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under any Contract and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Contract, the Supplier shall use its reasonable endeavours to resolve the Complaint to the Customer's satisfaction within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

34.3 Within five (5) Working Days of a request by ESPO, the Supplier shall provide to ESPO full details of a Complaint, including details of steps taken to its resolution.

## **35 DISPUTE RESOLUTION**

35.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute, and such attempt shall involve the escalation of the dispute to the ESPO Representative and the Supplier's Representative.

35.2 Nothing in this dispute resolution procedure shall prevent either of the Parties commencing or continuing court proceedings.

35.3 The obligations of the Parties under this Framework Agreement shall not cease or be suspended or be delayed by the reference of a dispute to mediation pursuant to this clause 35, and the Supplier and its Staff shall comply fully with the requirements of this Framework Agreement at all times.

35.4 If the dispute cannot be resolved by the Parties pursuant to clause 35.1, the Parties shall refer it to mediation pursuant to the procedure set out in clause 35.5 unless ESPO considers that the dispute is not suitable for resolution by mediation.

35.5 If a dispute is referred to mediation, the Parties shall comply with the following provisions:

- 35.5.1 a neutral mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party may apply to CEDR to appoint a Mediator;
  - 35.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held; the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
  - 35.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 35.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties with effect from its signature by their duly authorised representatives; and
  - 35.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing; such an opinion shall be provided on a without prejudice basis and may be used in evidence in any court proceedings relating to this Framework Agreement without the prior written consent of both Parties.
- 35.6 Each Party shall bear its own costs in relation to the reference to the Mediator. The Mediator's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Mediator) shall be borne by the Parties equally.

## **36 NOTICES**

- 36.1 Any notice given under or in relation to this Framework Agreement shall be in English in writing by letter, and shall be sent by hand (which for the purpose of this clause 36 includes by courier), pre-paid first class post, Special Delivery post, registered post or by the recorded delivery service, to the address of the relevant Party set out in clause 36.3 or to such other address as that Party may have stipulated in accordance with clause 36.4 A Party must provide an address only in the United Kingdom.
- 36.2 A notice shall be deemed to have been received:
- 36.2.1 if delivered by hand, at the time the notice is left at the address on a Working Day but, if not before 5 pm on a Working Day, on the next Working Day;
  - 36.2.2 in the case of pre-paid first class post, Special Delivery post, registered post or by the recorded delivery service three Working Days from the date of posting, provided that proof of postage is provided.
- 36.3 For the purposes of clause 36.1, the address of each Party shall be:

36.3.1 For ESPO:

Address: ESPO, Barnsdale Way, Grove Park,  
Enderby, Leicester, LE19 1ES

For the attention of: Procurement Service Manager

Email: ResourcesPF@espo.org

36.3.2 For the Supplier:

Address: [current registered office or any other address]

For the attention of: [contact name and position] or, if none specified, the Managing Director

Email: [email address] or, if none specified, any email address used by the Supplier's Representative or other senior employee of the Supplier.

36.4 Either Party may change its address for service by serving a notice in accordance with this clause, the change taking effect for the Party notified of the change at 5.00 pm on the later of: the date, if any, specified in the notice as the effective date for the change; or the date five Working Days after deemed receipt of the notice.

36.5 Any notice given under this Framework Agreement shall not be validly served if sent by email or other electronic means and not confirmed by a letter as above.

36.6 This clause 36 does not apply to the service of any proceedings or other documents in any legal action or any arbitration or other method of dispute resolution.

## 37 RIGHTS OF THIRD PARTIES

37.1 Save as otherwise provided for in this Agreement, a person (other than a Customer) who is not a Party to this Framework Agreement ("**Third Party**") has no right to under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on it, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

37.2 In any event, no consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Framework Agreement or any one or more clauses of it.

## **38 FORCE MAJEURE**

- 38.1 Subject to the remaining provisions of this clause 38, either Party to this Framework Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event, except as otherwise provided in this Framework Agreement.
- 38.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 38.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 38.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 38.5 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Framework Agreement. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 38.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement. Following such notification, this Framework Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

## **39 SEVERABILITY**

- 39.1 If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force without affecting the remaining provisions of this Framework Agreement.
- 39.2 If a provision of this Framework Agreement that is fundamental to the accomplishment of the purpose of this Framework Agreement is held to any extent to be invalid, ESPO and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

## **40 WAIVER AND CUMULATIVE REMEDIES**

- 40.1 The rights and remedies provided by this Framework Agreement may be waived only in writing by the ESPO Representative or the Supplier's Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

40.2 Unless a right or remedy of ESPO is expressed to be an exclusive right or remedy, the exercise of it by ESPO is without prejudice to ESPO's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

40.3 Except as otherwise expressly provided by this Framework Agreement, the rights and remedies provided by this Framework Agreement are cumulative and are not exclusive of any right or remedies provided at law or in equity or otherwise under this Framework Agreement.

