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# Bath & North East Somerset Council

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Dated [            **Date**            ] 2019

Bath & North East Somerset Council  
And

[ Contractor ]

FRAMEWORK AGREEMENT

**relating to**

**Print Services**

Reference [            ]

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## CONTENTS

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Clause		Page Number
1	Background	4
2	Definitions	5
3	Interpretation	14
	Part One: Framework Agreement and Award Procedure	
4	Framework Period	16
5	Scope of Framework Agreement	16
6	Award Procedure	17
7	Assistance in Related Procurements	17
	Part Two: Contractor's General Framework Obligations	
8	Warranties and Representations	17
9	Contractor's Employees	21
10	Prevention of Bribery	22
11	Discrimination	24
12	Human Rights Act 1998	26
13	Human Resources and Whistleblowing Policy	26
14	The Smoke Free Workplace and Public Place Policy	26
15	Environmental Requirements	26
16	Health and Safety	27
17	Call-Off Contract Performance	27
18	Prices for Goods and Services	28
19	Monitoring of Contract Performance	29
20	Quality	29
21	Statutory Requirements	30

	Part Three: Contractor’s Information Obligations	
22	Confidentiality	30
23	Data Protection	33
24	Freedom of Information	39
25	Transparency	40
26	Audit	40
	Part Four: Framework Agreement Termination	
27	Termination	42
	Part Five: Insurance and Liability	
28	Liabilities and Indemnities	45
29	Insurance	46
	Part 6: Other Provisions	
30	Assignment and Sub-Contracting	47
31	Variations to the Framework Agreement	47
32	Guarantee	48
33	Contracts (Rights of Third Parties) Act 1999	49
34	Waiver	49
35	Dispute Resolution	49
36	Force Majeure	51
37	Severability	52
38	Notices	52
39	Intellectual Property Rights	52
40	Conflict of Interest	54
41	Entire Agreement	55
42	Law and Jurisdiction	55

## Appendices

Appendix 1 Call-Off Terms and Conditions

Appendix 2 Specification for Print Services

Appendix 3 Price Schedule

[ To be added upon award ]

Appendix 4 Data Protection Schedule

THIS FRAMEWORK AGREEMENT is made on 18<sup>th</sup> March 2019

BETWEEN:

(1) **BATH & NORTH EAST SOMERSET COUNCIL (“BANES”)** whose principal place of business is at The Guild Hall, Bath BA1 5AW (“**the Council**”) and

(2) **[COMPANY NAME]** which is a company registered in England and Wales under Company Number: [ **insert company no.**] and whose registered office is at [**insert address**] (“**the Contractor**”)

1.1 **BACKGROUND**

1.2 The Council placed a contract notice in the Official Journal of the European Union (OJEU ref 20XX/S XXX-XXXXX EN, publication date XX/XX/20XX) seeking expressions of interest from providers for [insert title of the procurement] under a Framework Agreement.

1.3 *On [insert date of issue of ITT]* the Council issued the Invitation to Tender (“Invitation to Tender”). On the basis of the Contractor’s Tender, the Council selected the Contractor to enter into a Framework Agreement to provide Goods, Services or Goods and Services to Contracting Bodies on a call-off basis in accordance with this Framework Agreement.

1.4 The Contractor represented to the Council that it is capable of delivering the Goods, Services or Goods and Services in accordance with the Council’s requirements as set out in the Invitation to Tender and, in particular, the Contractor made representations to the Council in the Tender in relation to its competence, professionalism and ability to provide the Goods, Services or Goods and Services in an efficient and cost effective manner.

1.5 On the basis of the Contractor’s Tender, the Council selected the Contractor to enter into a Framework Agreement [**along with a number of other Contractors appointed to the Framework Agreement**] to provide the

Goods, Services or Goods and Services to Contracting Bodies from time to time on a call-off basis in accordance with this Framework Agreement.

- 1.6 This Framework Agreement sets out the award and ordering procedure for the Goods, Services or Goods and Services which may be required by Contracting Bodies, the main terms and conditions for any Call-Off Contract which Contracting Bodies may conclude and the obligations of the Contractor during and after the term of this Framework Agreement.
- 1.7 In setting up the Framework, the Council is acting as lead Council on behalf of the Contracting Bodies who may access the Framework.
- 1.8 It is the parties' intention that there will be no obligation for any Contracting Body to award any Orders under this Framework Agreement during its Term.

## 2. **DEFINITIONS**

- 2.1 '**Affiliates**' means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
- 2.2 '**Approval**' means the prior written consent of the Council and/or Other Contracting Body and 'Approve' and 'Approved' shall be construed accordingly.
- 2.3 '**Audit**' means an audit carried out pursuant to Clause 26 (Audit).
- 2.4 '**Auditors**' shall have the meaning set out in Clause 26 (Audit).
- 2.5 '**Branding Guidance**' means the Council's guidance in relation to the use of branding;
- 2.6 '**Call-Off Contract**' or '**Contract**' means the legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of Goods, Services or Goods and Services made between a Contracting Body and the Contractor comprising an Order and the Call-Off Terms and Conditions at Appendix 1;

- 2.7 **‘Call-Off Terms and Conditions’** means the terms and conditions in Appendix 1;
- 2.8 **‘Call-Off Commencement Date’** means the date set out in the Order;
- 2.9 **‘Change of Control’** shall have the meaning set out in Clause 27;
- 2.10 **‘Charges’** means the charges raised under or in connection with a Call-Off Contract from time to time, which Charges shall be calculated in a manner which is consistent with the Price Schedule;
- 2.11 **‘Commencement Date’** means **18<sup>th</sup> March 2019**
- 2.12 **‘Commercially Sensitive Information’** means the Confidential Information listed in a schedule of the Framework Agreement comprised of a Commercially Sensitive Information:
- (a) relating to the Contractor, its IPR or its business or Information which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
  - (b) that constitutes a trade secret.
- 2.13 **‘Confidential Information’** means all Personal Data and any Information, however it is conveyed, that relates to the business, affairs, development, trade secrets, Know-How, personnel, and suppliers of the Council, including all IPRs, together with all Information derived from any of the above, and any other Information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential;
- 2.14 **‘Contracting Bodies’** or **‘Contracting Body’** means the Council and any Other Contracting Bodies described in the OJEU notice;

- 2.15 **‘Contracting Officer’** means the representative of Bath and North East Somerset Procurement appointed by the Council to act on its behalf as agent for the purpose of managing the Framework Agreement;
- 2.16 **‘Contract Price’** means the price (exclusive of any applicable VAT), payable to the Contractor under the Framework Agreement and Call-Off Contract, as set out in the Order, for the full and proper performance by the Contractor of its obligations under the Contract;
- 2.17 **‘Contractor’** means the person, firm or company appointed by the Council to supply the Goods, Services or Goods and Services under this Framework Agreement or any Call-Off Contract and shall include the Contractor's Employees, personal representatives, successors and permitted assigns;
- 2.18 **‘Council’** means Bath and North East Somerset County Council;
- 2.19 **‘Day’** means a calendar day and ‘Days’ shall be construed accordingly;
- 2.20 **‘Default’** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other Default, act, omission, negligence or negligent statement of the relevant Party or the Employees in connection with or in relation to the subject-matter of the Framework Agreement and/or Call-Off Contract and in respect of which such Party is liable to the other;
- 2.21 **‘Employees’** means all persons employed by the Contractor together with the Contractor's servants, agents, Contractors and Sub-Contractors used in the performance of its obligations under this Framework Agreement and Call-Off Contracts;
- 2.22 **‘End User’** means any public sector body authorised to access the Framework Agreement;
- 2.23 **‘End User Agreement’** means the formal signed permission for a Contracting Body, other than the Council, to access the Goods, Services or Goods and Services under this Framework Agreement;

- 2.24 **‘Environmental Information Regulations’** 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.
- 2.25 **‘Equipment’** means the Contractor’s Equipment, plant and materials used in the performance of its obligations under this Framework Agreement or Call-Off Contracts;
- 2.26 **‘FOIA’** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time with any guidance and/or codes of practice issued by the Information Commissioner in relation to the legislation;
- 2.27 **‘Framework Agreement’** or **‘Agreement’** or **‘Framework’** means this agreement and all appendices to this agreement for Goods, Services or Goods and Services between the Council and the Contractor.
- 2.28 **‘Fraud’** means any offence under Laws creating offences in respect of fraudulent acts (including the Bribery Act 2010) 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 including but not limited to by means of any act of forgery;
- 2.29 **‘Further Competition’** or **‘Further Competition Procedure’** means the ordering procedure described in Appendix 4 of this Framework Agreement;
- 2.30 **‘Good Industry Practice’** means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
- 2.31 **‘Goods, Services or Goods and Services’** means the supply and delivery of Goods or Services or Goods and Services as ordered by the Council or Other Contracting Bodies. Any reference to Goods, Services or Goods and Services

shall apply equally to the performance of Goods, Services or Goods and Services as appropriate unless otherwise stated;

- 2.32 **'Guarantee'** means the deed of guarantee in favour of the Council which is granted pursuant to Clause 32 (Guarantee);
- 2.33 **'Guarantor'** means any person acceptable to the Council to grant a Guarantee or which is required to grant a Guarantee;
- 2.34 **'Information'** has the meaning given under section 84 of the Freedom of Information Act 2000;
- 2.35 **'Initial Term'** has the meaning set out in Clause 4.1 of this Framework Agreement;
- 2.36 **'Intellectual Property Rights'** means
- (a) Copyright, rights related to or affording protection similar to copyright, 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
- 2.37 **'Invitation to Tender' or 'ITT'** means the Invitation to Tender issued by the Council;

- 2.38 **‘Key Performance Indicators’ or ‘KPIs’** means the performance measurements and targets set out in this Framework Agreement;
- 2.39 **‘Know-How’** means all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how relating to the Services but excluding know-how already in the Contractor’s or the Council’s possession before the Commencement Date;
- 2.40 **‘Law’** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgement of a relevant courts of law, of directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;
- 2.41 **‘Management Information’** means files, usage records, price information, and such other Management Information, as the Contractor is obliged to retain for information for the Council and Other Contracting Bodies;
- 2.42 **‘Material Default’** means a material breach of this Framework Agreement and/or, breach by the Contractor of any of the following Clauses: Clause 8 (Warranty), Clause 10 (Prevention of Bribery), Clause 11 (Non-Discrimination), Clause 18 (Prices for Goods and Services), Clause 21 (Statutory Requirements), Clause 23 (Data Protection), Clause 24 (Freedom of Information), Clause 26 (Audit), and Clause 30 (Assignment and Sub-Contracting);
- 2.43 **‘Month’** means calendar month and monthly shall be interpreted accordingly;
- 2.44 **‘New Services’** shall have the meaning set out in Clause 7.1;
- 2.45 **‘OJEU Notice’** means the contract notice published in the Official Journal of the European Union;

- 2.46 **'Order'** means an order for Goods, Services or Goods and Services served by any Contracting Body on the Contractor in accordance with this Framework Agreement and Call-Off Terms;
- 2.47 **'Other Contracting Bodies'** means all Contracting Bodies except the Council;
- 2.48 **'Parent Company'** means any company which is the ultimate Holding Company of the Contractor and which is responsible either directly or indirectly for the business activities of the Contractor. The term 'Holding or Parent Company' shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment of amendment thereto.
- 2.49 **'Party'** means the Council or the Contractor and **'Parties'** shall mean both of them;
- 2.50 **'Premises'** means any location where the Goods, Services or Goods and Services are delivered, or the Goods, Services or Goods and Services are required to be collected, as set out in the Order;
- 2.51 **'Prohibited Act'**: the following constitute Prohibited Acts:
- 2.51.1 to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
- (a) induce that person to perform improperly a relevant function or activity;  
or
  - (b) reward that person for improper performance of a relevant function or activity;
  - (c) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- 2.51.2 committing any offence:

- (a) under the Bribery Act 2010; or
- (b) under legislation creating offences concerning fraudulent acts: or
- (c) at common Law concerning fraudulent acts relating to the Framework Agreement and the Call-Off Contract or any other contract with the Council and/or any Other Contracting Body; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council and/or any Other Contracting Body.

