

**Dated**

**2018**

**KCOM GROUP PLC**

**and**

**[            ]**

**FRAMEWORK AGREEMENT FOR CONSULTANCY SERVICES**

**KCOM Group Plc  
37 Carr Lane  
Hull  
East Yorkshire  
HU1 3RE**

## Framework Contract for Consultancy Services ("the Agreement")

Dated [insert date]

### Between:

**KCOM Group Plc** (registered number 02150618) and whose registered address is at 37 Carr Lane, Hull, HU1 3RE ("Supplier"); and

[ ] **Limited** (registered number ..... ) and whose registered address is at [.....] ("Customer")

together "the Parties"

### Introduction

- A. Supplier is a provider of IT consultancy and management services.
- B. The Customer wishes to engage Supplier to provide the Customer with IT consultancy services, management services and implementation support services from time to time.
- C. Supplier and the Customer have agreed that this Framework Agreement shall provide a framework under which they can agree individual Work Packages which will specify the particular services to be provided to the Customer.
- D. To meet the above objectives the parties agree to abide by the terms and conditions of this Framework Agreement.

### 1. Definitions

1.1. The following terms have the following meanings:

"Acceptance", "Acceptance Tests" and "Acceptance Certificates"	means respectively acceptance of the Work Product(s) by the Customer when the relevant project stage has successfully passed the Acceptance Test specified in the Work Package ("Acceptance Tests") and the Customer has signed the Acceptance Certificate in the format set out in Schedule 3 hereto;
"Account Manager"	means the persons named in Schedule 1 or their replacements as notified in writing from time to time;
"Change Control Procedure"	means the procedure for changing this Framework Agreement and/or a Work Package as described in Clause 6;
"Commencement Date"	means the date from which the provisions of this Framework Agreement will apply which, unless stated otherwise, will be the date of signature;
"the Daily Rates"	means the professional fee rates payable by the Customer to Supplier for each Man Day the Services are provided by the Personnel which, unless agreed otherwise in writing between the parties, shall be the

	rates specified in Schedule 1 (or as amended from time to time in accordance with Clause 7.9);
"Data Protection Laws"	means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated and the terms "Data Controller", "Data Processor", "Data Subject", "Data Subject Access Request", "Supervisory Authorities", "process" and "Personal Data" shall have the meanings given to those terms in such data protection laws and regulations;
"Man Day"	means the number of hours to be worked on each day between Monday and Friday (excluding public holidays in the United Kingdom) without incurring overtime charges, as specified in the Work Package;
"Personnel"	means any person provided by Supplier to the Customer for the purpose of performing the Services (regardless of whether that person is an employee, contractor, sub-contractor or otherwise);
"Services"	means the consultancy and/or management and implementation support services to be provided by Supplier to the Customer in accordance with each Work Package;
"Work Package"	means a signed contract for Services based on the pro-forma at Schedule 2 and which shall, unless agreed otherwise in writing, incorporate the terms and conditions of this Framework Agreement;
"Work Product"	means all works of authorship, products and materials developed, written or prepared by Supplier in connection with this Framework Agreement and/or any Work Package including computer programs and software, charts, diagrams, drawings, specifications, studies, reports, training notes and all other creative output of the Services.

## **2. Scope of Framework Agreement and Work Packages**

- 2.1. This Framework Agreement sets out a framework for agreeing individual contracts (known as Work Packages). If requested by the Customer, Supplier shall complete a document in the same or substantially similar form to that set out in Schedule 2 and forward it to Customer for consideration. If agreed, on signature by both parties, a contract shall be made in respect of the Services described in that Work Package.
- 2.2. The contract made by the signing of the Work Package consists of 2 elements:
  - 2.2.1. the Work Package itself;
  - 2.2.2. this Framework Agreement.

In the event of any conflict or inconsistency between the Work Package and this

Framework Agreement, the Work Package shall prevail.