## **41 RELATIONSHIP OF THE PARTIES**

Nothing in this Framework Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

## **42 FURTHER ASSURANCES**

Each Party undertakes, at the request of the other, to do all acts and execute all documents which may be necessary to give full effect to the meaning of this Framework Agreement.

## **43 ENTIRE AGREEMENT AND COUNTERPARTS**

43.1 Without prejudice to clause 7.1.4, this Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it, and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

43.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement.

43.3 Nothing in this clause 43 or the remainder of this Framework Agreement shall operate to exclude liability for fraud or fraudulent misrepresentation.

43.4 This Framework Agreement may be executed by exchange of letters or in counterparts each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.

## **44 LAW AND JURISDICTION**

This Framework Agreement shall be governed by and construed in accordance with the law of England and Wales and without prejudice to the dispute resolution procedure set out in clause 35 (Dispute Resolution) each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Guidance contained in this document is intended for use by ESPO employees however it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

This Framework Agreement has been duly executed by the Parties.

Signed by.....for and on behalf of the **Supplier** on ..... 202[ ]

.....

Director

Signed by ..... for and on behalf of **ESPO** on ..... 202[ ]

.....

Authorised Signatory

## **FRAMEWORK SCHEDULE 1 – THE GOODS AND/OR SERVICES**

### **1 INTRODUCTION**

- 1.1 This Framework Schedule 1 specifies:
    - 1.1.1 The Goods and/or Services that the Supplier shall make available to Customers;
    - 1.1.2 The Service Levels, if any, applicable to each of the Services;
    - 1.1.3 The Service Credits, if any, applicable where Service Levels are not met;
  - 1.2 The purpose of this Framework Schedule is to provide the contractual statement of the Goods, Services, Service Levels (where applicable) and Service Credits (where applicable) to the Framework Agreement and therefore subject to Contracts that may be entered into by Customers. At such time as a Customer places an order for Goods and/or Services, the details of those Goods and/or Services in this Schedule will be specified in the ensuing Contract.
  - 1.3 The contents of this Framework Schedule, together with pricing information in Schedule 2, will be made available to Customers in ESPO's catalogue post the award of Framework Agreement(s) subject to the Customers registering with a valid public body email address).
  - 1.4 Throughout the Term of the Framework Agreement, the Supplier may request modifications to the Goods and/or Services.
  - 1.5 Any request for such a modification shall be dealt with in accordance with clause 32.1.
  - 1.6 The scope and nature of any modified Goods and/or Services the Supplier requests shall be limited to technical developments of and/or improvements to the Goods and/or Services, whether in whole or part, originally tendered by the Supplier, and the inclusion of such modified goods and/or services shall not alter the overall scope and nature of the Framework Agreement or the Goods and/or Services. Any request to modify the Goods and/or Services which ESPO does not deem to be within such scope and nature shall be rejected by ESPO.
  - 1.7 If the Supplier's request is successful, from the date of agreement made under clause 32.1.1:
    - 1.7.1 the modified Goods and/or Services shall be made available to Customers;
    - 1.7.2 the prices for the modified Goods and/or Services shall be incorporated into the Framework Prices; and
    - 1.7.3 the modified Goods and/or Services shall form part of the Goods and/or Services for the purposes of this Framework Agreement.
- **Upon completion of the tender evaluation exercise and prior to the entry into the Framework Agreement, ESPO will incorporate into this Framework Schedule the Specification (contained within Section 2 of the Invitation to Tender, Requirement) and the Supplier's response to the Statement of**

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## **Requirements (contained within Section 1 of the Tender Submission Document).**

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## **ANNEX 1 OF FRAMEWORK SPECIFICATION SCHEDULE 1 – SPECIFICATION**