2.52 **‘Regulatory Body’** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Council.

2.53 **‘Requests for Information’** means a request for information relating to the Framework Agreement under the FOIA.

2.54 **‘Services’** means the services described in Appendix 2 (Specification) of this Framework Agreement which the Contractor shall make available to Contracting Bodies.

2.55 **‘Specification’** means the scope of the Goods, Services or Goods and Services to be provided pursuant to this Framework Agreement and any Call-Off Contract and set out in Appendix 2;

2.56 **‘Sub-Contract’** means any contract or agreement or proposed agreement between the Contractor and any Third Party whereby that Third Party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof;

2.57 **‘Sub-Contractor’** means each of the Sub-Contractors listed in the Framework Agreement or any person engaged by the Contractor in connection with the provision of the Services from time to time as may be permitted by the Framework Agreement.

- 2.58 **'Tender'** means the tender submitted by the Contractor to the Council ;
- 2.59 **'Term'** means the period commencing on the Framework Agreement Commencement Date and ending on **17<sup>th</sup> March 2022** (unless extended in accordance with clause 4.2) or on earlier termination of this Framework Agreement;
- 2.60 **'Third Party'** means a person who is not party to this Framework Agreement and has no right to enforce any term of this Framework Agreement;
- 2.61 **'VAT'** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
- 2.62 **'Working Days'** means Monday to Friday inclusive but not including any declared public holiday.
- 2.63 **'Year'** mean a calendar year and 'Years' shall be construed accordingly.
- 2.64 **Data Protection Legislation** : (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
- 2.65 **Data Protection Impact Assessment** : an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 2.66 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR;
- 2.67 **Data Loss Event** : any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

- 2.68 **Data Subject Access Request** : a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 2.69 **DPA 2018** : Data Protection Act 2018;
- 2.70 **GDPR** : the General Data Protection Regulation (Regulation (EU) 2016/679);
- 2.71 **LED** : Law Enforcement Directive (Directive (EU) 2016/680);
- 2.72 **Protective Measures** : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- 2.73 **Supplier Personnel**: all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;
- 2.74 **Sub-processor**: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

### 3. **INTERPRETATION**

- 3.1 The interpretation and construction of the Framework Agreement, including Appendices, shall be subject to the following provisions:
- 3.1.1 References to clauses and appendices are references to clauses and Appendices to this Framework Agreement;
- 3.1.2 The provisions of the Appendices are incorporated in this Framework Agreement;
- 3.1.3 Reference to the singular includes the plural and vice versa and references to any gender includes both genders;

- 3.1.4 The words “include”, “includes” and “including” are construed as they were immediately followed by the words “without limitation”;
- 3.1.5 References to any person shall include persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns and transferees;
- 3.1.6 The headings in this Framework Agreement and Appendices are included for ease of reference only and shall not affect the interpretation or construction of the Agreement;
- 3.1.7 Any periods of time referred to in this Framework Agreement or within the Call-Off Terms and expressed in Days shall refer to calendar Days unless stated otherwise;
- 3.1.8 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force;
- 3.1.9 Any condition referring to the delivery of the Goods, Services or Goods and Services shall apply equally to the performance of Goods, Services or Goods and Services as appropriate unless otherwise stated;
- 3.1.10 Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 3.1.11 In the event of any conflict between the Clauses and the Appendices, the Appendices shall prevail.

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

### **4. FRAMEWORK PERIOD**

- 4.1 **Term:** This Framework Agreement shall take effect on the **18<sup>th</sup> March 2019** (the '**Commencement Date**') and save where extended pursuant to Clause 4.2 shall expire **36 months** from the Commencement Date (the period between the Commencement Date and this date shall be known as the '**Initial Term**').
- 4.2 This Framework Agreement may be terminated earlier in accordance with Clause 30 of this Framework Agreement or otherwise by operation of Law.

### **5. SCOPE OF FRAMEWORK AGREEMENT**

- 5.1 This Framework Agreement governs the relationship between the Council and the Contractor in respect of the provision of the Goods, Services or Goods and Services by the Contractor to the Council and to Other Contracting Bodies.
- 5.2 The Contracting Bodies do not make any warranty, representation or agreement as to the nature, value or quantity of any Goods, Services or Goods and Services called off under this Framework Agreement.
- 5.3 The Contractor acknowledges that there is no obligation for the Council or any Other Contracting Body to purchase any Goods, Services or Goods and Services from the Contractor during the Term.
- 5.4 The Contractor acknowledges that in entering into this Framework Agreement no form of exclusivity or volume guarantee has been granted by the Council or Other Contracting Bodies for Goods, Services or Goods and Services from the Contractor and that the Council and/ Other Contracting Bodies are at all times entitled to enter into other contracts with other Contractors for the provision of any Goods, Services or Goods and Services.

## 6. **AWARD PROCEDURE**

- 6.1 If a Contracting Body decides to source Goods, Services or Goods and Services through the Framework Agreement it may award a Call-Off Contract in accordance with the terms laid down in Appendix 1 of this Framework Agreement.

## 7. **ASSISTANCE IN RELATED PROCUREMENTS**

- 7.1 In any case where a Contracting Body wishes to procure Services ("**New Services**") in circumstances where the Contractor is already providing the Services ("**Legacy Services**") to that Contracting Body which is related to or which interfaces with or is intended to interface with or be replaced by the New Services, the Contractor shall promptly provide the relevant Contracting Body and any supplier bidding for those New Services with all reasonable information and assistance as may be required from time to time to:

- 7.1.1 carry out appropriate due diligence with respect to the provision of the New Services;
- 7.1.2 effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Services and the New Services;
- 7.1.3 enable the Contracting Body to carry out a fair Further Competition Procedure for the New Services; and
- 7.1.4 enable the Contracting Body and Contractor to make a proper assessment as to the risk related to the New Services.

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

## 8. **WARRANTIES AND REPRESENTATIONS**

- 8.1 The Contractor warrants represents and undertakes to the Council and to each of the Other Contracting Bodies that:

- 8.1.1 it has full capacity and Council and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
- 8.1.2 this Framework Agreement is executed by a duly authorised representative of the Contractor;
- 8.1.3 in entering into this Framework Agreement and any Call-Off Contract it has not committed any Fraud;
- 8.1.4 all information, statements, warranties and representations contained in the PQQ Response, Tender and (unless otherwise agreed) any other document which resulted in the award of this Framework for the Services are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 8.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Framework;
- 8.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 8.1.4 above;
- 8.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed Tender for Services under this Framework;

- 8.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and/or any Call-Off Contract which may be entered into with the Council or Other Contracting Bodies;
- 8.1.9 it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this Framework Agreement and/or any Call-Off Contract which may be entered into with the Council or Other Contracting Bodies;
- 8.1.10 in connection with the exercise of its rights and performance of its obligations pursuant to this Framework Agreement it will at all times use all reasonable endeavours to meet or exceed the Key Performance Indicators;
- 8.1.11 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- 8.1.12 in the three (3) Years prior to the date of this Framework Agreement (or, if the Contractor has been in existence for less than three (3) Years, in the whole of such shorter period) it has:
- (a) conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (b) it has been in full compliance with all applicable securities Laws and regulations in the jurisdiction in which it is established; and

(c) it has not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Contractor's position as an on-going business concern or its ability to fulfil its obligations under this Framework Agreement.

8.1.13 it shall procure that the Contractor's Staff will:

(a) have the relevant qualifications, experience, skills, expertise and training in accordance with the requirements notified to the Contractor by the Contracting Body and will be competent to carry out the duties expected of persons acting in their or a similar capacity;

(b) be vetted in accordance with Good Industry Practice;

(c) be entitled to work in the United Kingdom or (where applicable) any other country from which (or in which) the Call-Off Contract is to be performed.

8.1.14 it shall at all times during the Term ensure that the Services and its obligations under this Framework Agreement:

(a) are supplied in accordance and conform in all respects with the Specification and requirements set out in the Framework Agreement and in accordance with the Contractor's Solution; and

(b) are performed and conform in all respects with all applicable Laws, and in accordance with Good Industry Practice; and

8.2 Each time a Call-Off Contract is entered into the warranties, representations and undertakings in Clause 9.1 shall be deemed to be repeated by the Contractor with reference to the circumstances existing at the time that they are deemed to be repeated.

8.3 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Council may have, had it not been so expressed, in respect of breach of that provision by the Council.

8.4 The Contractor acknowledges and agrees that:

8.4.1 the warranties, representations and undertakings contained in this Framework Agreement are material and are designed to induce the Council into entering into this Framework Agreement and to induce the Council and each and every Other Contracting Body to enter into Call-Off Contracts;

8.4.2 the Council relies on the skill and judgement of the Contractor in the supply of the Services and the performance of its obligations under this Framework Agreement;

8.4.3 the Council has been induced into entering into this Framework Agreement and in doing so has relied upon the warranties, representations and undertakings contained in this Framework Agreement; and

8.4.4 each Contracting Body will (amongst other things) on each and every occasion that it enters into a Call-Off Contract be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in this Framework Agreement.

## 9. **CONTRACTOR'S EMPLOYEES**

9.1 The Contractor warrants and represents that all Employees assigned to the performance of the Goods, Services or Goods and Services shall be suitably qualified, trained, experienced and supervised to provide the Goods, Services or Goods and Services required and shall be made fully aware of the

Contractor's obligations under this Framework Agreement and any Call-Off Contract as it affects them in the performance of their duties.

- 9.2 The Council reserves the right to refuse to admit to, or to withdraw permission to remain on, the Premises any Employee or Sub-Contractor, agent or servant of the Contractor whose admission or continued presence would be in their reasonable opinion undesirable. The decision of the Council in this regard shall be final and conclusive.
- 9.3 The Contractor shall employ sufficient persons to ensure that Goods, Services or Goods and Services are provided at all times and in all respects in accordance with this Framework Agreement and any Call-Off Contract.
- 9.4 The Contractor shall ensure that all Employees shall at all times be properly attired and presentable.
- 9.5 The Contractor shall provide a means of identification to its Employees in a form approved by the Council.
- 9.6 The Contractor shall require its Employees to wear and keep visible such identification at all times whilst providing the Goods, Services or Goods and Services and make it available for inspection on request by any employee of the Council.
- 9.7 The Contractor's Employees shall not act in a manner likely to bring discredit to the Council.
- 9.8 Where apprentice engineers, drivers etc. are employed by the Contractor they must be properly supervised. All work carried out by apprentices must be quality checked by a professional qualified engineer on completion of the work. **Under no circumstances shall apprentices carry out work unsupervised.**

## 10. PREVENTION OF BRIBERY

- 10.1 The Contractor:

- 10.1.1 shall not, and shall procure that any agent, consultant, contractor, employee and Sub-Contractor of the Contractor or any of its Sub-Contractors shall not, in connection with this Framework Agreement, or subsequent Call-Off Contract, commit a Prohibited Act under the Bribery Act 2010, or any other relevant Laws, statutes, regulations or codes in relation to bribery and anti-corruption.
- 10.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Framework, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Framework.
- 10.2 The Contractor shall:
- 10.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 10.2.2 within 14 Business Days of the date at the head of this Framework, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 10 by the Contractor and all persons associated with it or other persons who are supplying Goods, Services or Goods and Services in connection with this Framework. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.
- 10.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any agent, consultant, contractor, employee and Sub-Contractor of the Contractor or any of its Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 10.4 If any breach of clause 10.1 is suspected or known, the Contractor must notify the Council immediately

- 10.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 10.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to Audit books, records and any other relevant documentation.
- 10.6 The Council may terminate this Framework by written notice with immediate effect if the Contractor its agents, consultants, contractors, Employees and Sub-Contractors or those of its Sub-Contractors, (in all cases whether or not acting with the Contractor's knowledge) breaches clause 10.1.
- 10.7 Any notice of termination under 10.6 must specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the Party whom the Council believes has committed the Prohibited Act; and
  - (c) the date on which this Framework will terminate.
- 10.8 Despite clause 30, any dispute relating to:
- (a) the interpretation of clause 10; or
  - (b) the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
- 10.9 Any termination under clause 10.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 11. **DISCRIMINATION**

- 11.1 The Contractor acknowledges that the Council is an equal opportunities employer and the importance that the Council attaches to Equal Opportunities and other related legislation.

