

(1) **THE WELSH MINISTERS**

(2) **[SERVICE PROVIDER]**

**FRAMEWORK AGREEMENT FOR THE SUPPLY OF SERVICES
NPS PROVISION OF TEMPORARY WORKERS & SUPPLY TEACHERS**

NPS-PS-0088-18

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- (E) It is the Parties' intention that the Participating Organisations have no obligation to invite Providers to participate in a Call-Off Procedure under this Framework Agreement or at all.

FRAMEWORK AGREEMENT

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

1. INTERPRETATION

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

“Account Manager”	means [name of officer XXX];
“Framework Agreement”	means this Framework Agreement including its Recitals and Schedules;
“Associate Company”	means, in respect of the Provider, a company that is a subsidiary, a holding company (each as defined in the Companies Act 1985) or a company that is a subsidiary of the ultimate or any intermediate holding company of the Provider;
“Change in Control”	means any sale or other disposal of any legal, beneficial or equitable interest by an owner of at least 20% of, or a controlling interest in, the equity share capital of the Provider (or any company (other than a public quoted company whose equity securities are listed on a recognised investment exchange, as defined in section 207(1) of the Financial Services Act 1986) of which the Provider is a subsidiary) including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors;
“Call-Off Contract”	means the contract set out at Schedule 4 to this Framework Agreement and awarded following a Call-Off Procedure;
“Call-Off Procedure”	Means the Procedure by means of which the Participating Organisations may contract with the

Provider to provide the services as set out in Schedule 5;

“Commencement Date” Means 1st May 2019 for Lots 1, 2, 3, 4 and 1st August 2019 for Lot 5;

“Community Benefits Information” means the community benefits information set out in Schedule 6 or such other community benefits information as the Welsh Ministers may notify to the Provider from time to time;

“Confidential Information” means information (however it is conveyed or on whatever media it is stored), the disclosure of which would constitute an actionable breach of confidence, and which has either been designated as confidential by either Party in writing or which ought to be considered as subject to a duty of confidentiality and includes but is not limited to information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, clients and consultants of either Party;

“Data Protection Legislation” (i) the General Data Protection Regulation (EU) 2016/679 (GDPR), and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

“Data Loss” any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal

Data Breach

“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
“Dispute Resolution Procedure”	means the procedure for resolving disputes and differences between the Parties as set out in Clause 17 below;
“DPA 2018”	means the Data Protection Act 2018;
“Expiry Date”	means [DATE] unless terminated earlier in accordance with the provisions of this Framework Agreement;
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any natural or man-made disaster. It does not include any industrial action occurring within the Provider’s organisation or within any sub-Provider’s organisation.
“Framework Contract Manager”	means the nominated National Procurement Service official or such other person or persons as the Welsh Ministers shall nominate from time to time;
“GDPR”	the General Data Protection Regulation (EU) 2016/679 (GDPR), and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.
“Geographical Zones”	Means those geographical regions which the Lots have been sub-divided into and which are set out in Schedule 1 to this Framework Agreement;

“Good Industry Practice”	means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of goods and/or services of a similar type to the goods and/or services to be supplied under the Framework Agreement;
“Guidance”	means any guidance issued or updated by the UK government from time to time in relation to the PCR2015;
“Intellectual Property Rights”	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain rights, trade or business names, moral rights and any other similar rights or obligations whether registrable or not in any country (including but not limited to the UK) and the right to sue for passing off;
“Key Performance Indicators”	means the key performance indicators set out in Schedule 6 or such other key performance indicators as the Welsh Ministers may notify to the Provider from time to time;]
“Key Personnel”	means the Personnel named by the Provider as providing the services in respect of each Call-Off Contract;
“Law”	means - <ul style="list-style-type: none"> • any applicable statute or proclamation or any delegated or subordinate legislation; • any enforceable Community Right within the meaning of section 2(1) of the European Communities Act 1972; • any applicable guidance, direction or determination with which a Party is bound to comply; and

- any applicable judgment or decision of a court of competent jurisdiction which is a binding precedent in England and Wales,

in each case in force in England and Wales.

“Lots”	means the Lots set out in Schedule 1;
“Management Information”	means the management information set out in Schedule 6 or such other management information as the Welsh Ministers may notify to the Provider from time to time;
“Mini-Competition Procedure”	means the procedure for mini-competitions as set out in Schedule 5;
“Necessary Consents”	Means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the Framework Provider to participate in this Framework Agreement;
“Order”	means an order for services by a Participating Organisation sent to the Provider in accordance with the award procedures in clause 4 of this Framework Agreement;
“Order Form”	means the form attached at Schedule 3;
“Participating Organisation”	means such organisation as is entitled to Call-Off the services under this Framework Agreement and the details of which organisations are set out in Schedule 1;
“PCR 2015”	means the Public Contract Regulations 2015;
“Personnel”	means any agent, employee, servant or sub-Provider of the Provider or other person acting for or on behalf of the Provider or with the Provider’s authority (including without limitation implied, apparent or ostensible); does not include temporary workers

“Price”	means the price payable for the services as set out in Schedule 2 or as ascertained following a Mini-Competition;
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it
“Services”	means the services to be delivered in the Lots in Schedule 1 where applicable;
“Specification”	means the specification of the Services as set out in the ITT
“Staff”	means any and all individuals who are employed or engaged by the Provider or any sub-contractor who at any time is concerned with all or any of the services or any part thereof; does not include temporary workers
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Provider related to this Framework Agreement
“Tender Documents”	means the documents listed in the Annexe;
“Total Price”	means the total price to be charged by the Provider to a Participating Organisation in respect of the provision of the services under this Framework Agreement and any VAT or other tax payable stated as a separate element.
“Working Days”	means any day other than a Saturday, Sunday or public holiday in Wales on which banks are generally open for business;

1.2 In this Framework Agreement unless the context otherwise requires:

- 1.2.1 references to a statute or statutory provision shall be construed as a reference to the same as it is from time to time amended, consolidated, modified, extended, re-enacted or replaced. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;
- 1.2.2 words in the singular shall include the plural and vice versa and a reference to a gender shall include a reference to all genders;
- 1.2.3 a reference to a person shall include a reference to a firm, a body corporate and unincorporated association or to a person's executors or administrators;
- 1.2.4 a reference to a Clause or Schedule or Annexe shall be a reference to a Clause or Schedule or Annexe (as the case may be) of or to this Framework Agreement;
- 1.2.5 the headings are for convenience only and shall not affect the interpretation of any provision of this Framework Agreement.

