

**NHS LITIGATION AUTHORITY: HEALTH RELATED LEGAL SERVICES FRAMEWORK AGREEMENT**

**CONFIRMATION OF APPOINTMENT**

**Date:**

**Firm Full Name:**  
**Details:**

Address (including facsimile  
number and email):

Principal Contact:

Details for Legal Notices (if  
different from above):

**Lot(s) for which the Firm is appointed:**

**Firm's Approved Offices (applicable to  
Lots 1 and 2 only):**

**Key Personnel:**

**Firm's Hotline Number:**

**Commencement Date:**

**Agreement Ref:**

By signing and returning this Confirmation of Appointment the parties acknowledge and agree that they have read and will be bound by all the terms of this Framework Agreement and all of its Schedules in the attached form.

Signed  
Signature: .....  
duly authorised for and on behalf of the Firm  
Name: .....  
Position: .....  
Date: .....

Signed  
Signature: .....  
duly authorised for and on behalf of the  
Authority  
Name: .....  
Position: .....  
Date: .....

## **FRAMEWORK AGREEMENT**

### **BACKGROUND:**

- A The Firm has been selected, on the basis of a tender submitted by it in a competitive procurement process and in accordance with the Invitation to Tender, to be a member of a panel of firms suitable for appointment to provide the Beneficiaries with certain health related legal services.
- B This Framework Agreement sets out the procedure and basis on which the Beneficiaries may purchase specific Services from the Firm and/or may appoint the Firm to one or more specialist-panels of firms who may be selected to provide particular specialist advice.

### **IT IS AGREED:**

#### **1 DEFINITIONS AND INTERPRETATION**

This Framework Agreement (which incorporates Standard Terms), and each subsequent appointment within the scope of the Framework Agreement (whether as Preferred Supplier or by way of any Instructions), shall be interpreted in accordance with Framework Schedule 8.

#### **2 TERM OF APPOINTMENT**

- 2.1 Subject to earlier termination in accordance with the Standard Terms of this Framework Agreement or otherwise by operation of Applicable Laws, the appointment of the Firm under this Framework Agreement shall take effect on the Commencement Date and shall continue for a period of four (4) Years from that date.
- 2.2 Save to the extent otherwise expressly agreed, if any Beneficiary commissions, or the Firm provides to a Beneficiary, any Services otherwise than within the scope of this Framework Agreement (including if any Services are commissioned or provided after the expiry of this Framework Agreement or in any other manner otherwise than in accordance with this Framework Agreement) that commissioning or provision shall be governed by the terms of this Framework Agreement unless notified otherwise by the Authority.

#### **3 FIRM'S APPOINTMENT**

- 3.1 The Authority appoints the Firm to the relevant Framework Panels as an Authorised Provider for the duration of this Agreement.
- 3.2 As an Authorised Provider the Firm shall, subject to the remaining provisions of this paragraph 3, be eligible to be considered for the award by Beneficiaries of Instructions.
- 3.3 The appointment of the Firm is limited to the Lots described in the Confirmation of Appointment and, subject to paragraph 3.4, is also limited:
  - 3.3.1 to the extent that the Confirmation of Appointment specifies Approved Offices with respect to the Services, to the provision of the Services by those offices; and
  - 3.3.2 to the extent that the Confirmation of Appointment specifies Key Personnel, to the provision by those Key Personnel.
- 3.4 The Authority may, from time to time by written notice to the Firm, vary the scope of any Services, Approved Offices or Key Personnel applicable to the Firm's appointment as an Authorised Provider as specified in the Confirmation of Appointment provided that it shall, save in the case of emergencies, consult with the Firm before doing so.
- 3.5 Without prejudice to any Instruction when issued, nothing in this Framework Agreement shall oblige any Beneficiary to Instruct the Firm or any other provider and any Beneficiary shall be entitled at any time to decline to Instruct any provider whatsoever even if it has followed a procedure contemplated by this Framework Agreement.

## **4 PREFERRED SUPPLIER STATUS**

- 4.1 Any Beneficiary may, to the extent it considers it appropriate, take into account the benefits of developing a continuing familiarity (an "Established Relationship") on the part of a limited number of providers with a certain category of In-Scope Services, being either:
- 4.1.1 all In-Scope Services required by the Beneficiary with respect to that Lot; or
  - 4.1.2 certain specified In-Scope Services (for example, all such Services as may relate to an individual NHSLA Member) required by the Beneficiary with respect to that Lot
- in selecting which provider to appoint to provide Services within that category.
- 4.2 To the extent that a Beneficiary may, from time to time, consider the development or existence of Established Relationships to be beneficial in selecting which provider to Instruct within a particular category of Services, it may appoint one or more providers (which may, or may not, include the Firm) as a preferred supplier ("Preferred Supplier") with respect to that category.
- 4.3 Where a Beneficiary has nominated one or more Preferred Suppliers with respect to a category of Services, it may take that status into account in deciding which provider to Instruct with respect to any Services within that category
- 4.4 Nomination as a Preferred Supplier may be made by Appointment Letter or:
- 4.4.1 within any Instructions; or
  - 4.4.2 otherwise in such form and manner as the relevant Beneficiary considers appropriate.
- 4.5 A Beneficiary may require that, as a condition of nomination as a Preferred Supplier, a provider commits to make available certain specified Additional Services.

## **5 APPOINTMENT PROCEDURES – LOTS 1 AND 2**

- 5.1 The provisions of this clause 5 apply to the selection of a provider:
- 5.1.1 to be instructed with respect to any specific services; or
  - 5.1.2 to be nominated as a preferred supplier
- in each case within the scope of lot 1 or lot 2.
- 5.2 Subject to the procedures set out in this clause 5, a beneficiary may select a provider in accordance with such criteria and process as it may, in its absolute discretion, consider appropriate.
- 5.3 Before selecting a provider a beneficiary may, where relevant, seek and consider the views of any NHSLA member for which the provision of services is relevant.
- 5.4 In making any selection a beneficiary shall:
- 5.4.1 only consider for selection such firms as the beneficiary considers (whether as a result of a further specific tender or otherwise) are capable of providing the services in question; and
  - 5.4.2 use such criteria as it considers appropriate which may include, without limitation, the following:
    - 5.4.2.1 in the case of specific instructions, any preferred supplier status (where relevant);

- 5.4.2.2 the volumes of work being handled, or which have been handled, under the Framework by any potential providers across all of their respective offices;
- 5.4.2.3 the capacity of any potential providers to handle new instructions in the area in which the need has arisen;
- 5.4.2.4 the prior experience of any potential providers concerned in the subject matter of the new instructions;
- 5.4.2.5 the performance of any potential providers concerned under their applicable KPI's;
- 5.4.2.6 the need to secure value for money;
- 5.4.2.7 any Additional Services offered or provided by any potential providers; and
- 5.4.2.8 the willingness or otherwise of any potential providers to accept previous Instructions in respect of which they were capable of providing the relevant Services.

## **6 APPOINTMENT PROCEDURES – LOT 3**

6.1 The provisions of this clause 6 apply to the selection of a provider:

6.1.1 to be instructed with respect to any specific services; or

6.1.2 to be nominated as a preferred supplier; or

6.1.3 to be included within a mini-competition process in accordance with clause 6.4 below

in each case within the scope of lot 3.

6.2 Subject to the procedures set out in this clause 6, a beneficiary may select a provider in accordance with such criteria and process as it may, in its absolute discretion, consider appropriate.

6.3 In making any selection a beneficiary shall:

6.3.1 only consider for selection such firms as the beneficiary considers (whether as a result of a further specific tender or otherwise) are capable of providing the services in question; and

6.3.2 use such criteria as it considers appropriate which may include, without limitation, the following:

6.3.2.1 in the case of specific Instructions, any Preferred Supplier status (where relevant);

6.3.2.2 the volumes of work being handled, or which have been handled, under the Framework by any potential providers across all of their respective offices;

6.3.2.3 the capacity of any potential providers to handle new instructions in the area in which the need has arisen;

6.3.2.4 the prior experience of any potential providers concerned in the subject matter of the new instructions;

6.3.2.5 the performance of any potential providers concerned under their applicable KPI's;

- 6.3.2.6 the need to secure value for money;
- 6.3.2.7 the Additional Services offered or provided by any potential providers; and
- 6.3.2.8 the willingness or otherwise of any potential providers to accept previous Instructions in respect of which they were capable of providing the relevant Services.

6.4 A beneficiary may, where it considers it practical to do so conduct a mini-competition to identify the chosen provider(s) subject always to the following value guidelines:

- 6.4.1 in respect of any appointment the anticipated value of which is less than £25,000, a mini-competition is unlikely to be necessary;
- 6.4.2 in respect of any appointment the anticipated value of which is equal to, or exceeds, £25,000 but is less than £50,000, a mini-competition process, if held, is likely to be undertaken between a maximum of three firms selected by the beneficiary from framework panel lot 3; and
- 6.4.3 in respect of any appointment the anticipated value of which is equal to, or exceeds, £50,000, a mini-competition process, if held, is likely to be undertaken between all members of framework panel lot 3

provided that a beneficiary is unlikely to undertake any mini-competition in respect of services for which it has already appointed one or more preferred suppliers.

6.5 A beneficiary may organise a mini-competition in such manner as it considers appropriate provided that it will normally:

- 6.5.1 issue to relevant firms an invitation to submit a response to a mini-competition to all relevant firms which will detail its requirements, the information which organisations must provide and details of the criteria and method of evaluation;
- 6.5.2 evaluate the responses to such an invitation as it sees fit subject to the following parameters:
  - 6.5.2.1 Financial issues (weighting 20-80%);
  - 6.5.2.2 Qualitative issues (weighting 20-80%).

6.6 A beneficiary shall not be required to organise a mini-competition in any circumstances where it does not consider that to be appropriate by reason, for example but without limitation, by reference to the urgency with which the advice is required.

## **7 INSTRUCTIONS**

7.1 Instructions may be issued in such form, and may contain such information, as the relevant beneficiary considers appropriate provided that a non-exhaustive indicative list of the content of instructions shall be as follows:

- 7.1.1 The instructed services;
- 7.1.2 confirmation of the basis upon which the agreed fees will be calculated;
- 7.1.3 the partner at the firm with overall responsibility for, and any key personnel nominated with respect to, the supply of the instructed services;
- 7.1.4 the beneficiary's representative for the purpose of the instructions; and
- 7.1.5 any approved sub-contractors in connection with those instructions.

7.2 If the firm is selected to be appointed as a preferred supplier or to be instructed it shall not be obliged to accept such instructions but must confirm to the relevant beneficiary whether it accepts those instructions:

7.2.1 within any period specified by the beneficiary; and

7.2.2 in any event within **five (5) working days (or a reasonable time if shorter)**.

7.3 If the firm:

7.3.1 declines to accept the instructions; or

7.3.2 fails to accept those instructions within the period referred to in clauses 7.2.1 and 7.2.2 above

the beneficiary may withdraw those instructions and may instruct another provider.

7.4 The acceptance by the firm of any instructions will create a legally binding obligation upon the firm (either in accordance with clause 7.2 or in any such other manner as the relevant beneficiary may expressly agree) to provide the relevant services specified in the instructions and in accordance with the standard terms and any specific terms agreed as part of the appointment.

7.5 If a Beneficiary requests the Firm to supply services which are the same as or similar to the Services, the Firm shall promptly and in any event within five (5) Working Days of that request by the Beneficiary and before starting any supply of such services, inform the Beneficiary of the existence of this Framework Agreement.

7.6 If any nhsla members merge to form a new entity, the authority may undertake a new selection process in accordance with the procedures set out above.

## **8 APPLICABLE TERMS AND CONDITIONS**

8.1 The Standard Terms shall be deemed to be incorporated each time a firm is appointed under this Framework Agreement on the basis that, each time there is a new appointment the warranties, representations and undertakings in the Standard Terms shall be deemed to be repeated by the Firm in relation to the circumstances existing at that time.

8.2 An appointment may also incorporate any other terms and conditions as the relevant Beneficiary may consider appropriate in relation to the subject matter of the specific appointment.

8.3 In the case of any conflict between the requirements of this Framework Agreement, any appointment terms and conditions or any other document, the Standard Terms of this Framework Agreement shall take precedence. No firm is permitted to incorporate any other terms and conditions, including but not limited to their own terms and conditions, in relation to this framework agreement or their appointment to provide the services.

## **9 COMMERCIAL TERMS**

9.1 Unless otherwise expressly agreed in writing, the charges for all work provided pursuant to Instructions shall be calculated in accordance with the Agreed Fees.

9.2 Throughout the term of its appointment, the Firm shall provide the Additional Services.

## **10 PROVISION OF MANAGEMENT INFORMATION**

10.1 The Firm shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Part B of Framework Schedule 6 (Management Information).