- 11.2 The Contractor shall not unLawfully discriminate in the provision of the Goods, Services or Goods and Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unLawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.
- 11.3 The Contractor shall at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Council. The Contractor shall forward a copy of this policy to the Council when required and demonstrate its operation in the performance of the Goods, Services or Goods and Services.
- 11.4 The Contract shall take all reasonable steps to secure the observance of this clause by all personnel employed in the performance of the Contract.
- 11.5 In the event of a finding of discrimination being made by any court or employment tribunal against the Contractor or any Sub-Contractor appointed by the Contractor during the performance of this Contract, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of this Contract, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unLawful discrimination.
- 11.6 The Contractor shall indemnify the Council in respect of any claims against the Council which arise by reason of the Contractor's breach of the legislation referred to in clause 11.1 where such breach arises in the performance of its obligations under this Contract.
- 11.7 The Contractor may be required to answer questions raised by the Council on matters referred to in this clause.

## **12. HUMAN RIGHTS ACT 1998**

12.1 The Contractor shall, at all times when providing the Goods, Services or Goods and Services under this Contract act in a way that is compatible with relevant provisions of the Human Rights Act 1998.

12.2 The Council shall be empowered to suspend the provision of the Goods, Services or Goods and Services or part thereof in the event of non-compliance by the Contractor. The Contractor shall not resume provision of the Goods, Services or Goods and Services or such part until the Council is satisfied that the non-compliance has been rectified.

## **13. HUMAN RESOURCES AND WHISTLEBLOWING POLICY**

13.1 The Council has a responsibility to ensure that their agents and contractors are aware of the existence of important policies, such as Bullying and Harassment and Whistleblowing. Contractors are therefore reminded that they will be expected to act in the spirit of such policies and respect the principles contained therein. Full details of these policies can be accessed through the Internet.

## **14. THE SMOKE FREE WORKPLACE AND PUBLIC PLACE POLICY**

14.1 The Contractor and his staff will comply with the Council's Smoke Free Workplace and Public Place Policy and guidance in accordance with local arrangements deemed appropriate by managers. Smoking will not be allowed in or around any part of Council property including entrance ways or any other designated smoke free areas, at any time. Full details of these policies can be accessed through the Internet.

## **15. ENVIRONMENTAL REQUIREMENTS**

15.1 The Contractor shall, when working on the Council's Premises, perform the Agreement in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of

greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**16. HEALTH AND SAFETY**

- 16.1 The Council places great emphasis on compliance with both the letter and spirit of health and safety legislation.
- 16.2 The Contractor shall comply with the requirements of the Health and Safety at Work Act 1974 and all other acts, orders, regulations and codes of practice relating to health and safety, including those provisions set out in the Specification, which may apply to the performance of the Goods, Services or Goods and Services.
- 16.3 The Council may at its sole discretion suspend the provision of Goods, Services or Goods and Services or part of it in the event of non-compliance by the Contractor with his legal duties in health and safety matters. The Contractor shall not resume provision of the Goods, Services or Goods and Services or such part as remains until the Council is satisfied that the non-compliance has been rectified.

**17. CALL-OFF CONTRACT PERFORMANCE**

- 17.1 The Contractor shall perform all its obligations under all Call-Off Contracts entered into with the Council or any Other Contracting Body in accordance with:
  - 17.1.1 the requirements of this Framework Agreement and the Specification; and
  - 17.1.2 the terms and conditions of the respective Call-Off Contracts;
  - 17.1.3 In accordance with Good Industry Practice;
  - 17.1.4 With appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and
  - 17.1.5 In compliance with all applicable Laws.

17.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of any Call-Off Contract, the terms and conditions of the Call-Off Contract shall prevail.

## 18. **PRICES**

18.1 The prices offered by the Contractor for Call-Off Contracts to Contracting Bodies for the Goods, Services or Goods and Services shall be the prices listed in the Pricing Schedule at Appendix 3.

18.2 **Price Review:** The prices quoted in the Pricing Schedule at Appendix 3 detailing the rates for the supply of the Goods, Services or Goods and Services shall not be revised for a period of at least **6 months** from the Commencement Date but may be varied thereafter, with the agreement of both parties.

18.2.1 The Council will not discuss any price proposal submitted by the Contractor without the Contractor also submitting supporting evidence on reason for said price proposal and transparent calculations how proposed revised price has been reached.

18.2.2 No revision of prices shall be implemented by the Contractor without the agreement of the Council.

18.2.3 Should a price proposal be acceptable to the Council then it may not be implemented by the Contractor for at least 28 Days or the implementation date agreed by both parties.

18.2.4 Any agreed price variation shall be valid of a period of **12 months**.

18.2.5 The Council, in the event of a price proposal being unacceptable to the Council, reserves the right to negotiate with the Contractor and should these negotiations prove unsuccessful with no agreement reached by both parties,

the Council may at its discretion purchase the Goods, Services or Goods and Services elsewhere.

18.3 Any price reduction shall have an immediate effect and must be notified to the Council within 48 hours of it being known to the Contractor.

18.4 The Contractor will endeavour to keep pricing competitive throughout the life of the Framework Agreement.

## 19. **MONITORING OF CONTRACT PERFORMANCE**

19.1 The Contractor in partnership with the Council will develop and implement agreed Key Performance Indicators (KPI's) to demonstrate acceptable performance of the Framework Agreement. Failure to meet the KPI's will be actioned in accordance with the remedies available to the Council under the Call-Off Terms and Conditions.

19.2 The Contractor will have effective Management Information systems in place to provide such information at no charge, at the request of the Council.

19.3 Contract review meetings will be held at the Council's offices and any costs incurred by the Contractor in attending these meetings will be at the Contractor's expense. If necessary, the Council will attend meetings at the Contractor's Premises to view specific data or for other reasons.

19.4 Contract review meetings will be chaired by the Contracting Officer and held from the Commencement Date at the discretion of the Council. Additional Management Information may be required by the Council as agreed at contract review meetings.

19.5 The Council may inspect the Goods, Services or Goods and Services at any reasonable time.

## 20. **QUALITY**

20.1 The Contractor shall institute and maintain a properly documented quality system to ensure that the standards required under the Framework

Agreement and any Call-Off Contract are at all times properly maintained and evidenced, and such system to be in accordance with that submitted by the Contractor's Tender and any agreed variations thereto. The system shall be open to inspection by the Council whether or not the Specification is being met.

20.2 The documented quality system shall supplement any monitoring that may be instituted by the Council and shall not be a substitute for it.

## 21. **STATUTORY REQUIREMENTS**

21.1 The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Framework Agreement and any Call-Off Contract.

## **PART THREE: CONTRACTOR'S INFORMATION OBLIGATIONS**

### 22. **CONFIDENTIALITY**

22.1 Each Party, its Employees or any other person associated with either Party will keep confidential:

22.1.1 the terms of this Framework Agreement and any Call-Off Contract; and

22.1.2 any and all Confidential Information that it may acquire in relation to the other Party

22.2 No Party will use or disclose the other Party's Confidential Information, without prior written consent, except to persons and for the purpose of performing its obligations under this Framework Agreement and any Call-Off Contract

22.3 The Contractor will take reasonable steps to ensure the Council's Confidential Information is only given to its Employees, professional advisors, Sub-Contractors or consultants as strictly necessary for the performance of this Framework and any Call-Off Contract. The Contractor shall ensure its

Employees, professional advisors, Sub-Contractors or consultants are aware of the Contractor's confidentiality obligations under this Contract.

22.4 At the written request of the Council (which shall not be made unreasonably), the Contractor shall procure that members of the Contractor Staff whom the Council may identify from time to time, sign a confidentiality undertaking in a form acceptable to the Council prior to commencing any work in accordance with this Framework Agreement.

22.5 The provisions of clauses 22.1 to 22.4 shall not apply to any Confidential Information received by one Party from the other which:

- (a) Is or becomes public knowledge otherwise than by breach of this clause (Confidentiality);
- (b) was in the possession of the receiving Party without restriction as to its disclosure, before the date of receipt from the disclosing Party;
- (c) is received from a Third Party who Lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information;
- (e) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the clause 28 (Transparency) and/or the Freedom of Information Act 2000, or the Environmental Information Regulations pursuant to Clause 27 (Freedom of Information).;

22.6 Nothing in this clause shall prevent the Council:

22.6.1 disclosing any Confidential Information for the purpose of

- (a) the examination and certification of the Council's accounts; or

- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or

22.6.2 disclosing any Confidential Information obtained from the Contractor:

- (a) to any government department or any Other contracting Council. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or Other contracting authorities 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 contracting Council  
  
or
- (b) to any person engaged in providing any Goods, Services or Goods and Services to the Council for any purpose relating to or ancillary to the Contract.
- (c) provided that in disclosing Information under 22.5.2 the Council discloses only the Information which is necessary for the purpose concerned and requires that the Information is treated in confidence and that a confidentiality undertaking is given where appropriate.

22.6.3 In the event that the Contractor fails to comply with Clauses 22.1 to 22.4, the Council reserves the right to terminate the Framework Agreement with immediate effect by notice in writing.

22.6.4 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Framework Agreement or the Call-Off Contracts, the Contractor undertakes to maintain adequate security arrangements that met the requirements of Good Industry practice.

22.6.5 The Contractor will immediately notify the Council of any breach of security in relation to the Council's Confidential Information obtained in the performance of this Framework Agreement and the Call-Off Contracts and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Council's Confidential Information however it may be recorded. This obligation is in addition to the Contractor's obligations under Clauses 22.1 to 22.4 above. The Contractor will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Council's Confidential Information.

22.6.6 The Contractor shall, at its own expense, alter any security systems used in connection with the performance of this Framework Agreement or Call-Off Contract at any time during the Term at the Council's request if the Council believes (acting reasonably) the Contractor has failed to comply with Clause 22.3 above.

22.6.7 This clause shall survive termination of this Framework and any Call-Off Contract for a period of 6 Years.

## **23. DATA PROTECTION**

23.1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule A by the Customer and may not be determined by the Contractor.

23.1.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

23.1.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to

commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

23.1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule A, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :

(i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Contractor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or

23.1.5 LED Article 37) as determined by the Customer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

23.1.6 Subject to clause 1.6, the Contractor shall notify the Customer immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

(f) becomes aware of a Data Loss Event.

23.1.7 The Contractor's obligation to notify under clause 23.1.5 shall include the provision of further information to the Customer in phases, as details become available.

23.1.8 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 23.1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

(a) the Customer with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Customer to enable the

23.1.9 Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Customer following any Data Loss Event;

(e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

23.1.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

(a) the Customer determines that the processing is not occasional;

(b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

23.1.11 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

23.1.12 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

23.1.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

(a) notify the Customer in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Customer;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 23 such that they apply to the Sub-processor; and

(d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

23.1.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

23.1.15 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

23.1.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## 24. FREEDOM OF INFORMATION

- 24.1 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Contractor's expense) to enable it to comply with its Information disclosure requirements.
- 24.2 The Contractor shall and shall procure that its Sub-Contractors shall:
- 24.2.1 transfer all Requests for Information to the Council (where it is reasonably apparent that such are intended to be Requests for Information for the Council) as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
  - 24.2.2 provide the Council with a copy of any Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that information; and
  - 24.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 24.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 24.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOI Act; or
  - 24.3.2 is to be disclosed in response to a request for Information, and
  - 24.3.3 in no event shall the Contractor respond directly to a request for Information unless expressly authorised to do so by the Council.