2. COMMENCEMENT AND TERM

- 2.1 This Framework Agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date, unless it is otherwise terminated in accordance with this Framework Agreement.
- 2.2 For the avoidance of doubt, the term of this Agreement shall not exceed 4 years from the commencement date, or for Participating Organisations a maximum of six months after the expiry of this Framework Agreement term in relation to Lots 1, 2, 3 and 4.

3. SCOPE OF THE FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Welsh Ministers and the Provider in respect of the provision of the services by the Provider to the Participating Organisations.
- 3.2 The Welsh Ministers appoint the Provider as a Framework Provider of the services and the Provider shall be eligible to receive invitations to deliver such services from Participating Organisations during the Term.
- 3.3 Participating Organisations may, in their absolute discretion and from time to time, order Services from the Provider in accordance with the Call-Off Procedures set out in Schedule 5 during the Term.
- 3.4 If and to the extent that any services under this Framework Agreement are required a Participating Organisation shall:
 - 3.4.1 enter into a contract with the Provider for these services materially in accordance with the terms of the Call-Off Contract; and

3.4.2 comply with the Ordering procedure in Clause 4.

3.5 The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Participating Organisations for the services and that the Participating Organisations are at all times entitled to enter into other contracts and arrangements with other Providers for the provision of any or all services which are the same as or similar to the services.

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

4. AWARD PROCEDURES

4.1 If a Participating Organisation decides to source services through the Framework Agreement, then it may:

4.1.1 satisfy its requirements for services by awarding a Call-Off Contract in accordance with the terms laid down in this Framework Agreement at Schedule 4 without re-opening competition; or

4.1.2 satisfy its requirements for services by awarding a Call-Off Contract following a Mini-Competition conducted in accordance with terms laid down in this Framework Agreement at Schedule 4.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

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

5.1.1 the requirements of this Framework Agreement;

5.1.2 the Specification; and

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

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

5.2.1 the clauses of the Call-Off Contract;

5.2.2 the terms of the Framework Agreement, the Schedules to the Framework Agreement and any appendices thereto; and

5.2.3 any other document referred to in the clauses of the Call-Off Contract.

6. PRICES FOR SERVICES AND MANDATORY PROVIDER REBATE

- 6.1 The Prices offered by the Provider for Call-Off Contracts to the Participating Organisation for Services procured under a Call-Off Procedure shall be tendered in accordance with the requirements of the direct award held pursuant to Schedule 5.
- 6.2 The Welsh Ministers shall charge the Provider a fee equal to the amount detailed in the Lot specific Specification, of the total value of Services provided by the Provider under each Call-Off Contract to which it is a party under the Framework Agreement (the “**Mandatory Provider Rebate**”).
- 6.3 Payment of the Mandatory Provider Rebate will be made in arrears at quarterly intervals following the commencement of the Framework Agreement.
- 6.4 The Mandatory Provider Rebate shall be exclusive of VAT and the Provider shall pay VAT on the Mandatory Provider Rebate at the rate and in the manner prescribed by law from time to time.
- 6.5 The Welsh Ministers reserve the right to undertake an independent audit of the total value of the Services provided by the Provider under each Call-Off Contract successfully concluded by it (through invoices raised/delivered) to confirm that the correct Mandatory Provider Rebate has been charged/paid. Underpaid Mandatory Provider Rebate shall be recovered from the Provider and the Welsh Ministers reserve the right to either:
- 6.5.1 suspend the Provider from the Framework Agreement until such outstanding payments are made; or
 - 6.5.2 in the event of a continued failure to pay the Mandatory Provider Rebate terminate the Agreement
- 6.6 The Provider must not issue credit notes to cover the Mandatory Provider Rebate. Payment will be requested via invoices issued by the Welsh Ministers.
- 6.7 The invoice for the Mandatory Provider Rebate shall be payable within 30 days of the date of the invoice.
- 6.8 Interest shall be payable on any late payments of the Mandatory Provider Rebate in accordance with the Late Payments of Commercial Debts (Interest) Act 1998

Without prejudice to any other remedies available to it, the Welsh Ministers reserve the right to recover from the Provider any reasonable administration fees incurred in pursuing unpaid Mandatory Provider Rebates.

7. WELSH MINISTERS' POSITION

- 7.1 The Provider acknowledges and agrees that Participating Organisations are under no obligation to issue invitation under this Framework Agreement. The Provider acknowledges that any data or information given to it by the Welsh Ministers in respect of the anticipated

volume of invitations to be issued under this Framework Agreement are estimates only, based on historical data, and that the Welsh Ministers cannot be held responsible for the actual number or value of Call-Off Contracts placed under this Framework Agreement. The Provider therefore agrees that the Welsh Ministers have no liability to it in respect of or arising out of the number or value of Call-Off Contracts (or lack of Call-Off Contracts) under this Framework Agreement.

- 7.2 The Welsh Ministers have established this Framework Agreement for the benefit of such Participating Organisations as may from time to time wish to issue invitations under this Framework Agreement. The contract which arises when an Invitation is issued by a Participating Organisation will be between that Participating Organisation and the Provider. Accordingly, (other than in respect of a Call-Off Contract arising as a result of the Welsh Ministers, acting as a Participating Organisation, issuing an Invitation), the Welsh Ministers shall not be a party to any Call-Off Contract nor shall the Welsh Ministers have any liability arising out of the acts or omissions or negligence or default of Participating Organisations in connection with Call-Off Contracts or in connection with the issuing of invitations.

