

CONTRACT NO []

DATED

1. April 2019

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**ISOTOMA LIMITED (1)**

and

**(2)**

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**FRAMEWORK AGREEMENT**

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THIS AGREEMENT is dated 1. April 2019

## **PARTIES**

- (1) ISOTOMA LIMITED incorporated and registered in England and Wales with company number 5171172 whose registered office is at Swinegate Court East, Swinegate, York, YO1 8AJ (**Supplier**).
- (2) [ ] incorporated and registered in England and Wales with company number [ ] whose registered office is at [ ] (**Customer**).

## **BACKGROUND**

- (A) The Supplier is an expert in the provision of information technology services.
- (B) In reliance on that expertise, the Customer wishes to appoint the Supplier to provide Services to it and its Affiliates under this framework agreement and in compliance with any relevant Order.
- (C) When a Customer or any of its Affiliates requests Services from the Supplier under, and the Supplier is able to provide such Services, the relevant parties will enter into one or more of the Orders.
- (D) Each of the Orders shall incorporate the terms and conditions set out in the Applicable Terms.

## Agreed Terms

### **1. INTERPRETATION**

In this framework agreement and each of the Orders, the following rules apply:

- (a) All defined terms in this framework agreement and any of the Orders formed under it shall have the meaning given to them in Schedule 4.
- (b) Clause, schedule and paragraph headings shall not affect the interpretation of this framework agreement or any Orders.
- (c) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- (d) The schedules form part of this framework agreement and shall have effect as if set out in full in the body of this framework agreement and any reference to this framework agreement includes the schedules to it.
- (e) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (f) Words in the singular shall include the plural and vice versa.
- (g) A reference to one gender shall include a reference to the other genders.

- (h) A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- (i) A reference to writing or written exclude faxes and e-mail.
- (j) References to this framework agreement means these terms and conditions and schedules as amended from time to time in accordance with clause 7.
- (k) References to clauses and schedules are to the clauses and schedules of the framework agreement or Orders (as applicable); references to paragraphs are to paragraphs of the relevant schedule to the framework agreement or Orders.
- (l) Any words following the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. WORK ORDER PROCESS**

- 2.1 This framework agreement governs the overall relationship of the parties in relation to the Services provided by the Supplier to the Customer and Customer Affiliates, and sets out:
  - (a) in this clause 2, the procedure for the Customer and Customer Affiliates to request the provision of Services from the Supplier under the separate Orders;
  - (b) in Schedule 4 a list of the Orders the terms of which can be provided separately; and
  - (c) in Schedule 2, the Applicable Terms that are deemed incorporated into this framework agreement and each of the Orders.
- 2.2 The Customer and the Customer Affiliates shall be entitled from time to time to request in writing the provision of any or all of the Services from the Supplier.
- 2.3 Within 28 Business Days of receipt of a written request from the Customer or any Customer Affiliate, the Supplier shall:
  - (a) either notify the Customer or Customer Affiliate that it is not able to provide the requested Services; or
  - (b) complete the relevant draft Order and shall submit the relevant draft Agreement to the Customer or the Customer Affiliate (as applicable) for its written approval.
- 2.4 None of the Orders shall enter into force, be legally binding or have any other effect unless:
  - (a) the relevant Order contains the information set out in the template Order referred to in Schedule 4;

- (b) the relevant Order has been signed by the authorised representatives of both parties to it; and
- (c) as at the date the relevant Order is signed, this framework agreement has not been terminated.

2.5 Each of the Orders:

- (a) shall be entered into by the Customer or a Customer Affiliate and the Supplier;
- (b) forms a separate contract between its signatories; and
- (c) shall incorporate the Applicable Terms.

2.6 Any amendment to this framework agreement agreed by the Customer and the Supplier in accordance with clause 7 shall be deemed to apply to all future Orders entered into after the date of such amendment.

**3. COMMENCEMENT AND TERM**

This framework agreement shall commence on the Framework Agreement Commencement Date and shall, unless terminated earlier in accordance with its terms or by law, continue in force until terminated by a party to it giving the other party not less than 3 months' prior written notice, such notice to expire on or after the first anniversary of the Framework Agreement Commencement Date.