24.4 The Contractor acknowledges that the Council may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA or the Environmental Information Regulations, be obliged to disclose information:

24.4.1 without consulting with the Contractor; or

24.4.2 following consultation with the Contractor and having taken its views into account.

24.5 The Contractor shall ensure that all Information produced in the course of this Framework Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

24.6 The Contractor acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 24.4.

## 25. **TRANSPARENCY**

28.1 Notwithstanding any other term of this Framework Agreement, the Contractor hereby gives his consent for the Council to publish the Framework Agreement its entirety, (subject to any information that is exempt from disclosure in accordance with the provision of the FOIA redacted) including from time to time agreed changes to the Framework Agreement.

## 26. **AUDIT**

26.1 The Contractor shall keep and maintain until [twelve Years] after the date of termination or expiry (whichever is the earlier) of this Framework Agreement full and accurate records of the Framework Agreement including the Goods, Services or Goods and Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body.

- 26.2 The Contractor shall on reasonable notice afford the Council such access to those records as may be required by the Council or the Council's representatives, and/or the Auditor appointed by the Council at the Contractor's Premises and/or provide copies of such records and accounts, as may be required and agreed with the Council (or relevant Other Contracting Body or Auditors) for the following purposes:
- 26.2.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Framework Agreement) and/or the costs of the Contractor (including Sub-Contractors);
  - 26.2.2 to review the integrity, confidentiality and security of the Personal Data held or used by the Contractor;
  - 26.2.3 to review the Contractor's compliance with the Data Protection Legislation in accordance with this Framework Agreement and any other Laws;
  - 26.2.4 to review the Contractor's compliance with its security obligations;
  - 26.2.5 to review any books of accounts kept by the Contractor in connection with the provision of the Services; and/or
  - 26.2.6 to ensure that the Contractor is complying with its obligations under this Framework Agreement and any Call-Off Contract.
- 26.3 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services pursuant to the Call-Off Contracts.
- 26.4 If an Audit reveals that the Contractor has not complied with its obligations under this Framework Agreement and any Call-Off Contract, then the Contractor shall reimburse the Council its reasonable costs incurred in relation to the Audit.

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

### **27. TERMINATION**

27.1 This Framework Agreement shall terminate:

27.1.1 On the expiry of the Term;

27.1.2 Immediately if either Party commits a fundamental breach of the terms and conditions of the Framework Agreement, with the offended Party serving written notice to the Party in breach, giving details of the way in which it is considered they are in breach;

27.2 The Council may by notice in writing to the Contractor terminate this Framework Agreement as from the date of service of such notice if:

27.2.1 the Contractor passes a resolution or a court makes an order that the Contractor be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or

27.2.2 circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Contractor; or

27.2.3 the Contractor undergoes a Change of Control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of this Framework Agreement; or

27.2.4 the Contractor becomes the subject of a voluntary arrangement under s1 of the Insolvency Act 1986; or

27.2.5 the Contractor has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up; or

- 27.2.6 the Contractor has a petition presented to any court for its winding up or for an administration order; or
- 27.2.7 the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 27.2.8 the Contractor suffers any distraint, execution or other process to be levied or enforced on any of its property by any Third Party and is not paid out, withdrawn or discharged within 7 Days.
- 27.3 The Council may only exercise its right under clause 27.2.3 within six months after a Change of Control occurs and shall not be permitted to do so where it has agreed in advance to the particular Change of Control that occurs. The Contractor shall notify the Contracting Officer immediately any Change of Control occurs.
- 27.4 The Council shall be entitled to terminate this Framework Agreement immediately and recover from the Contractor the amount of any loss resulting from such cancellation if, in relation to any agreement with the Council, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 2000.
- 27.5 The Council may at any time by notice in writing to the Contractor terminate this Framework Agreement as from the date of service of such notice whenever any of the following events occurs:
- 27.5.1 the Contractor commits a material breach of any of its obligations under or in relation to this Framework Agreement which is not capable of remedy or, if capable of remedy, is not remedied within 30 Days after receipt of written notice from the non-breaching Party of its intention to terminate; or
- 27.5.2 the Contractor is continually in breach or commits a series of repeated breaches of this Framework Agreement, which cannot be remedied within 30 Days of written notice from the Council of its intention to terminate.

- 27.5.3 where any Contracting Body terminates a Call-Off Contract awarded to the Contractor under this Framework Agreement as a consequence of Default by the Contractor.
- 27.6 The Council may terminate this Framework Agreement by serving notice on the Contractor with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which:
- 27.6.1 adversely impacts on the Contractor's ability to supply the Goods, Services or Goods and Services under this Framework Agreement; or
- 27.6.2 could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Goods, Services or Goods and Services under this Framework Agreement.
- 27.7 The Council may terminate this Framework Agreement by serving notice on the Contractor in writing with effect from the date specified in such notice if the Contractor is required to procure a Guarantee from a Guarantor pursuant to Clause 35 (Guarantee) where:
- 27.7.1 the Guarantor withdraws the Guarantee; or
- 27.7.2 any of the events set out in Clause 27.2.1 to 27.2.8 (inclusive) occurs in respect of the Guarantor; or
- 27.7.3 The Guarantee becomes invalid or unenforceable,  
in each case where the Guarantee is not replaced by an alternative agreement acceptable to the Council.
- 27.8 The Council shall have the right to terminate this Framework Agreement or to terminate the provision of any part of the Framework Agreement at any time by giving three month's written notice to the Contractor.
- 27.9 The Council is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 27, provided always that the parts of this Framework

Agreement not terminated can operate effectively to deliver the intended purpose of this Framework Agreement.

- 27.10 The termination or expiry of the Framework Agreement shall not automatically terminate any Call-Off Contract. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 27.11 No Other Contracting Body may terminate this Framework Agreement or the appointment of the Contractor under this Framework Agreement.
- 27.12 The Contractor shall upon the termination of the Framework Agreement immediately deliver up to the Council all correspondence, documents, Specification papers and property belonging to the Council which may be in his possession or under his control.

## **PART FIVE: INSURANCE AND LIABILITY**

### **28. LIABILITIES AND INDEMNITIES**

- 28.1 Neither Party excludes or limits its liability for:
  - 28.1.1 death or personal injury caused by its negligence, or that of its Employees, agents or Sub-Contractors; or
  - 28.1.2 Fraud or fraudulent misrepresentation by it or its Employees;
  - 28.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 28.2 Subject to clause 28.1 each Party's total aggregate liability in connection with this Framework Agreement in each twelve (12) month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall in no event exceed an amount equal to one hundred percent (100%) of the value of payments made. For the avoidance of doubt, the parties acknowledge and agree that this clause 28.2 shall not limit either

Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

28.3 Subject to clause 28.2, the Contractor shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury or loss or damage was not caused or contributed to by its negligence or Default.

31.4 Subject to Clause 31.1 in no event shall either Party be liable to the other for any:

- 31.4.1 loss of profits;
- 31.4.2 loss of business;
- 31.4.3 loss of revenue;
- 31.4.4 loss of or damage to goodwill;
- 31.4.5 loss of savings (whether anticipated or otherwise); and/or
- 31.4.6 any indirect, special or consequential loss or damage.

## 29. **INSURANCE**

29.1 The Contractor shall effect and maintain the following insurances at its own expense for the duration of the Framework Agreement in relation to the performance of the Framework Agreement.

29.1.1 a valid policy or policies of public liability insurance with a minimum level of indemnity of £5 million for any one claim.

29.1.2 a valid policy or policies of employer's liability insurance with a minimum level of indemnity of £10 million for any one claim in respect of all sums if the Contractor is found legally liable to pay for injury, illness or disease suffered by an employee of the Contractor acting in the course of his duties.

- 29.1.3 a valid policy or policies of product liability insurance with a minimum level of indemnity of £5 million for any one claim.
- 29.2 The Contractor shall produce to the Council and use its best endeavours to procure that any Sub-Contractor that it engages to provide the Services under this Framework Agreement shall produce, on request, copies of all insurance policies referred to in this Clause 29 or a broker's verification of insurance to demonstrate that the appropriate cover is in place.
- 29.3 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Framework Agreement or any Call-Off Contract.
- 29.4 If, for whatever reason, the Contractor or any Sub-Contractor engaged by the Contractor under this Framework Agreement fails to give effect to and maintain the insurances required by the Framework Agreement then the Council may make alternative arrangements to protect its interests and recover the costs of such arrangements from the Contractor.
- 29.5 The Contractor shall maintain the insurances referred to in Clause 29.1 in full force and effect at all times from the Commencement Date until that date which is six (6) Years following the expiration or earlier termination of this Framework Agreement or such longer term as may be required by the Authority.

## **PART SIX: OTHER PROVISIONS**

### **30. ASSIGNMENT AND SUB-CONTRACTING**

- 30.1 The Contractor shall not transfer, assign or sub-let directly or indirectly to any person or persons any portion of his Framework Agreement without the previous permission of the Council.
- 30.2 Sub-letting any part of this Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this

Framework Agreement. The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

30.3 The Council shall be entitled to assign the benefit of this Framework Agreement or any part of it and shall give written notice of any assignment to the Contractor.

### **31. VARIATIONS TO THE FRAMEWORK AGREEMENT**

31.1 The Council may propose a variation to the Framework Agreement by serving the Contractor with written notice of the proposal to vary the Framework Agreement.

31.2 The notice of variation will contain sufficient detail to allow the Contractor to consider whether any changes to the Pricing Schedule are necessary.

31.3 On receipt of the notice, the Contractor has 7 Days to respond in writing with any objections to the variation. Where the Council does not receive any written objections within the timescales detailed, the Council may serve the Contractor with a written agreement detailing the variation to be signed and returned by the Contractor within 7 Days of receipt.

31.4 Where the Contractor can demonstrate that a variation would result in a change to the prices set out in the Pricing Schedule, the Council may require further evidence from the Contractor that any additional costs to the Contractor will be kept to a minimum.

31.5 The Council may require the Contractor to meet and discuss any proposed changes to the Pricing Schedule that would result from a variation.

31.6 Where a change to the Pricing Schedule is agreed by the Council, the Council shall notify its acceptance of the change to the Contractor in writing.

31.7 In the event that the Council and the Contractor cannot agree to the changes to the prices set out in the Pricing Schedule, the Council may withdraw the variation or propose an amendment to it.

31.8 Variations to the Framework Agreement shall be agreed through Bath and North East Somerset Procurement at the Council, and no other section or department unless notified to the contrary.

## 32. **GUARANTEE**

32.1 Where the Council notifies the Contractor that the award of this Framework Agreement and any Call-Off Contract shall be conditional upon receipt of a valid Guarantee from an acceptable Guarantor, on or prior to the execution of this Framework Agreement or a Call-Off Contract (as the case may be) the Contractor shall deliver to the Council or the Other Contracting Body (as the case may be respectively):

32.1.1 an executed Guarantee from a Guarantor acceptable to the Council or the Other Contracting Body as the case may be.

## 33. **CONTRACTS (RIGHTS OF THIRD PARTIES ACT) 1999**

33.1 Save as provided in clauses 5, 6 and 8.2 and the rights specified in the Framework Agreement for the benefit of Contracting Bodies, a person who is not a Party to this Framework Agreement shall not have any rights under or in connection with it.

## 34. **WAIVER**

34.1 Failure by the Council or the Contractor to insist on strict performance of this Framework Agreement or to exercise any right or remedy upon breach of any provision of this Framework Agreement shall not constitute a waiver of the contract conditions or a waiver of any subsequent breach or Default in the performance of the Framework Agreement. The rights and remedies provided in this Framework Agreement are cumulative and not exclusive of any rights and remedies provided by Law.