### **3. Contract Management**

- 3.1. Each party shall appoint an Account Manager who will be responsible for overseeing this Framework Agreement and the Work Packages.
- 3.2. The parties shall ensure that the Account Managers meet with the frequency specified in Schedule 1 to discuss the performance of this Framework Agreement and associated Work Packages and to agree new Work Packages. Supplier's Account Manager will be responsible for taking minutes of those meetings and circulating the minutes to all interested parties.
- 3.3. Each party shall also, in respect of each particular Work Package, appoint a person who will act as their project manager for that Work Package. That person shall deal with:
  - 3.3.1. requests for information;
  - 3.3.2. requests for any change in relation to that Work Package;
  - 3.3.3. reviewing progress against any project plan contained within the Work Package.
- 3.4. The parties shall ensure that the project managers meet with the frequency specified in the Work Package to discuss and minute the performance of the Work Package.
- 3.5. Supplier's project manager shall provide the Customer with such information as is specified in the Work Package and advise on progress against the project plan.
- 3.6. Supplier's project manager shall ensure that the project plan is kept up-to-date.

### **4. Supplier's Responsibilities**

- 4.1. Supplier will ensure that its Personnel have the skills necessary to enable them to properly perform their duties under each Work Package and that the Services will be provided using all reasonable care and skill.
- 4.2. Supplier will use all reasonable endeavours to meet any anticipated timetable contained within the Work Package but the Customer accepts that, as the anticipated timetable will be dependent to a large degree upon the Customer (and any third parties appointed by or under the control of the Customer) complying with their respective responsibilities, time shall not be of the essence in this respect. Supplier will, however, notify the Customer as quickly as possible if it appears that there may be any delays in the performance of the Services.

### **5. The Customer's Responsibilities**

- 5.1. The Customer shall, in a timely manner, provide (and shall be responsible for procuring that any third party appointed by or under its control also provides) to Supplier access to such premises, systems, information and personnel as is necessary to enable it to perform its obligations under this Framework Agreement and the Work Packages.
- 5.2. It shall be the Customer's responsibility to advise Supplier of any industry-specific legislation, rules and guidance issued by the appropriate regulatory authorities, which is or may be applicable to the performance of the Work Package. If changes to that (or any other) legislation, rules or guidance (or the introduction of any new legislation, rules or guidance) result in the need for a Change to Services which are already being provided, the parties shall apply the Change Control Procedure.
- 5.3. Supplier shall not be liable for any failure of or delay in the performance of the Services

or supply of the Work Product or any defect in the Services or Work Product, to the extent that it is caused by the Customer (or any third party appointed by or under the control of the Customer). In the case of such failure or delay, the timetable or any completion date agreed by the parties for the work specified in that Work Package shall be automatically extended to the extent that the failure or period of delay was caused by the Customer/third party and the Customer shall be responsible for paying any additional costs incurred by Supplier as a result.

- 5.4. The Customer and Supplier shall agree dates and criteria for Acceptance Tests in relation to agreed stages of the project and document the same in the Work Package.
- 5.5. Upon successful completion of all the Acceptance Tests, the Customer shall sign an Acceptance Certificate for the relevant stage as set out in Schedule 3 to this Framework Agreement.
- 5.6. In the event that the Customer commences live running (as opposed to Acceptance Testing) of a Work Product(s) for which it has not signed an Acceptance Certificate, such Work Product(s) shall be deemed to be accepted by the Customer within 2 weeks of releasing such Work Product(s) into a live environment.
- 5.7. The Customer agrees to act as a reference customer by agreeing with the Supplier a case study and / or publicity. Any publicity to be issued by either party in connection with this Framework Agreement and/or any Work Package shall be subject to prior written consent from the other party.

## **6. Change Control Procedure**

- 6.1. If either party wishes to change this Framework Agreement or a Work Package for any reason, it may request such a change by notice in writing. Requests for changes to the Framework Agreement should be addressed to the Account Manager. Requests for any change to a Work Package should be addressed to the project manager for that particular Work Package.
- 6.2. In the event of a change requested by the Customer, Supplier shall, as soon as possible, (but in any event within 7 working days) inform the Customer if the change will involve additional cost or adversely affect performance under any Work Package. Until Supplier has received confirmation in writing from the Customer that it agrees to meet any such additional cost or will accept any adverse effect in performance, Supplier shall be under no obligation to carry out such change.
- 6.3. Where the parties do agree to implement a change, the details and impact of that change (including agreement as to scope, revised timetables of work or delivery and additional cost) shall be recorded in writing and signed by both parties. Supplier shall be under no obligation to effect any change until such time as written agreement has been reached in accordance with this Clause 6.