8. TERMINATION

Termination on Default

- 8.1 The Welsh Ministers may terminate the Framework Agreement by serving written notice on the Provider with effect from the date specified in such notice:

8.1.1 where the Provider commits a material breach and:

8.1.1.1 the Provider has not remedied the material breach to the satisfaction of the Welsh Ministers within 30 Working Days, or such other period as may be specified by the Welsh Ministers, after issue of a written notice specifying the material breach and requesting it to be remedied; or

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

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

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

8.2.1 a substantial portion of this Framework Agreement; or

8.2.2 any of the obligations set out in clauses 11, 18, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33 over the term of this Framework Agreement.

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

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

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

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

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

Termination on insolvency and Change of Control

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

8.4.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986] [**OR** (being a partnership) has any partner to whom any of the foregoing apply;

8.4.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

8.4.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company);

- 8.4.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
 - 8.4.5 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 8.4.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
 - 8.4.7 the Provider (being an individual) is the subject of a bankruptcy petition or order;
 - 8.4.8 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
 - 8.4.9 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.4.1 to clause 8.4.8 (inclusive);
 - 8.4.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 8.4.11 any warranty given by the other party in clause 20 of this Framework Agreement is found to be untrue or misleading.
- 8.5 The Provider shall notify the Welsh Ministers immediately if the Provider undergoes a Change of Control. The Welsh Ministers may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:
- 8.5.1 being notified that a Change of Control has occurred; or
 - 8.5.2 where no notification has been made, the date that the Welsh Ministers becomes aware of the Change of Control;

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

Termination by Welsh Ministers for convenience

8.6 The Welsh Ministers shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving 30 days' written notice to the Provider.

9. SUSPENSION OF PROVIDER'S APPOINTMENT

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

10. CONSEQUENCES OF TERMINATION AND EXPIRY

- 10.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 10.
- 10.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Call-Off Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 10.3 Within 14 Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return or destroy at the request of the Welsh Ministers any data, personal information relating to the Welsh Ministers or its personnel or Confidential Information belonging to the Welsh Ministers in the Provider's possession, power or control, either in its then current format or in a format nominated by the Welsh Ministers (in which event the Welsh Ministers will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Welsh Ministers.
- 10.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 10.5 The provisions of clause 10 (consequences of Termination and Expiry), clause 20 (Warranties and Representations), clause 24 (Confidentiality) clause 25 (Data Protection), clause 2 (Freedom of Information), clause 29 (Records and Access) and Clause 38 (Costs) shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

11. ASSIGNMENT, SUB-CONTRACTING AND CHANGE IN CONTROL

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

circumstances the Welsh Ministers shall authorise the transferee to use such Confidential Information only for purposes relating to this Framework Agreement and/or any Call-Off Contract and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by a confidentiality undertaking substantially similar to that in Clause 24 (Confidentiality) in relation to such Confidential Information.

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

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

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

12. ENTIRE FRAMEWORK AGREEMENT

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

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

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

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

13. DENIAL OF PARTNERSHIP

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

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

14. NOTICES AND PARTIES' REPRESENTATIVES

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

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

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

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

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

Welsh Ministers:

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

(with a copy to the Framework Contract Manager)

Provider: [TBA]

(with a copy to the Account Manager)

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

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

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

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

15. WAIVER

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

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

16. SEVERANCE

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

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

17. DISPUTE RESOLUTION

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

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

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

18. WELSH LANGUAGE OBLIGATIONS

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

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

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

19. GOVERNING LAW AND JURISDICTION

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

20. WARRANTIES AND REPRESENTATIONS

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

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

- 20.1.4 as at the Commencement Date all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed to the Welsh Ministers prior to the conclusion of the Framework Agreement. The Provider shall promptly notify the Welsh Ministers immediately of any fact or circumstance of which it may become aware which would render any information statement or representation to be false or misleading;
- 20.1.5 it has made and will make its own enquiries to satisfy itself as to the accuracy of any information supplied to it by the Welsh Ministers and that where the Welsh Ministers have provided the Provider with incorrect or insufficient information the Provider shall not be relieved from any obligation under this Framework Agreement, nor be entitled to claim against the Welsh Ministers, except where such information is a fraudulent misrepresentation by the Welsh Ministers;
- 20.1.6 it will perform its obligations under this Framework Agreement and under any Call-Off Contract in accordance with and so as not to infringe any Law, and so as not to cause the Welsh Ministers or any Participating Organisation to infringe any Law;
- 20.1.7 it employs people based on their individual capabilities and skills regardless of marital status, sex, sexual orientation, race, colour, religion, national origin, age and in accordance with its statutory obligations in respect of mental and physical disability;
- 20.1.8 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Framework Agreement or any Call-Off Contract;
- 20.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Participating Organisations;
- 20.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement

and any Call-Off Contract;

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

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

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

21. STATUTORY OBLIGATIONS

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

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

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

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

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

22. LIMITATION OF LIABILITY

- 22.1 Nothing in this Framework Agreement shall limit or exclude a Party's liability for:
- 22.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
 - 22.1.2 fraud or fraudulent misrepresentation; or
 - 22.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 22.2 Subject to clause 22.1, neither Party to this Framework Agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Framework Agreement.
- 22.3 The Welsh Ministers accepts no liability for the performance by any Participating Organisation of any Call-Off Contract entered into by such Participating Organisation.
- 22.4 This clause 22 shall survive termination of the framework agreement.

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

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

23.1.2 Section 182 of the Finance Act 1989 (disclosure of information relating to tax and other matters)

23.2 In the event that the Provider and/or any Personnel fail to comply with this Clause 23, the Welsh Ministers reserve the right to terminate this Framework Agreement by giving notice in writing to the Provider.

23.3 The provisions of Clause 23.1 shall apply during the continuance of this Framework Agreement and indefinitely after its expiry or termination.