## 35. **DISPUTE RESOLUTION**

35.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences on matters relating to this Framework

Agreement. Accordingly it is agreed that the procedures set out in this clause shall be followed prior to the service of written notice terminating this Framework Agreement or in relation to any matter of dispute between the parties

35.2 In the event that any disagreement or difference of opinion arises out of this Framework Agreement the matter shall be dealt with as follows:

35.2.1 the Contracting Officer and the Contractor representative shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either Party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred by either Party to the next level of management within the respective organisations for immediate resolution.

35.2.2 if within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.

35.3 An independent expert shall be appointed by agreement between the parties. The parties shall promptly furnish to such expert all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the parties taking into account the respective rights and obligations of the parties.

35.4 The decision of the expert shall be final and binding on the parties.

35.5 The parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.

35.6 In respect of all other disputes either Party may refer the matter for decision to arbitration whereupon the parties shall comply with the following provisions:

35.6.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

35.6.2 the arbitration fees shall be met by the Council and Contractor in equal shares;

35.6.3 the decision of the arbitrator shall be binding on the parties.

## 36. **FORCE MAJEURE**

36.1.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Framework Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of six Months, either Party may terminate the Framework Agreement with immediate effect by notice in writing.

36.1.2 Any failure or delay by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by a Sub-Contractor or Contractor shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

36.1.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 36.1.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

**37. SEVERABILITY**

37.1 If any part of this Framework Agreement becomes invalid, illegal or unenforceable, the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which gives effect to their original intentions.

**38. NOTICES**

38.1 Any notice to be given under the Framework shall either be delivered personally, sent by facsimile, sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

38.1.1. if personally delivered, at the time of delivery;

38.1.2. if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and

**39. INTELLECTUAL PROPERTY RIGHTS**

39.1 Save as granted under this Framework Agreement, neither the Council nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.

39.2 The Contractor shall ensure and procure that the availability, provision and use of the Services and the performance of the Contractor's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any Third Party.

39.3 With respect to the Contractor's obligations under this Framework Agreement, the Contractor warrants and represents that:

- 39.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Framework Agreement and/or any Call-Off Contract which may be entered with the Council or Other Contracting Bodies and shall maintain the same in full force and effect;
- 39.3.2 it has and shall continue to take all steps, in accordance with Good industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or Council Confidential Information (held in electronic form (owned by or under the control of, or used by the Council and/or Other Contracting Bodies;
- 39.4 The Contractor shall during and after the Term of this Framework Agreement indemnify and keep indemnified the Council on demand from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 39.4.1 availability, provision or used of the Services (or any parts thereof); and
- 39.4.2 performance of the Contractor's responsibilities and obligations hereunder.
- 39.5 The Contractor shall promptly notify the Council if any claim or demand is made or action brought against the Contractor for infringement of alleged infringement of any Intellectual Property Right that may affect the availability, provision, use of the Services (or any deliverables or parts thereof) and/or the performance of the Contractor's responsibilities and obligations hereunder.
- 39.6 If a claim or demand is made or action brought to which Clauses 39.3 and/or 39.4 may apply, or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may (subject to Approval) at its own expense and within a reasonable time either:

39.6.1 modify any or all of the affected Services without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the affected Services, so as to avoid the infringement of the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such substitution shall not increase the burden on Contracting Bodies to a Cal-Off Contract; or

39.6.2 procure a licence to use the Services on terms that are reasonably acceptable to the Council and in relation to the performance of the Contractor's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations; and

39.7 Subject to full compliance with the Branding Guidance, the Contractor shall be entitled to use the Council's logo exclusively in connection with the provision of the Services during the Term and for no other purpose.

#### 40. **CONFLICT OF INTEREST**

40.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any of its Employees, servants, agents, Contractors or Sub-Contractors is placed in a position where there is or may be an actual conflict or potential conflict between the pecuniary interests of the Contractor or such persons and the duties owed to the Council under the provisions of the Framework Agreement. The Contract shall disclose to the Council full particulars of any such conflict of interest which may arise.

40.2 The provision of this clause shall apply during the continuance of the Framework and indefinitely after its termination.

40.3 The Council reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of this Framework Agreement or any Call-Off

Contract. The action of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

**41. ENTIRE AGREEMENT**

41.1 This Framework Agreement represents the entire understanding between the Contractor and the Council in relation to the subject matter hereof, save for such Call-Off Contracts as may be entered into between the Council and Contractor pursuant to this Framework Agreement.

**42. LAW AND JURISDICTION**

42.1 This Framework Agreement shall be governed by and constructed in accordance with English Law and each Party agrees to submit to the exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF** this Framework Agreement has been executed as a Deed by the following parties and delivered on the date stated above

**SIGNED by**

.....

for and on behalf of

Authorised Signatory

BATH AND NORTH EAST SOMERSET COUNTY COUNCIL

**SIGNED by**

authorised signatories

.....,

for and on behalf of

Director

**[THE CONTRACTOR]**

.....

Director/Secretary

## APPENDIX 1 - CALL OFF TERMS AND CONDITIONS

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### 1. DEFINITIONS

- 1.1 **'Affiliates'** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
- 1.2 **'Approval'** means the prior written consent of the Council and/or Other Contracting Body and 'Approve' and 'Approved' shall be construed accordingly.
- 1.3 **'Audit'** means an audit carried out pursuant to Clause 29 (Audit).
- 1.4 **'Auditors'** shall have the meaning set out in Clause 29 (Audit).
- 1.5 **'Branding Guidance'** means the Council's guidance in relation to the use of branding;
- 1.6 **'Call-Off Contract'** or **'Contract'** means the legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of Goods, Services or Goods and Services made between a Contracting Body and the Contractor comprising an Order and the Call-Off Terms and Conditions at Appendix 1;
- 1.7 **'Call-Off Terms and Conditions'** means the terms and conditions in Appendix 1;
- 1.8 **'Call-Off Commencement Date'** means the date set out in the Order;
- 1.9 **'Change of Control'** shall have the meaning set out in Clause 30;
- 1.10 **'Charges'** means the charges raised under or in connection with a Call-Off Contract from time to time, which Charges shall be calculated in a manner which is consistent with the Price Schedule;
- 1.11 **'Commencement Date'** means [insert date dd/mm/yy]

- 1.12 **‘Commercially Sensitive Information’** means the Confidential Information listed in a schedule of the Framework Agreement comprised of a Commercially Sensitive Information:
- (a) relating to the Contractor, its IPR or its business or Information which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
  - (b) that constitutes a trade secret.
- 1.13 **‘Confidential Information’** means all Personal Data and any Information, however it is conveyed, that relates to the business, affairs, development, trade secrets, Know-How, personnel, and suppliers of the Council, including all IPRs, together with all Information derived from any of the above, and any other Information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential;
- 1.14 **‘Contracting Bodies’** or **‘Contracting Body’** means the Council and any Other Contracting Bodies described in the OJEU notice;
- 1.15 **‘Contracting Officer’** means the representative of Bath and North East Somerset Procurement appointed by the Council to act on its behalf as agent for the purpose of managing the Framework Agreement;
- 1.16 **‘Contract Price’** means the price (exclusive of any applicable VAT), payable to the Contractor under the Framework Agreement and Call-Off Contract, as set out in the Order, for the full and proper performance by the Contractor of its obligations under the Contract;
- 1.17 **‘Contractor’** means the person, firm or company appointed by the Council to supply the Goods, Services or Goods and Services under this Framework Agreement or any Call-Off Contract and shall include the Contractor's Employees, personal representatives, successors and permitted assigns;

- 1.18 **‘Council’** means Bath and North East Somerset County Council;
- 1.19 **‘Day’** means a calendar day and ‘Days’ shall be construed accordingly;
- 1.20 **‘Default’** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other Default, act, omission, negligence or negligent statement of the relevant Party or the Employees in connection with or in relation to the subject-matter of the Framework Agreement and/or Call-Off Contract and in respect of which such Party is liable to the other;
- 1.21 **‘Employees’** means all persons employed by the Contractor together with the Contractor’s servants, agents, Contractors and Sub-Contractors used in the performance of its obligations under this Framework Agreement and Call-Off Contracts;
- 1.22 **‘End User’** means any public sector body authorised to access the Framework Agreement;
- 1.23 **‘End User Agreement’** means the formal signed permission for a Contracting Body, other than the Council, to access the Goods, Services or Goods and Services under this Framework Agreement;
- 1.24 **‘Environmental Information Regulations’** 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.
- 1.25 **‘Equipment’** means the Contractor’s Equipment, plant and materials used in the performance of its obligations under this Framework Agreement or Call-Off Contracts;
- 1.26 **‘FOIA’** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time with any guidance and/or codes of practice issued by the Information Commissioner in relation to the legislation;

- 1.27 **'Framework Agreement'** or **'Agreement'** or **'Framework'** means this agreement and all appendices to this agreement for Goods, Services or Goods and Services between the Council and the Contractor.
- 1.28 **'Fraud'** means any offence under Laws creating offences in respect of fraudulent acts (including the Bribery Act 2010) 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 including but not limited to by means of any act of forgery;
- 1.29 **'Further Competition'** or **'Further Competition Procedure'** means the ordering procedure described in Appendix 2 of this Framework Agreement;
- 1.30 **'Good Industry Practice'** means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
- 1.31 **'Goods, Services or Goods and Services'** means the supply and delivery of Goods or Services or Goods and Services as ordered by the Council or Other Contracting Bodies. Any reference to Goods, Services or Goods and Services shall apply equally to the performance of Goods, Services or Goods and Services as appropriate unless otherwise stated;
- 1.32 **'Guarantee'** means the deed of guarantee in favour of the Council which is granted pursuant to Clause 35 (Guarantee);
- 1.33 **'Guarantor'** means any person acceptable to the Council to grant a Guarantee or which is required to grant a Guarantee;
- 1.34 **'Information'** has the meaning given under section 84 of the Freedom of Information Act 2000;
- 1.35 **'Initial Term'** has the meaning set out in Clause 4.1 of this Framework Agreement;

1.36 **'Intellectual Property Rights'** means

- (a) Copyright, rights related to or affording protection similar to copyright, 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

1.37 **'Invitation to Tender' or 'ITT'** means the Invitation to Tender issued by the Council;

1.38 **'Key Performance Indicators' or 'KPIs'** means the performance measurements and targets set out in this Framework Agreement;

1.39 **'Know-How'** means all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how relating to the Services but excluding know-how already in the Contractor's or the Council's possession before the Commencement Date;

1.40 **'Law'** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgement of a relevant courts of law, of directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of

Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

- 1.41 **'Management Information'** means files, usage records, price information, and such other Management Information, as the Contractor is obliged to retain for information for the Council and Other Contracting Bodies;
- 1.42 **'Material Default'** means a material breach of this Framework Agreement and/or, breach by the Contractor of any of the following Clauses: Clause 8 (Warranty), Clause 10 (Prevention of Bribery), Clause 11 (Non-Discrimination), Clause 19 (Prices for Goods and Services), Clause 24 (Statutory Requirements), Clause 26 (Data Protection), Clause 27 (Freedom of Information), Clause 29 (Audit), and Clause 33 (Assignment and Sub-Contracting);
- 1.43 **'Month'** means calendar month and monthly shall be interpreted accordingly;
- 1.44 **'New Services'** shall have the meaning set out in Clause 7.1;
- 1.45 **'OJEU Notice'** means the contract notice published in the Official Journal of the European Union;
- 1.46 **'Order'** means an order for Goods, Services or Goods and Services served by any Contracting Body on the Contractor in accordance with this Framework Agreement and Call-Off Terms;
- 1.47 **'Other Contracting Bodies'** means all Contracting Bodies except the Council;
- 1.48 **'Parent Company'** means any company which is the ultimate Holding Company of the Contractor and which is responsible either directly or indirectly for the business activities of the Contractor. The term 'Holding or Parent Company' shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment of amendment thereto.
- 1.49 **'Party'** means the Council or the Contractor and **'Parties'** shall mean both of them;

1.50 **‘Premises’** means any location where the Goods, Services or Goods and Services are delivered, or the Goods, Services or Goods and Services are required to be collected, as set out in the Order;

1.51 **‘Prohibited Act’**: the following constitute Prohibited Acts:

1.51.1 to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity;  
or
- (b) reward that person for improper performance of a relevant function or activity;
- (c) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

1.51.2 committing any offence:

- (a) under the Bribery Act 2010; or
- (b) under legislation creating offences concerning fraudulent acts: or
- (c) at common Law concerning fraudulent acts relating to the Framework Agreement and the Call-Off Contract or any other contract with the Council and/or any Other Contracting Body; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council and/or any Other Contracting Body.

