DATED 2018

**THE COUNCIL OF THE COUNTY OF DURHAM**

and

**[PROVIDER]**

FRAMEWORK AGREEMENT

relating to the provision of Audio Visual Aids Equipment &

Accessories

LOT [ ]

Helen Lynch

Head of Legal and Democratic Services

County Hall

Durham

DH1 5UL

**THIS AGREEMENT** dated 2017

is made **BETWEEN**:

(1) THE COUNCIL OF THE COUNTY OF DURHAM whose registered office is at County Hall, Durham, DH1 5UL (the “Council”); and

(2) [ ] [(Company No. [ ]) whose [registered] office is at [ ] (“the Provider”)

each one a Party and together the Parties.

**BACKGROUND**

(A) The Council placed a contract notice [number in OJEU] on [**date]** seeking tenders from Providers for the provision of Audio Visual Aids (divided into Lots) under a framework agreement.

(B) The Provider submitted a Tender on [**date**].

(C) On the basis of the Provider’s Tender, the Council selected the Provider to enter a framework agreement in respect of the Provider’s Lots to provide Goods to the Contracting Bodies on a call-off basis in accordance with this Framework Agreement.

(D) This Framework Agreement sets out the award and ordering procedure for the Goods and the Competed Goods which may be required by the Contracting Bodies, the main terms and conditions for any Call-Off Contract which the Contracting Bodies may conclude, and the obligations of the Provider during and after the Term of this Framework Agreement.

(E) It is the Parties’ intention that there will be no obligation for any Contracting Body to award any Call-Off Orders under this Framework Agreement during its Term.

IT IS AGREED as follows:

**INTERPRETATION**

* 1. In this Framework Agreement the following expressions have the following meanings:-