- 10.2 If the Authority shares the Management Information with any Beneficiary, the Authority shall inform such Beneficiary of the sensitive nature of that information and shall request that Beneficiary not to disclose it to any person who is not a Crown body or another Beneficiary (unless required to do so by Applicable Laws).

## **11 PERFORMANCE MANAGEMENT**

- 11.1 The Firm will attend performance review meetings ("Performance Review Meetings") with the Authority not less than quarterly and more frequently when requested by the Authority. At each Performance Review Meeting the Firm will discuss with the Authority:

11.1.1 all aspects of the performance of the Services including any issues of concern on the part of either party

11.1.2 any failure by the Firm to achieve any KPI Target or KPI Threshold.

- 11.2 If the Firm's performance in respect of any KPI measure is below the relevant KPI Target or KPI Threshold:

11.2.1 if the Authority considers that failure to be critical, the Firm shall immediately instigate a rectification plan which will resolve the issue within seven days;

11.2.2 in all other cases the Firm shall instigate a rectification plan which will resolve the issue as soon as reasonably practicable and in any event in no more than 3 months.

- 11.3 All rectification plans will be agreed with the Authority. If a rectification plan cannot be agreed at a Performance Review Meeting or a rectification plan does not resolve the relevant performance issue within the required period, the matter will be considered a dispute which shall be escalated in accordance with the Disputes Procedure. If it remains unresolved, the Authority may terminate this Framework Agreement.

- 11.4 The provisions of clause 11.1-11.3 will apply at the request of any Beneficiary in respect of any Instructions or appointment (including any appointment as Preferred Supplier) other than the Framework Agreement save that references to the Authority shall, in that event, be interpreted as references to the relevant Beneficiary.

## **12 FRAMEWORK AGREEMENT MANAGEMENT**

- 12.1 This Framework Agreement shall be managed in accordance with Part A of Framework Schedule 6 (Framework Management).

- 12.2 The Firm acknowledges that each Beneficiary is independently responsible for the conduct of its award of an appointment under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to the conduct or performance of any Beneficiary (other than the Authority) in relation to this Framework Agreement or any appointment.

## **FRAMEWORK SCHEDULE 1**

### **List of Beneficiaries**

Department of Health

NHS Litigation Authority

Care Quality Commission

Health Education England

Health Protection Agency

Health Research Authority

Health and Social Care Information Centre

Human Fertilisation and Embryology Authority

Human Tissue Authority

Medicines and Healthcare Products Regulatory Agency

Monitor

National Clinical Assessment Service

National Institute for Health and Clinical Excellence

National Treatment Agency for Substance Misuse

NHS Blood and Transplant

NHS Business Services Authority

NHS Commissioning Board

NHS Institute for Innovation and Improvement

NHS Trust Development Authority

Professional Standards Authority for Health and Social Care

Public Health England

Any and all other entities which are currently, or may at any time during the life of the Framework become, arm's length bodies or agencies of the Department of Health.



## **FRAMEWORK SCHEDULE 2**

### **Part A – Fees**

#### **Section 1 – Lot 1 Fees**

##### Lot 1 – stipulated hourly rates

	Clinical Inner London hourly rate	Clinical Outer London hourly rate	Clinical Provincial hourly rate
<b>Nominated Partner</b>	£194	£173	£166
<b>Other Partner, and/or solicitor 10 years or more PQE</b>	£179	£164	£152
<b>Solicitors 5-9 years PQE</b>	£162	£148	£145
<b>Solicitor NQ – 4 years PQE</b>	£155	£144	£140
<b>Legal executives, paralegals or trainee solicitors</b>	£90	£83	£78

The Inner London rate applies to any work undertaken in the following London postcode areas: WC, EC.

The Outer London rate applies to any work undertaken in the following London postcode areas: W, NW, N, E, SE, SW.

##### Lot 1 – fixed fees

In respect of clinical negligence claims where the damages reserve agreed and set by the Beneficiary's case manager at the date of instruction is £100,000 or below, the following aspects of the work must be charged in accordance with the following fixed fees (exclusive of VAT) save where the Beneficiary in its discretion notifies the relevant organisation on instruction that exceptional circumstances dictate that these arrangements shall not apply.

Work in litigation at a value up to and including £50,000	
Stage 1 - Work up to and including service of a Defence or conclusion if that occurs first (inclusive of all disbursements)	£2000 (paid if concluded at this point; if not second stage below applies)
Stage 2 - Post Defence work up to conclusion (inclusive of all disbursements)	Up to a total cap of £4,500 per case including Stage 1.
Work in litigation £50,001 up to and including £100,000	
Stage 1 - Up to and including service of a	£4,000 (paid if concluded at this point, if

Defence or conclusion if that occurs first (inclusive of all disbursements)	not second stage below applies)
Stage 2 - Post Defence work up to conclusion (inclusive of all disbursements )	Up to a total cap of £11,000 per case, including Stage 1

Notes on fixed cost work:

- For the avoidance of doubt, the maximum fee payable for litigated work up to £50,000 is £4,500 inclusive of all disbursements. The maximum fee for litigated work in the range £50,001 up to and including £100,000 is £11,000 inclusive of all disbursements.
- The definition of disbursements shall include counsel's fees and expert's reports.
- For the purposes of the above tables, valuation of the case is the reserve for damages agreed and set by the Beneficiary's case manager at the date of instruction of solicitors and conclusion of the case refers to the point at which the case is discontinued or closed by agreement of the Beneficiary's case manager or damages are agreed.

All work in the specified class of cases which falls outside the fixed fee will be chargeable at the hourly rates quoted above.

Where instructions are given to contest a case to trial, trial preparation and attendance at trial will be chargeable at the hourly rates specified above. Disbursements, including counsel's and expert's fees, incurred after the date of such instruction, will be paid in addition as per the normal rules applicable to Lot 1 disbursements and subject, in the case of counsel and expert fees, to the express agreement of those costs by the Beneficiary's case manager.

#### Lot 1 – Special arrangements for inquests

Inquest work will be charged at the Lot 1 hourly rates specified earlier. However, inquest work will only be paid for by the Authority with its express prior agreement, at its discretion, where a claim for compensation is likely in its opinion. The Authority reserves the right to introduce fixed and capped fee arrangements for this work.

## **Section 2 – Lot 2 Fees**

Lot 2 stipulated hourly rates

	London rate (net of VAT)	Provincial rate (net of VAT)
<b>Nominated Partner</b>	£170	£142
<b>Other Partner, and/or solicitor 10 years or more PQE</b>	£156	£133
<b>Solicitors 5 – 9 years PQE</b>	£137	£115
<b>Solicitors NQ - 4 years PQE</b>	<b>£130</b>	<b>£105</b>
<b>Legal executives, paralegals or trainee solicitors</b>	<b>£75</b>	<b>£70</b>

The London rate applies to any work undertaken in the following London postcode areas: WC, EC. Work undertaken in any other London postcode areas will be subject to the provincial rate.

Lot 2 – fixed fees

These fees apply to cases with damages estimated by the Beneficiary's case handler at £25,000 or less at the date of instruction. They do not apply to claims for defamation, unlawful detention, illness or disease, stress, bullying, harassment, sexual or physical abuse, alleged breaches of the Human Rights Act or Data Protection Act or to the costs of defending criminal proceedings. Other matters may be excluded by agreement of the Beneficiary concerned.

	Fixed cost (net of VAT)
Stage 1- All work up to and including service of a Defence or conclusion if that occurs first (inclusive of all disbursements)	£500 (paid if concluded at this point; if not, second stage below applies)
Stage 2- post Defence work up to conclusion (inclusive of all disbursements)	Up to a total cap of £1300 per case including Stage 1

Beneficiaries may issue protocols to determine the precise conditions applicable.

All work in the specified class of cases which is not within the fixed fee will be charged at the hourly rates quoted above.

The definition of disbursements shall include counsel's fees and expert's reports.

The relevant Beneficiary shall be entitled to stipulate at the time of issuing instructions to the organisation concerned that the fixed fee shall not apply even to a claim falling within the above descriptions in which event the standard hourly rates quoted above will apply.

Where instructions are given to contest a case to trial, trial preparation and attendance at trial will be chargeable at the hourly rates specified above. Disbursements, including counsel and expert fees, incurred after the date of such instruction, will be paid in addition as per the normal rules applicable to Lot 2 disbursements and subject, in the case of counsel and expert fees, to the express agreement of those costs by the Beneficiary's case manager.

### Section 3 – Lot 3 Fees

Hourly rates will be as specified in a Tender accepted by the Authority or a Beneficiary according to the following classifications.

<b>Partner 10 years or more PQE</b>	
<b>Other Partner, and/or solicitor 10 years or more PQE</b>	
<b>Solicitors 5 – 9 years PQE</b>	
<b>Solicitors NQ - 4 years PQE</b>	
<b>Legal executives, paralegals or trainee solicitors</b>	

The Firm must provide (at no charge) training to any Beneficiary in respect of which it is appointed a Preferred Supplier arrangement, at the Beneficiary's premises for a duration dependent on the value of fees (exclusive of VAT) billed by the organisation concerned and paid by the Beneficiary in the financial year in question as follows:

<b>Annual Spend</b>	<b>Free Training</b>
£10,000 or more	1 hour
£20,000 or more	2 hours
£30,000 or more	3 hours
£40,000 or more	4 hours
£50,000 or more	5 hours

In relation to each new instruction issued by a Beneficiary the Firm must provide an initial 18 minutes of free advice/assistance.

## Section 4 – Fees Principles Applicable over all Lots

### General Principles

- All rates will remain unchanged throughout the term of the Framework Agreement.
- Travelling time will not be chargeable.
- The instructing Beneficiary will meet reasonable disbursements such as court fees. Travel will be paid in accordance with rates notified to the organisation from time to time and will consist of reimbursement for second class rail travel and limited mileage where public transport options are not available. Please note that photocopying and/or secretarial support, postage and general office administration costs will not be considered as a disbursement and shall be absorbed as an office expense within the overall remuneration rate.

### Volume discount applicable across all Lots

The following discounts will apply once the sums billed by the Firm (exclusive of VAT) to any and all of the Beneficiaries for work performed under any and all of the Lots/Panels and paid by those Beneficiaries, reaches the following levels:

£1 million paid in financial year to date	1% deducted from all future bills until the next trigger point
£2 million paid in financial year to date	2% deducted from all future bills until the next trigger point
£4 million paid in financial year to date	3% deducted from all future bills until the next trigger point
£6 million paid in financial year to date	4% deducted from all future bills until the next trigger point
£8 million paid in financial year to date	5% deducted from all future bills until the next trigger point

For these purposes the financial year means the period **1 April to 31 March**.

## **Part B – Additional Services**

Each Firm shall provide the following Additional Services to the appointed Beneficiary on an on-going basis as part of the Agreed Fee as and when reasonably agreed between the parties:

1. Library and research services;
2. Secondees for Lot 1 and Lot 2;
3. Secretarial support and administrative support;
4. Office services;
5. Premises to accommodate conferences and other events;
6. Legal and other training services;
7. Seminars, exhibitions and conferences;
8. Contributions to the Beneficiary's publications, extranet and website content;
9. Speakers at conferences and seminars hosted by the Beneficiary;
10. Such other services as enable the Beneficiaries to achieve their corporate objectives, e.g. supporting learning from claims

A Beneficiary may choose from the Additional Services contained in this Schedule as and when they choose, but all firms must ensure that they are capable of fulfilling all of the Additional Services. The specific Additional Services required shall be detailed in each individual appointment between the relevant Beneficiary and the relevant Firm.

The Additional Services shall also include any such services as have been proposed by the Firm in its Tender and agreed by a Beneficiary.

No Additional Services shall attract a fee or requirement for any Beneficiary to make any payment.

## Part C – Form of Appointment Letter

*[Letterhead of Beneficiary]*

*[Name and address of Firm(s)]*

*[Reference number]*

*[Date]*

Dear Sirs,

### **Preferred Supplier Status**

This is an Appointment Letter written pursuant to the Legal Services Framework Agreement between the National Health Service Litigation Authority or any Beneficiary and you dated [ ] (the "**Framework Agreement**"). It shall be interpreted in accordance with, and shall incorporate the Standard Terms provided for in, the Framework Agreement.

The purpose of this letter is to inform you that you have been appointed by [*insert name of Beneficiary*] (the "**Appointer**") from Framework Panel Lot 3 in accordance with the appointment procedures in the Framework Agreement as a Preferred Supplier.

As a Preferred Supplier, you may, from time to time, be Instructed to carry out on behalf of the Appointer:

- a) all In-Scope Services required by the Appointer with respect to Lot 3; or
- b) certain specified In-Scope Services required by the Appointer with respect to Lot 3.

Notwithstanding your appointment as a Preferred Supplier, it shall remain at the absolute discretion of the Appointer as to whether to Instruct you within a particular category of Services.