## **FRAMEWORK SCHEDULE 2 - CHARGING STRUCTURE**

### **1. GENERAL PROVISIONS**

- 1.1 The Framework Prices set out in this Schedule 2 as amended by any variation agreed pursuant to the provisions in this Framework Schedule are equal to the maximum Charges that the Supplier may charge pursuant to any Contract entered into pursuant to the Framework Agreement , provided that the Supplier agrees that, if a Customer requires a change or changes to the Goods or Services which objectively justify an increase in the Charges for them in excess of the Framework Prices, the increase in the Charges payable by the Customer shall be no more than is reasonable to reflect such change or changes, provided that, in any event, the Supplier undertakes to ESPO that such change or changes shall not alter the overall nature of the Framework Agreement or the Goods and/or Services.
- 1.2 The Supplier and ESPO acknowledge and agree that any Charges submitted in relation to a further competitive selection process held in accordance with Framework Schedule 4 (Ordering Procedure) shall be equal to or lower than the Framework Prices where they relate to the same Goods and/or Services, provided that the Supplier agrees that, if a Customer requires a change or changes to the Goods or Services which objectively justify an increase in the Charges for them in excess of the Framework Prices, the increase in the Charges payable by the Customer shall be no more than is reasonable to reflect such change or changes, provided that, in any event, the Supplier undertakes to ESPO that such change or changes shall not alter the overall nature of the Framework Agreement or the Goods and/or Services.
- 1.3 The Supplier acknowledges that the Framework Prices may be reviewed and adjusted if necessary from time to time in accordance with Framework Schedule 6 (Value for Money).

#### **The Framework Fee:**

- 1.4 The Framework Fee is 1%.
- 1.5 The Framework Fee will be paid in accordance with clause 16 of the Framework Agreement by the Supplier to ESPO.

### **2. ADJUSTMENT OF THE FRAMEWORK PRICES**

- 2.1 The Framework Prices shall only be varied:
  - 2.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Prices in accordance with clause 32.2 of the Framework Agreement;
  - 2.1.2 where the Parties agree a reduction in all or part of the Framework Prices in accordance with paragraph 2.2 of this Framework Schedule; or
  - 2.1.3 where a review of the Framework Prices is requested and agreed by the Parties, in accordance with the provisions of paragraph 3 of this Framework Schedule;

- 2.2 Every 6 Months during the Term, the Supplier shall assess the level of the Framework Prices to consider whether it is able to reduce them. Such assessments shall be carried out on the date that is six (6) months from the Commencement Date and every six (6) months thereafter during the Term (each a "Price Assessment Date"). If any Price Assessment Date does not fall on a Working Day, the assessment shall be carried out on the next Working Day following such Price Assessment Date. The Supplier shall no later than one Month after each Price Assessment Date provide a written report to ESPO of its decision with reasonable details. To the extent that the Supplier is able to decrease all or part of the Framework Prices, it shall immediately notify ESPO in writing and such reduction shall be implemented in accordance with paragraph 4.1.3 of this Framework Schedule.

### **3. REVIEW OF THE FRAMEWORK PRICES**

- 3.1 This paragraph 3 is subject to paragraph 2 above.
- 3.2 The Supplier may request a variation to the Framework Prices in accordance with the remaining provisions of this paragraph 3 subject always to:
- 3.2.1 the request being submitted in writing at least three Months before the Adjustment Date; and
- 3.2.2 the written agreement of the Director of ESPO.
- 3.3 The earliest Adjustment Date for any increase in the Framework Prices in accordance with this paragraph shall be the first Working Day following the second anniversary of the Commencement Date. Thereafter, any subsequent increase to any of the Framework Prices in accordance with this paragraph shall not occur before the anniversary of the previous Adjustment Date.
- 3.4 To make a request for a variation of some or all of the Framework Prices in accordance with this paragraph, the Supplier shall provide ESPO with:
- 3.4.1 a list of the Framework Prices it wishes to review; and
- 3.4.2 written evidence of the justification for the requested increase for each of the Framework Prices under review, including:
- (a) a breakdown of the profit and cost components that comprise the relevant Framework Price;
  - (b) details of the movement in the different identified cost components of the relevant Framework Price;
  - (c) reasons for the movement in the different identified cost components of the relevant Framework Price; and
  - (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components.

### **4. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES**

- 4.1 Variations in accordance with the provisions of this Framework Schedule to the Framework Prices shall be made by ESPO to take effect:

- 4.1.1 in accordance with clause 32.2 of the Framework Agreement where an adjustment is made in accordance with paragraph 2.1.1 of this Framework Schedule; or
- 4.1.2 where the Supplier notifies ESPO in accordance with paragraph 2.2 of this Framework Schedule that it is able to decrease the Framework Prices, no later than one Month after the date of notification; or
- 4.2 Any change to the Framework Prices implemented pursuant to this Framework Schedule shall be made independently of, and shall not affect, the Charges payable by a Customer under a Contract in force at the time a change to the Framework Prices is implemented unless agreed by the Customer.
- 4.3 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the relevant Customer and implemented in accordance with the provisions applicable to the Contract.