1.52 **‘Regulatory Body’** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Council.

- 1.53 **'Requests for Information'** means a request for information relating to the Framework Agreement under the FOIA.
- 1.54 **'Services'** means the services described in Schedule [XX] (Specification) of this Framework Agreement which the Contractor shall make available to Contracting Bodies.
- 1.55 **'Specification'** means the scope of the Goods, Services or Goods and Services to be provided pursuant to this Framework Agreement and any Call-Off Contract and set out in Appendix 2;
- 1.56 **'Sub-Contract'** means any contract or agreement or proposed agreement between the Contractor and any Third Party whereby that Third Party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof;
- 1.57 **'Sub-Contractor'** means each of the Sub-Contractors listed in the Framework Agreement or any person engaged by the Contractor in connection with the provision of the Services from time to time as may be permitted by the Framework Agreement.
- 1.58 **'Tender'** means the tender submitted by the Contractor to the Council ;
- 1.59 **'Term'** means the period commencing on the Framework Agreement Commencement Date and ending on [insert date] (unless extended in accordance with clause 4.2) or on earlier termination of this Framework Agreement;
- 1.60 **'Third Party'** means a person who is not party to this Framework Agreement and has no right to enforce any term of this Framework Agreement;
- 1.61 **'VAT'** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
- 1.62 **'Working Days'** means Monday to Friday inclusive but not including any declared public holiday.

1.63 'Year' mean a calendar year and 'Years' shall be construed accordingly.

## 2. INTERPRETATION

2.1 The interpretation and construction of the Contractor shall be subject to the following provisions:

2.1.1 Reference to the singular includes the plural and vice versa and references to any gender includes both genders;

2.1.2 The words "include", "includes" and "including" are construed as they were immediately followed by the words "without limitation";

2.1.3 References to any person shall include persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns and transferees;

2.1.4 The headings in the Contract included for ease of reference only and shall not affect the interpretation or construction of the Contract;

2.1.5 Any periods of time referred to in the Contract and expressed in Days shall refer to calendar Days unless stated otherwise;

2.1.6 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force;

2.1.7 Any condition referring to the delivery of Goods, Services or Goods and Services shall apply equally to the performance of Goods, Services or Goods and Services as appropriate unless otherwise stated;

2.1.8 Reference to a clause is a reference to the whole of that clause unless stated otherwise;

## 3. GENERAL PROVISIONS

### **3.1 Contractor's Status**

3.1.1 At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

### **3.2 Entire Agreement**

3.2.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

3.2.2 In the event of any conflict between the Order, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in the following order of precedence:

a) the Order;

b) the clauses of the Contract; and any other document referred to in the clauses of the Contract

### **3.3 Notices**

3.3.1 Any notice to be given under the Framework shall either be delivered personally, sent by facsimile, sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

3.3.1.1. if personally delivered, at the time of delivery;

3.3.1.2. if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and

### **3.4 Conflicts of Interest**

3.4.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor its Employees or any servant, agent, Contractor or Sub-Contractor is placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Contracting Body under the provisions of this Call-Off Contract. The Contractor will disclose to the Contracting Body full particulars of any such conflict of interest which may arise.

## **4. SUPPLY OF GOODS AND SERVICES**

### **4.1 The Goods and Services**

4.1.1 The Contractor shall supply the Goods, Services or Goods and Services in accordance with the Contracting Body's requirements in the Framework Agreement, the Specification, the Order, any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 and all relevant specifications applicable to such including those of the British Standards Institution or European equivalent (or if there be no such specification shall be of the highest standard).

4.1.2 The Contractor acknowledges that the Contracting Body relies on the skill and judgment of the Contractor in the supply of the Goods, Services or Goods and Services and the performance of its obligations under the Contract.

### **4.2 Delivery**

4.2.1 The Contractor shall deliver the Goods, Services or Goods and Services at the time(s) and date(s) specified in the Order and strictly in accordance with the Specification at all times.

4.2.2 The Contractor shall not make delivery of the Goods, Services or Goods and Services without the Contracting Body's prior Approval.

4.2.3 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods, Services or Goods and Services within the time specified by the Contracting Body, the Contracting Body may release itself from any obligation to accept and pay for the Goods, Services or Goods and Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Contracting Body.

4.2.4 The Contracting Body shall be under no obligation to accept or pay for any Goods, Services or Goods and Services delivered in excess of the quantity ordered. If the Contracting Body elects not to accept such over-delivered Goods, Services or Goods and Services it shall give notice in writing to the Contractor to remove them within five Working Days and to refund to the Contracting Body any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Contracting Body may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods, Services or Goods and Services shall remain with the Contractor unless they are accepted by the Contracting Body. The Contracting Body shall be under no obligation to accept or pay for any Goods, Services or Goods and Services supplied earlier than the date for delivery stated in the Order.

4.2.5 In delivering the Goods, Services or Goods and Services to the Premises the Contractor shall take all reasonable care to avoid injury to persons thereon and damage to property.

4.2.6 The Contractor shall comply with all reasonable security requirements relating to the Premises and shall ensure that all its Employees, agents and Sub-Contractors shall likewise comply with such requirements.

#### 4.3 **Ownership and Risk**

4.3.1 Ownership and risk in the Goods, Services or Goods and Services shall, without prejudice to any other rights or remedies of the Contracting Body, pass to the Contracting Body at the time of acceptance of delivery.

- 4.3.2 The Contracting Body disclaims all responsibility for the security of Goods, Services or Goods and Services delivered and left on the Premises by the Contractor if they should fail to obtain receipt for their acceptance from a person authorised to receive them.
- 4.3.3 All Equipment belonging to the Contractor which is brought onto the Contracting Body's Premises shall be at the Contractor's risk.

#### 4.4 **Non-Delivery**

- 4.4.1 Where specified by the Contracting Body on dispatch of any consignment of the Goods, Services or Goods and Services, the Contractor shall send the Contracting Body an advice note specifying the date of dispatch and the volume of the Goods, Services or Goods and Services. Where the Goods, Services or Goods and Services, having been placed in transit, fail to be delivered to the Contracting Body on the due date for delivery, the Contracting Body shall, (provided that the Contracting Body has been advised in writing of the dispatch of the Goods, Services or Goods and Services), within ten (10) Working Days of the notified date of delivery, give notice to the Contractor that the Goods, Services or Goods and Services have not been delivered and may request the Contractor free of charge to deliver substitute Goods, Services or Goods and Services within the timescales specified by the Contracting Body or terminate the Contract.

#### 4.5 **Rejection**

- 4.5.1 The Contracting Body may by written notice to the Contractor reject any of the Goods, Services or Goods and Services which fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to the Contracting Body of such Goods, Services or Goods and Services. If the Council rejects any of the Goods, Services or Goods and Services pursuant to this clause the Contracting Body may (without prejudice to other rights and remedies) either:-

- a) have such Goods, Services or Goods and Services promptly, and in any event within five (5) Working Days, replaced by the Contractor with

Goods, Services or Goods and Services which conform in all respects with the Order and due delivery shall not be deemed to have taken place until such replacement has occurred; or

- b) treat the Contract as discharged by the Contractor's breach and obtain a refund from the Contractor in respect of the Goods, Services or Goods and Services concerned together with payment of any additional expenditure reasonably incurred by the Contracting Body in obtaining other Goods, Services or Goods and Services in replacement provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods, Services or Goods and Services.

4.5.2 The issue by the Contracting Body of a receipt note for the Goods, Services or Goods and Services shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, Services or Goods and Services.

4.5.3 Any Goods, Services or Goods and Services rejected or returned by the Contracting Body as described in clause 4.5.2 shall be returned to the Contractor at the Contractor's risk and expense.

## **5. CONTRACT PERFORMANCE**

5.1.1 The Contractor shall perform its obligations under the Contract:-

- a) with appropriately experienced, qualified and trained Employees with all due skill, care and diligence;
- b) in a timely manner; and
- c) in compliance with all applicable legislation, including but not limited to, any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.

5.1.2 The Contractor shall ensure that the Goods, Services or Goods and Services conform in all respects with the Specification and are fit and

sufficient for all the purposes for which such Goods, Services or Goods and Services are ordinarily used and for any particular purpose made known to the Contractor by the Contracting Body.

## **6. PAYMENT AND CONTRACT PRICE**

### **6.1 Contract Price**

6.1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Contracting Body shall pay the Contract Price in accordance with clause 6.2.

6.1.2 The Contracting Body shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods, Services or Goods and Services supplied in accordance with the Contract.

6.1.3 Payment shall, unless otherwise stated, be deemed to be inclusive of all costs, expenses and overheads of any kind incurred by the Contractor including delivery costs.

### **6.2 Payment and VAT**

In consideration of the Contractor performing its obligations under the Contract, the Contracting Body shall pay all sums due to the Contractor in cleared funds within thirty (30) Days of receipt of a valid invoice.

6.2.1 Invoices must legibly state:

- a) the full name and address of the Contracting Body that ordered the Goods, Services or Goods and Services together with the official order number;
- b) the address of the Premises where the Goods, Services or Goods and Services were delivered;
- c) a full and proper description of the Goods, Services or Goods and Services delivered at the price set out in the Pricing Schedule.

d) and such other requirements as set out in the Specification.

6.2.2 All payments will be made in sterling unless otherwise agreed by the Parties.

6.2.3 If the Contracting Body intends to withhold all or any part of a payment it must not later than 5 Working Days before the final date for payment give notice to the Contractor to that effect which notice must specify the amount proposed to be withheld and the ground for doing so.

### 6.3 **Recovery of Sums Due**

6.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any breach of the Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Contracting Body.

6.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

6.3.3 The Contractor shall make any payments due to the Contracting Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Body to the Contractor.

## 7. **STATUTORY OBLIGATIONS AND REGULATIONS**

### 7.1 **Discrimination**

7.1.1 The Contractor shall not unlawfully discriminate in the supply of the Goods, Services or Goods and Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, religion, belief or age and without

prejudice to the generality of the foregoing shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998, or other relevant legislation, or any statutory modification or re-enactment.

7.1.2 The Contractor shall at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Contracting Body. The Contractor will forward a copy of this policy to the Contracting Body when required to demonstrate its operation in the supply of the Goods, Services or Goods and Services.

7.1.3 The Contractor shall take all reasonable steps to secure the observance of clause 7.1.1 by all servants, Employees or agents of the Contractor and all Contractors and Sub-Contractors employed in the execution of the Contract.

## 7.2 **The Contracts (Rights of Third Parties) Act 1999**

7.2.1 A person who is not a Party to the Contract shall not have any rights under or in connection with it.

## 7.3 **Sustainability**

7.3.1 The Parties are committed to the protection of the environment and to promote sustainable development, especially ways in which to eliminate waste, recycle and re-use.