The Appointer may appoint one or more Preferred Suppliers. If the Appointer has nominated more than one Preferred Supplier with respect to a category of Services, it shall be at the discretion of the Appointer to decide which provider to Instruct with respect to any Services.

As a condition of your appointment as a Preferred Supplier, you commit to make available the Services, the Additional Services and, if required by the Appointer, certain specified additional services as instructed to you from time to time.

Any Instructions from the Appointer shall be given to you each time new Instructions are required. Such Instructions may be given orally or in writing and will at all times be interpreted and in accordance with, and shall incorporate the Standard Terms provided for in, the Framework Agreement.

As a Preferred Supplier you are not obliged to accept Instructions but must confirm to the Appointer whether you accept any Instructions:

- a) within any period specified by the Appointer; and
- b) in any event within five (5) working days (or a reasonable time if shorter).

If you decline to accept the Instructions or fail to accept those instructions within the period referred to above, the Appointer may withdraw those Instructions and may Instruct another provider.

The acceptance by you of any Instructions will create a legally binding obligation upon you to provide the relevant Services specified in the Instructions and in accordance with the Standard Terms and any specific terms agreed as part of the appointment.



The Appointer may terminate your appointment as a Preferred Supplier at any time at their absolute discretion.

Yours faithfully

.....

For and on behalf of [*insert name of Beneficiary*]

## FRAMEWORK SCHEDULE 3

### Part A - Service Levels

Performance Criteria	Service Level	Performance Guidance
<b>1. Requirement</b>	1.1 Firm has the necessary <b>understanding and expertise</b> to meet Beneficiary expectations.	The Firm has a good knowledge of the subject and the environment in which the Beneficiary operates - Beneficiary expectations of Firm expertise are met.
	1.2 Firm is open and proactive in <b>optimising costs</b> .	Efforts made to minimise expenses - prices are in line with market expectations - Firm is open in explaining price breakdown and working with the Beneficiary to identify opportunities to reduce cost – accurate and timely billing of Beneficiary and invoices provided in line with Beneficiary requirements.
	1.3 Firm is proactive in identifying and <b>managing risks</b> .	Firm is proactive in identifying and allocating risk ownership - Firm supports Beneficiary in assigning and managing risks - Firm is proactive in assessing impact of risks in the course of performing the Instructions and raising issues as appropriate.
<b>2. Quality of advice</b>	2.1 Firm provides <b>good advice</b> within given <b>timescales</b> and <b>covers all issues</b> that are requested appropriately.	Advice is technically sound and clearly expressed – Firm adheres to timelines and shows right focus– Firm strikes appropriate balance between covering issues thoroughly and providing unnecessary detail.
<b>3. Engagement &amp; Relationship</b>	3.1 Firm <b>engagement</b> with the Beneficiary is appropriate and focused on relevant Services delivery	Firm uses the right departments to deliver the Services - Beneficiary is able to distinguish between business development activity/roles and delivery activity/role - Firm does not exploit its position/relationship with the Beneficiary.
	3.2 Firm establishes effective working <b>relationships</b> with the Beneficiary.	Firm integrates well with Beneficiary staff and other advisers- Firm is flexible in its approach to the Beneficiary - demonstrates a knowledge of Beneficiary culture - manages engagement issues well and does not let them impact on delivery - Firm builds good relationships with internal staff of the Beneficiary - Firm does not take advantage of its position / relationship with the Beneficiary.
<b>4. Project Management</b>	4.1 Firm <b>resources</b> are deployed in the right way to deliver value.	Firm Staff are consistent throughout the duration of the Services - Firm explains how project team has been put together to deliver the Services - resource requirement remains in line with that included in the proposal - focus on relevant Services delivery is maintained.
	4.2 <b>Roles and responsibilities</b> of the legal team are clear.	Firm provides clarity as to the roles and responsibilities of each member of the legal team engaged.
	4.3 Firm <b>governance and project management</b> is effective in ensuring the assignment is successful.	Issues were raised as soon as possible and solutions offered - delivery plan was developed and agreed with the Beneficiary at the outset - progress against milestones was reported regularly and in line with Beneficiary requirements - Beneficiary satisfaction with delivery was monitored by the Firm.
	4.4 Original <b>scoping</b> is robust.	The scope and resource requirement remained in line with initial proposal - initial proposal was accurate and did not need to be amended.
<b>5. Value for Money</b>	5.1 <b>Delivery on time</b> .	As per Firm Instructions.
	5.2 <b>Delivery on budget</b> .	As per Firm Instructions.
	5.3 <b>Value for Money</b> .	Extent to which the benefits - as outlined in the assignment proposal – were delivered.
<b>6. Skills Transfer</b>	6.1 Skills transfer.	Firm identified opportunities for skills and knowledge transfer - Firm delivered transfer within original time and budget.
<b>7. Exit Strategy</b>	7.1 Project closure.	Firm reflected any exit strategy requirements in their proposal - the project was closed off with no outstanding dependencies.

## Part B – Key Performance Indicators

### Lots 1 and 2

KPIs for Lots 1 and 2 shall be measured as set out below.

The Authority will directly track the KPI information for all Authority instructed matters.

The Firm must provide to the Authority in a report (with such frequency as the Authority requires):

- a) the information set out below for each matter instructed by a Beneficiary other than the Authority; and
- b) such other information that the Authority requires

Measure	Definition	Comment	Target	Tolerance
Average defence costs	Average defence costs on reaching a closed or PP (periodical payments) status.	Shown by firm and office and by damages tranche, as defined by the Authority.	Panel Average or below	10% above Panel average
Average defence costs - weighted	Weighted to reflect case mix	Shown by firm and office and by damages tranche.	Panel Average or below	10% above Panel average
Average defence costs of claims closed at zero	Average defence costs on closure of file for nil damages	Shown by firm and office.	Panel Average or below	10% above Panel average
Average claimant costs	Average claimant costs on reaching a closed or PP status	Shown by firm and office and by damages tranche.	Panel Average or below	10% above Panel average
Average damages	Average damages on reaching a closed status. Excluding claims closed at zero or reaching a PP status.	Shown by firm and office and by damages tranche.	Panel Average or below	10% above Panel average
Average total cost per case	Average total costs and damages paid on reaching a closed or PP status. Excluding claims closed at zero, claims closed for damages of £1m + and claims reaching a PP status.	Shown by firm and office.	Panel Average or below	10% above Panel average

Ratio of average defence costs to average damages	All claims which are at a closed status. Excludes claims at £999 or less damages or at £1m + damages or at a PP status. Uses paid defence costs and paid damages.	Shown by firm and office.	Panel Average or below	10% above Panel average
Ratio of total costs (claimant + defendant) to total damages	Ratio of total costs to total damages on reaching closed status – excluding claims settled at zero or reaching PP status.	Shown by firm and office	Panel Average or below	10% above Panel average
Ratio of average claimant costs to average damages.	All claims which are at a closed status. Excludes claims at £999 or less damages or at £1m + damages or at a PP status. Uses paid claimant costs and paid damages.	Shown by firm and office.	Panel Average or below	10% above Panel average
Shelf-life	From date of current panel contact on claim to a settled status.	Shown by firm and office and by damages tranche. PPs are given separate consideration.		
	CNST (Clinical Negligence Scheme for Trusts)	Specified benchmarks.	1.2 years	1.35 years
	LTPS (Liabilities to Third Parties Scheme)		1.0 years	1.15 years
Claims settled at zero damages	Claims reaching a settled status with a zero damages payment, expressed as a percentage of claims reaching a closed or PP status in the same period.	Shown by firm and by office. Specified benchmarks. (rather than panel averages)	25%	20%
Claims successfully defended at trial	Successfully defended at trial on liability or Defendant CPR Part 36 offer not beaten at trial.	Shown by firm and by office	tba	tba
Discounted settlements	Claims reaching a settled status with a discounted settlement flag.	The number of favourable settlements achieved, reflecting arguments on liability.	tba	tba
Audit scores	Most recent audit score undertaken by Beneficiary.	Shown by firm and by office	tba	tba
Justified complaints	Complaints re. panel handling found to be justified following investigation	Complaints on the solicitors' log, or otherwise received from a claimant, member or elsewhere, found to be justified by the panel manager.	0 in rolling 3 month period	3 in rolling 3 month period
Value-added activities	Hours x hourly rate	As defined in Part B, additional activities. Return submitted by panel and subject to periodic verification / spot-checking by the panel manager. To be proportionate to firm size.	tba	tba

Value-added services	e.g. Facilities for conferences, library services.	As defined in Part B, additional services. Measured by nominal cost agreed with panel manager and checked for consistency by chair of the panel liaison group. To be proportionate to firm size.	tba	tba
Case studies supplied.	Anonymised case studies supplied and receiving Authority approval.	Prepared by solicitor at the end of a case where relevant patient safety lessons to be learned.. Shared on extranet for training/education purposes. To be proportionate to firm size.	tba	tba

### **Lot 3**

In the case of Lot 3, the relevant Beneficiary may determine relevant KPIs as part of the appointment process. The Beneficiary may adopt any of the KPIs set out above and will manage and monitor the Firm's performance of the KPIs as they consider appropriate and may, if it considers it necessary, do so in consultation with the Authority.

The Firm will attend Performance Review Meetings with the Beneficiary not less than quarterly and more frequently when requested by the Beneficiary. At each Performance Review Meeting issues of concern will be discussed. Where a Firm has fallen below the KPIs:

- a) where the Beneficiary considers that failure to be critical, the Firm shall immediately instigate a rectification plan which will resolve the issue within seven days;
- b) in all other cases the Firm shall instigate a rectification plan which will resolve the issue as soon as reasonably practicable and in any event in no more than 3 months.

All rectification plans will be agreed with the Beneficiary. If a rectification plan cannot be agreed at a Performance Review Meeting or a rectification plan does not resolve the relevant performance issue within the required period, the matter will be escalated to the Director of Claims or the Technical Claims Director of the Authority and if still unresolved to the Chief Executive of the Authority. If it remains unresolved, the Authority may terminate this Framework Agreement.

## FRAMEWORK SCHEDULE 4: STANDARD TERMS AND CONDITIONS

### 1 PERFORMANCE OF SERVICES

- 1.1 The Firm shall provide all Instructed Services and Additional Services and otherwise perform its obligations under the Agreement:
  - 1.1.1 in accordance with the requirements of the Agreement (including, for the avoidance of doubt, of the Framework Agreement and any applicable appointment);
  - 1.1.2 in accordance with all Applicable Laws and all regulations, constitutional documents and/or policies applicable to or issued by the Authority;
  - 1.1.3 in accordance with Good Practice and to a Proper Standard and in accordance with the instructions of the Authority;
  - 1.1.4 in accordance with the Service Levels and to a standard which meets or exceeds the Key Performance Indicators as set out in Framework Schedule 3 Part B; and
  - 1.1.5 in accordance with and not exceeding any specific Level of Authority.
- 1.2 The Firm shall:
  - 1.2.1 obtain and maintain all licences, authorisations, consents or permits required in relation to the performance of its obligations under the Agreement;
  - 1.2.2 comply with all reasonable instructions given to it by the Authority and/or any relevant Beneficiary with respect to any Instructed Services, and by the Authority and any relevant Beneficiary with respect to the Additional Services;
  - 1.2.3 co-operate with each Beneficiary and the Authority (and, in each case, their respective other professional advisers); and
  - 1.2.4 comply with Government codes and practices and, to the extent the same are notified to the Firm, any internal policies and procedures of the Authority and each Beneficiary in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability).
- 1.3 The Firm shall not:
  - 1.3.1 incur any expenditure on behalf of, or for which it will subsequently seek reimbursement from, any Beneficiary without the prior written approval of that party;
  - 1.3.2 without the prior written consent of the relevant Beneficiary or the Authority accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of any Services;
  - 1.3.3 pledge the credit of any Beneficiary in any way; or
  - 1.3.4 engage in any conduct which in the reasonable opinion of any Beneficiary is prejudicial to that Beneficiary.

### 2 PERSONNEL INVOLVED IN THE SERVICES

- 2.1 The Firm acknowledges that the Key Personnel are essential to the proper provision of the Services. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Agreement and such other roles as may be necessary or desirable for the purposes of the Agreement or as may be agreed between the Firm and any Beneficiary from time to time.
- 2.2 In addition to performing such roles, upon request the Firm shall procure that Key Personnel attend Performance Review Meetings at no cost to the relevant Beneficiary.
- 2.3 Without the agreement of the Authority (in the case of Key Personnel specified in the Framework Agreement) or the relevant Beneficiary (in the case of Key Personnel specified in any Instructions other appointment) the Firm shall not:
  - 2.3.1 release the Key Personnel from supplying Services pursuant to the Agreement except by reason of long-term sickness, maternity leave, paternity leave, termination of employment/partnership; or
  - 2.3.2 appoint any replacements for the Key Personnel provided that in any event the Firm must ensure that any such replacements are of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and are suitable for the responsibilities of that person, and in relation to Nominated Partners, agreed with the Authority or the relevant Beneficiary.