24. CONFIDENTIALITY

24.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Provider acknowledges that any Confidential Information obtained from or relating to the Welsh Ministers, the Crown, and its or their employees, servants, agents or sub-Providers, is the property of the Welsh Ministers or the Crown as the case may be.

24.2 Each Party shall:

24.2.1 maintain in confidence any information or materials provided to it directly or indirectly by the other Party under, or in anticipation of this Framework Agreement, taking such reasonable security measures as it takes to protect its own confidential information and trade secrets;

24.2.2 treat all Confidential Information obtained as secret and confidential and safeguard it accordingly, and only use it for the purpose of this Framework Agreement;

24.2.3 not disclose any Confidential Information to any other person other than to Personnel who have accepted obligations of confidentiality equivalent to this Clause 24 and who need to have access to such information or materials in connection with the performance of this Framework Agreement.

24.3 Without prejudice to Clause 24.2.3 of this Framework Agreement neither Party shall disclose any Confidential Information to any other person whatsoever without the prior written consent of the Party supplying it.

24.4 The Provider shall provide all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (without the Welsh Ministers' prior approval in writing) or used other than for the purpose of this Framework Agreement by any Personnel.

- 24.5 Without prejudice to the generality of the foregoing neither the Provider nor any Personnel shall use the Confidential Information for the solicitation of business from the Welsh Ministers its employees, servants, agents or sub-Providers or the Crown.
- 24.6 Where it is considered necessary in the opinion of the Welsh Ministers, the Provider shall ensure that all Personnel or any other person engaged by it in connection with this Framework Agreement shall sign a confidentiality undertaking in a form specified by the Welsh Ministers before commencing work in connection with this Framework Agreement.
- 24.7 The provisions of this Clause 24 shall not apply to any information which:
- 24.7.1 is or becomes public knowledge (otherwise than by breach of this Framework Agreement); or
 - 24.7.2 which is in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; or
 - 24.7.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 24.7.4 which is independently developed without access to the Confidential Information; or
 - 24.7.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure including any requirements on the Welsh Ministers for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and pursuant to Clause 26 (Freedom of Information).
- 24.8 Nothing in this Clause 24 shall prevent the Provider from:
- 24.8.1 disclosing any Confidential Information which is required to be disclosed by an order of court or other competent tribunal or required to be disclosed by any applicable legal requirement; or
 - 24.8.2 disclosing such Confidential Information as is strictly necessary for the purpose of obtaining legal advice or for the examination or preparation of the Provider's accounts to its legal advisors and accountants, provided that such legal advisors and accountants are bound by a professional duty of confidence.

24.9 In the event that the Provider fails to comply with this Clause 24, the Welsh Ministers reserve the right to terminate this Framework Agreement by notice in writing with immediate effect.

24.10 The provisions of this Clause 24 shall apply during the continuance of this Framework Agreement and indefinitely after its termination howsoever arising.

25. DATA PROTECTION

25.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer and the Contractor will act as independent data Controllers.

25.2 The Parties shall, in relation to any Personal Data processed in connection with this Framework Agreement ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

25.3 Subject to clause 25.4, a Party shall notify the other party immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Framework Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

- (f) becomes aware of a Data Loss Event.

- 25.4 A Party's obligation to notify under clause 25.3 shall include the provision of further information to the other Party in phases, as details become available.
- 25.5 Taking into account the nature of the processing, a Party shall provide the other Party with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 25.3 (and insofar as possible within the timescales reasonably required by the Party) including by promptly providing:
- (a) the other Party with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the other Party to enable the other Party to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the other Party, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the other Party following any Data Loss Event;
 - (e) assistance as requested by the other Party with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 25.6 The Parties shall maintain complete and accurate records and information to demonstrate their compliance with this clause.
- 25.7 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 25.8 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Independent Controller clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).
- 25.9 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may, on not less than 30 Working Days' notice to the Contractor, amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

26. FREEDOM OF INFORMATION

- 26.1 The Provider acknowledges that the Welsh Ministers are subject to the requirements of the Code of Practice on Access to Information published by the Welsh Ministers ("the WG Code"), the Freedom of Information Act ("the FOIA") and the Environmental Information Regulations

2004 (“EIR”).

26.2 The Provider acknowledges that the Welsh Ministers shall be responsible for determining in its absolute discretion whether:

26.2.1 to disclose any information which it has obtained under or in connection with the Framework Agreement to the extent that the Welsh Ministers is required to disclose such information to a person making a disclosure request under the FOIA or the EIR (“an RFI”);

26.2.2 any information is exempt from disclosure under the WG Code, the FOIA or the EIR.

26.3 The Provider acknowledges that the Welsh Ministers may be obliged under the WG Code, the FOIA or the EIR to disclose information subject to an RFI:

26.3.1 following consultation with the Provider carried out in accordance with the DCA Code;

26.3.2 without consulting with the Provider where this is not required by the WG Code.

26.4 Where the Provider is consulted in accordance with Clause 26.3.1 then the Provider shall respond with any views within five (5) working days.

26.5 In no event shall the Provider respond directly to an RFI unless expressly authorised in writing to do so by the Welsh Ministers.

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

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

26.7 The provisions of this Clause 26 shall apply during the continuance of this Framework Agreement and indefinitely after its expiry or termination.