**4. LIMITATION OF LIABILITY**

4.1 Nothing in this framework agreement or any of the Orders shall limit or exclude a party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

4.2 Subject to clause 4.1 or as otherwise set out in any of the Orders, neither party to this framework agreement or any of the Orders shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with this framework agreement or any of the Orders.

4.3 Subject to clause 4.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this framework agreement or any Order shall be the lesser of £50,000 and the total of the Charges paid by the Customer to the Supplier within the preceding 12 months at the time when the liability arose.

4.4 This clause 4 shall survive termination of this framework agreement or any of the Orders.

## **5. TERMINATION**

5.1 Without affecting any of its rights or remedies, either party to this framework agreement may terminate this framework agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this framework agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so.
- (b) any of the events set out in clause 5.2 occur.

5.2 The following events constitute rights of termination for a party under clause 5.1(b):

- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company); or

- (e) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 5.2(a) to clause 5.2(g) (inclusive); or
- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **6. CONSEQUENCES OF TERMINATION**

- 6.1 On termination of this framework agreement, howsoever arising, each of the Orders then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such Orders, unless earlier terminated.
- 6.2 Termination of any of the Orders shall not affect any of the other Orders or this framework agreement.
- 6.3 On termination of this framework agreement:
  - (a) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the framework agreement which existed at or before the date of termination; and
  - (b) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **7. VARIATION**

- 7.1 No variation of this framework agreement shall be valid unless it is in writing and signed by, or on behalf of, each of its parties.

## **8. WAIVER**

- 8.1 A waiver of any right or remedy under this framework agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to this framework agreement to exercise any right or remedy provided under this framework agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 8.2 No single or partial exercise of any right or remedy provided under this framework agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

## **9. SEVERANCE**

- 9.1 If any court or competent authority finds that any provision of this framework agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this framework agreement shall not be affected.
- 9.2 If any invalid, unenforceable or illegal provision of this framework agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **10. ENTIRE AGREEMENT**

- 10.1 This framework agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understanding or agreement between them, whether written or oral, relating to its subject matter.
- 10.2 Each party to this framework agreement acknowledges that, in entering into this framework agreement, it has not relied on, and shall have no right or remedy in respect of, any representation or warranty (whether made negligently or innocently) that is not set out in this framework agreement.
- 10.3 Nothing in this clause 10 shall limit or exclude any liability for fraud.

## **11. ASSIGNMENT**

The Customer shall not at any time, assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights or obligations under this framework agreement.

## **12. NO PARTNERSHIP OR AGENCY**

Nothing in this framework agreement is intended to, or shall operate to, create a partnership between its parties, or to authorise either party to act as agent for the other, and neither party to this framework agreement shall have authority to act in the name or on behalf of or otherwise to bind the other party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **13. THIRD PARTY RIGHTS**

13.1 A person who is not a party to this framework agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this framework agreement.

13.2 The Customer and Supplier may vary, terminate or rescind this framework agreement without the consent of any Customer Affiliate.

## **14. NOTICES**

14.1 Any notice or other communication required to be given to a party under or in connection with this framework agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, at the address set out at the beginning of this framework agreement unless an alternative address is notified in writing by one party to the other.

14.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

14.3 This clause 14 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. A notice required to be given under this framework agreement shall not be validly served if sent by e-mail or fax.

## **15. CONFIDENTIALITY AND PUBLICITY**

15.1 Each party undertakes not to use any confidential information disclosed to it by the other party otherwise than in the exercise and performance of its rights and obligations under this framework agreement.

15.2 The restrictions imposed by clause 15.1 shall not apply to the disclosure of any confidential information which:

- (a) is now in or hereafter comes into the public domain;



- (b) before any negotiations or discussions leading to this agreement was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or
- (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).