## **7. Charges**

- 7.1. Unless agreed otherwise in a particular Work Package, the Customer shall pay for each Man Day that the Services are performed by the Personnel in accordance with the Daily Rates.
- 7.2. Budgets or Man Day forecasts may be agreed in respect of each Work Package but these are estimates only and are not formal offers open for acceptance. However, Supplier undertakes to keep the Customer regularly updated of progress against each budget as part of the meetings described in Clause 3.2.
- 7.3. The Customer shall also make additional payments as follows:

- 7.3.1. for Services requested in excess of a Man Day during the working week, the Customer shall pay the Daily Rates on a pro-rata basis for each hour the Services are provided by the Personnel;
- 7.3.2. for Services requested at weekends, the Customer shall pay one and a half times the Daily Rates on a pro-rata basis for each hour the Services are provided by the Personnel;
- 7.3.3. for Services requested on UK public holidays, the Customer shall pay twice the Daily Rates on a pro-rata basis for each hour the Services are provided by the Personnel;
- 7.3.4. for the cost of travel, hotel and other expenses reasonably incurred by Supplier Personnel in performing its obligations under each Work Package including (without limitation) transportation, accommodation and subsistence;
- 7.3.5. for travel time in excess of one hour, the Daily Rates on a pro-rata basis (or overtime rates described in Clauses 7.3.2 and 7.3.3, as appropriate) for each hour spent travelling by the Personnel (or part thereof).
- 7.4. Supplier will raise invoices monthly in arrears for Work Packages being performed on a Daily Rate basis and monthly in advance for Work Packages being performed on a fixed price basis (unless stated otherwise in the relevant Work Package) and payment of those invoices (in pounds sterling) shall be due within thirty (30) days of the date of invoice. The Customer undertakes to provide details to Supplier of any information which should be included upon the invoices to help expedite payment.
- 7.5. Supplier shall be entitled to charge the Daily Rates for each Man Day spent by its Personnel while they are ready and available to perform the Services but are unable to do so because of the Customer failing to meet its responsibilities under this Framework Agreement and/or any Work Package.
- 7.6. All charges referred to in this Framework Agreement or a Work Package are quoted exclusive of VAT and any other similar taxes, duties or levies or other deductions or withholdings in countries outside the United Kingdom, which taxes shall be payable at the rate and in the manner prescribed by law.
- 7.7. If any charges are not fully paid on the due date, Supplier shall be entitled, in addition to its other rights and remedies, to:
  - 7.7.1. charge interest thereon at the rate of three per cent (3%) per annum above the base rate of Lloyds TSB plc for the time being in force from the due date until the date of payment; and
  - 7.7.2. suspend performance of its duties under this Framework Agreement or the Services under any then ongoing Work Packages until such time as payment has been made in full, provided that Supplier shall not so suspend its duties or the Services, if it has been notified in writing of any bona fide dispute relating to its invoices and the Customer has paid any undisputed amounts and is actively pursuing resolution of that dispute via the problem escalation and dispute resolution procedure described in Clause 15.
- 7.8. No Daily Rates will be charged for Man Days (or part thereof) which are not spent in providing the Services, due to statutory and annual holidays, sickness or temporary absence for any other reason. Where the Personnel perform the Services for part of a Man Day, the Customer shall pay for such Services at the pro-rata Daily Rate for each hour the Personnel performs the Services.
- 7.9. The Daily Rates set out in Schedule 1 may be reviewed and varied by Supplier from time to time. Supplier will give to the Customer not less than 30 days' notice of any such variation. Such variation shall not affect any then current Work Packages.

- 7.10. For each Work Package being performed on a Daily Rate basis, Supplier shall keep reasonable evidence of the work done and of the Man Days (or part thereof) spent on each Work Package, including, without limitation, by retaining copies of all relevant timesheets or similar records of the time spent by the Personnel. Copies of those timesheets will be provided to the Customer on request.

## **8. Intellectual Property Rights**

- 8.1. The Customer should note that a Work Product may contain:

- 8.1.1. material which constitutes pre-existing proprietary material owned by Supplier (or a third party); or
- 8.1.2. material which has been newly developed by Supplier in the course of performing the Services for the Customer but which does not contain information confidential to the Customer or is of a routine, generic or non-Customer specific nature.

The Customer understands and accepts that Supplier (or the third party, as appropriate) shall be the owner of and shall at all times retain ownership of the intellectual property rights in such material. However, subject to receipt of payment in accordance with Clause 7, Supplier shall grant (or shall procure the grant to the Customer of) a perpetual but non-exclusive and non-transferable licence to use such material contained within the Work Product for the purposes envisaged by the Work Package. The Customer must not modify or amend that material or make any copies of it other than for back-up purposes.