- 2.4 Any consent required under Clause 2.3:
- 2.4.1 shall not be unreasonably withheld; and
  - 2.4.2 shall be conditional on appropriate arrangements being made by the Firm to minimise any adverse impact upon any Beneficiary which could be caused by a change in Key Personnel.
- 2.5 The Authority or any Beneficiary shall have the right to require the removal from involvement in the provision of any Services any person engaged in the performance of any Services if in the reasonable opinion of the Authority or Beneficiary (as the case may be) the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the relevant Services provided that before exercising this right the Authority or Beneficiary (as the case may be) shall, save in the case of an emergency, consult with the Firm.
- 2.6 For the duration of the Agreement and for a period of twelve (12) months after the end of it the Firm shall not employ or offer employment to any staff of any Beneficiary who have been associated with the procurement and/or provision of any Services without the prior written consent of the Beneficiary.

### **3 FEES AND PAYMENT**

- 3.1 The only fees or other charges payable under the Agreement or otherwise for any Services shall be those calculated in accordance with the Agreed Fees, any appointment and any other agreement in writing between the Authority or any relevant Beneficiary, including but not limited to any Instructions.
- 3.2 If at any time during the period of any Instructions the Agreed Fees are reduced, with the result that the Agreed Fees are lower than the fees payable under those Instructions, the fees payable under those Instructions shall automatically be reduced to reflect that change.
- 3.3 In consideration of the Firm's performance of its obligations under Instructions, the Beneficiary shall pay the charges calculated in accordance with that Agreement together, following receipt of a valid VAT invoice, with VAT properly chargeable on the relevant amount.
- 3.4 Unless otherwise instructed by the relevant Beneficiary, the Firm shall:
- 3.4.1 issue monthly invoices for fees arising under the Agreement; and
  - 3.4.2 ensure that each monthly invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the relevant Services provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the relevant Beneficiary or the Authority to substantiate the invoice.
- 3.5 Where a Beneficiary receives an invoice validly issued to it in accordance with clause 3.4:
- 3.5.1 the relevant Beneficiary shall pay any sums properly due and payable to the Firm pursuant to that invoice in cleared funds by no later than thirty (30) calendar days after the date of receipt of such invoice, unless there is an agreed arrangement with the Beneficiary for earlier receipt of payment, in exchange for a discount on fees; and
  - 3.5.2 if the relevant Beneficiary fails to pay any undisputed amount in accordance with clause 3.5.1 it shall pay Interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment such amount. Such failure to pay shall not entitle the Firm to suspend the supply of any Services.
- 3.6 The Firm shall:
- 3.6.1 make any payments due to any Beneficiary without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless it has a valid court order requiring an amount equal to such deduction to be paid by that Beneficiary to the Firm; and
  - 3.6.2 Indemnify each Beneficiary against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on that Beneficiary (as the case may be) at any time in respect of the Firm's failure to account for or to pay any VAT relating to payments made to the Firm pursuant to the Agreement. Any amounts due under this Clause 3.6 shall be paid by the Firm not less than five (5) Working Days before the date upon which the tax or other liability is payable by the relevant Beneficiary.
- 3.7 Any overpayment of any amount by any party in connection with any Agreement shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.
- 3.8 If, pursuant to any Agreement, any Beneficiary is entitled to recover or receive any sum of money from the Firm, the relevant Beneficiary may unilaterally deduct that sum from any sum then due, or which at any later time may become due from it to the Firm.

### **4 CONFLICTS**

- 4.1 The Firm shall not at any time during the period of any Instructions knowingly act in any capacity for any person, firm or company in circumstances where, in the opinion of the Authority, a conflict of interest



between such person, firm or company and the relevant Beneficiary shall thereby exist in relation to the Instructed Services.

- 4.2 The Firm shall immediately report to the relevant Beneficiary's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 4.1.

## **5 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 5.1 As at the date of the Agreement, the Firm warrants represents and undertakes to each Beneficiary that:
- 5.1.1 it is financially solvent;
  - 5.1.2 all relevant Tenders are true, complete and accurate and any financial information provided by the Firm to any Beneficiary has been prepared in accordance with all relevant generally accepted accounting principles;
  - 5.1.3 there is no claim, dispute, step or proceeding existing or, so far as it is aware, pending or threatened, which will or might affect its ability to perform its obligations under the Agreement; and
  - 5.1.4 the Agreement is executed by a duly authorised representative of the Firm.
- 5.2 The Firm shall promptly notify each Beneficiary in writing:
- 5.2.1 of any material detrimental change in the financial standing and/or credit rating of the Firm;
  - 5.2.2 if the Firm undergoes a Change of Control;
  - 5.2.3 if the Firm becomes associated in any way with any organisation, firm or individual that would, in the opinion of the Authority, damage the reputation of the Firm in such a way that would also damage the reputation of the Authority; and
  - 5.2.4 provided this does not contravene any Applicable Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 5.3 Both parties shall take all necessary measures to ensure the health and safety of the other party's employees, consultants and agents visiting their premises.
- 5.4 The Firm undertakes to indemnify the Authority and/or any relevant Beneficiary for any damage suffered as a result of:
- 5.4.1 any accidental loss, destruction, damage, alteration or disclosure of any Personal Data, Relevant Personal Data or Confidential Information or the unauthorised or unlawful processing of such data and in breach of the Framework Agreement or any Applicable Laws;
  - 5.4.2 any and all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities brought by any NHSLA Member against the Authority as a result of the actions of the Firm acting in breach of this Framework Agreement or any relevant appointment; and
  - 5.4.3 the Firm exceeding any specific Level of Authority.

## **6 FRAUD**

- 6.1 The Firm shall take all reasonable steps, in accordance with Good Practice, to prevent any Firm Related Fraud.
- 6.2 The Firm shall notify the Authority in writing and immediately if it has reason to suspect that any Firm Related Fraud has occurred, is occurring or is likely to occur save where complying with this provision would cause the Firm or its employees to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 6.3 If there is any Firm Related Fraud:
- 6.3.1 the Authority may terminate the Framework Agreement; and
  - 6.3.2 any Beneficiary may terminate any Instructions or other appointment,
- and in each case may recover the amount of any loss which they may have suffered resulting from such termination (including the costs reasonably of making other arrangements for the supply of the Services) from the Firm.

## **7 BRIBERY AND CORRUPTION**

- 7.1 Throughout the term of the Agreement, the Firm will:
- 7.1.1 comply with all Anti-Corruption Laws;
  - 7.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity, practice or conduct had been carried out in the UK;
  - 7.1.3 immediately report to the Authority, together with any Beneficiary who might reasonably be affected, with as much detail as is practicable, any request or demand for any undue financial or

other advantage of any kind received by the Firm in connection with the performance of any Agreement;

7.1.4 immediately notify the Authority (in writing) if any person who is a foreign public official (as defined in section 6(5) of the Bribery Act) becomes an officer or employee of the Firm or acquires a direct or indirect interest in the Firm (and the Firm warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Framework Agreement); and

7.1.5 from time to time, at the reasonable request of the Authority confirm to the Authority compliance with this Clause 7 by:

7.1.5.1 the Firm; and

7.1.5.2 all of the Firm's Associated Persons who are performing any part of the Services,

and the Firm will provide such supporting evidence of compliance as the Authority may reasonably request. Such confirmation will be in writing and signed by an officer of the Firm.

## **8 INTELLECTUAL PROPERTY RIGHTS**

8.1 Unless agreed otherwise between the parties all Intellectual Property Rights generated as the product of any Services shall vest in the relevant Beneficiary who shall grant to the Firm a non-exclusive licence to use and exploit the same for so long as the Firm remains a party to the relevant Agreement.

8.2 Subject to Clause 8.1 and save as expressly granted elsewhere under the Agreement, no Beneficiary shall acquire any right, title or interest in or to the Intellectual Property Rights of the Firm or its licensors and the Firm shall not acquire any right, title or interest in or to the Intellectual Property Rights of any Beneficiary or its licensors.

8.3 The Firm shall on demand Indemnify and hold each Beneficiary and the Crown harmless against any and all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which any Beneficiary and or the Crown may suffer or incur as a result of a Third Party IP Claim.

8.4 If a Third Party IP Claim arises, the relevant Beneficiary shall notify the Firm in writing of the Claim and shall not make any admissions which may be prejudicial to the defence or settlement of that claim. The Firm shall at its own expense conduct all negotiations and any litigation arising in connection with the claim provided always that the Firm:

8.4.1 shall consult the relevant Beneficiary on all substantive issues which arise during the conduct of such litigation and negotiations;

8.4.2 shall take due and proper account of the interests of the relevant Beneficiary and the Crown;

8.4.3 shall consider and defend the Third Party IP Claim diligently using competent counsel and in such a way as not to bring the reputation of the relevant Beneficiary or the Crown into disrepute; and

8.4.4 shall not settle or compromise the Third Party IP Claim without the prior written approval of the relevant Beneficiary (not to be unreasonably withheld or delayed).

8.5 The Firm shall have no rights to use any of any names, logos or trademarks of any Beneficiary without the prior written approval of that Beneficiary.

## **9 DATA PROTECTION**

9.1 The Firm shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Agreement in such a way as to cause any Beneficiary to breach any of its applicable obligations under the Data Protection Legislation. The Firm must promptly notify the relevant Beneficiary and the Authority if they breach this clause 9.1.

9.2 The Firm shall not cause or permit to be processed, stored, accessed or otherwise transferred outside the European Economic Area any Relevant Personal Data without approval of the relevant Beneficiary. Where the relevant Beneficiary consents to such processing, storing, accessing or transfer outside the European Economic Area, the Firm shall comply with:

9.2.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Relevant Personal Data that is so processed, stored, accessed or transferred; and

9.2.2 any reasonable instructions notified to it by the Authority or relevant Beneficiary.

The Firm must promptly notify the relevant Beneficiary and the Authority if they breach this clause 9.2.

9.3 The Firm shall:

9.3.1 process the Relevant Personal Data only in accordance with instructions from the relevant Beneficiary and to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Applicable Law or any Regulatory Body;

- 9.3.2 implement appropriate technical and organisational measures to protect Relevant Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure having regard to the nature of that data and the risks associated with any such loss, destruction, damage, alteration or disclosure;
  - 9.3.3 implement appropriate technical training to the Firm Staff on the handling, processing and protection of Relevant Personal Data. Records of this training are to be made and maintained by the Firm in such a form so as to enable the relevant Beneficiary to audit these training records if they request to do so;
  - 9.3.4 take reasonable steps to ensure the reliability of all Firm Staff who have access to Relevant Personal Data and ensure that such Firm Staff are made aware of their duty to protect Relevant Personal Data under the Standard Terms of this Framework Agreement;
  - 9.3.5 notify the relevant Beneficiary within two (2) Working Days if the Firm receives:
    - 9.3.5.1 a request from a data subject to have access to the Relevant Personal Data relating to that person; or
    - 9.3.5.2 a complaint or request relating to the relevant Beneficiary's obligations under Data Protection Legislation;
  - 9.3.6 provide each Beneficiary with full cooperation and assistance in relation to any complaint or request made to the Beneficiary by any Third Party relating to the use of Relevant Personal Data;
  - 9.3.7 permit or procure permission for the Authority's representative or the relevant Beneficiary representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the data processing activities of the Firm and/or of its agents and Sub-Contractors);
  - 9.3.8 provide, within timescale requested by the relevant Beneficiary a written description of the technical and organisational methods employed by the Firm for Processing the Relevant Personal Data.
- 9.4 Without prejudice to any other provision of the Agreement, the Firm shall comply with the provisions of the Authority's statement on information governance set out in Framework Schedule 7, which the Authority may at its discretion update from time to time.

## **10 RECORDS AND AUDIT ACCESS**

- 10.1 The Firm shall keep and maintain, in accordance with Good Practice, full and accurate records and accounts of the operation of the Agreement (including the Services provided and any case files relating to the Services, and amounts paid under the Framework Agreement) until seven (7) Years after the date of termination or expiry (whichever is the earlier) of the Agreement (or such other longer period as may be agreed between the parties).
- 10.2 The Firm shall afford each Beneficiary, the National Audit Office and/or any other relevant auditor (the "Auditors") and their respective representatives access to the records, case files and accounts referred to in Clause 10.1 at the Firm's premises and/or provide copies of such records and accounts, as may be required and agreed with each Beneficiary or Auditors) from time to time, in order that each Beneficiary or Auditors may carry out an inspection.
- 10.3 Without prejudice to the liability for any breach of contract which may be identified as a result of any audit, the parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 10.