15.3 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any confidential information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

15.4 Notwithstanding the provisions of this clause 15 the Customer hereby agrees that the Supplier may with the consent of the Customer (such consent not to be unreasonably withheld or delayed) refer to and Orders and the work contained in those Orders, the Customer and the existence of this framework agreement for the Supplier's marketing purposes.

15.5 This clause 15 shall remain in full force and effect, despite any termination of this framework agreement.

## **16. DATA PROCESSING**

16.1 Both parties shall comply with all applicable requirements of Data Protection Legislation. This clause 16 (Data Processing) is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Legislation. In this clause 16 (Data Processing):

- (a) **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law;
- (b) **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK; and
- (c) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures** as defined in the Data Protection Legislation.

16.2 The Parties acknowledge that for the purposes of Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. Schedule 5 (Data Processing) sets out the scope, nature and purpose of processing by the Supplier, the duration of the Processing and the types of Personal Data subject to this agreement.

- 16.3 Without prejudice to the generality of clause 16.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 16.4 Without prejudice to the generality of clause 16.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement
- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisation measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisation measures adopted by it);
  - (c) without prejudice to the confidentiality obligations in clause 15 (Confidentiality and Publicity), ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies of such to the Customer on termination of the agreement unless required by Applicable Laws to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes Data Protection Legislation.

16.5 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under this agreement without its prior written consent having been obtained by the Supplier.

## **17. GOVERNING LAW AND JURISDICTION**

17.1 This framework agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

17.2 The parties to this framework agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this framework agreement or its subject matter or formation (including non-contractual disputes or claims).

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

## **SCHEDULE 1    APPLICABLE TERMS**

### **1.    TERM OF ORDERS**

Each of the Orders shall come into force on the date it is executed by its parties in accordance with clause 2 of the framework agreement or such later date as is specified in the relevant Order and shall continue, unless terminated earlier in accordance with these Applicable Terms or by law, until the expiry of the term set out in the relevant Order.

### **2.    INTERPRETATION**

- 2.1. The schedules to an Order, together with any documents referred to in them, form an integral part of the Order and any reference to the Order means the Order together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 2.2. Except where the contrary intention appears a reference to a clause or schedule is a reference to a clause of or schedule to an Order.
- 2.3. Clause and schedule headings do not affect the interpretation of an Order.
- 2.4. If any conflict arises between the terms and conditions of an Order and any provision of the schedule, then the provision of the schedule shall prevail.
- 2.5. If any conflict arises between the provisions of an Order (including the schedule) and any provision of this Framework Agreement then provision of the Order shall prevail.
- 2.6. Any definition not defined in an Order but defined in this Framework Agreement will take on the meaning defined in the Framework Agreement.

### **3.    SUPPLY OF SERVICES**

- 3.1. The Supplier shall supply the Services in accordance with these Applicable Terms and any express terms set out in the relevant Order.
- 3.2. The Supplier shall provide the Services from the date specified in the relevant Order or, if no date is specified, from the date such Order comes into force in accordance with paragraph 1 of these Applicable Terms.
- 3.3. In supplying the Services, the Supplier shall:

- (a) perform the Services with reasonable care and skill;
- (b) co-operate with the Customer Party in all matters relating to the Services;
- (c) use personnel who are suitably skilled to perform tasks assigned to them;
- (d) provide all equipment reasonably required to provide the Services.

#### **4. ANTI-BRIBERY COMPLIANCE**

##### **4.1. The Supplier shall:**

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

##### **4.2. Breach of this paragraph 4 by the Supplier shall be deemed a material breach incapable of remedy under clause 5.1(a) of the framework agreement.**

#### **5. CUSTOMER PARTY'S OBLIGATIONS**

##### **The Customer Party shall:**

- (a) co-operate with the Supplier in all matters relating to the Services and appoint (and, as it thinks fit, replace) the Customer's Manager in relation to the relevant Order;
- (b) provide such access to the Customer Party's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier for the purposes of the Services;
- (c) provide such information as the Supplier may request, in order to carry out the Services in a timely manner;
- (d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer Party's premises.