- 8.2. Subject to Clause 8.1.2 (and provided Supplier has received payment in full for the Work Product), the intellectual property rights in any bespoke or specially developed Work Product shall vest in the Customer. At the Customer's request, Supplier shall execute any deed or document or do anything which may reasonably be required to give effect to the assignment and transfer of the intellectual property rights in such material.
- 8.3. The Customer (or some other third party, as appropriate) is the owner of (and shall at all times retain ownership of) the intellectual property rights in any material it provides to Supplier, to enable it to perform the Services. However, it hereby grants (or shall procure the grant to) Supplier of a licence to use the same in the performance of the Services.
- 8.4. Nothing in this Framework Agreement or any Work Package shall prevent Supplier from using all of its knowledge and know-how gained in performing the Services in the course of providing services to others, even where those services are the same as or similar to the Services.
- 8.5. Where AWS services form part of the Work Product, the Customer acknowledges, by entering this Framework Agreement, that any use of AWS services is subject to the AWS Customer License Terms which is a separate agreement entered into between Customer and Amazon Web Services LLC, a current version of which is located here: <https://aws.amazon.com/solutions/solution-providers/program/reseller/customerterms/> and agrees to comply with such terms. Upon termination of this Framework Agreement or any relevant Work Package, any AWS data/accounts will be transferred to Customer at the time and in the format reasonably requested by the Customer. If applicable, the Parties will agree the process for removal of non-Customer IAM accounts, groups, roles, and federation.
- 8.6. Where Azure services form part of the Work Product, the Customer acknowledges, by entering this Framework Agreement, that any use of Microsoft Azure services is subject to Microsoft's Azure standard terms and conditions including its Acceptable Use Policy, a current version of which is located here: <http://azure.microsoft.com/en-us/support/legal/subscription-agreement/> and agrees to comply with such terms.
- 8.7. Where Google services form part of the Work Product, the Customer acknowledges, by

entering this Framework Agreement, that any use of Google services is subject to the Google Terms of Service and Acceptable Use Policy, a current version of which is located here: and agrees to comply with such terms and any Service Specific Terms.

- 8.8. Customer understands and acknowledges that Supplier and Google are independent contractors and Supplier is not Google's agent or partner in a joint venture.
- 8.9. Customer understands and acknowledges that, where applicable, Google and Supplier are processors of personal data and Customer is the controller of personal data as defined in the Data Protection Act.
- 8.10. Customer understands and acknowledges that, to the extent permitted by law, Google and Supplier disclaim (b) liability for any damages, whether direct, indirect, incidental or consequential arising from Supplier's distribution and resale of Google services to the Customer and (b) all warranties with respect to the Google services including warranties of merchantability, fitness for a particular purpose, and non-infringement.
- 8.11. Where a third party supplier software forms part of the Work Product, the Customer acknowledges, by accepting these terms and conditions, that any use of such software is subject to the third party supplier's standard terms of service, details of which shall be provided to Customer by Supplier.

## **9. Intellectual Property Rights Indemnity**

- 9.1. Supplier shall indemnify and keep indemnified the Customer against all costs, losses, damages and expenses arising out of or in connection with any claim made against the Customer by a third party alleging that the use of the Work Product infringes its intellectual property rights provided that:
  - 9.1.1. the claim has not arisen as a result of the Customer using or combining the Work Product with any other product;
  - 9.1.2. the claim has not arisen as a result of the Customer's unauthorised modification or amendment of the work Product;
  - 9.1.3. the Customer gives to Supplier the sole conduct of the claim or any resultant proceedings;
  - 9.1.4. the Customer affords Supplier all reasonable assistance in connection with its defence of such a claim and does not make any statement prejudicial to Supplier's position.
- 9.2. Supplier reserves the right (but without materially affecting the functionality or content of the Work Product) to replace or modify the Work Product to avoid infringement of third party intellectual property rights or to obtain a licence to allow continued use of the Work Product. In the event that it is unable to do so, it shall refund the charges paid for that particular Work Product.
- 9.3. This Clause 9 shall apply *mutatis mutandis* to any claim made against Supplier by a third party alleging that the use by Supplier of materials provided by the Customer, infringe the third party's intellectual property rights.
- 9.4. This Clause 9 sets out the total liability of each party to the other in respect of third party claims of intellectual property rights infringement.