27. PUBLICITY

- 27.1 The Provider shall participate in promotional events at the request of the Welsh Ministers and/or the Participating Organisation.
- 27.2 The Provider shall report all new business arising from any marketing activities required by Clause 27 to the relevant Participating Organisation and also to the Welsh Ministers.
- 27.3 Except with the prior written consent of the Framework Contract Manager and the Participating Organisation, the Provider shall not make any press announcement or publicise this Framework Agreement or any Call-Off Contract in any way.
- 27.4 The Provider shall provide the Welsh Ministers and the Participating Organisation with a copy of all marketing and promotional material relating to this Framework Agreement for approval before any such material is published and shall not publish such material without the Welsh Ministers' and Participating Organisation's prior written approval.
- 27.5 The Provider shall ensure the observance of the provisions of Clause 27.1, 27.2, and 27.3 by all relevant Personnel.
- 27.6 If the Welsh Ministers have not given prior written consent pursuant to clause 27.3 or where the Welsh Ministers agree with the Provider pursuant to Clause 27.4 text to be used by the Provider in marketing its Services, such Framework Agreement may be suspended if the text becomes incorrect, incomplete or misleading, in which case the Provider shall forthwith cease using such text.
- 27.7 The Provider must use the branding provided by the Welsh Ministers and/or the Participating Organisation in all its materials when delivering the Services and must comply with the Welsh Ministers' and/or the Participating Organisation's branding guidelines and/or any other guidance issued by the Welsh Ministers and/or the Participating Organisation from time to time.
- 27.8 The Provider agrees that the Welsh Ministers may include details about the Provider's organisation and business, the Framework Agreement and the Services in Welsh Government promotional materials and the Provider further agrees to cooperate with the Welsh Ministers' reasonable requests to achieve the production of such materials.
- 27.9 The provisions of this Clause 27 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

28. THE HUMAN RIGHTS ACT 1998

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

29. RECORDS AND AUDIT ACCESS

29.1 The Provider shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records of the Framework Agreement and of any Call-Off Contract including the Services provided, all expenditure reimbursed by the Participating Organisation, all payments made by the Participating Organisation, and of the costs incurred in connection with the Framework Agreement or any Call-Off Contract until such time as notified to the Provider by the Welsh Ministers.

29.2 The Provider shall on request afford the Participating Organisation or its auditors or representatives such access to those records as may be required by the Participating Organisation. The provisions of this clause 29 shall apply during the continuance of this Framework Agreement and shall survive its expiry or termination.

29.3 Failure by the Provider to provide the required access and information in accordance with this clause 29 shall be a material breach of this Agreement for the purposes of clause 8.

30. MONITORING

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

30.2 The Provider shall, at no additional cost to the Welsh Ministers attend such meetings as the Welsh Ministers may reasonably require, including but not limited to a Provider performance review meeting every six months.

30.3 The Welsh Ministers may elect to conduct the meeting referred to in Clause 30.2 by audio or video conference.

30.4 The Provider shall upon request assist the Contract Manager to develop and circulate to Participating Organisations annual performance management questionnaires.

30.5 A failure by the Provider to attend meetings and provide the information required under this clause 30 shall be a material breach of this Agreement for the purposes of clause 8.

31. CORRUPT GIFTS OR PAYMENTS

31.1 The Provider shall not offer or give, or agree to give, to any employee, servant, agent or representative of the Welsh Ministers any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Framework Agreement or any Call-Off Contract or any other contract with the Welsh Ministers or any other contracting Welsh Ministers or for showing or refraining from showing favour or disfavour to any person in relation to this Framework Agreement or any Call-Off Contract. The attention of the Provider is drawn to the criminal offences created by the Bribery Act 2010.

31.2 The Provider shall not enter into this Framework Agreement if in connection with it commission has been paid or is agreed to be paid to any employee, servant, agent or representative of the Welsh Ministers by the Provider or on the Provider's behalf, unless before this Framework Agreement is made particulars of any such commission and of the terms and conditions of any Framework Agreement for the payment thereof have been disclosed in writing to the Welsh Ministers.

31.3 Where the Provider or any Personnel breaches the provisions of Clauses 31.1 and 31.2 in relation to this or any other contract with the Welsh Ministers or another contracting Welsh Ministers, the Welsh Ministers has the right to:

31.3.1 terminate the Framework Agreement with immediate effect and recover from the Provider the amount of any loss suffered by the Welsh Ministers resulting from the termination;

31.3.2 recover from the Provider the amount or value of any such gift, consideration or commission; and

31.3.3 recover in full from the Provider any other loss suffered by the Welsh Ministers in consequence of any breach of this Clause 31, whether or not the Framework Agreement has been terminated.

31.4 In exercising its rights or remedies under this Clause 31, the Welsh Ministers shall:

31.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;

31.4.2 give all due consideration, where appropriate, to action other than termination of the Framework Agreement.

32. FRAUD

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

33. CONFLICTS OF INTEREST

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

34. SUSTAINABILITY

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

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

35. AMENDMENT AND VARIATION

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

36. EXCLUSION OF THIRD PARTY RIGHTS

36.1 Nothing in this Framework Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to this Framework Agreement and no supplemental or ancillary Framework Agreement to this Framework Agreement shall create

any such rights unless expressly so stated in any such Framework Agreement by the Parties to this Framework Agreement. This does not affect any right or remedy of a third party which exists or is available apart from that Act.

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

37. RIGHTS AND REMEDIES

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

38. COSTS

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

39. COUNTERPARTS

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

This agreement has been entered into on the date stated at the beginning of it.

Signed by XXXXXXXXXXXXXXXXXXXX

for and on behalf of Welsh Ministers Head of XXXXXXXXXXXX Category

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF PROVIDER] Director

Part 1. Services

NOTE: The Participating Organisation should attach its specification for Services here, divided into Lots, if/as appropriate.

[SPECIFICATIONS FOR ALL SERVICES]

[DESCRIPTION OF LOTS AND GEOGRAPHICAL ZONES]

- To be completed for each supplier post tender award

Part 2. Provider's Lots

NOTE: The Participating Organisation should identify the Lots to which the Provider has been appointed, if Lots are being used. If Lots are not being used, this may be deleted. Ensure that any other references to Lots are also removed if this is done.

The Provider tender should also be attached (regardless of whether Lots are used). In the event of conflict or inconsistency in the contract documents, the specification in Part 1 takes precedence over the Tender.

Appendix 1: [The Provider Lot(s) and Geographical Zone]

Appendix 2: [The Provider's Tender]

Schedule 2

Pricing Matrices

Submitted as part of the Tender submission (eTenderWales Commercial envelope)

1. Price

- a. The Price set out in the pricing matrix shall be the maximum price payable for the Services.
- b. The Framework will be awarded for a maximum of 4 years (3+1).