## **11 CONFIDENTIALITY**

- 11.1 Except to the extent set out in this Clause 11 or where disclosure is expressly permitted elsewhere in the Agreement, each party shall:
  - 11.1.1 treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
  - 11.1.2 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 the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Framework Agreement or is a requirement of any Applicable Law.
- 11.2 The Firm shall:
  - 11.2.1 only disclose any Beneficiary's Confidential Information to those members of the Firm's Staff who are directly involved in the provision of the relevant Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality;

- 11.2.2 only use any Beneficiary's Confidential Information for the purpose of providing the relevant Services;
  - 11.2.3 maintain security arrangements with respect to all Beneficiary's Confidential Information which meet the requirements of Good Practice;
  - 11.2.4 ensure that the Firm Staff are aware of, and shall use its best endeavours to ensure that the Firm Staff comply with, the Firm's confidentiality obligations under the Agreement; and
  - 11.2.5 at the written request of the relevant Beneficiary, procure that specified members of the Firm Staff sign a confidentiality undertaking prior to commencing any work in connection with any Services.
- 11.3 The Firm must promptly notify the relevant Beneficiary and the Authority if they breach any of the provisions of clauses 11.1 and/or 11.2.
- 11.4 The provisions of Clauses 11.1 and 11.2 shall not apply to any Confidential Information received by one party from the other which:
- 11.4.1 is or becomes public knowledge (otherwise than by breach of this Clause 11);
  - 11.4.2 is provided for the purpose of obtaining professional advice;
  - 11.4.3 was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
  - 11.4.4 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 11.4.5 is information independently developed without access to the Confidential Information; or
  - 11.4.6 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 13 (Transparency) and/or the FOIA, or the Environmental Information Regulations pursuant to Clause 12 (Freedom of Information).
- 11.5 Nothing shall prevent any Beneficiary from disclosing Confidential Information of the Firm:
- 11.5.1 to any consultant, contractor or other person engaged by that Beneficiary for any purpose relating to or connected with the Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting any public sector audit, review or any additional assurance programme;
  - 11.5.2 for the purpose of the examination and certification of the Authority's or any relevant Beneficiary's accounts;
  - 11.5.3 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 the Authority or any relevant Beneficiary has used its resources; or
  - 11.5.4 to any government department or any other Beneficiary,
- and the Firm hereby acknowledges that all government departments or Beneficiaries receiving such Firm Confidential Information may further disclose the Firm Confidential Information to other government departments or Beneficiaries 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 Beneficiary (unless disclosure is required by Applicable Law or is permitted under any appointment).
- 11.6 The Firm acknowledges and agrees that information relating to Instructions placed by a Beneficiary, including Service Levels, pricing information (which includes information on prices tendered in a further competition, even where an Instruction is not placed) and the terms of any appointment may be shared with any Beneficiary from time to time. The Authority shall use reasonable endeavours to notify the recipient of such information that its contents are confidential.
- 11.7 Within 6 months of the Commencement Date the Firm shall provide to the Authority a plan setting out its procedures for the handover of any Confidential Information and or Relevant Personal Data which comes into the possession or under the control of the Firm or any Approved Sub-Contractors in the course of providing the Services related to the Framework Agreement and/or any appointment ("Transition Plan"). The Transition Plan:
- 11.7.1 shall be subject to the approval of, and shall be amended in accordance with any requirements of, the Authority,
  - 11.7.2 shall be maintained and implemented (as required) in each case by and at the cost of the Firm;
  - 11.7.3 shall include information relating to timelines and the mechanisms for handover of files to the Authority and/or Beneficiary and any run off provisions that may be relevant;

11.7.4 shall not remove the rights of the Authority or that of a Beneficiary to require, at their discretion, the immediate return or destruction of any such information as described in Clause 19.2.1 of this Framework Schedule 4.

## **12 FREEDOM OF INFORMATION**

12.1 The Firm acknowledges that each Beneficiary is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.

12.2 The Firm shall and shall procure that Sub-Contractors shall:

12.2.1 transfer Information to any Beneficiary as soon as practicable and in any event within two (2) Working Days of receiving a Relevant Request for such Information;

12.2.2 provide each Beneficiary with a copy of all Information that is relevant to a Relevant Request for Information and in its control, possession or power, in the form that the Beneficiary requests within five (5) Working Days (or such other period as the Authority may specify) of the Beneficiary's request; and

12.2.3 provide all necessary assistance reasonably requested by a Beneficiary to enable the Beneficiary to respond to any Relevant Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations

12.3 Each Beneficiary shall be responsible for determining 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 Environmental Information Regulations.

12.4 In no event shall the Firm respond directly to a Relevant Request for Information without prior written approval from the relevant Beneficiary.

12.5 The Firm acknowledges that (notwithstanding the provisions of this Clause 12) a Beneficiary may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Firm or the Services:

12.5.1 in certain circumstances without consulting the Firm; or

12.5.2 following consultation with the Firm and having taken the Firm's views into account,

provided always that where this Clause 12.5 applies the Beneficiary shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Firm advance notice, or failing that, to draw the disclosure to the Firm's attention after any such disclosure.

12.6 The Firm shall ensure that all Information is retained for disclosure in accordance with Clause 10 (Records and Audit Access) and shall permit the Authority to inspect such records as requested from time to time.

## **13 TRANSPARENCY**

13.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement and any other Agreement, Instructions or terms of any appointment, are not Confidential Information which the Firm is entitled to protect.

13.2 The Authority, or the relevant Beneficiary as the case may be, shall be responsible for determining in its absolute discretion whether any of the content of this Framework Agreement any other Agreement, Instructions or terms of any appointment as the case may be, is exempt from disclosure in accordance with the provisions of the FOIA.

13.3 The Authority, or the relevant Beneficiary as the case may be, may consult with the Firm to help with its decision regarding any exemptions under Clause 13.1 but the Authority, or the relevant Beneficiary as the case may be, shall have the final decision in its absolute discretion.

13.4 The Firm shall assist and cooperate with the Authority, or the relevant Beneficiary as the case may be, to enable the Authority or Beneficiary to publish this Framework Agreement.

## **14 PUBLICITY AND BRANDING**

14.1 The Authority and each Beneficiary shall be entitled to publicise the Agreement:

14.1.1 in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise; and

14.1.2 otherwise to the extent it reasonably considers appropriate subject, where practicable, to prior consultation with the Firm.

- 14.2 The Firm shall not:
- 14.2.1 do anything or cause anything to be done which may damage the reputation of the Authority or any Beneficiary or bring the Authority or any Beneficiary into disrepute; or
  - 14.2.2 make any announcement or public reference to its appointment by the Authority or any other relevant Beneficiary, or to any Instructions or its work undertaken pursuant such appointment or Instructions, or produce any publicity material without the prior written consent of the Authority provided that this shall not restrict the Firm in doing anything which:
    - 14.2.2.1 is necessary for the performance of the Services; or
    - 14.2.2.2 is required by law provided that the Firm first consults with the Authority or relevant Beneficiary as the case may be,
- any breach of this Clause 14.2 may be deemed by the Authority to be a Material Default.

## **15 LIABILITY**

- 15.1 Neither party excludes or limits its liability for:
- 15.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or
  - 15.1.2 fraud or fraudulent misrepresentation by it or its employees.
- 15.2 In respect of any and all Services, unless otherwise specifically agreed in the relevant Instructions the liability of the Firm for any individual matter and/or claim shall be capped at £40 million (forty million).
- 15.3 Save in the case of Fraud or any liability for death or personal injury, no individual partner or employee of the Firm shall have any personal liability directly to any Beneficiary for any act or omission of such person in connection with this Agreement or the provision of any Services provided that this shall not limit or prejudice any liability of the Firm in that regard.

## **16 INSURANCE**

- 16.1 Each successful Firm must, throughout the period of its appointment to any of the Framework Panels maintain professional indemnity cover of not less than the amount specified, in respect of each Lot for which it is appointed in the relevant part of Framework Schedule 5 and must maintain all other insurances in providing such cover and to such levels as would be advised to be reasonably appropriate by an insurance broker to the carrying on of the Firm's business. All such insurance policies shall be maintained with a reputable insurance company, on terms that are no less favourable than those generally available to a prudent Firm in respect of risks insured in the international insurance market.
- 16.2 The terms of any insurance or the amount of cover shall not relieve the Firm of any liabilities arising under this Framework Agreement or any appointment.
- 16.3 The Firm shall produce to the Authority and/or Beneficiary, on request, copies of all insurance policies required by the Beneficiaries under any appointment or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 16.4 The Firm shall use its reasonable endeavours to ensure that it shall not by its acts or omissions cause any policy of insurance to be invalidated or voided.

## **17 TERMINATION**

- 17.1 For the purposes of the Framework Agreement "Terminate" shall amount to any or all of the following:
- 17.1.1 the termination of the Framework Agreement as a whole;
  - 17.1.2 the termination of a particular office or Key Personnel of the Firm from participation in the Framework Agreement; or
  - 17.1.3 the termination of any appointment of the Firm whether as a Preferred Supplier or otherwise; or
  - 17.1.4 the termination of any specific Instructions.
- 17.2 Where any right to Terminate arises in favour of the Authority under the Framework Agreement, that right shall be exercisable in respect of the whole or any part of that Agreement.
- 17.3 Without prejudice to any rights arising under any Instructions or appointment, each Beneficiary shall have a right to Terminate any Instructions or appointment to which it is a party in any circumstances (whether or not the Authority exercises any right to Terminate) where:
- 17.3.1 the circumstances set out in clauses 17.4 or 17.5 apply with respect to those Instructions or that appointment; or
  - 17.3.2 the circumstances set out in clause 17.6 apply

but no Beneficiary other than the Authority will have the right to Terminate any part of the Framework Agreement or the Framework Agreement as a whole.

- 17.4 The Authority may Terminate by serving written notice on the Firm with effect from the date specified in such notice where the Firm commits a Material Default and if:
- 17.4.1 the Firm does not remedy the Material Default to the satisfaction of the relevant Beneficiary within twenty (20) Working Days, or such other period as may be specified by the relevant Beneficiary, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
  - 17.4.2 the Material Default is not, in the reasonable opinion of the relevant Beneficiary, capable of remedy.
- 17.5 The Authority may Terminate by serving notice on the Firm in writing with effect from the date specified in such notice where a Persistent Failure has occurred.
- 17.6 The Authority may Terminate with immediate effect by notice in writing where in respect of the Firm:
- 17.6.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 17.6.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that it be wound up or dissolved or a resolution for its winding-up or dissolution is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 17.6.3 a petition is presented for its winding up (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
  - 17.6.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 17.6.5 a creditor or encumbrancer 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; or
  - 17.6.6 an application or an administration order is made either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 17.6.7 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - 17.6.8 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force in relation to it pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 17.6.9 being an individual, or where the Firm is a partnership, limited partnership or limited liability partnership, any partner or partners or member or members in that entity who together are able to exercise direct or indirect control of the firm, shall at any time become bankrupt or shall have a receiving order or administration order made against him or them or shall make any composition or arrangement with or for the benefit of his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s), or a trust deed shall be granted by him or them on behalf of his or their creditors; or
- any event analogous (in respect of any relevant legal entity, person or persons) to those listed in Clauses 17.6.1 to Clause 17.6.9 (inclusive) occurs under the law of any jurisdiction.
- 17.7 The Authority may Terminate by giving notice in writing to the Firm with immediate effect within six (6) Months of:
- 17.7.1 being notified in writing that a Change of Control has occurred; or
  - 17.7.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control, or
  - 17.7.3 the Authority becoming aware that the Firm has become associated in any way with any organisation, firm or individual that would, in the opinion of the Authority, damage the reputation of the Authority and/or Beneficiary,

in each case if it considers that the event is likely to have an adverse effect on the provision of the Services or if, in the opinion of the Authority, it will damage the reputation of the Authority and/or any Beneficiary, and provided that the Authority has not first given its express prior written approval to the Change of Control.

- 17.8 The Authority shall have the right to Terminate without cause with effect from a date falling at any time nine (9) Months or more after the Commencement Date by giving at least three (3) Months' written notice to the Firm.