## **10. Term and Termination**

- 10.1. This Framework Agreement shall start on the Commencement Date and continue in force until it is terminated in accordance with Clauses 10.2 or 10.4.



- 10.2. This Framework Agreement may be terminated for convenience by either party giving to the other not less than three (3) months written notice. Termination of the Framework Agreement under this clause shall not affect any current Work Packages, which will remain in force until terminated in accordance with Clause 10.3.
- 10.3. Each Work Package (which is being performed on a Daily Rates basis) will remain in force until it is terminated by either party on not less than two (2) months written notice or in accordance with clause 10.4. If the Services under a Work Package are being performed on a fixed price basis, the Work Package will remain in force until the Services have been completed or it is terminated in accordance with clause 10.4 or its written terms.
- 10.4. Either party shall be entitled to terminate this Framework Agreement and any current Work Package with immediate effect by notice in writing:
- 10.4.1. if the other has committed a material breach of its obligations under the Framework Agreement or any Work Package and, where such breach is capable of remedy, has failed to remedy the breach within thirty (30) days of having been requested to do so in writing; or
  - 10.4.2. upon the other party passing a resolution for winding-up (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Framework Agreement and any current Work Packages) or suffering a winding-up order being made against it or going into administration; or
  - 10.4.3. if a receiver or administrative receiver is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the other party; or
  - 10.4.4. if the other party is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors; or
  - 10.4.5. if the other party suffers an event in a country other than the United Kingdom which has a similar effect to the events described in Clauses 10.4.2 - 10.4.4 in the United Kingdom.
- 10.5. Termination of this Framework Agreement or any Work Package shall be without prejudice to any rights of either party, which arose on or before its termination or which are expressed to arise upon or continue after termination.

## **11. Limitation of Liability**

- 11.1. This Clause 11 prevails over all other clauses in this Framework Agreement save that the limits in Clauses 11.3 and 11.4 do not apply to any charges which are properly due and payable by the Customer to Supplier under this Framework Agreement and/or any Work Package.
- 11.2. Neither party excludes or limits its liability to the other party for fraud or for death or personal injury caused by its negligence.
- 11.3. The liability of either party in respect of loss or damage to tangible property of the other party caused by its negligence shall be limited to £1,000,000 per event or series of connected events.
- 11.4. Except as provided in Clauses 11.1 - 11.3, 11.5 and 11.6, the total liability of either party for all claims made by the other in relation to any particular Work Package for loss or damage suffered by that party however that liability arises, including (without limitation)

breach of contract, tort, misrepresentation (other than fraudulent misrepresentation) or breach of statutory duty, shall be limited to the greater of £500,000 or the total of all sums paid or payable to Supplier pursuant to that Work Package.

- 11.5. Neither party shall be liable to the other party for any loss of profit, loss or corruption of data or information, loss of business, goodwill, business opportunity or anticipated savings or any special, indirect or consequential loss even if that loss or damage was reasonably foreseeable or that party was aware of the possibility of that loss or damage arising.
- 11.6. It is the Customer's responsibility to ensure that it takes a back-up copy of any software or data it provides to Supplier under or in connection with any Work Package and to keep that back-up copy secure. Supplier shall not be liable for loss or damage suffered by the Customer where the Customer, having taken a proper back-up copy of its software or data, could have avoided that loss or damage.

## **12. Confidentiality**

- 12.1. Neither party shall disclose to any person (other than with the written authority of the other) any confidential information concerning the products, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the other which may come to that party's knowledge in the course of performing its duties under this Framework Agreement nor may the Customer disclose the Work Product (whether wholly or in part) to any other person.
- 12.2. Nothing contained in this Clause 12 shall prevent either party from disclosing that information:-
- 12.2.1. to any of its employees or contractors whose work requires the disclosure of that information and who have prior to the disclosure of that information agreed in writing to keep such information confidential;
  - 12.2.2. to any government department or other authority court or arbitrator having statutory authority or jurisdiction to require the disclosure of that information;
  - 12.2.3. if that information is at the time of disclosure known to the public through no act or default on the part of the recipient of the information
  - 12.2.4. If that information has been independently developed by Supplier or provided by a third party other than in breach of that party's duty of confidentiality.