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| --- | --- |
| “Approval” | the prior written approval of the Council; |
| “Audit” | an audit carried out pursuant to Clause 17; |
| “Auditor” | the Council’s internal auditor and/or the National Audit Office or an auditor appointed by the Audit Commission as the context requires; |
| “Authorised Officer” | the person duly appointed by the Council and notified in writing to the Provider to act as the representative of the Council for the purpose of the Framework or as amended from time to time and in default of such notification the Council’s Head of Procurement or similar responsible officer; |
| “Award Criteria” | the Standard Call-Off Award Criteria and/or the Competed Call-Off Award Criteria as the context requires; |
| “Business Day” | any day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London; |
| “Call-Off Contract” | the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Goods made between the a Contracting body and the Provider comprising a Call-Off Order and the Call-Off Contract as may be amended pursuant to Clause 6.4.6; |
| “Call-Off Data” | any reports, documents, and other data or materials acquired or brought into existence or used in relation to the Goods; |
| “Call-Off Order” | an order placed with the Provider in accordance with the provisions of Clauses 6.9 and 6.14; |
| “Commercially Sensitive Information” | any Confidential Information comprised of information:  (a) which is provided in writing by the Provider to the Contracting Body in confidence and designated as Commercially Sensitive Information including emergency contact list; and/or  (b) that constitutes a trade secret; |
| “Competed Call-Off” | a mini-competition which follows the procedure set out in Clause 6.6 for the selection of a Provider and award of a Call-Off Contract for Competed Goods by a Contracting Body under this Framework Agreement; |
| “Competed Call-Offs Award Criteria” | the award criteria to be applied to tenders received through mini-competitions held for the award of Call-Off Contracts for Competed Call-Offs as set out in Schedule 2; |
| “Competed Goods” | Goods and all associated requirements set out by a Contracting Body in a Competed Call‑Off; |
| “Confidential Information” | (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and  (b) the Commercially Sensitive Information; |
| “Contracting Body” | the Council and any other contracting body described in the OJEU notice, which includes NEPO members and associate members and those bodies and establishments listed in Schedule 11; |
| “Contract Year” | a period of twelve (12) months commencing on the date hereof, or on the anniversary of the date hereof, as the case may be; |
| “Council Establishment” | means those bodies and establishments listed in Schedule 11; |
| “Direct Losses” | all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional Goods, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses; |
| “Dispute Resolution Procedure” | the procedure set out in Clause 37; |
| “DPA” | the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
| “Environmental Information Regulations” | 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; |
| “Extended Period(s)” | any one of or together the First Extended Period, the Second Extended Period and/or the Third Extended Period; |
| “Fees Regulations” | the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004; |
| “First Extended Period” | a period of twelve (12) months commencing upon the end of the Initial Term; |
| “FOIA” | the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation; |
| “Force Majeure” | the occurrence after the date of this Framework Agreement, of:-  war, civil war, armed conflict or terrorism; or  nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act or breach of this Framework Agreement by the Provider, Sub-Contractors’ or suppliers (of any tier); or  pressure waves caused by devices travelling at supersonic speeds;  which directly causes either party to be unable to comply with all or a material part of its obligations under this Framework Agreement; |
| “Framework Agreement” | this agreement and all Schedules to this agreement; |
| "Fraud" | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud any Contracting Body; |
| “Further Pricing Schedule” | the further pricing schedule submitted by a Provider for the Competed Goods as set out in Clause 6.6, Competed Goods; |
| “Goods” | the Goods set out in Schedule 1 and/or the Competed Goods; |
| “Good Industry Practice” | standards, practices, methods and procedures conforming to the Law and 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 in a similar type of undertaking under the same or similar circumstances; |
| “Goods Framework Lots” | means the lots advertised on the NEPO Portal and referred to in Schedule; |
| “Guidance” | any guidance issued or updated by the UK Government from time to time in relation to the Regulations; |
| “Indirect Losses” | loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any losses under any sub-contracts which are not of themselves Indirect Losses; |
| “Information” | has the meaning given under Section 84 of the Freedom of Information Act 2000; |
| “Initial Term” | a period of twelve (12) months from the Commencement Date; |
| “Insolvency Event” | any of the following:-  (a) a Court makes an order that the Provider or Parent shall be wound up or a resolution for a voluntary winding up of the Provider or Parent is passed;  (b) any receiver or receiver manager in respect of the Provider [or Parent] is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;  (c) any voluntary arrangement is made for the composition of debts or an arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Provider or Parent;  (d) an administration order is made or an administrator is appointed in respect of the Provider or Parent; |
| “Intellectual Property Rights” | patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off; |
| “ITT” | the invitation to tender issued by the Council on [**date**]; |
| “Key Performance Indicators” | where relevant, key performance indicators for monitoring ongoing performance and delivery as detailed in Schedule 5 to this Framework Agreement; |
| “Law” | 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, judgment of a relevant court of law, or directives or requirements of any Regulatory Body; |
| “Management Information” | the management information specified in Schedule 6; |
| “Material Default” | any breach of Clause 6 (Award Procedures), Clause 10 (Safeguard Against Fraud), Clause 13 (Statutory Requirements), Clause 15 (Non-Discrimination), Clause 16 (Provision of Management Information), Clause 17 (Records and Audit Access), Clause 19 (Data Protection), Clause 20 (Freedom of Information) and Clause 26 (Transfer and Sub-Contracting); |
| “Month” | a calendar month; |
| “NEPO” | North Eastern Purchasing Organisation; |
| “Order” | an order for Goods served by any Contracting Body on the Provider; |
| “Order Form” | means a document setting out details of an Order in the form set out in Schedule 4 or such other form as may be agreed between the Parties |
| “Ordering Procedures” | the ordering and award procedures specified in Clause 6; |
| “Other Contracting Bodies” | means all Contracting Bodies except the Council; |
| “Parent Company” | any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term “**Holding Company**” shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto; |
| “Party” | the Council, Other Contracting Bodies and/or the Provider as the context requires; |
| “Price” | the price of the Goods as set out in the Pricing Schedule. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for; |
| “Pricing Schedule” | the pricing schedule set out in Schedule 3 to this Framework Agreement; |
| “Prohibited Act” | offering, giving or agreeing to give to any servant of a Contracting Body any gift or consideration of any kind as an inducement or reward:  for doing or not doing (or having done or not having done)any act in relation to the obtaining or performance of this Framework Agreement or any other contract with a Contracting Body ; or  for showing or not showing favour or disfavour to any person in relation to this Framework Agreement or any other contact with the Contracting Body ;  entering into this Framework Agreement or any other contract with the Contracting Bodies in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract was entered into particulars of such commission and of any of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Contracting Body or  committing any offence:  under the Bribery Act 2010  under Law creating offences in respect of fraudulent acts; or  at common law in respect of fraudulent acts in relation to this Framework Agreement or any other contract with the Contracting Body;  defrauding or attempting to defraud or conspiring to defraud any of the Contacting Body**;** |
| “Providers” | the providers appointed as Framework Agreement providers under the Framework Agreement; |
| “Provider’s Lots” | means the lots which the Provider has been appointed to under this Framework Agreement as set out in Schedule 1 |
| “Regulations” | the Public Contracts Regulations 2015; |
| “Regulatory Bodies” | 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; |
| “Requests for Information” | a request for information or an apparent request under the FOIA or the Environmental Information Regulations; |
| “Replacement Provider” | any company, organisation or person who replaces the Provider following termination or expiry of all or part of this Framework Agreement; |
| “Second Extended Period” | a period of 12 months commencing upon the end of the First Extended Period; |
| “Staff” | means all persons employed by the Provider to perform its obligations under the Framework Agreement together with the Provider’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Framework Agreement; |
| “Standard Call-Off” | means a call-off from this Framework Agreement which follows the process set out in Clause 6.5 for the selection of a Provider and award of a Call-Off Contract for Goods by a Contracting Body; |
| “Sub-Contractor” | any sub-contractor to be appointed by the Provider to undertake any part of the Goods; |
| “Tender” | means the tender submitted by the Provider to the Council on [**date**]; |
| “Term” | means together the Initial Term and any Extended Period(s); |
| “Third Extended Period” | a period of 12 months commencing upon the end of the Second Extended Period; |
| “TUPE” | the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 2006/246) as amended or re-enacted from time to time; |
| “VAT” | value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; |
| “Working Days” | any day other than a Saturday, Sunday or public holiday in England and Wales; |
| “Year” | a calendar year, |