Prices that reduce over the term of the Framework are encouraged.

2. Pricing revisions

- a. In the event that the Provider seeks a variation to the Price set out in the service requirements, the Provider shall submit an application in writing to the Contract Manager stating details of the variation to the Price (the "Application") and the following provisions shall apply:
 - i. The first variation to the Price may be awarded no earlier than 24 months from the Commencement Date.
 - ii. If 24 months from the Commencement Date have passed and the Provider has failed to submit an Application the next earliest date a variation to the Price may be awarded will be 36 months from the Commencement Date, and
 - iii. Subsequent Applications may be submitted on a twelve monthly basis PROVIDED ALWAYS that in the event of an Application not being submitted within twelve months from an anniversary of the Commencement Date the next earliest date a variation to the Price may be awarded will be the following anniversary of the Commencement Date.
- b. Any Application submitted under paragraph 1 above shall be given to the Contract Manager at least 60 days prior to the proposed effective date of the variation and will be capped in accordance with the Consumer Price Index (CPI) as published by the Office of National Statistics (<http://www.statistics.gov.uk>)
- c. The percentage variation will be the 'annual change' in the CPI Index for the latest published month preceding the date of the proposed effective date of the variation (where 'annual change' refers to the corresponding figure for the relevant month as published by the Office of National Statistics).
- d. Where the Welsh Ministers grants their approval to the variation, the variation will be effective from the anniversary of the Commencement Date.
- e. The Provider may not apply for a variation in the Price within a period of twelve months following a variation having taken place thereto.
- f. Variation in the Price arising from taxation imposed by H.M Government will be immediately allowed.
- g. In the event that the Welsh Ministers seeks a variation in the Price the same process applies as set out in paragraph 2a above.
- h. In the event of failure to reach agreement on the revision of the Price either Party shall be at liberty to give the other four [4] months notice in writing to terminate this Agreement, and until such time as this Agreement is so terminated the Price will remain unaltered.

- i. The Contract Manager reserves the right to request the Provider to provide documentary evidence in support of any request to vary the Price.
- j. Where the CPI Figure specified for the month preceding the date of the proposed effective date of the variation is stated as a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Welsh Ministers and the Provider shall agree otherwise.
- k. In the event that any changes occur to the basis of the CPI, or it is no longer published, the Welsh Ministers will select a fair and reasonable alternative to the CPI that will have substantially the same effect as the CPI.

The variation shall not become effective until the Provider has satisfied the Welsh Ministers that the variation to the Price is justified and the Welsh Ministers have confirmed their agreement to the variation in writing. Until this approval has been received the Price will remain unaltered.

3. Value for money

- a. The Provider must identify (and notify the Contract Manager) of potential costs savings and improved value for money in respect of the service requirements.
- b. In the event that the Provider seeks a reduction to the Price set out in the service requirements list, the Provider shall provide details in writing to the Contract Manager at least 14 days prior to the proposed effective date of the reduction. Subject to the Contract Manager's approval in writing, the reduction to the Price shall take effect from the date proposed by the Provider and continue until such time as it may be varied in accordance with this Schedule.

ORDER FORM**Framework Agreement****FROM**

Customer:	
Service address:	
Invoice address:	
Authorised Representative:	Ref: Phone: E-mail:
Order number:	To be quoted on all correspondence relating to this Order:
NPS Framework Reference Number	NPS-PS-0088-18
Order date:	

TO

Provider:	[SERVICE PROVIDER'S NAME]
For the attention of:	
E-mail:	
Telephone number:	
Address:	

1. SERVICE REQUIREMENTS
(1.1) SERVICES [and deliverables] required:
(1.2) Delivery Date/Service Commencement Date:
(1.3) Price payable by Customer and payment profile:
(1.4) Completion date (including any extension period or periods):

2 ADDITIONAL REQUIREMENTS
(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:
(2.2) Variations to Call-off Terms and Conditions:

3. PERFORMANCE OF SERVICES [AND DELIVERABLES]
(3.1) Key personnel of the Provider to be involved in the Services [and deliverables]:
(3.2) Performance standards:
(3.4) Quality standards:
(3.5) Contract monitoring arrangements:
(3.6) Management Information and meetings

4. CONFIDENTIAL INFORMATION

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

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

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding contract with the Provider to provide to the Customer the Services specified in this Order Form (together with, where completed and applicable, the order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Framework Agreement entered into by the Provider and the Participating Organisation on [DATE].

For and on behalf of the Provider:

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

For and on behalf of the Customer:

Name and title	
Signature	
Date	

Appendix 1: Specification for the Services

Appendix 2: Provider's Tender

Schedule 4

Call-Off Terms and Conditions

SEE SECTION 3 CALL OFF TERMS & CONDITIONS

Schedule 5

Call-Off Procedure and Rules

In this Schedule 5 in addition to the terms defined elsewhere in the Framework Agreement (which shall bear the same meaning here) -

1. Call to Competition

1.1 For each Call-Off Contract awarded pursuant to this Framework Agreement, Participating Organisation will award to the single provider for a Call-Off Contract.

2. Direct Award

2.1 A sole Provider will be identified Tender stage for this Framework Agreement. For Call-Off Contracts, Participating Organisations may award Call-Off Contracts directly without further competition.

3. The Participating Organisation shall send an Order to the relevant Provider;**General**

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

3.1.1 the conduct of Participating Organisations in relation to the Framework Agreement;
or

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

4. Form of Order

4.1 Participating Organisation may place an Order with the Provider by serving an order in writing in substantially the form set out in Schedule 3 or such similar or analogous form agreed with the Provider including systems of ordering involving fax, e-mail or other online solutions.

5. Accepting and declining Orders

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

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

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

5.2 If the Provider:

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

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

then the Order shall lapse, Participating Organisation may then source the service via an alternative method.