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## **ANNEX TO FRAMEWORK SCHEDULE 2 – FRAMEWORK PRICES**

**The prices that the awarded Supplier has submitted as part of its tender will form this Annex**

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## **FRAMEWORK SCHEDULE 3 – FORM OF CONTRACT AND CALL-OFF TERMS**

Framework Schedule 3 is in the form provided by ESPO as a separate document.

## **FRAMEWORK SCHEDULE 4 - ORDERING PROCEDURE**

### **1. INTRODUCTION**

If any Customer decides to source the Goods and/or Services through the Framework, then it will award its Goods and/or Services Requirements in accordance with the procedure(s) in this Framework Schedule and the requirements of the Regulations and the Guidance.

### **2. AWARD PROCEDURE (CALL OFF WITHOUT COMPETITION)**

- 2.1 A Customer ordering the Goods and/or Services under this Framework Agreement, without re-opening competition, may enter a Contract by selecting a Framework Supplier from the relevant Lot based on the following objective mechanism:
- 2.1.1 To the cheapest Supplier for the Goods and/or Services (or the relevant part thereof) required by the Customer as set out in the Supplier's Framework Prices at Framework Schedule 2 (as amended)
  - 2.1.2 Where only one Supplier can deliver the Goods and/or Services (or the relevant part thereof) required by the Customer in the geographical location in which the Goods and/or Services are to be delivered or performed, to that Supplier
  - 2.1.3 Where a Supplier has had prior involvement in the provision of equivalent Goods and/or Services to the relevant Customer in the preceding [12] months and there would be demonstrable inefficiencies or duplication of costs in instructing an alternate contractor, to that Supplier
  - 2.1.4 The Customer shall enter a Contract pursuant to paragraph 2.1 by submitting a Form of Contract together with a Master Contract Schedule to the relevant Framework Supplier (the "**Call-Off Without Competition Request**").
- 2.2 Following receipt of a Call-Off Without Competition Request, if the Supplier wishes to enter into the Call off Contract it must sign the Call-Off Without Competition Request and return it to the Customer. A Contract shall come into effect when the Call-Off Without Competition Request is so signed and returned by the Supplier and is then countersigned by the Customer. A Customer may choose to withdraw its Call-Off Without Competition Request at any time before such countersigning.

### **3. AWARD PROCEDURE (FURTHER COMPETITIVE SELECTION PROCESS)**

- 3.1 If all of the core terms (as defined in section 45(4)(b)(i)) of the proposed Contract are not laid down in this Framework Agreement and a Customer:
- 3.1.1 requires the Supplier to develop a solution in respect of such Customer's Goods and/or Services Requirements; and/or
  - 3.1.2 needs to amend the terms of the Contract to reflect its Goods and/or Services Requirements to the extent permitted by, and in accordance with, the PA23, Regulations and Guidance;

then the Customer shall follow the procedures set out in the Award Procedure (Further Competitive Selection Process).

### 3.2 CUSTOMER'S OBLIGATIONS

Any Customer ordering Goods and/or Services under the Framework through a further competitive selection process shall:

- 3.2.1 develop a Statement of Requirements setting out its Goods and/or Services Requirements and identify the Framework Suppliers capable of supplying the Goods and/or Services;
- 3.2.2 identify the Framework Suppliers capable performing the Contract for its Goods and/or Service Requirements (which may include a selection process that uses conditions of participation as described in section 46 of the PA23);
- 3.2.3 amend the terms of the Contract to reflect its Goods and/or Services Requirements only to the extent permitted by and in accordance with the requirements of the PA23, Regulations and Guidance;
- 3.2.4 invite tenders to participate in a further competitive selection process for its Goods and/or Services Requirements in accordance with the PA23, Regulations and Guidance and in particular:
  - (a) invite the relevant Framework Suppliers to develop a proposed statement of work (covering Goods and/or Services as applicable) setting out their respective proposals in respect of such Customer's Statement of Requirements ("**Statement of Work**") and invite the Framework Suppliers to submit a tender in writing for each specific contract to be awarded by giving written notice by email to the relevant Supplier's Representative of each Framework Supplier;
  - (b) set a time limit for the receipt by it of the tenders 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 time limit set out in paragraph 2.1.4 (b) above has expired.
- 3.2.5 apply the Further Competitive Selection Process Award Criteria (see Framework Schedule 5) to the Framework Suppliers' compliant tenders submitted through the further competitive selection process as the basis of its decision to award a Contract for its Goods and/or Services Requirements;
- 3.2.6 enter into a Contract with the successful Framework Supplier which:
  - (a) states the Goods and/or Services Requirements;
  - (b) states the Statement of Work submitted by the successful Framework Supplier;