## **18 SUSPENSION AND NON-TERMINATION REMEDIES**

- 18.1 If a relevant Beneficiary reasonably believes that a Material Default, Persistent Failure or Grave Misconduct has occurred with respect to an appointment then, without prejudice to the rights of a Beneficiary to terminate that appointment, that Beneficiary may suspend the Firm's appointment for such period as it determines to be appropriate by giving notice in writing to the Firm.
- 18.2 If a Beneficiary suspends the Firm in accordance with clause 18.1:
- 18.2.1 the Firm's entitlement to receive further Instructions or participate in any future mini-competitions shall, in relation to that Beneficiary and during the period of such suspension, unless otherwise stated by the Beneficiary, be suspended;
  - 18.2.2 that Beneficiary may notify other Beneficiaries who may take such suspension into account in determining whether to appoint the Firm to provide any other Services or may, if reasonably appropriate, suspend the Firm from the provision of Services under any other appointment; and
  - 18.2.3 any such suspension shall not affect the Firm's obligation to perform any Services save to the extent those obligations are expressly suspended.
- 18.3 If the Firm is suspended by any Beneficiary, the Authority may suspend the Firm's status as Authorised Provider for all purposes under the Framework Agreement.
- 18.4 Without prejudice to any other right or remedy which the Beneficiary may have, if any Services are not supplied in accordance with, or the Firm fails to comply with, any of the terms of the Framework Agreement or any relevant appointment then the Beneficiary may (whether or not any part of the relevant Services have been delivered) do any one or more of the following:
- 18.4.1 at the Beneficiary's option, give the Firm the opportunity (at the Firm's expense) to remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Framework Agreement and the relevant appointment are fulfilled, in accordance with the Beneficiary's instructions;
  - 18.4.2 without terminating the appointment, itself supply or procure the supply of all or part of the relevant Services until such time as the Firm shall have demonstrated to the reasonable satisfaction of the Beneficiary that the Firm will once more be able to supply all or such part of the relevant Services in accordance with the Framework Agreement and the appointment;
  - 18.4.3 without terminating the whole of the appointment, terminate the appointment in respect of part of the relevant Services only and thereafter itself supply or procure a third party to supply such part of the relevant Services; and/or
  - 18.4.4 charge the Firm for, whereupon the Firm shall on demand pay, any costs reasonably incurred by the Beneficiary (including any reasonable administration costs) in respect of the supply of any part of the relevant Services by the Beneficiary or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Firm for such part of the relevant Services and provided that the Beneficiary uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement relevant Services.

## **19 CONSEQUENCES OF EXPIRY OR TERMINATION**

- 19.1 Where the Authority Terminates pursuant to Clause 17 (Termination) or where a Beneficiary Terminates an appointment and then makes alternative arrangements for the supply of the relevant Services:
- 19.1.1 the Authority or the relevant Beneficiary may recover from the Firm the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Authority or the relevant Beneficiary in securing those alternative arrangements provided that the Authority or the relevant Beneficiary shall take all reasonable steps to mitigate such additional expenditure; and
  - 19.1.2 no further payments shall be payable by the Authority or the relevant Beneficiary to the Firm until the Authority or the relevant Beneficiary has established the final cost of making those alternative arrangements, whereupon the Authority or the relevant Beneficiary may deduct an amount equal to the final cost of such other arrangements from any further payments then due to the Firm.



- 19.2 On the expiry or termination of the Framework Agreement and/or any appointment for any reason, the Firm shall, at the request of the relevant Beneficiary and at the Firm's cost:
- 19.2.1 notwithstanding the existence of any Transition Plan as described in Clause 11.7 of this Framework Schedule 4, with respect to any Confidential Information and or Relevant Personal Data which came into the possession or under the control of the Firm or any Approved Sub-Contractors in the course of providing the Services related to that agreement or in connection with that agreement:
- 19.2.1.1 immediately return it to the Beneficiary; and
- 19.2.1.2 except where it is required to retain them by Applicable Law, promptly destroy all copies of such information or data and provide written confirmation to the Beneficiary that the data has been destroyed,
- such actions shall only be required where specifically requested by the Authority or a Beneficiary. In the absence of such a request the mechanisms of the pre-agreed Transition Plan shall operate;
- 19.2.2 immediately deliver to the Beneficiary in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Firm by the Beneficiary in connection with the Agreement;
- 19.2.3 vacate, and procure that all partners or employees of it or any of its Approved Sub-Contractors vacate, any premises of the Beneficiary occupied for the purposes of providing the relevant Services;
- 19.2.4 return to the Beneficiary any sums prepaid in respect of any of the relevant Services the provision of which has not been completed by the date of expiry or termination; and
- 19.2.5 promptly provide all information concerning the provision of the relevant Services which may reasonably be requested by the Beneficiary for the purposes of adequately understanding the manner in which the relevant Services have been provided or for the purpose of allowing the Beneficiary or any replacement provider to conduct due diligence.
- 19.3 Notwithstanding the service of a notice to terminate this Framework Agreement, the Firm shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 19.3.
- 19.4 Termination or expiry of this Framework Agreement shall not cause any appointment to terminate automatically. For the avoidance of doubt, unless the relevant Beneficiary otherwise elects, all appointments shall remain in force unless and until they are terminated or expire in accordance with the terms of the appointment, notwithstanding the termination or expiry of this Framework Agreement.
- 19.5 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, or such other period as may be agreed with the Authority, the Firm shall implement the mutually agreed Transition Plan.
- 19.6 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either party accrued under this Framework Agreement prior to termination or expiry.
- 19.7 The provisions of Clauses 8 (Intellectual Property Rights), 9 (Data Protection), 11 (Confidentiality), 15 (Liability), 19 (Consequences of Termination), 29 (Notices), 31 (Dispute Resolution), 33 (Law and Jurisdiction) and Framework Schedule 8 (Interpretation) and, without limitation to the foregoing, any other provision of this Agreement which, expressly or by implication, is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Framework Agreement.
- 19.8 If, as a result of the termination of part or all of this Framework Agreement, or of the provision of the Services, by operation of the Transfer Regulations the contract of employment of any of the Firm's Staff has effect or is alleged to have effect as if originally made between the Authority and any such of the Firm's Staff then:
- 19.8.1 The Authority may, within one month of becoming aware of the application of the Transfer Regulations to any such contract of employment, give notice to terminate such contract (being the minimum notice to which such the Firm's Staff are entitled by law); and
- 19.8.2 The Firm shall indemnify and keep the Authority fully and effectively indemnified on demand from and against all losses incurred or suffered by the Authority arising out of or in connection with:
- 19.8.2.1 such termination and against any sums payable to or in relation to the Firm's Staff in respect of their employment after the date of the relevant transfer of such Firm Staff to the date of such termination of their contract of employment; and

19.8.2.2 any act or omission by the Firm or any other event, matter or circumstance occurring before termination of this Framework Agreement in relation to the Firm Staff.

19.9 The Firm shall indemnify and shall keep the Authority indemnified on demand against any and all losses arising as a result of any failure or alleged failure by the Firm to comply with the Firm's obligations under Regulations 11, 13 and 14 of the Transfer Regulations.

## **20 TRANSFER AND SUB-CONTRACTING**

20.1 All Agreements are personal to the Firm and the Firm shall not sub-contract, assign, novate or otherwise dispose of or create any trust in relation to any or all rights and obligations under any Agreement or any part thereof without prior written approval of the relevant Beneficiary.

20.2 Notwithstanding any Approved Sub-Contract, the Firm at all times shall remain responsible for all acts and omissions of its sub-contractors and the acts and omissions of those employed or engaged by such sub-contractors as if they were its own. An obligation on the Firm to do, or refrain from doing, any act or thing shall include an obligation upon the Firm to procure that its partners, employees and agents also do, or refrain from doing, such act or thing.

20.3 A Beneficiary shall be entitled to:

20.3.1 assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof to any other Beneficiary; or

20.3.2 novate this Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the relevant Beneficiary,

provided that such assignment, novation or disposal shall not increase the burden of the Firm's obligations under the Agreement in question.

20.4 The Firm shall enter into such agreement and/or deed as a Beneficiary shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to Clause 20.3.

20.5 Any change in the legal status of the Beneficiary such that it ceases to be a Beneficiary or public body shall not affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Beneficiary.

## **21 VARIATIONS**

21.1 Save as specifically provided in the Framework Agreement or otherwise agreed in writing, the Framework Agreement may not be varied except where:

21.1.1 the Authority notifies the Firm in writing that it wishes to vary the Standard Terms of this Framework Agreement and provides the Firm with full written details of any such proposed change; and

21.1.2 the Authority Representative and the Firm Representative, acting reasonably, agree in writing to the variation and a written variation agreement is signed by the Authority Representative and the Firm Representative.

21.2 If, by the date thirty (30) Working Days after notification was given under Clause 21.1.1 no agreement is reached between the Authority and the Firm acting reasonably in relation to any variation requested, the Authority may, by giving written notice to the Firm, either:

21.2.1 agree that the parties shall continue to perform their obligations under this Framework Agreement without the variation; or

21.2.2 terminate the Framework Agreement with immediate effect.

21.3 The Firm shall neither be relieved of its obligations under any Agreement nor be entitled to increase the Agreed Fees and/or the charges under any Instructions as the result of any change in law.

21.4 A Beneficiary may at any time by giving written notice with immediate effect to the Firm suspend, terminate or vary any Instructions provided that in each such case the charges to be paid for the instructed Services shall be varied in accordance with the Agreed Fees, any principles of the any charges agreed with specifically respect to those Instruction and, otherwise in an equitable manner.

## **22 NON-DISCRIMINATION**

22.1 The Firm shall not, and shall take reasonable steps to procure that its Sub-Contractors do not, unlawfully discriminate either directly or indirectly within the meaning and scope of any Law, enactment, order or regulation relating to discrimination on grounds of race, gender, religion or religious belief, colour, ethnic or national origin, disability, sexual orientation, age or otherwise when performing their obligations under the Agreement.

## **23 RIGHTS OF THIRD PARTIES**

- 23.1 Save as specifically provided in any Agreement a person who is not party to that Agreement (a "Third Party") has no right to enforce any term of the Agreement under the Agreements (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 23.2 Each Beneficiary may, with the written approval of the Authority, enforce any term of this Framework Agreement which is for the benefit of the Beneficiary as a third party beneficiary in accordance with the Agreements (Rights of Third Parties) Act 1999.
- 23.3 The Authority may, with the written approval of a Beneficiary, enforce any term of any appointment which is for the benefit of the Authority as a third party beneficiary in accordance with the Agreements (Rights of Third Parties) Act 1999.
- 23.4 The Authority may act as agent and trustee for each Beneficiary and enforce on behalf of that Beneficiary any Clause or term that is referred to in Clause 23.2 and/or recover any loss, damage or liability suffered by that Beneficiary in connection with a breach of any such Clause or term.
- 23.5 No consent of any Beneficiary other than the Authority, or 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 the Framework Agreement or any one or more Clauses of it.
- 23.6 No consent of any Beneficiary other than the relevant Beneficiary, or 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 an appointment or any one or more parts of it.

## **24 BUSINESS CONTINUITY**

The Firm shall have robust contingency plans in place to ensure that the services to all Beneficiaries will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Firm's operations, and those of Sub-Contractors to the Firm, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Framework Agreement and all appointments.

## **25 SEVERABILITY**

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

## **26 WAIVER AND CUMULATIVE REMEDIES**

- 26.1 The rights and remedies provided by the Framework Agreement may be waived only by the relevant Beneficiary or the Firm (as the case may be) in writing and 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.
- 26.2 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of any Beneficiary to any document or information provided by the Firm in its provision of any Services, and no failure of any Beneficiary to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Firm to exercise all the obligations of a professional solicitor employed in a client/solicitor relationship.
- 26.3 Unless a right or remedy of any Beneficiary is expressed to be an exclusive right or remedy, the exercise of it by the Beneficiary is without prejudice to the Beneficiary's other rights and remedies provided at Law or in equity.

## **27 RELATIONSHIP OF THE PARTIES**

- 27.1 Save to the extent the Firm operates specifically within a Level of Authority, nothing in the 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 any other party, or to authorise a party to act as agent for any other party. No party shall have authority to make representations, act in the name of, or on behalf of, or otherwise to bind the other party.
- 27.2 Where there is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the firm's obligations under the Framework Agreement.

27.3 Save as otherwise expressly provided, the obligations of a Beneficiary under the Framework Agreement are obligations of that Beneficiary in its capacity as a contracting counterparty and nothing in the Framework Agreement shall operate as an obligation upon, or in any other way fetter or constrain that Beneficiary in any other capacity, nor shall the exercise by that Beneficiary of its duties and powers in any other capacity lead to any liability under the Framework Agreement (howsoever arising) on the part of that Beneficiary or the Firm.

## **28 NON-EXCLUSIVITY**

Except to the extent the Framework Agreement specifies the purchase of particular services from the Firm, the Agreement confers no form of exclusivity, or volume guarantee, in favour of the Firm and all Beneficiaries will all times be entitled to enter into other contracts and agreements with other firms for the provision of any Services.

## **29 NOTICES**

29.1 Any notices given under or in relation to the Framework Agreement shall be in writing by letter, (signed by or on behalf of the party giving it) sent by hand, post, or recorded signed for delivery service, by facsimile transmission or by electronic mail (confirmed by letter) to the address or facsimile number and for the attention of the relevant party at the address specified in the Framework Agreement or to such other address or facsimile number as that party may have stipulated in accordance with this Clause 29.1.