7.3.2 The Contractor shall comply with the obligations regarding sustainability set out in the Specification.

## 7.4 **Health and Safety**

7.4.1 The Contractor shall comply with the requirements of the Specification and of the Health and Safety at Work etc Act 1974 and all other Acts, Orders, regulations and codes of practice relating to health and safety which may apply to the performance of the Contract.

- 7.4.2 The Contractor shall promptly notify the Contracting Body of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Contract.
- 7.4.3 The Contractor shall make its health and safety policy statement available on request.
- 7.4.4 The Contracting Body shall be empowered to suspend the performance of the Contract in the event of non-compliance by the Contractor with its legal duties in health and safety. The Contractor shall not resume performance of the Contract until the Contracting Body is satisfied that the non-compliance has been rectified.

## **8. CONTROL OF THE CONTRACT**

### **8.1 Assignment and Sub-Letting**

- 8.1.1 The Contractor shall not transfer, assign or sub-let directly or indirectly to any person or persons any portion of this Contract without the previous permission of the Contracting Body.
- 8.1.2 Sub-letting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract. The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 8.1.3 The Contracting Body shall be entitled to assign the benefit of this Contract or any part of it and shall give written notice of any assignment to the Contractor.

### **8.2 Waiver**

- 8.2.1 Failure by the Contracting Body or the Contractor to insist on strict performance of the Contract or to exercise any right or remedy upon breach of any provision of the Contract shall not constitute a waiver of the Contract conditions or a waiver of any subsequent breach or Default in the performance of the Contract.

8.2.2 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by Law.

### 8.3 **Variation**

8.3.1 Subject to the provisions of this clause 8.3, the Contracting Body may request a variation to Goods, Services or Goods and Services ordered provided that such variation does not amount to a material change to the Order.

8.3.2 The Contracting Body may request a variation by giving sufficient information for the Contractor to assess the extent of the variation and any additional cost that may be incurred. The Contractor shall respond to a request for a variation within the time limits specified by the Contracting Body.

8.3.3 In the event that the Parties are unable to agree a change to the Contract Price, the Contracting Body may:-

a) agree to continue to perform their obligations under the Contract without the variation; or

b) terminate the Contract with immediate effect, except where the Contractor has already delivered part of all of the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed in clause 11.2.

8.3.4 If the Parties agree the variation, the Contractor shall carry out such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Contract.

### 8.4 **Severability**

8.4.1 If any part of this Contract becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually

satisfactory provision to be substituted which gives effect to their original intentions.

## **8.5 Remedies in the event of inadequate performance**

8.5.1 In the event that the Contracting Body is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Contracting Body may, without prejudice to its rights under clause 10, do any of the following:-

- a) without terminating the Contract, itself supply or procure the supply of all or part of the Goods, Services or Goods and Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Contracting Body that the Contractor will once more be able to supply all or such part of the Goods, Services or Goods and Services in accordance with the Contract;
- b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods, Services or Goods and Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a Third Party to supply such part of the Goods, Services or Goods and Services;
- c) terminate, in accordance with clause 10 the whole of the Contract; and/or
- d) charge the Contractor for, and the Contractor shall pay any costs reasonably incurred by, the Contracting Body (including any reasonable administration costs) in respect of the supply of any part of the Goods, Services or Goods and Services by the Contracting Body or a Third Party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Goods, Services or Goods and Services and provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods, Services or Goods and Services.

8.5.2 If the Contractor fails to supply any of the Goods, Services or Goods and Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Body shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 (ten) Working Days of the Contracting Body's instructions or such other period of time as the Contracting Body may direct.

8.5.3 In the event that the Contractor:-

- a) fails to comply with clause 8.5.2 above and the failure is materially adverse to the interests of the Contracting Body or prevents the Contracting Body from discharging a statutory duty; or
- b) persistently fails to comply with clause 8.5.2 above;

the Contracting Body may terminate the Contract with immediate effect by giving the Contractor notice in writing.

8.5.4 Without prejudice to any other right or remedy which the Contracting Body may have, if any Goods, Services or Goods and Services are not supplied in accordance with, or the Contractor fails to comply with any of the terms of, the Contract the Contracting Body shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods, Services or Goods and Services have been accepted by the Contracting Body:-

- a) to rescind the Order;
- b) to reject the Goods, Services or Goods and Services (in whole or in part) and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Goods, Services or Goods and Services so returned shall be paid forthwith by the Contractor;

- c) at the Contracting Body's option to give the Contractor the opportunity at the Contractor's expense to either remedy any defect in the Goods, Services or Goods and Services or to supply replacement Goods, Services or Goods and Services;
- d) to refuse to accept any further deliveries of the Goods, Services or Goods and Services but without any liability to the Contracting Body; and

8.5.5 to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract.

## 9. LIABILITIES

### 9.1 Liability, Indemnity and Insurance

9.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-

- a) death or personal injury caused by its negligence or that of its Employees;
- b) Fraud or fraudulent misrepresentation by it or its Employees; or
- c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

9.1.2 Subject to clause 9.1.3 and clause 9.1.4 the Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods, Services or Goods and Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Employees on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted

to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Body or by breach by the Contracting Body of its obligations under the Contract.

- 9.1.3 Subject always to clause 9.1.1 and clause 9.1.4, the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £1,000,000 (one million pounds).
- 9.1.4 Subject to clause 9.1.1, in no event shall either Party be liable to the other for any loss of profits, loss of business, loss of revenue, loss of or damage to goodwill, loss of savings (whether anticipated or otherwise) and/or any indirect or consequential loss or damage.
- 9.1.5 The Contracting Body may, amongst other things, recover as a direct loss:
- a) any additional operational and/or administrative expenses arising from the Contractor's Default ;
  - b) any wasted expenditure or Charges rendered unnecessary and/or incurred by the Contracting Body arising from the Contractor's Default (to include wasted staffing costs in the event of delayed delivery); and
  - c) the additional cost of procuring replacement Goods, Services or Goods and Services following termination of the Contract as a result of a Default by the Contractor.
- 9.1.6 The Contractor shall effect and maintain the following insurances at its own expense for the duration of the Contract arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor:

- a) a valid policy or policies of public liability insurance with a minimum level of indemnity of £5 million for any one claim;
- b) a valid policy or policies of employer's liability insurance with a minimum level of indemnity of £10 million for any one claim in respect of all sums the Contractor is found legally liable to pay for injury, illness or disease suffered by an employee of the Contractor acting in course of his duties;
- c) a valid policy or policies of product liability insurance with a minimum level of indemnity of £5 million for any one claim.

9.1.7 The Contractor shall give the Contracting Body, on request, copies of all insurance policies referred to in this clause 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.

9.1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

9.1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

## 9.2 **Warranties and Representations**

9.2.1 The Contractor warrants and represents that:-

- a) it has full capacity and Council and all necessary consents to enter into and perform its obligations under the Contract and the Contract is executed by a duly authorised representative of the Contractor;
- b) it will supply the Goods, Services or Goods and Services using reasonable care, skill and diligence using suitably qualified personnel

and in accordance with generally accepted industry standards and practice.

- c) in entering the Contract it has not committed any Fraud;
- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- e) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

## 10. **DEFAULT, DISRUPTION AND TERMINATION**

### 10.1 **Termination**

10.1.1 The Contracting Body may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor:-

- a) 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
- b) a petition is presented for its winding up (which is not dismissed within 14 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

- c) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- d) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- e) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- f) the Contractor undergoes a Change of Control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Contract. The Contracting Body may only exercise its right to terminate within six months after a Change of Control occurs.

10.1.2 The Contracting Body shall be entitled to terminate this Contract immediately and recover from the Contractor the amount of any loss resulting from such cancellation if, in relation to any agreement with the Contracting Body, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010 or any other relevant Laws, statutes, regulations or codes in relation to bribery and anti-corruption, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

10.1.3 The Contracting Body may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a Material Default and if:

- a) the Contractor has not remedied the Default to the satisfaction of the Contracting Body within ten (10) Working Days, or such other period as may be specified by the Contracting Body, after issue of a written notice specifying the Default and requesting it to be remedied; or

b) the Default is not, in the opinion of the Contracting Body, capable of remedy.

10.1.4 The Contracting Body shall have the right to terminate the Contract at any time by giving 30 Days written notice to the Contractor.

10.1.5 The Contracting Body may terminate the Contract by giving written notice to the Contractor with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

## 10.2 **Consequences of Expiry or Termination**

10.2.1 Where the Contracting Body terminates the Contract under clause 10.1.3 and then makes other arrangements for the supply of Goods, Services or Goods and Services, the Contracting Body may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Body throughout the remainder of the Contract Period. The Contracting Body shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated due to the Contractor's Default, no further payments shall be payable by the Contracting Body until the Contracting Body has established the final cost of making those other arrangements.

10.2.2 Subject to clause 10 where the Contracting Body terminates the Contract under clause 10.1.4, the Contracting Body shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available.

10.2.3 The Contracting Body shall not be liable under clause 10.5.2 to pay any sum which:-

- a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period.

10.2.4 Save as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

### 10.3 **Disruption**

- 10.3.1 The Contractor shall immediately inform the Contracting Body of any actual or potential industrial action, whether such action be by its own Employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 10.3.2 In the event of industrial action by the Employees, the Contractor shall seek the Contracting Body's Approval to its proposals for the continuance of the supply of the Goods, Services or Goods and Services in accordance with its obligations under the Contract.
- 10.3.3 If the Contractor's proposals referred to in clause 10.3.2 are considered insufficient or unacceptable by the Contracting Body acting reasonably then the Contract may be terminated with immediate effect by the Contracting Body by notice in writing.
- 10.3.4 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Contracting Body, an appropriate allowance by way of extension of time will

be approved by the Contracting Body. In addition, the Contracting Body will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

#### **10.4 Recovery upon Termination**

10.4.1 On the termination of the Contract for any reason, the Contractor shall:

- a) immediately deliver to the Contracting Body all property that may have been provided to the Contractor by the Contracting Body.
- b) assist and co-operate with the Contracting Body to ensure an orderly transition of the provision of the Goods, Services or Goods and Services to the replacement Contractor and/or the completion of any work in progress.

#### **10.5 Force Majeure**

10.5.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six Months, either Party may terminate the Contract with immediate effect by notice in writing.

10.5.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or Contractor shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

10.5.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 10.5.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

## 11. **DISPUTES AND LAW**

### 11.1 **Law and Jurisdiction**

11.1.1 This Contract shall be governed by and interpreted in accordance with English Law and each Party agrees to submit to the exclusive jurisdiction of the English courts.

### 11.2 **Dispute Resolution**

11.2.1 It is the intention of the Parties to settle amicably by negotiation all disagreements and differences on matters relating to this Contract. Accordingly it is agreed that the procedures set out in this Clause shall be followed prior to the service of written notice terminating this Contract or in relation to any matter of dispute between the Parties.

11.2.2 In the event that any disagreement or difference of opinion arises out of this Contract the matter shall be dealt with as follows:

- a) the Contracting Body's Contracting Officer and the Contractor representative shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either Party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred by either Party to the next level of management within the respective organisations for immediate resolution.
- b) if within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to

the matter in dispute, the Parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.

- 11.3 An independent expert shall be appointed by agreement between the Parties. The Parties shall promptly furnish to such expert all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the Parties taking into account the respective rights and obligations of the Parties.
- 11.4 The decision of the expert shall be final and binding on the parties.
- 11.5 The Parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.
- 11.6 In respect of all other disputes either Party may refer the matter for decision to arbitration whereupon the Parties shall comply with the following provisions:
  - 11.6.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 11.6.2 the arbitration fees shall be met by the Contracting Body and Contractor in equal shares;
  - 11.6.3 the decision of the arbitrator shall be binding on the Parties.