- (c) states the Contract Charges payable for the Goods and/or Services Requirements in accordance with the tender submitted by the successful Framework Supplier; and
- (a) incorporates the terms of the Contract applicable to the Goods and/or Services,

3.2.7 Notify unsuccessful Framework Suppliers of the outcome of the further competitive selection process.

3.2.8 The Customer will send to the awarded Framework Supplier a Form of Contract and Master Contract Schedule for signature by the Framework Supplier (the "**Call-Off Request**"). Following receipt of a Call-Off Request, if the Supplier wishes to enter into the Call off Contract it must the sign Call-Off Request and return it to the Customer. A Contract shall come into effect when the Call-Off Request is so signed and returned by the Supplier and is then countersigned by the Customer.

### 3.3 THE SUPPLIER'S OBLIGATIONS

The Supplier will in writing, by the time and date specified by the Customer in accordance with paragraph 2.1.4 (b) provide the Customer with either:

- 3.3.1 a statement to the effect that it does not wish to tender in relation to the relevant Goods and/or Services Requirements; or
- 3.3.2 the Statement of Work and full details of its tender made in respect of the relevant Statement of Requirements which should include, as a minimum:
  - (a) an email response subject line to comprise unique reference number and Supplier's name, so as to clearly identify the Supplier;
  - (b) a brief summary, in the email, stating whether or not the Supplier is bidding for the Statement of Requirements;
  - (c) a proposal covering the Goods and/or Services Requirements; and
  - (d) CVs of Key Personnel – as a minimum any lead consultant, with others, as considered appropriate along with required staff levels.
- 3.3.3 The Supplier shall ensure that any prices submitted in relation to a further competitive selection process held pursuant to this paragraph shall be based on the Charging Structure and take into account any discount to which the Customer may be entitled as set out in Framework Schedule 2 (Charging Structure).
- 3.3.4 The Supplier agrees that:
  - (a) all tenders submitted by the Supplier in relation to a further competitive selection process held pursuant to this

paragraph shall remain open for acceptance by the Customer for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with the Ordering Procedure); and

- (b) all tenders submitted by the Supplier are made in good faith and on the condition that the Supplier has not fixed or adjusted the amount of the offer by or in accordance with any agreement or arrangement with any other person; the Supplier certifies that it has not, and undertakes that it will not:
  - (i) communicate to any person other than the Customer the amount or approximate amount, of the offer, except where the disclosure, in confidence, of the approximate amount of the offer was necessary to obtain quotations required for the preparation of the offer; and
  - (ii) enter into any arrangement or agreement with any other person that it or the other person(s) shall refrain from making an offer.

#### **4. E-AUCTIONS**

- 4.1 One or more Customers may use an electronic reverse auction to evaluate tenders and award a Contract as part of a further competitive selection process. If a Supplier chooses to tender, it shall comply with documentation issued by the relevant Customer in connection with the e-auction.

#### **5. NO AWARD**

- 5.1 Notwithstanding the fact that the Customer has followed a procedure as set out above, the Customer shall be entitled at all times to decline to make an award for its Goods and/or Services Requirements. Nothing in this Framework Agreement shall oblige any Customer to enter into a Contract for the purchase of any of the Goods and/or Services or to accept any tenders that may be received.

#### **6. RESPONSIBILITY OF AWARDS**

- 6.1 The Supplier acknowledges that each Customer is independently responsible for the conduct of its award of a Contract under the Framework and that ESPO is not responsible or accountable for, and shall have no liability whatsoever in relation to:-
  - (a) the conduct of Customers in relation to the Framework; or
  - (b) the performance or non-performance of any Contracts between the Supplier and Customers entered into pursuant to the Framework.

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## **FRAMEWORK SCHEDULE 5 - FURTHER COMPETITIVE SELECTION PROCESS AWARD CRITERIA**

The following criteria ("the Further Competitive Selection Process Award Criteria") shall be applied to the Further Competitive Selection Process Procedure in Framework Schedule 4:

<b>Criteria</b>	<b>Criteria Weighting</b>
Price	40%
Non-Price	60%

In any event the same criteria (or closely associated) as those used in the establishment of the Framework Agreement must be used.

ESPO and/or Customers may vary the weightings provided that they are relevant and proportionate to the requirements of the Order and communication to tenderers.