## **13. Data Protection**

- 13.1. Both parties hereby warrant, represent and agree that in relation to the performance of the Services during the term of the Framework Agreement each will comply with the Data Protection Laws.
- 13.2. Both parties acknowledge and agree that Customer is the Data Controller and Supplier is the Data Processor. Supplier agrees and accepts that it will process the Personal Data pursuant to and in accordance with this Framework Agreement and the Data Protection Laws.
- 13.3. Supplier shall:
- 13.3.1. only process the Personal Data for the purposes of performing its obligations under this Framework Agreement and in accordance with the documented instructions of Customer;
  - 13.3.2. not transfer the Personal Data outside of the EEA without Customer's prior written consent unless required to do so by any legislation or regulation, in which case Supplier shall inform Customer of such requirement if it is able to do so;

- 13.3.3. ensure that all Personnel who process the Personal Data are subject to an obligation of confidentiality in relation to the Personal Data;
- 13.3.4. implement appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk, including but not limited to:
  - 13.3.4.1. pseudonymising and encrypting Personal Data, as appropriate;
  - 13.3.4.2. ensuring the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;
  - 13.3.4.3. enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with any service level agreement between the Supplier and Customer;
  - 13.3.4.4. regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and
  - 13.3.4.5. taking steps to ensure that any Personnel who has access to Personal Data does so in accordance with the rights and obligations of Supplier as expressly detailed in this clause or otherwise on the express written instructions of the Customer unless otherwise required by legislation or other applicable regulation;
- 13.3.5. inform the Customer of any new sub-processor and/or change of an approved sub-processor. The Customer shall inform Supplier within five (5) working days of any objection to such appointment or change. If the Customer does not raise any such objection, Supplier shall ensure that such sub-processors shall comply with the provisions of this clause;
- 13.3.6. assist Customer in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
  - 13.3.6.1. where Supplier is required to assist Customer with a Data Subject Access Request it has received, responding to such request for assistance within twenty (20) days of receiving notice of such request from Customer;
  - 13.3.6.2. where Supplier receives a Data Subject Access Request directly from the Data Subject, Supplier shall notify Customer within one (1) working day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws;
  - 13.3.6.3. where Customer is required to assist Supplier with such Data Subject Access Request, it shall respond to Supplier within twenty (20) days of receiving notice of such request from Supplier;
  - 13.3.6.4. assisting Customer, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
  - 13.3.6.5. enabling Customer to comply with a request for data portability of a Data Subject;
- 13.3.7. assist Customer in complying with its obligations relating to security of Personal Data as set out in this Framework Agreement or as otherwise may be reasonably requested by Customer, including but not limited to:

- 13.3.7.1. notifying Customer of any Personal Data breach as soon as reasonably practicable and no later than 24 (twenty four) hours after becoming aware of the breach occurring (such notice by email and/or telephone and followed up by email), and including all relevant detail. Supplier agrees and accepts that Customer may use any detail included in the notification of a Personal Data breach, or otherwise given in its communication to Data Subjects, to the extent that such information does not breach the rights of any other individual;
- 13.3.7.2. at the request and expense of the Customer, assisting with the communication to the Supervisory Authorities, any customer of Customer and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach;
- 13.3.7.3. at the request and expense of the Customer, consulting with the Supervisory Authorities and/or assisting Customer to consult with the Supervisory Authorities, including providing Customer with any information relating to Supplier's processing of Personal Data and/or Supplier's compliance with the Data Protection Laws as may be reasonably requested by Customer.
- 13.3.8. upon the expiry or termination of this Framework Agreement, delete or return all Personal Data to Customer (as requested by Customer), unless otherwise required or permitted by Data Protection Law and provide written confirmation in this respect;
- 13.3.9. make available to Customer all information reasonably necessary to enable Customer to demonstrate compliance with its obligations under the Data Protection Laws, including such records of all categories of processing carried out on behalf of Customer, as such is requested by Customer;
- 13.3.10. co-operate with any request of the Supervisory Authority;
- 13.3.11. allow Customer to undertake audits of Supplier on 30 days' notice and at the expense of the Customer, subject to any reasonable requests Supplier may have regarding the timing and conduct of such audit, to ensure Supplier's compliance this clause;
- 13.3.12. contribute to any audits or inspections of the Customer by any Supervisory Authority, a supplier of Customer or any other third party of Customer, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Customer's and/or Supplier's obligations under this clause;
- 13.3.13. at the expense of the Customer, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this clause and/or the Data Protection Laws, as such recommendations and/or remedial actions are deemed necessary by Customer (acting reasonably) or any Supervisory Authority, as applicable following an audit or inspection in accordance with 13.3.12 above, or otherwise as Customer deems reasonably necessary.