## **APPENDIX 2 – SPECIFICATION FOR PRINT SERVICES**

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### **1. GENERAL**

- 1.1 This Specification should be read in conjunction with the Information and Instructions to Tenderers, Price Schedule, Framework Terms & Conditions and other sections of the tender.
- 1.2 The Participating Organisations' Representatives will be jointly responsible for management of the Contract
- 1.3 The Contractor will develop a contract with the Participating Organisations' customers to meet the needs of print deadlines, seek best value, provide a high quality printing service and achieve continuous improvements during the course of the Contract.
- 1.4 If it is necessary for some parts of the Contract to be sub-contracted then the Contractor shall ensure that any sub-contractors comply with and perform in accordance with this Contract. The Contractor must advise the customer which aspects of work are outsourced and to whom.
- 1.5 To enable sufficient management of our supply chain and ensure a full understanding of issues such as slave labour, conflict minerals, equality and diversity policies and to ensure the confidentiality of content the Participating Organisations' will not contract with a company that places work with unknown printing companies.

### **2. LIST OF SERVICES/PRICE LIST**

- 2.1 Contractors shall provide, free of charge, pricing data, technical literature and assistance, sales data, samples, Contract price lists and other documentation and items necessary to assist the Participating Organisations in the selection of the appropriate and efficient print service to meet their needs.
- 2.2 The contractor will be asked to supply prices in a form of a price matrix which will cover the most commonly used documents and quantities, stating their maximum rate for each job. This matrix assumes standard delivery of 5 working days.

### **3 QUOTES**

- 3.1 Quotes are to be provided direct to the customer and should be supplied promptly via email.

## **4 ORDERS**

- 4.1 Contractors will receive requests for work, pricing and related data direct from the customer.
- 4.2 Goods and Services shall only be provided upon receipt of a Purchase Order supplied to the Contractor in PDF format via email.
- 4.3 Each Order will contain the following:
- Full details of Goods and Services requested
  - Full details of the Premises or other delivery points to which Goods and Services are to be supplied
  - A timetable for implementation of the Order
  - Any divergence from the responsibilities set out in these conditions or any additional requirements
  - Any other information e.g. price and recipient that needs to be specified
  - A purchase order number

4.4 Orders not containing this information should be referred back to the customer.

## **5. PROOFS**

- 5.1 Proofs are to be provided direct to the customer [person] who has placed the order and is specified on the Purchase Order.
- 5.2 Proofs should continue to be supplied promptly to the Customer and requests made for their approval and return until both the Contractor and Customer are satisfied with the content. The Contractor should then proceed with the work in accordance with the Contract and as specified in the Order.

## **6. DELIVERIES AND RETURNS**

- 6.1 The Contractor must deliver all Goods and Services within the agreed number of working days.
- 6.2 The Contractor shall notify the Customer upon arrival at the delivery point and obtain any necessary security clearances. The Contractor shall deliver all items to the Customer's desk where possible or Reception points as specified in the Order.
- 6.3 If Goods and Services are incorrectly delivered the Contractor shall redeliver them within 1 Working Day at their own cost and risk.

- 6.4 The Contractor shall keep an accurate record of the Order, work requirements and response times for providing the Goods and Services for the Participating Organisations. The Contractor shall work with the Participating Organisations to continuously improve working methods for the performance of the Contract.
- 6.5 The Contractor shall maintain a record of deliveries as proof of delivery.
- 6.6 The customer may reject any incorrectly printed Goods even if otherwise correctly delivered in which case the Contractor shall redeliver once correctly printed.
- 6.7 The Contractor shall submit a separate delivery note in respect of each delivery direct to the Customer, which shall not constitute an invoice. Each delivery note shall contain full supporting information including the following:
- The Purchase Order number
  - Full details of the Goods and Services requested by the customer
  - Department/Section/Premises to which Goods and Services were delivered
  - The customer contact supplied for taking delivery of the Goods and Services
  - Contractor's name and contact information
  - Delivery note number
- 6.8 All Goods shall be delivered with boxes/packaging/clearly labelled with the title of the work and quantity and the job number/order reference supplied.
- 6.9 Each participating organisation shall ensure that during their Customer's normal working hours the Contractor can access their Customers premises or specified delivery point/s to deliver Goods. The Contractor shall be responsible for everything else involved in delivery and shall take reasonable care to ensure that it does not interfere with or hinder the operations of the participating organisation.

- 6.10 Goods will be signed for by the Customer/delivery point on a “received but not checked” basis. However the person receiving the Goods must be permitted to examine them at the time of receipt and in any event the Customer reserves the right to reject the delivery in whole or part, if in the view of the receiving officer, the Goods do not meet the specifications of the Contract or Order.
- 6.11 The Contractor shall ensure that all Goods are properly packed and secure in suitable fitting boxes or other suitable packaging materials to protect the Goods and shall store and deliver them so that they reach their destination in good condition. Alternative packaging may be used for high volume deliveries following agreement with the customer beforehand. After delivery the Contractor shall be responsible at its own cost for removing any packaging and/or waste materials requested by the Customer and shall leave the delivery point in a clean and tidy condition.
- 6.12 Deliveries shall take place between 08.30 and 17.00 Monday to Thursday and 16.30 on Friday, unless specifically agreed.
- 6.13 If, as a result of poor handling or packing by the contractor, goods are found to be damaged, replacement copies must be provided within reasonable timescales using best endeavours to rectify the mistake.

## **7. MANAGEMENT REPORTS**

- 7.1 The Contractor shall give free and unhindered access to all information and documents relating in any way to the Contract on request by the Participating Organisations.
- 7.2 The Contractor shall submit to each Organisation management information and usage reports when requested by the Organisation.

## **8. KEY PERFORMANCE INDICATORS**

Management Performance Reports including details of adherence to KPIs should be sent to each Participating Organisation on request.

<b>Key Performance Indicator</b>	<b>Customer Service Measure</b>	<b>Performance/ Information Required</b>
Delivery	Every job to be delivered on or before the date and time agreed.	100% Record delivery information
Quality	All jobs should match the specification supplied Quantity delivered should equal or exceed the quantity requested All jobs need to be of a high print and finishing quality e.g. set off, hickies, colour consistency, accurate cutting, accurate binding etc.	100% Record issues and actions
Customer Service	Quotes for bespoke work must be returned within 8 working hours of the request	100% Record information on quotations
Issue Resolution	Level 1 Queries or non-compliance issues to receive an initial response within 2 working hours and a plan for resolution to be in place within 8 working hours. For urgent issues an on-site visit by the contractor's representative within 4 working hours of the request. Level 2 Subject to the failure to achieve resolution at Level 1 the nominated person shall have a further 3 working days to resolve the problem and advise their Manager/Director and Customer of the actions to be taken. Level 3 Manager/Director shall upon notification investigate actions and respond to the Customer if complaint not resolved within 8 working days and commit to resolve within a specified period (maximum 10 working days). Following each specified period for resolution the Contractor shall contact the Customer and parties involved to ensure that the matter has been dealt with	100% Record issues and actions

	satisfactorily.	
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## 9. PRODUCT SPECIFICATION AND QUALITY

- 9.1 Contractor shall ensure that it has a quality management system in place to ensure the performance of the Contract to the Contract standard and that it includes policies and procedures that address all the elements in the Contract.
- 9.2 The Contractor will only supply printing Goods and Services of a satisfactory quality and fit for purpose.
- 9.3 The Contractor shall ensure that the Customer is kept informed of new Goods and Services and other developments including all approved price changes.
- 9.4 The Contractor shall meet or exceed the standards of the Key Performance Indicators (Section 8).
- 9.5 The Contractor shall provide a dedicated accounts manager and sales, technical assistance and support on any operational methods to the satisfaction of the Participating Organisation free of charge to all Customers and supply them with the appropriate contact details to ensure a prompt response.
- 9.6 All complaints and customer service queries shall be dealt with in a courteous and efficient manner.
- 9.7 The Contractor shall have a clear written procedure for handling complaints and dealing with Customer service queries in accordance with the KPIs (Section 8) and shall investigate and resolve any complaint and queries in accordance within the timescales in that procedure.

## **10. SUSTAINABILITY AND ENVIRONMENTAL ISSUES**

10.1 The Participating Organisations takes their responsibility to the environment very seriously. To this effect an ethical decision has been made to use recycled paper wherever possible. The paper must be at least Elementary Chlorine Free (ECF). Totally Chlorine Free (TCF) will also be accepted. Contractors will be asked to provide pricing information based on FSC paper with an indication of price variance for 100% post-consumer waste paper if applicable. It is appreciated that there may be circumstances where specific paper not fitting this criteria will be required and each Authority will negotiate with the Contractor regarding this on an ad hoc basis.

## **11. SECURITY**

11.1 The Contractor and their employees, carriers or agents should notify the Customer upon arrival and departure from the premises.

## **12. FURTHER COMPETITION**

12.1 All Contractors will be asked to give an estimate for all print jobs. Jobs will be allocated based on the estimate price and ability to meet delivery deadline. The Participating Organisations also reserves the right to place orders for bespoke items outside the framework.

12.2 A draft version of the framework arrangements for Print Services is set out in Appendix 4. These may be subject to subsequent minor revisions.

## **13. MARKETING**

13.1 Promotion of the Contract within the individual Participating Organisations will be the responsibility of each Authority. The Contractor shall ensure that each Authority is kept informed of new Goods and Services and other developments including agreed price changes.

13.2 All marketing literature supplied by the Contractor will be taken as being free of charge.

13.3 The Contractor must not market their services directly within the Participating Organisations' establishments without the express agreement of the relevant Authority.

## APPENDIX 3 – PRICE SCHEDULE

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## APPENDIX 4 – AWARD PROCEDURE

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### Conducting Further Competition with Multiple Economic Operators

- 1.1 Where the terms laid down in the Framework Agreement are not precise or complete enough for the particular call-off, Further Competition will be held with all those Contractors within the Framework Agreement capable of meeting the particular requirement.
- 1.2 The basic terms and conditions of the Framework cannot be renegotiated or the Specification used in setting up the Framework cannot be substantively changed.
- 1.3 **Price:** A Contracting Body may conduct Further Competition based on evaluation of 100% price where it is seeking best price from Contractors to meet the particular circumstances of the individual Call-Off or Order, and no element of quality is to be evaluated.
- 1.4 **Price and Quality:** A Contracting Body, when conducting Further Competition, may at their option vary the % weighting ratios as part of any Further Competition if both quality and price is to be evaluated.
- 1.5 The Contracting Body may wish to conduct Further Competition to reflect particular circumstances for the individual call-off and weight the evaluation / award criteria according to the Contracting Body's requirements.
- 1.6 Examples of possible areas:
  - particular delivery timescales;
  - particular invoicing arrangements and payment profiles;
  - additional security needs;
  - incidental Charges;
  - particular mixes of rates and quality;
  - where the terms include a price mechanism;

- individual special terms (e.g. specific to the particular Goods, Services or Goods and Services that will be provided to meet a particular requirement under the Framework Agreement)

1.7 The Contractor acknowledges that:

1.7.1 Contracting Bodies may opt to use electronic methods for running their Further Competitions, and that evaluation of tenders will be included within an electronic process;

1.7.2 Equally, Contracting Bodies may opt to use non-electronic methods;

1.7.3 Interview, presentations and/or site visits may be required as part of the process at Further Competition;

1.8 Whilst Further Competition is likely to be conducted directly by an individual Contracting Body, Further Competition may also be run by a Contracting Body on behalf of a collaboration or group of Contracting Bodies where necessary or desired.

1.9 The Contractor acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:

1.9.1 the conduct of Other Contracting Bodies in relation to the Framework Agreement; or

1.9.2 the performance or non-performance of any Call-Off Contract between the Contractor and Other Contracting Bodies entered into pursuant to the Framework Agreement.

1.10 Subject to clauses 1.1 to 1.3 above, each Contracting Body may place an Order with the Contractor in a form agreed with the Contractor.

- 1.11 The Order constitutes an offer by the Contracting Body to purchase the Goods, Services or Goods and Services subject to the terms and conditions of the Call-Off Contract.