When evaluating a further competitive selection process, Customers may adopt a scheme similar to that used by ESPO in establishing the Framework, or may advise Service Providers that a revised scheme will be used, in order to suit the specific requirements. This may involve, for example, using the same criteria, but varying the weightings assigned to them. It is anticipated that as 'non-price' factors will have been assessed when the Framework was established, increased weighting may be given to 'price' and/or 'Social Value' at further competitive selection stage.

## **FRAMEWORK SCHEDULE 6 - VALUE FOR MONEY**

### **1. BACKGROUND**

- 1.1 The Supplier acknowledges that ESPO wishes to ensure that the Goods and/or Services, represent value for money for its Customers throughout the Term of this Framework Agreement.
- 1.2 This Framework Schedule sets out the following processes to ensure this Framework Agreement represents value for money throughout the Term:
  - 1.2.1 [Benchmarking;]
  - 1.2.2 Continuous Improvement;

### **2. BENCHMARKING**

- 2.1 Frequency, Purpose and Scope of Benchmark Review
  - 2.1.1 ESPO shall not be entitled to request a benchmark review as provided in this paragraph 2 of this schedule during the six (6) Month period from the Commencement Date, and shall not be entitled to request a Benchmark Review at intervals of less than twelve (12) Months after any previous Benchmark Review.
  - 2.1.2 The purpose of a Benchmark Review will be to establish whether the Benchmarked Rates are, individually and/or as a whole, good value.
  - 2.1.3 The rates that are to be the benchmarked rates will be identified by ESPO in writing.
- 2.2 Benchmarking Process
  - 2.2.1 The Supplier shall produce and send to ESPO a benchmark report which shall include:
    - 2.2.1.1 the product and/or rates identified by ESPO in accordance with clause 2.1.3.
    - 2.2.1.2 a description of the benchmarking methodology used by the Supplier.
    - 2.2.1.3 the items utilised in the comparison of the Supplier's rates.
    - 2.2.1.4 the market intelligence utilised in the process including any relevant published information.
    - 2.2.1.5 a clear statement of the Supplier's own benchmarked rates.
    - 2.2.1.6 demonstrate the extent to which the Supplier's rates remain competitive against the comparison rates and their average.
  - 2.2.2 The Supplier shall provide evidence of the extent to which exchange rates, import tax or other such levies may influence the Supplier's rates, and/or major events affecting its supply chain.

2.2.3 The Supplier shall also provide information on any other reasonable factors which, if not taken into account, could unfairly cause the Supplier's rates to appear non-competitive.]

### **3. CONTINUOUS IMPROVEMENT**

3.1 The Supplier shall adopt a policy of continuous improvement in relation to the Goods and/or Services; pursuant to which, it will regularly review with ESPO the Goods and/or Services, and the manner in which it is providing the Goods and/or Services, with a view to reducing ESPO's costs (including the Framework Prices), the costs of Customers (including the Charges) and improving the quality and efficiency of the Goods and/or Services. The Supplier and ESPO will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and, in particular, reducing such costs.

## **FRAMEWORK SCHEDULE 7 - MANAGEMENT INFORMATION REQUIREMENTS**

### **MANAGEMENT INFORMATION**

#### **1. GENERAL REQUIREMENTS**

- 1.1 The Supplier shall, until all transactions relating to Contracts have permanently ceased, maintain appropriate systems, processes and records to ensure that it can, at all times during such period, deliver timely and accurate Management Information to ESPO in accordance with the provisions of this Framework Schedule.
- 1.2 The Supplier shall also supply such management information as may be required by a Customer in accordance with the terms of its Contract.
- 1.3 The Supplier will be provided with one Month's written notice of any change to Management Information reporting requirements (including changes to MI Templates and reporting frequencies) in the event that ESPO, acting reasonably decides to make any such change.

#### **2. MANAGEMENT INFORMATION REPORTS**

- 2.1 The Supplier agrees to provide full, accurate and complete MI Reports to ESPO which incorporate the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Framework Schedule.

#### **3. FREQUENCY AND COVERAGE**

- 3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to ESPO on or prior to the Reporting Date every Quarter until all transactions relating to Contracts have permanently ceased. The Reporting Date shall be during Normal Working Hours on the 5<sup>th</sup> Working Day after the Quarter.
- 3.2 The MI Report should be used (among other things) to report Contracts entered into, orders received and transactions with invoices occurring during the Quarter to which the MI Report relates, regardless of when the supply was actually completed. Each Contract entered into by the Supplier must be reported forthwith once the Contract is entered into.
- 3.3 The Supplier must return the MI Report for each Quarter even where there is no invoice or transaction to report in the relevant Quarter and, if there are no such invoice or transaction to report, the Supplier must refer to it as a "**Nil Return**".