#### 14. **Sub-Contracting**

- 14.1. Supplier shall not be entitled to sub-contract its responsibilities under this Framework Agreement or any Work Package without the consent of the Customer. Before any sub-contract is agreed, Supplier shall ensure that it has made sufficient arrangements to ensure that confidentiality is preserved and it shall remain wholly responsible for the performance of the Services, as if Supplier were continuing to perform those itself.

## **15. Problem Escalation and Dispute Resolution**

- 15.1. Any dispute arising out of or in connection with a Work Package shall in the first instance be referred to the project managers for discussion and resolution at the next project review meeting. If the matter is not resolved at that meeting, (or if the dispute relates to any question or difference concerning the construction, meaning or effect of the Framework Agreement) the matter will be referred to the Account Managers for discussion and resolution on or before the next account review meeting. If the matter is not resolved at that meeting, it will be referred to the Managing Directors of each party who must meet within two (2) weeks to attempt to resolve the matter. If the unresolved matter is having a serious effect on the performance of this Framework Agreement or a Work Package, the parties will use reasonable endeavours to reduce the elapsed time in completing the process.
- 15.2. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution in London.
- 15.3. If the matter has not been resolved by an ADR procedure within 30 days of the initiation of that procedure, or if either party will not participate in an ADR procedure, either party may refer the matter to the courts.

## **16. Matters relating to the Personnel**

- 16.1. Neither party shall, without the prior written consent of the other, recruit any of the other's personnel, during the life of this Framework Agreement or until expiry of the last of the Work Packages (whichever is the last to come to an end) and for a period of 6 months thereafter.
- 16.2. In recognition of the value of personnel and the inconvenience which would be caused to it as a result of a breach of Clause 16.1, the parties agrees that, in the event of such breach, the breaching party shall pay to the other party an amount to be agreed but in any event no less than:
  - 16.2.1. in respect of an employee – an amount which is equivalent to that employee's gross salary over the 12 months immediately preceding the date of termination of his/her employment;
  - 16.2.2. in respect of any other person – an amount which is equivalent to the gross revenue generated (from all sources) by that person during the 12 months immediately preceding the date of termination of his/her engagement.

- 16.3. The parties hereby expressly agree that the sums referred to in Clause 16.2 represent a genuine pre-estimate of the loss likely to be suffered in such circumstances.
- 16.4. Supplier reserves the right to substitute new personnel (with equivalent levels of qualification) for the Personnel assigned to the Work Packages from time to time. The Customer may refuse any alternative personnel offered by Supplier if it has reasonable grounds for doing so.

## **17. Force Majeure**

- 17.1. Neither party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from circumstances beyond its reasonable control.
- 17.2. Each party agrees to give written notice to the other on becoming aware of an event of force majeure, such notice to contain details of the circumstances giving rise to the event of force majeure.
- 17.3. Either party shall have the right to terminate this Framework Agreement and/or any affected Work Package on written notice without liability to the other (except in respect of then accrued rights and liabilities) if the event of force majeure continues for a period in excess of fourteen (14) consecutive days.

## **18. Notice**

- 18.1. Any notice given under this Framework Agreement must be given in writing and sent or delivered by hand, post, or email to the other party at the address stated in the Framework Agreement (or any other address notified for this purpose by that party) provided that any:
  - 18.1.1. notice delivered by hand shall be deemed to have been given when deposited at the appropriate address;
  - 18.1.2. notice sent by post shall be deemed to have been given forty eight (48) hours after a first class registered letter is posted to the appropriate address; and
  - 18.1.3. notice sent by email shall carry a marker which identifies when the email has been received and shall be deemed to have been given when electronic confirmation of receipt is indicated.