29.2 A notice shall be deemed to have been received:

29.2.1 if delivered personally, at the time of delivery;

29.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting;

29.2.3 in the case of electronic communication, two (2) Working Days after posting of a confirmation letter; and

29.2.4 in the case of fax, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender.

29.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail confirmation letter) that the envelope containing the notice was addressed to the relevant party as referred to in clause 29.1 above (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded signed-for delivery or pre-paid airmail letter and in the case of facsimile, that a transmission report generated from a facsimile machine evidences that the facsimile was transmitted to the relevant facsimile number.

29.4 For the purposes of Clause 29.1, the postal address, facsimile number and email address of each party shall be:

29.4.1 for the Authority Second Floor, 151 Buckingham Palace Road, London SW1W 9SZ; 020 7821 0029; generalenquiries@nhs.uk

29.4.2 the Firm, the address set out in the Confirmation of Appointment; and

29.4.3 for a Beneficiary, the address set out in the relevant Instructions

29.5 A party may change its address for service by serving a notice in accordance with this Clause 29.

29.6 For the avoidance of doubt, any notice given under this Framework Agreement shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

## **30 COMPLAINTS HANDLING AND RESOLUTION**

30.1 The Firm shall notify the Authority of any Complaints made by the Beneficiaries, which are not resolved by operation of the Firm'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 Firm's plans to resolve such Complaint.

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

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

30.4 Where the Authority believes, at its own discretion, that a Complaint is of a sufficiently serious nature, or where there have been multiple Complaints made by the Beneficiaries regarding the same Firm the

Authority shall have the right to suspend a Firm or Terminate in accordance with the provisions of these Standard Terms. Such Complaint may be deemed by the Authority a Material Default.

### **31 DISPUTE RESOLUTION**

- 31.1 The parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days of either party notifying the other of matter which is subject to the potential dispute and such efforts shall involve the escalation of the matter to the Beneficiary representative and the Firm representative. Such an escalation process shall involve the escalation of the matter first to the Director of Claims or Technical Claims Director of the Authority and if still unresolved to the Chief Executive of the Authority.
- 31.2 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 31.3 The obligations of the parties under this Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this Clause 31 and the Firm and Firm Staff, personnel and associates shall comply fully with the requirements of this Framework Agreement at all times.
- 31.4 Unless as set forth in clause 31.5, if the dispute cannot be resolved by the parties pursuant to Clause 31.5 the parties shall submit to the exclusive jurisdiction of the courts of England.
- 31.5 If, for any reason and at the sole discretion of the Authority, the Authority chooses that a dispute should be settled by mediation in place of the courts of England the parties shall refer it to mediation pursuant to the procedure set out in Clause 31.6.
- 31.6 If a dispute is referred to mediation the parties shall comply with the following provisions:
- 31.6.1 a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that the Mediator is unable or unwilling to act, apply to the CEDR to appoint a Mediator;
  - 31.6.2 the parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
  - 31.6.3 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;
  - 31.6.4 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;
  - 31.6.5 if the parties fail to reach an agreement on the resolution of the dispute, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both parties; and
  - 31.6.6 if the parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to arbitration pursuant to Clause 31.8.
- 31.7 If a dispute cannot be resolved by the parties pursuant to Clause 31.6 the Authority may require that, as an alternative to being referred to the courts of England and Wales, it shall be referred to arbitration pursuant to the procedure set out in Clause 31.8.
- 31.8 If a dispute is referred to arbitration the parties shall comply with the following provisions:
- 31.8.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules shall be applied and are deemed to be incorporated into this Framework Agreement (save that in the event of any conflict between those rules and this Framework Agreement, this Framework Agreement shall prevail);
  - 31.8.2 the decision of the arbitrator shall be binding on the parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);

- 31.8.3 the tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 31.8.4 the arbitration proceedings shall take place in London; and
- 31.8.5 if the parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the arbitrator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

### **32 ENTIRE AGREEMENT**

32.1 The entire agreement and understanding between the parties in respect to:

- 32.1.1 the subject matter of any appointment shall be set out in that appointment, any other directly connected appointment, any relevant Tender and the Framework Agreement; and
- 32.1.2 the subject matter of the Framework Agreement shall be set out in that Agreement and any relevant Tender,

which in each case shall supersede, cancel or nullify any previous agreement between the relevant parties in relation to such matters.

32.2 Nothing in this Clause 32 shall operate to exclude liability for Fraud or fraudulent misrepresentation.

### **33 LAW AND JURISDICTION**

All Agreements and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England and Wales and without prejudice to the dispute resolution procedure set out in Clause 31 (Dispute Resolution) each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

## FRAMEWORK SCHEDULE 5: LOT SPECIFIC TERMS AND CONDITIONS

### Part A – Lot 1

#### 1 INSURANCE

Each Firm shall maintain insurance to a level of at least £40 million for each and every claim and/or matter.

#### 2 HELPLINE

The Firm shall at all times during its appointment make available a helpline facility (the "**Helpline**") on the following basis:

- a) the Helpline number shall be as specified in the Firm's Confirmation of Appointment;
- b) the Helpline shall be available and answered by a qualified lawyer capable of providing substantive assistance 24 hours a day, 7 days per week, 52 weeks of the year (including public holidays);
- c) the Helpline shall provide substantive initial advice on all matters within the scope of Lot 1; and
- d) the Helpline shall be available to be contacted by any Beneficiary or organisation represented by the Authority.

### Part B – Lot 2

#### 1 INSURANCE

The minimum insurance to be maintained by each Firm is £40 million for each and every claim and/or matter.

#### 2 HELPLINE

The Firm shall at all times during its appointment make available a Helpline on the following basis:

- a) the Helpline number shall be as specified in the Firm's Confirmation of Appointment;
- b) the Helpline shall be available and answered by a qualified lawyer capable of providing substantive assistance 24 hours a day, 7 days per week, 52 weeks of the year (including public holidays);
- c) the Helpline shall provide substantive initial advice on all matters within the scope of Lot 2; and
- d) the Helpline shall be available to be contacted by any Beneficiary or organisation represented by the Authority.

## **Part C – Lot 3**

### **1 INSURANCE**

The minimum insurance to be maintained by each Firm is £40 million for each and every claim and/or matter, or as stipulated by the Beneficiary in the letter of instruction. This figure may not be varied downwards by the Firm without the written agreement of the beneficiary.

### **2 HELPLINE**

The Firm shall at all times during its appointment make available a Helpline on the following basis:

- a) the Helpline number shall be as specified in the Firm's Confirmation of Appointment;
- b) the Helpline shall be available and answered by a qualified lawyer capable of providing substantive assistance 24 hours a day, 7 days per week, 52 weeks of the year (including public holidays);
- c) the Helpline shall provide substantive initial advice on all matters within the scope of Lot 3; and
- d) the Helpline shall be available to be contacted by any Beneficiary or organisation represented by the Authority.



## FRAMEWORK SCHEDULE 6: FRAMEWORK AGREEMENT MANAGEMENT

### Part A – Management Procedures

- 1 The Authority will appoint a Nominated Manager for the Firm for Lots 1 and 2. Performance Review Meetings shall be held with the Nominated Manager as provided in Framework Schedule 3 Part B. In the event of failure to agree, any dispute will be escalated in accordance with the Disputes Procedure.
- 2 Beneficiaries will manage their own relationships with firms performing work for them, as they consider appropriate. Any material issues shall be escalated in accordance with the Disputes Procedure.

### Part B – Management Information

The following information must be supplied by appointed firms to the finance team at the Authority on a monthly basis for each invoice billed:

Name of Beneficiary billed

Lot number

Date of bill

Period billed

Costs

Disbursements

VAT

Total Gross

Total Net.

## FRAMEWORK SCHEDULE 7: AUTHORITY STATEMENT REGARDING INFORMATION GOVERNANCE

The NHSLA is subject to information governance requirements from the Department of Health (DH), NHS and Cabinet Office, as well as those in statutory and common law. This statement sets out minimum requirements of third parties with access to NHSLA data and information.

The NHSLA requires the organisations it works with to maintain confidentiality, security and effective governance of all data (which includes all information and in particular, personal sensitive information relating to NHS patients and staff, appellants and claimants).

All those with access to the NHSLA's data are required to have and comply with appropriate and robust policies, procedures and processes on information governance, including but not limited to:

- policies that ensure that the organisation complies with the DPA;
- policies that support the NHSLA meeting FOI requirements;
- policies that ensure that the organisation complies with DH, NHS and Cabinet Office guidance and good practice for ensuring information governance, including secure data storage, retention and disposal;
- policies to support staff in completing risk assessments and in reporting and investigating any near misses or incidents that do occur
- robust information management systems enabling the organisation to securely store, maintain and, where appropriate, delete electronic and destroy paper versions of NHSLA data;
- effective and regular training for all staff with access to NHSLA data on information governance.

### Storage, transportation and disposal

- Wherever possible data should be stored in secure premises and systems.
- Where records are to be taken or sent off site, risk assessments must be undertaken to determine whether to use electronic media or paper for transporting and transferring data and the most appropriate type of electronic media or method of sending paper to be used.
- Physically transported electronic data should wherever possible be encrypted and/or transported on a device that can be immediately wiped remotely in the event of loss, and/or password protected.
- Transporting paper files should be avoided unless absolutely necessary. Where paper files are to be transported, all reasonable steps must be taken to safeguard the contents. For example, paper files sent via recorded delivery should be double enveloped and marked Strictly Private and Confidential, with a return address and contact details in the event of loss.
- The physical transport of papers should wherever possible be avoided, but if unavoidable all sensitive and confidential paper copy data must be sent by Royal Mail special delivery, secure courier or secure DX.
- Avoid using faxes – but where this is necessary, ensure they are sent from and received at a secure point.
- Arrangements for the secure destruction of all electronic records and paper documents must be in place and implemented.

### Data loss

- Any loss of data must be reported to the NHSLA immediately, and investigated.
- NHSLA must be fully advised of the outcome of the investigation and action taken to prevent a recurrence.
- If the NHSLA is not satisfied with the robustness of the investigation and/or the actions taken, it may suspend working with the third party until it is satisfied that necessary action has been taken to safeguard all NHSLA data.
- If the loss involves a sub-contractor, the NHSLA will hold the principal contractor responsible for the loss.

### Assurance

- Third parties with access to NHSLA data must be able immediately to provide evidence that they are meeting the NHSLA's requirements.
- Contractors must assure themselves that sub-contractors meet the NHSLA requirements as outlined in this statement.
- Evidence of ISO 27001 and/or compliance audit against the Information Commissioner's Office codes of practice will be sufficient to provide the NHSLA with assurance.
- The NHSLA reserves the right to inspect specific evidence such as quarterly reports evidencing compliance, and to audit compliance with information governance practices (which shall include staff training records).