#### **4. DEFAULT FRAMEWORK FEE**

- 4.1 If the Supplier (for any reason, including by reason of a Force Majeure Event) fails to submit a valid MI Report ("**MI Default**") for any Quarter, then ESPO shall, until the Framework Fee is calculated and paid in full, be entitled to charge on account of the Framework Fee due for that Quarter a "**Default Framework Fee**" which shall be calculated as the higher of:
  - 4.1.1 a sum equal to the average Framework Fee paid or payable by the Supplier to ESPO for each Quarter during the immediately preceding

12 Months in respect of which valid MI Reports had been submitted to ESPO; and

- 4.1.2 a sum based on Management Information collated by ESPO from the Customer information and records which in ESPO's reasonable opinion properly reflects the level of business conducted by the Supplier under this Framework Agreement throughout the period covered by the MI Default.

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## **ANNEX – MI REPORTING TEMPLATE**

**A EXAMPLE OF THE MI THAT IS REQUIRED FOR PERFORMANCE MANAGEMENT PURPOSES (PLEASE NOTE THIS MAY CHANGE OVER THE TERM OF THE FRAMEWORK).**

## **FRAMEWORK SCHEDULE 8 - MARKETING**

This Framework Schedule describes the activities that the Supplier will carry out as part of its on-going commitment to the marketing of this Framework Agreement to Customers and should be read in conjunction with Framework Schedules 1 (The Goods and/or Services) and 2 (Charging Structure).

**Upon completion of the tender evaluation exercise and prior to the commencement of the Framework Agreement, ESPO will incorporate what has been agreed in relation to on-going commitment to marketing.**

### **1. INTRODUCTION**

- 1.1 This Framework Schedule describes the activities that the Service Provider will carry out as part of its on-going commitment to the marketing of this Framework Agreement to Customers and should be read in conjunction with Schedules 1 (The Goods and/or Services) and 2 (Charging Structure).

### **2. MARKETING**

- 2.1 Marketing contact details:
  - 2.1.1 ESPO Comms team
  - 2.1.2 ESPO
  - 2.1.3 Commsteam@espo.org

### **3. PUBLICATIONS**

- 3.1 ESPO will periodically update and revise marketing materials. The Service Provider shall supply current information for inclusion in such marketing materials when required by ESPO.
- 3.2 Such information shall be provided in the form of a completed template, supplied by ESPO together with the instruction for completion and the date for its return.
- 3.3 Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Service Provider's exclusion from the use of such marketing materials.

### **4. SUPPLIER PUBLICATIONS**

- 4.1 Any marketing materials in relation to this Framework that the Service Provider produces must comply in all respects with ESPO's branding guidelines. The Service Provider will periodically update and revise such marketing materials.
- 4.2 The Service Provider shall be responsible for keeping under review the content of any information which appears on the Service Provider's website and which relates to this Framework and ensuring that such information is kept up to date at all times.

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## **FRAMEWORK SCHEDULE 9 - CONFIDENTIAL INFORMATION (IF ANY)**

**The Supplier's completed Confidential Information Schedule supplied with its tender shall be incorporated into this schedule.**

## **FRAMEWORK SCHEDULE 10 - FRAMEWORK MANAGEMENT INCLUDING SERVICE LEVELS AND KEY PERFORMANCE INDICATORS**

### **1. INTRODUCTION**

- 1.1 The successful delivery of this Framework Agreement will rely on the ability of the Supplier and ESPO in developing a strategic relationship immediately following award and maintaining this throughout the Term.
- 1.2 To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality management information, and the sharing of information between the Supplier and ESPO.
- 1.3 This Schedule outlines the general structures and management activities that the Parties shall follow during the Term.

### **2. FRAMEWORK MANAGEMENT**

#### **2.1 Framework Management Structure**

- 2.1.1 The Supplier shall provide a suitably qualified nominated contact (the "**Framework Manager**") who will take overall responsibility for delivering the services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
- 2.1.2 The Supplier shall put in place a structure to manage the Framework in accordance with Schedule 1 (Goods and/or Services) and to the Service Levels and KPIs as set out in the Annex to this Schedule.
- 2.1.3 A full governance structure for the Framework will be agreed between the Parties during Framework Agreement implementation stage.