## **19. General**

- 19.1. The parties hereby expressly agree that any person who is not a party to this Framework Agreement shall have no right to enforce any term of this Framework Agreement or the Work Packages against either of the parties pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.2. Each party shall be obliged to immediately notify the other in writing, if it becomes aware of any legislation, rules or guidance which might impact upon the lawful provision of the Services.
- 19.3. No failure, delay or indulgence on the part of either party in exercising any power or right under this Framework Agreement or a Work Package shall operate as a waiver of such power or right.
- 19.4. If any provision of this Framework Agreement or Work Package shall be held by a court of competent jurisdiction to be invalid or voidable such provision shall be struck out and the remainder shall stand in full force or effect.

- 19.5. Neither party may assign or novate this Framework Agreement or any Work Package or transfer any of its rights and obligations thereunder without the prior written consent of the other.

## **20. Entire Agreement and Law**

- 20.1. This Framework Agreement and the Work Packages constitute the entire agreement between the parties with respect to the subject matter contained therein. All prior agreements, representations, statements, negotiations, understandings and undertakings either written or oral are, unless made fraudulently, superseded hereby and the parties hereby acknowledge that they have not placed any reliance on any representation made but not embodied in those documents.
- 20.2. Both parties agree that, unless they expressly provide otherwise in any Work Package, all conditions or warranties of any kind (whether expressed or implied, statutory or otherwise) concerning the quality or fitness for purpose of the Services or Work Product are hereby excluded to the fullest extent permitted by law.
- 20.3. No change to this Framework Agreement or to a Work Package nor any waiver of any of the terms hereof shall be valid unless made in writing and signed by the duly authorised representatives of both parties.
- 20.4. This Framework Agreement and related Work Packages shall be subject to English law and, subject to the provisions of Clause 15, the parties agree to submit to the exclusive jurisdiction of the English courts.

SIGNED for and on behalf

of KCOM Group Plc

Signature \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

SIGNED for and on behalf

of [.....]

Signature \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

**SCHEDULE 1**  
**CONTRACT MANAGEMENT**

**Account Managers:** *(insert details for both Supplier and the Customer)*

**Frequency of Account Meetings:** *(insert detail- suggest monthly)*

**Daily Rates:** *(insert details of daily rates)*

<b>GRADE OF PERSONNEL</b>	<b>DAILY RATES</b>
Programme Manager, Lead Consultant	
Project Manager, DBA, Quality Manager, Technical Specialist	
Technical Architect, Senior Developer, Business/Test Analyst	
Developer, Tester	



## SCHEDULE 2

### WORK PACKAGE TEMPLATE

WORK PACKAGE NO. [ ] DATED [ ]

This Work Package forms part of the Framework Agreement between KCOM Group Plc ("KCOM" or "Supplier") and [ ] ("[" ]" or "the Customer") dated [ ]. It shall be read together with the terms and conditions contained within the Framework Agreement but in the event of any conflict between this Work Package and the Framework Agreement, this Work Package shall prevail. Once signed, this Work Package supersedes the terms of any purchase or other order placed by the Customer for the Services described below.

#### Description of Services:

#### Scope of Services:

#### Acceptance Testing:

*Acceptance Criteria:* [insert general acceptance criteria here]

Customer may not reject the Work Product(s) by reason of any failure to provide any operation or function not specified in any Functional Specification agreed between the parties or by reason of non-critical errors.

#### Project Managers:

#### Frequency of Project Meetings:

#### Daily Rates/Fixed Price:

#### Invoicing Profile:

#### Payment Profile:

**Expenses:** In addition to any charges specified in Clause 7.3 of the Framework Agreement:

**Man Day:** 7.5 Hours

#### Start Date:

#### Anticipated Timetable:

#### Customer Responsibilities/Dependencies:

#### Signed for and on behalf of KCOM Group Plc

**By:**

**Name:**

**Date:**

**Position:**

**Signed for and on behalf of [.....]**

**By:**

**Name:**

Commercial in Confidence

**Date:**

**Position:**

### SCHEDULE 3

## ACCEPTANCE CERTIFICATE TEMPLATE

TO: KCOM GROUP PLC

FROM: [.....]

Dear [ ]

We refer to the Framework Agreement between our respective companies dated [INSERT DATE] and WORK PACKAGE NUMBER [ ] relating to [DESCRIBE WHAT SUPPLIER IS DELIVERING]

We confirm that the following Work Products have passed the Acceptance Tests (as defined in the Work Package) and that we have today accepted the Work Products specified below:

[IDENTIFY WORK PRODUCTS HERE]

**Signed for and on behalf of [ ] Limited**

**Name:**

**Date:**

**Position:**