## **6. CONFIDENTIALITY**

- 6.1. A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of the Disclosing Party's confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations or, in the case of the Customer Party, exercising its rights, under any of the Agreements, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 6.2. This paragraph 6 of these Applicable Terms shall survive termination of this framework agreement any of the Orders.

## **7. CHARGES AND PAYMENT**

- 7.1. In consideration for the provision of the Services, the Customer Party shall pay the Supplier the Charges in accordance with this paragraph 7 unless otherwise agreed in the relevant Order. The Charges shall be paid in pounds sterling, unless otherwise specified in the relevant Order.
- 7.2. Unless otherwise agreed in the relevant Order, the Supplier shall invoice the Charges to the Customer Party at the intervals specified in Schedule 2. Each invoice shall include all reasonable supporting information required by the Customer Party to verify the accuracy of the invoice.
- 7.3. Unless otherwise agreed in the relevant Order, the Supplier may increase the Charges no more than once in any 12 month period, always provided that the first such increase shall fall after the first anniversary of the Framework Agreement Commencement Date. The Supplier shall give the Customer Party not less than 3 months' notice of any increase. Any increase in the Charges shall apply with effect from expiry of the Supplier's notice. Changes to the Charges in Orders that are already agreed will require the written agreement of the Customer before coming into effect.
- 7.4. Unless otherwise agreed in the relevant Order, the Customer Party shall reimburse to the Supplier, in addition to the Charges, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by the Supplier's employees, subcontractors and agents in the provision of the Services. The Supplier shall submit its invoices for expenses to the Customer Party monthly in arrears.

- 7.5. Unless otherwise agreed in the relevant Order, the Customer Party shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 7.6. All amounts payable by the Customer Party are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Orders by the Supplier to the Customer Party, the Customer Party shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.7. Unless otherwise agreed in the relevant Order, if the Customer Party fails to pay any amount properly due and payable by it under the relevant Order, the Supplier shall have the right to charge interest on the overdue amount at the rate of six per cent (6%) per annum above the base rate for the time being of Handelsbanken plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 7.8. The Supplier shall maintain (where relevant) complete and accurate records of the Services provided under the Orders, sufficient to enable the Customer Party to verify the accuracy of any invoices submitted pursuant to any of the Orders. The Supplier shall allow the Customer Party or its representatives to inspect and take copies of such records at all reasonable times on request.

## **8. TERMINATION**

- 8.1. Without prejudice to any rights that have accrued under a relevant Order or any of its rights or remedies, either party may at any time terminate an Order with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under the Order on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment
  - (b) the other party commits a material breach of any term of the Order (other than failure to pay any amounts due under the Order) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (c) the other party repeatedly breaches any of the terms of the Order in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1(d) to clause 8.1(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

Either party may terminate a relevant Order in the event of Force Majeure.

8.2. Any provision of a relevant Order which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

8.3. Termination of an Order, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.



- 8.4. Termination of any of the Orders shall not affect any of the other Orders or the framework agreement.
- 8.5. On termination of this agreement for any reason, each party shall as soon as reasonably practicable:
- (a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence no later than 7 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them, provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Supplier Software or to the extent necessary to allow it to make full use of the Development Work and any Supplier Software; and
  - (b) permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation no later than 7 days after termination of this agreement that this software has been deleted;
  - (c) Notwithstanding its obligations in this clause 8, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 8.6. Unless otherwise agreed in the relevant Order, on termination of any of the Orders:
- (a) the Supplier shall, if so requested by the Customer Party, provide all assistance reasonably required by the Customer Party to facilitate the smooth transition of the Services to the Customer Party or any replacement supplier appointed by it. The Customer Party shall pay for any such assistance at the rates set out in Schedule 2 of the framework agreement, subject to any maximum amount agreed with the Supplier;
  - (b) the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Development Work that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.
  - (c) the accrued rights, remedies, obligations and liabilities of the parties to any of the Orders as at termination shall not be affected, including the right to claim damages in respect of any breach of the Orders which existed at or before the date of termination; and

- (d) terms which expressly or by implication have effect after termination shall continue in full force and effect.