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

5.3.1 reissue the Order incorporating the modifications or conditions; or

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

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

6. USER ORDERING AND ENGAGEMENT PROCEDURE

1. The Lots covered by this framework are:

Lot 1 Master Vendor Service Provider (MVSP)

Lot 2 Vendor Neutral Service Provider (VNSP)

Lot 3 Hybrid Service Provider (HSP)

Lot 4 Spot Buying Service Provider (SBSP)

Lot 5 Supply Teacher & Education Temporary Workers

2. **User Ordering & Engagement Procedure for Lots 1, 2 and 3**

Customers may wish to choose which type of Service Provider they require based on the model currently used within their organisation, or local decisions and objectives which may favour a particular supply model that best meets these objectives.

Once this decision has been made and documented the user can then follow the User Ordering and Engagement procedure for the lot covering that type of Service Provider, either through the direct award process or via a mini competition.

The mini competition process will be between suppliers in the Customers preferred Lot (Lot 1 for Master Vendor, Lot 2 for Vendor Neutral, Lot 3 for Hybrid Solution).

However, some Customers may want to consider all or a combination of Service Provider solutions for their requirement, and these Customers may wish to run a mini competition between all Lot 1 and 2, or Lot 1 and 3, or Lot 2 and 3 or Lot 1, 2 and 3 suppliers.

Direct Award / Price Comparison

For Lot 1, 2 and Lot 3 Customers may choose to undertake a direct award based on a price comparison of the maximum rates for the Categories of Workers required by the Customer as follows:

Price comparison

A Customer may order any quantity of Agency Staff Services by signing a User Agreement with their chosen Service Provider, having undertaken a benchmarking exercise of all Service Providers by applying the Tendered Prices submitted at award stage to their current volumes or;

Mini-Competition Procedure

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

<p>“Mini-Competition Award Criteria”</p>	<p><i>means the award criteria for the evaluation of Supplier responses to Mini-Competitions which will be weighted 50% Technical (Non Commercial) and 50% Price (Commercial) , the latter broken down as set out below:</i></p>
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Commercial	50%
Technical (Sub criteria shown below)	50%
Total	100%

Quality / Technical Sub Criteria	Split of 500 (50%)
Supply Chain Management, Performance & Operational Delivery	250

Account Management	165
Policy	85

Customers wishing to run a mini competition post award may wish to adjust the award criteria weightings (+ or – 20%). Users may also wish to place a restriction on the number of workers provided by Master Vendor /Neutral Vendor solutions own workforce/group of companies, or remove this restriction. Users may require different insurance levels and will detail these as part of their Mini Competition process.

The Customer may use the Mini-Competition Procedure in respect of the supply of Agency Staff services either by lot - so all of those suppliers in Lot 1 or all of the suppliers in Lot 2 or all of those suppliers in Lot 3 - or as a competition between all suppliers listed in Lot 1 and 2, or Lot 1 and 3, or Lot 2 and 3 or Lot 1, 2 and 3 suppliers.

The Mini-Competition Procedure shall be as follows:

Step 1: The Customer shall produce a Specification of their detailed requirement for Agency Staff.

Step 2: The Customer shall invite all Suppliers within the Lots they wish to consider to participate in the Mini-Competition. As part of this process the Customer may require the Suppliers to respond to a collaborative (multi-organisation) or non-collaborative (single organisation) competition, and may choose to run an e-auction. Full details must be provided by the Customer.

Step 3: The Customer shall send the specification to the Suppliers and invite the Suppliers to submit a proposal in response to the specification within the response time specified by the Customer. Customers shall be entitled to adjust the Framework Award Criteria weightings by a maximum of plus or minus 20% and/or to introduce sub-criteria which derive from the Framework award criteria provided that these are notified to the Suppliers at the time the Suppliers are invited to submit their proposals. Where customers are running their competition across a combination of Lots 1, 2 and 3 they may introduce sub-criteria that derives from the framework criteria for these lots, as deemed relevant by the customer.

Step 4: The Customer shall evaluate any Suppliers' proposals in accordance with the Mini-Competition Award Criteria and the Customer's requirements as specifically stated in the specification.

Step 5: The Customer shall, at its sole option, decide whether or not to select a Supplier to provide the Services as set out in the specification. If the Customer decides not to select a Supplier the Customer shall notify all potential Suppliers of the same and the Mini-Competition Procedure shall be discontinued. The Customer may at its option repeat the Mini-Competition Procedure.

Step 6: If the Customer decides to select a Supplier, the Customer shall issue an Order Form with such Supplier and notify all other potential Suppliers in writing of their failure to be selected. No proposal shall be deemed to have been accepted unless and until an Agreement has been signed and sent to the Supplier by the Customer. It is at this award point that the Customer will become a User.

Electronic Auction

Bidders should be aware that an on-line Electronic Auction may be used in conjunction with collaborative and non-collaborative mini competitions, post award of the Agreement.

Users reserve the right not to enter into an Electronic Auction exercise if considered inappropriate.

3. User Ordering and Engagement Procedure Lot 4 – Spot Buying

A User may order any quantity of Services by submitting an Order to the Service Provider by the method agreed with the Service Provider.