Email queries about this statement to [riskmanagement@nhs.uk](mailto:riskmanagement@nhs.uk)

## FRAMEWORK SCHEDULE 8: INTERPRETATION

### 1. Defined Terms

IN THE FRAMEWORK AGREEMENT AND EACH APPOINTMENT, WORDS AND PHRASES WILL HAVE ANY MEANING GIVEN TO THEM IN THE CONFIRMATION OF APPOINTMENT AND IN ADDITION:

**"Additional Services"** means the services and other benefits specified in Part B of Framework Schedule 2;

**"Agreed Fees"** means fees calculated in accordance with Part A of Framework Schedule 2;

**"Agreement"** means, as the context requires:

- (a) the Framework Agreement; or
- (b) a legally binding agreement created by the issue of Instructions by a Beneficiary and the acceptance of those Instructions by the Firm;
- (c) any other agreement created by an appointment;

**"Anti-Corruption Laws"** means all Applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption;

**"Applicable Laws"** means all regional, national and international laws, rules, regulations and standards including those imposed by any governmental or regulatory authority and all applicable industry standards and standards determined by any self-regulatory body which apply from time to time to the person or activity in the circumstances in question;

**"appointment"** means, save where the context requires otherwise, an appointment duly made under this Agreement by a Beneficiary of the Firm by way of any Instructions, as a Preferred Supplier or otherwise;

**"Appointment Letter"** means a letter of appointment in the form set out as Part C of Framework Schedule 2 amended as the relevant Beneficiary may consider appropriate;

**"Approved Office"** means an office, department, division or region of the Firm or of any Approved Sub-Contractor which the Authority concludes has the capabilities from time to time to provide the Services;

**"Approved Sub-Contractor"** means a sub-contractor approved by the relevant Beneficiary in the Framework Agreement, any appointment, or any Instructions or appointment;

**"Associated Person"** will be determined in accordance with section 8 of the Bribery Act and will include without limitation any partner, director, any employee and any agent of the Firm;

**"Auditors"** shall have the meaning given in clause 10.2 of Framework Schedule 4;

**"Authority"** means the National Health Service Litigation Authority;

**"Authorised Provider"** means a person appointed by the Authority;

**"Beneficiaries"** means the Authority and each of the bodies listed in Framework Schedule 1 provided that, in relation to any Instructions, **"Beneficiary"** shall mean the Beneficiary issuing those Instructions;

**"Beneficiary"** means in respect of any Instructions, the Beneficiary issuing those Instructions in order to procure specific Services;

**"Bribery Act"** means the Bribery Act 2010 under the laws of England;

**"CEDR"** means the Centre for Effective Dispute Resolution;

**"Change of Control"** shall have the meaning given to it within Sections 1124 and 450 of the Corporation Tax Act 2010;

**"Commencement Date"** shall be the date given in the Confirmation of Appointment letter;

**"Commercially Sensitive Information"** means any Confidential Information which the Firm regards as commercially sensitive regarding its affairs and which is listed as Commercially Sensitive Information in the Framework Agreement, any appointment, or any Instructions;

**"Complaint"** means any formal written complaint raised by any Beneficiary in relation to the performance of this Framework Agreement or any appointment in accordance with Clause 30 of Framework Schedule 4 (Complaints Handling and Resolution);

**"Confirmation of Appointment"** means the document confirming the appointment of the Firm signed on behalf of the Authority and the Firm;

**"Conflict"** means any conflict of any nature whatsoever between the interests of the Firm or of one of its clients and the interests of a Beneficiary;

**"Confidential Information"** means the information provided by the Authority or any Beneficiary to the Firm or by the Firm to the Authority or any Beneficiary and which is not in the public domain;

**"Control"** means control as defined in sections 1124 and 450 of the Corporation Tax Act 2010;

**"Crown"** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**"Data Controller", "Data Processor" and "Data Subject"** shall have the same meaning as set out in the Data Protection Act 1998;

**"Data Protection Legislation" or "DPA"** means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

**"Disputes Procedure"** means the procedure set out in Clause 31 of Framework Schedule 4;

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

**"Established Relationship"** shall have the meaning given to it in Clause 4.1 of the Framework Agreement;

**"Firm"** means the firm specified in the Confirmation of Appointment;

**"Firm Related Fraud"** means any Fraud by the Firm or any Firm Staff or any Authorised Sub-Contractor or any partner, director, office or employee of any Authorised Sub-Contractor;

**"Firm Staff"** means any partner, employee, staff or other workers, agents and consultants of the Firm engaged in any way in the provision of the Services or of any ancillary or support activity carried on by the Firm in order to enable the provision of the Services;

**"FOIA"** 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;

**"Framework"** means the framework arrangements established by the Authority for the provision of the Services to Beneficiaries by firms;

**"Framework Agreement"** means the clauses of this Framework Agreement together with the Framework Schedules and annexes to them;

**"Framework Panel Lot 1"** means the panel consisting of all firms which have entered into a framework agreement relating to the provision of the Services in respect of Lot 1;

**"Framework Panel Lot 2"** means the panel consisting of all firms which have entered into a framework agreement relating to the provision of the Services in respect of Lot 2;

**"Framework Panel Lot 3"** means the panel consisting of all firms which have entered into a framework agreement relating to the provision of the Services in respect of Lot 3;

**"Framework Panels"** means any one of, or all of, Framework Panel Lot 1, Framework Panel Lot 2 and/or Framework Panel Lot 3;

**"Fraud"** means any offence under Applicable Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown;

**"Good Practice"** means standards, practices, methods and procedures conforming to the Applicable Laws 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 regulated by the Solicitors Regulation Authority;

**"Grave Misconduct"** means grave misconduct within regulation 23(4)(e) of the Regulations and includes:

- (a) poor performance or serious or persistent breaches which have led to the early termination of a contract between the Crown or any Beneficiary and the Firm; or
- (b) poor performance or a serious breach or breaches which are the subject of proceedings concerning a contract between the Crown or any Beneficiary and the Firm; or

(c) serious financial irregularities on the part of the Firm (within any legal jurisdiction); or

(d) misconduct which would be regarded as serious by any Regulatory Body,

and for the purposes of the foregoing "proceedings" includes arbitration proceedings which have been commenced or court proceedings where a letter before action or a notice of claim has been issued;

**"Helpline"** means the 24 hours a day helpline facility provided by the Firm as described in Framework Schedule 5;

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

**"Indemnify"** means to indemnify on a continuing basis;

**"In-Scope"** means:

(a) with respect to Services, Services within; and

(b) and, with respect to Instructions, Instructions to provider Services within

the scope of the Lot or Lots specified in the Confirmation of Appointment;

**"Instructions"** means an order placed by way of an instruction to provide specific Services and

**"Instruct"** means the placing of such an order;

**"Instructed Services"** means any Services which are the subject of any Instructions;

**"Intellectual Property Rights" or "IPR"** 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 registerable 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 registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

**"Invitation to Tender"** means the Invitation to Tender dated [ ] issued by the Authority;

**"Key Performance Indicators" or "KPIs"** means the performance measurements and targets:

(a) in the case of Lot 1 and Lot 2, as set out in Framework Schedule 3 Part B;

(b) in the case of Lot 3, as may be determined by the relevant Beneficiary at the time of the relevant appointment ;

**"Key Personnel"** means any individuals identified as such in the Confirmation of Appointment or in any subsequent appointment and any replacements for such individuals that may be agreed between the relevant parties from time to time, and shall include Nominated Partners;

**"KPI Target"** means, in relation to a KPI, the target performance level for that KPI (being, in the case of the KPIs set out in Framework Schedule 3 Part B the "Target" level and, in the case of any other KPI, the level determined at the time that KPI is set);

**"KPI Threshold"** means, in relation to a KPI, the least acceptable performance level for that KPI (being, in the case of the KPIs set out in Framework Schedule 3 Part B the "Tolerance" level and, in the case of any other KPI, the level determined at the time that KPI is set);

**"LCIA"** means the London Court of International Arbitration;

**"Level of Authority"** means the scope of and limits on the authority of the Firm to act in carrying out their Instructions in relation to the Services as determined by the Beneficiary;

**"Lot(s)"** shall have the same meaning as described in the Invitation to Tender;

**"Management Information" or "MI"** means the management information specified in Framework Schedule 6 Part B (Management Information);

**"Material Default"** means a material breach by the Firm of the Framework Agreement including any breach by the Firm of any of the following Clauses of the Standard Terms and Conditions: Clause 1 (Performance of Services), Clause 4 (Conflicts), Clause 5 (Warranties and Representations), Clause 6 (Fraud), Clause 7 (Bribery and Corruption), Clause 9 (Data Protection), Clause 10 (Records and Audit Access), Clause 12 (Freedom of Information), Clause 14 (Publicity and Branding), Clause 20 (Transfer and Sub-Contracting), Clause 22 (Non-Discrimination), and Clause 30 (Complaints Handling and

Resolution) and, in addition shall be deemed to occur if any information which is, or has been, provided by the Firm to the Authority or any Beneficiary (whether incorporated in any Tender or otherwise) is untrue or misleading or any other information is available, or event occurs, in relation to the Firm which the Authority considers would be reasonably likely to damage the reputation of the Authority or any Beneficiary;

**"Mediator"** shall have the meaning given to it in clause 31.6 of Framework Schedule 4;

**"Month"** means an entire calendar month and "Monthly" shall be interpreted accordingly;

**"NHSLA Member"** means English NHS Trusts and other providers of NHS care for whom the Authority operates schemes, on behalf of the Secretary of State for Health, primarily for the handling of liability claims;

**"Nominated Manager"** means a manager designated by the Authority to be responsible for monitoring the performance of a Firm;

**"Nominated Partner"** shall mean any partner of an instructed firm specifically nominated within any Instructions;

**"Performance Review Meeting"** shall have the meaning given to it as described in Clause 11;

**"Persistent Failure"** means any of:

- (a) two (2) or more failures by the Firm to accept an Instruction within two (2) Working Days of receipt in any rolling period of twelve (12) Months (other than when the Firm's failure to accept an Instruction is due to a conflict of interest);
- (b) two (2) or more failures by the Firm to provide the Management Information by the reporting date in any rolling period of twelve (12) Months; or
- (c) any two (2) or more failures by the Firm to meet a KPI Threshold (whether the failures relate to the same or different KPI Threshold) in relation to the Framework Agreement or one or more other appointment in any rolling period of twelve (12) Months; or
- (d) any failure by the Firm to meet the KPI Targets in relation to the Framework Agreement or one or more other appointment in any rolling period of three (3) Months where such failure relates to a majority in number of the relevant KPI's;
- (e) any failure by the Firm to meet the KPI Targets in relation to the Framework Agreement or one or more other appointment in any rolling period of three (3) Months where such failure relates to not less than 25% in number of the relevant KPI's and is not rectified during the immediately following period of three (3) Months;

**"Personal Data"** has the meaning given to it in Data Protection Legislation;

**"Preferred Supplier"** shall have the meaning given to it in clause 4.2 of the Framework Agreement;

**"Proper Standard"** means a standard of the Services:

- (a) which would be expected if they were provided by a skilled, experienced and professional solicitor providing those services using appropriate facilities, resources and current and accurate legal know how with Good Practice; and
- (b) appropriate for the purpose for which the Beneficiary requires the Services in all respects;

**"Process"** has the meaning given to it in Data Protection Legislation;

**"Regulations"** means the Public Contracts Regulations 2006;

**"Regulatory Bodies"** means the Solicitors Regulation Authority and other 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 and **"Regulatory Body"** shall be construed accordingly;

**"Relevant Personal Data"** means personal data which is either provided to the Firm by a Beneficiary or is otherwise received by the Beneficiary in the course of providing the Services and relates to the subject matter of the Services;

**"Relevant Request for Information"** means, in the case of any Beneficiary, a request for information relating to the provision of services to that Beneficiary or, in the case of the Authority, to this Framework Agreement, or, in the case of any other Beneficiary, any appointment or an apparent request for such

information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

**"Services"** means the provisions of legal and ancillary services in respect of any of the Lots specified in the Framework Agreement;

**"Service Levels"** means the service levels detailed in Framework Schedule 3 Part A and within any specific appointments;

**"Standard Terms"** means the provisions of Framework Schedule 4 and, in respect of each Lot, the relevant part of Framework Schedule 5;

**"Sub-Contract"** means the Firm's contract with an Approved Sub-Contractor whereby the Approved Sub-Contractor agrees to provide to the Firm certain services (or any part thereof or facilities), as may be necessary for the Firm to provide the to any Beneficiary under any Agreement;

**"Tender"** means any document or information provided by the Firm in response to the Invitation to Tender or which otherwise which represents the capabilities of the Firm or its suitability to provide any Services or the basis or terms upon which it would provide those Services and includes, in all cases, the tender documentation provided to the Authority by the Firm and, in the case of each appointment, also includes any documentation provided to any Beneficiary in connection with such appointment;

**"Terminate"** shall have the meaning given to it in Clause 17 of Framework Schedule 4;

**"Third Party"** shall have the meaning set out in Clause 23.1 of Framework Schedule 4;

**"Third Party IP Claim"** means any claim that the performance by the Firm of any Services infringes or allegedly infringes a Third Party's Intellectual Property Rights;

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**"Transition Plan"** means the mutually agreed plan outlining the handover of Confidential Information and Relevant Personal Data upon the expiry or termination of this Framework Agreement as described in Clause 11.7 of Framework Schedule 4;

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

**"Year"** means a period of 12 months.

## 2. RULES OF CONSTRUCTION

This Agreement will, except as specifically provided otherwise, be interpreted and construed as follows:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa and words importing the masculine include the feminine and the neuter and vice versa;
- (b) "include", "for example", "in particular" and words of similar effect shall be construed as if they were immediately followed by the words "without limitation";
- (c) references to any person shall include any natural or legal person of any kind including any partnership or limited liability partnership and their successors and permitted assigns or transferees;
- (d) references to any statute, enactment, order, regulation, code, official guidance or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced from time to time (whether such amendment or replacement occurs before or after the date of this Framework Agreement);
- (e) headings do not affect the interpretation or construction of this Framework Agreement;
- (f) references to any Clause, sub-Clause or Framework Schedule shall be construed as a reference to a clause or sub-clause of, or schedule to, this Framework Agreement;
- (g) references in a Framework Schedule to any paragraph or further designation shall be construed as a reference to the paragraph of the relevant Framework Schedule so numbered;
- (h) in the event and to the extent only of any conflict between the Clauses and the Framework Schedules, the Clauses shall prevail over the Framework Schedules;

- (i) the fact that any provision is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Firm;  
and
- (j) where the Firm is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Firm's obligations under this Framework Agreement.