## **9. FORCE MAJEURE**

Neither party to any relevant Order shall be liable to the other as a result of any delay or failure to perform its obligations under any relevant Agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Services for more than 8 weeks, the Customer Party shall have the right, without limiting its other rights or remedies, to terminate the Order by giving 1 months' written notice to the Supplier. On the expiry of this notice period, the relevant Order will terminate.

## **10. GENERAL**

The following clauses in the framework agreement shall be deemed to be incorporated in the Orders as if set out here, except that all references to " framework agreement" in such clauses shall be deemed to references to the relevant Order, all references to "party" shall be deemed to be references to a party to the relevant Order, and all references to "Customer" shall be deemed to be references to the Customer Party:

- (a) Clause 1 (Interpretation);
- (b) Clause 7 (Variation);
- (c) Clause 8 (Waiver);
- (d) Clause 9 (Severance);
- (e) Clause 10 (Entire Agreement);
- (f) Clause 11 (Assignment);
- (g) Clause 12 (No partnership or agency);
- (h) Clause 13 (Third Party Right);
- (i) Clause 14 (Notices); and
- (j) Clause 15 (Confidentiality and Publicity)
- (k) Clause 16 (Data Protection).
- (l) Clause 17 (Governing Law and Jurisdiction)

## **SCHEDULE 2    CHARGES**

### **1.    HOURLY RATES**

Services will be provided at [ ] per hour

### **2.    EXIT CHARGES**

Where exit assistance charges under paragraph 8.6(a) of the Applicable Terms are calculated on a time and materials basis:

- (a) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on a Business Day;
- (b) the Supplier shall not be entitled to charge on a pro-rata basis for part-days unless it has the Customer Party's prior written consent to do so; and
- (c) the Supplier shall ensure that its employees, subcontractors and agents providing the Services complete time sheets recording time spent on the Services.

## SCHEDULE 3 DEFINITIONS

### 1. DEFINITIONS

In this framework agreement and each of the Orders, the following definitions apply:

**Affiliate:** in relation to a party, a person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party's holding company.

**Applicable Terms:** the terms and conditions which apply to each of the Agreements as set out in Schedule 1.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges set out in Schedule 2 of the framework agreement or as otherwise specified in the relevant Order payable by a Customer Party for the supply of the Services.

**Customer Affiliate:** an Affiliate of the Customer.

**Customer Manager:** the person so designated in any relevant Order (where applicable).

**Customer Party:** in respect of any of the Orders, the Customer or the Customer Affiliate which has entered into it.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

**Framework Agreement Commencement Date:** 1. April 2019.

**holding company and subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.

**Order(s):** the Work Orders agreed in accordance with clause 2 of the framework agreement.

**Personal Data:** has the meaning as set out in the Data Protection Legislation.

**Services:** the services to be provided by the Supplier to the Customer Party pursuant to the relevant Order.

**UK Data Protection Legislation:** all applicable data protection legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/279); the Data Protection Act 2018; the Privacy and electronic Communications Directive 2002/58/EC (as updated by Directive 2009/236/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).

## **SCHEDULE 4    ORDERS**

### **1.    LIST OF ORDERS**

- (a)    Fixed Price Small Project Work Order
- (b)    Agile Small Project Work Order
- (c)    Scoping Phase Work Order
- (d)    Fixed Price Implementation Phase Work Order
- (e)    Agile Implementation Phase Work Order
- (f)    Limited Support Services Work Order
- (g)    Full Support Services Work Order

**SCHEDULE 5      SCHEDULE 5 DATA PROCESSING**

**1. PROCESSING BY THE SUPPLIER:**

1.1. Scope [ ];

1.2. Nature [ ];

1.3. Purpose of processing [ ]

1.4. Duration of processing [ ]

## 2. TYPES OF PERSONAL DATA:

### 3. CATEGORIES OF DATA SUBJECT:

Signed by [ ]

for and on behalf of ISOTOMA LIMITED

.....

Director

Signed by [ ]

.....

for and on behalf of