4. User Ordering and Engagement Procedure for Lot 5 – Supply Teachers

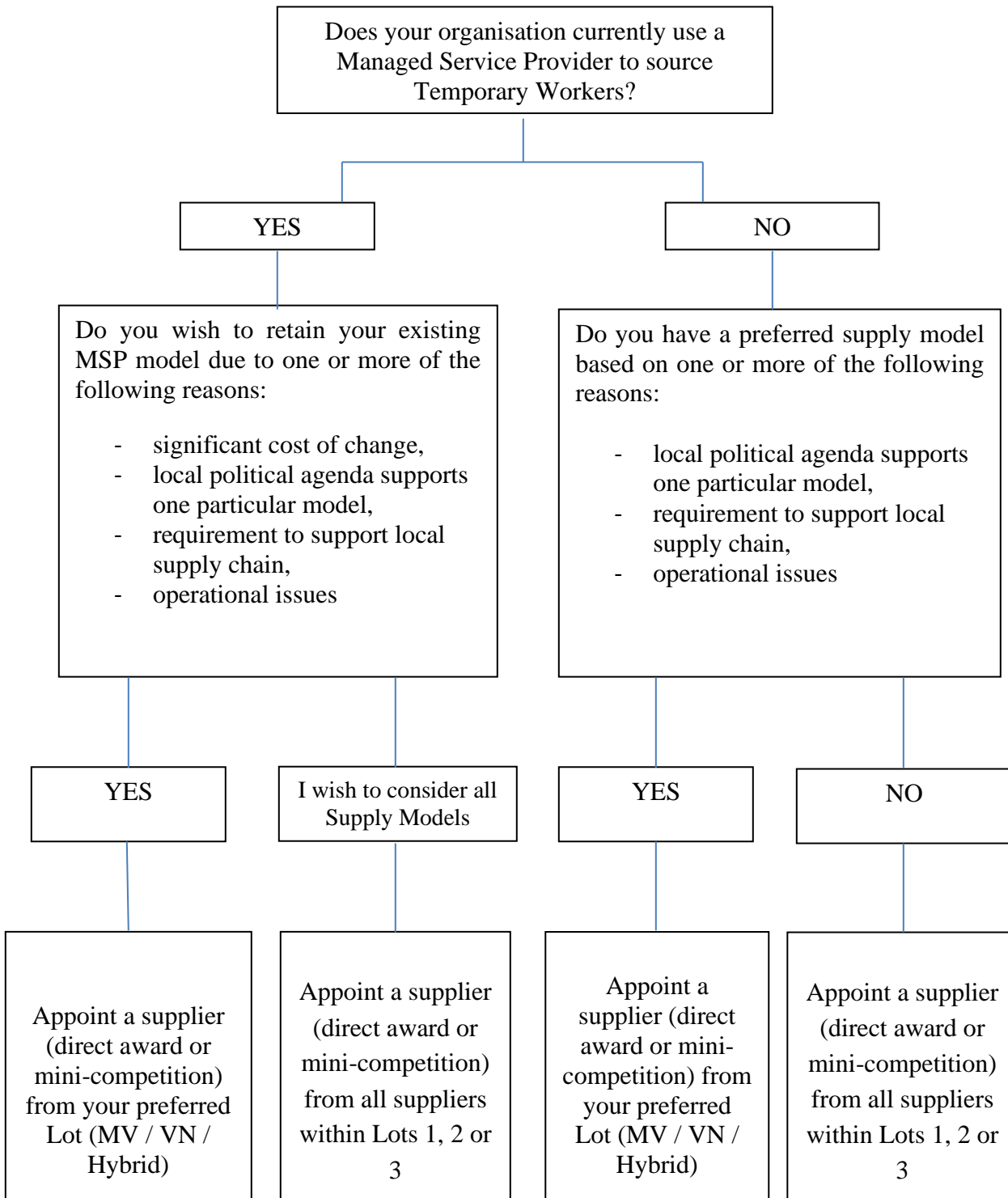
Direct Award

For lot 5 customers may choose to undertake a direct award based on a comparison of overall framework scores and availability of workers required (for those providers appointed within their geographical zone).

Mini competition

The Customer may use the same Mini-Competition Procedure for Lot 5, as outlined above (for Lots 1, 2 and 3).

User Ordering and Engagement Procedure Flowchart (Lots 1, 2 and 3)



Direct award can be based on applying tendered rates / margins to current volumes, but no further quality evaluation.

Mini-Competition would allow user organisations to add their additional and specific requirements.

Schedule 6

Management Information, Key Performance Indicators and Community Benefits Information

At the start of each financial year (April – March), the Provider will be provided with an excel spreadsheet for completion on a regular basis.

Management Information - Spend Information

The Management Information submission template will require the Provider to record spend information exclusive of VAT for Participating Organisations and must be returned to the National Procurement Service, by way of reply to a quarterly automated email from the NPS MI service provider.

Providers will receive an email on the 1st and 10th of each quarter requesting submission of quarterly Management Information returns. MI returns will be for the National Procurement Service Frameworks that the Provider provides services on. If Providers wish to provide a “Nil Return” (i.e. no MI to report), then this can be done by way of reply to the Atamis email with “Nil Return” in the subject header.

The Provider must also supply Participating Organisations directly with their own management information as and when requested.

In addition, the Provider must also hold in a single database the following information which must be made available on request by the Welsh Ministers and/or the Participating Organisation:

- Customers
- Description of services, value and rates of contract, period of contract, scope of contract
- Subcontracting opportunities
- Qualifications of staff providing services
- Engagement / number of calls / appointments / referrals
- Discounts and additional benefits
- Any new services

Key Performance Indicators

The second spreadsheet will detail Key Performance Indicators on the performance of the Framework Agreement and must be returned to the Framework Contract Manager by the 10th day of the month on a quarterly basis in an electronic format and as a general rule a week prior to any review meeting.

To ensure the quality of service is maintained and monitored, the Framework Contract Manager will agree, as a minimum, Key Performance Indicators with the Provider in relation to Service Delivery.

Details on Lot Specific Key Performance Indicators are included within the Specification documents related to this tender.

Community Benefits Information

The third spreadsheet will require the Provider to record on the delivery of community benefits detailed in the Provider's community benefits plan submitted as part of the Tender and must be returned to the Framework Contract Manager by the 10th day of the month on an annual basis and as a general rule a week prior to any review meeting.

Schedule 7**Example Schedule to Call-Off Contract:****Processing, Personal Data and Data Subjects Data Processing Schedule**

1. The Provider shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	[The Customer will set out a high level, short description of what the processing is about i.e. its subject matter]
Duration of the processing	[The Customer will clearly set out the duration of the processing including dates]
Nature and purposes of the processing	[The Customer shall cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]
Type of Personal Data	Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, Providers, patients, students / pupils, members of the public, users of a particular website etc.]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[The Customer shall set out how long the data will be retained for, how it is to be returned or destroyed]