#### **2.2 Framework Review Meetings**

- 2.2.1 Regular performance review meetings must take place throughout the Term ("**Framework Review Meetings**"). The Supplier's Representative and the ESPO Representative shall hold a Framework Review Meeting every 6 Months.
- 2.2.2 The exact timings and frequencies of such Framework Review Meetings will be determined by ESPO. Flexibility from both Parties will be expected over the frequency, timings and content of these reviews.
- 2.2.3 ESPO sees Framework Review Meetings as a vital element in developing a strategic relationship with the Supplier and to promote the building of a positive working relationship. The content of each Framework Review Meeting will be agreed between both Parties at least 14 days before the date of the Framework Review Meeting.
- 2.2.4 The Framework Review Meetings shall consider both strategic and operational aspects of the framework. The Framework Review Meetings shall as a minimum focus on:

### Strategic aspects:

- (a) Overall framework performance including Supplier's supply chain performance,;
- (b) Efficiency opportunities, e.g. cost drivers (Supplier and ESPO);
- (c) Benchmarking including progress against Government efficiency targets;
- (d) Market conditions (UK/Global market share, financials);
- (e) Policy updates including emerging government initiatives;
- (f) Security and risk management.

### Operational aspects:

- (a) Transition and on-boarding of key new customers (milestones and progress against targets) including contract compliance and Supplier sector strategies (*key customers are those of whom are of a strategic importance to the success of the Framework*);
- (b) Compliance against Key Performance Indicators ("**KPI's**") (e.g. response times, up time, first time fix rates, no. of units sold, volume of prints, exceptions reports);
- (c) Framework revenue and savings performance, submission of management information, sector revenue performance;
- (d) Incident and problem management including Supplier helpdesk performance;
- (e) Forward planning, opportunities and future efficiencies including standardisation and rationalisation;
- (f) Customer satisfaction (quality of Goods, delivery of service etc);
- (g) New product plans;
- (h) Environmental savings and initiatives with impact on environment;

## 3. SERVICE LEVELS

- 3.1 The Supplier shall be required to deliver Goods and/or Services through this Framework Agreement in accordance with the Service Levels set out in Schedule 1 (The Goods and/or Services).
- 3.2 ESPO reserves the right to adjust and revise these Service Levels during the Framework Agreement; however, any significant changes will be agreed between ESPO and the Supplier.

#### **4. SERVICE LEVELS FOR CUSTOMERS**

- 4.1 The Service Levels set out in Schedule 1 (Goods and/or Services) shall be the minimum services levels applicable to all Customers accessing this Framework Agreement together with the Service Levels set out in the Call-Off Terms.

#### **5. KEY PERFORMANCE INDICATORS**

- 5.1 The Key Performance Indicators (KPIs) applicable to this Framework Agreement are set out in the table below.
- 5.2 The Supplier shall establish processes to monitor its performance against the KPIs in order to report progress to the Customer. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
- 5.3 ESPO shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligation to fulfil the Framework Agreement.
- 5.4 The Supplier's achievement of KPIs shall be reviewed during Framework Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the framework management process as outlined in this Schedule.
- 5.5 The Supplier shall provide a Quarterly report on its performance against each of the KPIs listed in Annex A (and /or any KPIs introduced as per paragraph 5.6 below).
- 5.6 ESPO reserves the right (acting reasonably) to adjust, introduce new, or remove KPIs throughout the Term; however, any significant changes to KPIs shall be agreed in writing between ESPO and the Supplier.

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## ANNEX A

### KEY PERFORMANCE INDICATORS

The following KPIs will be applied by ESPO from the Commencement Date of this Framework Agreement.

<b>Performance Criteria</b>	<b>Key Indicator</b>	<b>Key Performance Indicator</b>
<b>Complaints Resolution</b>	Resolution of Customer Complaints	100% of complaints to be responded to within two Working Days of Supplier's receipt of the Complaint.  98% of Complaints to be resolved or have an agreed action plan in place within ten Working Days of Supplier's receipt of the Complaint.
<b>Return of MI Reports</b>	Accuracy/ Timeliness	The Supplier shall ensure that no less than three Quarterly MI Reports are made correct and on time by the Reporting Date in each Contract Year.
<b>Update of information to ESPO</b> (e.g. contact details etc)	Number of occurrences of inaccurate information.	No more than one discrepancy identified in any one Contract Year
<b>Invoicing</b>	Accuracy	98% of the number of invoices issued in every Month are accurate in amount
<b>Social Value</b>	Commitment & Outcomes / Benefits	Social Value delivered as per each Contract. Financial and non-financial benefits delivered to Customers measured and reported on to ESPO.

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## **FRAMEWORK SCHEDULE 11 – GUARANTEE**