* 1. The interpretation and construction of this Framework Agreement including any schedules and appendices shall all be subject to the following provisions:
     1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
     2. words importing the masculine include the feminine and the neuter;
     3. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
     4. references to any person shall include natural 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 or transferees;
     5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
     6. headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
     7. references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;
     8. references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;
     9. reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and

in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

1. **TERM OF FRAMEWORK AGREEMENT**

2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall continue in force for the Initial Term whereupon it will automatically terminate, unless extended in accordance with Clause 2.2.

2.2 The Council may in its absolute discretion, extend this Framework Agreement by notice in writing to the Provider for any Extended Period.

1. **SCOPE OF FRAMEWORK AGREEMENT**
   1. This Framework Agreement governs the relationship between the Council and the Provider in respect of the provision of the Goods by the Provider to the Contracting Bodies.
   2. The Council and the Contracting Bodies (subject to the following provisions of this Clause 3.2) may at their absolute discretion and from time to time order Goods from the Provider in accordance with the Ordering Procedure during the Term.
   3. The Provider acknowledges that there is no obligation for any Contracting Body to purchase any Goods from the Provider during the Term.
   4. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Goods to be ordered by them pursuant to this Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
   5. The Provider shall on request provide on or before each anniversary of this Framework Agreement to the Council current financial information in the form of the Statement of Good Standing detailed at Schedule 8 to this Framework Agreement confirming that the Provider’s financial standing is no less than that submitted by the Provider during the pre-qualification stage of the procurement of the Framework Agreement and is of sufficient strength to allow them to fulfil their respective obligations under this Framework Agreement for the following twelve (12) month period.
2. **PROVIDER APPOINTMENT**

The Council appoints the Provider as a potential Provider of the Goods referred to in the Provider’s Lots and the Provider shall be eligible to be considered for the award of Call-Off Orders for such Goods by the Council during the Term.

1. **NON-EXCLUSIVITY**

The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Goods from the Provider and that the Contracting Bodies are at all times entitled to enter into other contracts and agreements with other Providers for the provision of any Goods.

1. **AWARD PROCEDURES**

**Awards under the Framework Agreement**

* 1. If a Contracting Body decides to source Goods through the Framework Agreement then it may:
     1. award a Call-Off Contract following the Standard Call-Off in accordance with the terms laid down in this Framework Agreement without reopening competition; and
     2. award a Call-Off Contract following a Competed Call-Off conducted in accordance with the requirements of this Framework Agreement.
  2. The Provider shall not solicit or in any way unilaterally approach any Contracting Body for the sourcing of Goods under this Framework Agreement.

**Standard Call-offs (Awards without re-opening Competition)**

* 1. A Contracting Body when ordering Standard Call-offs under the Framework Agreement without re-opening competition shall:
     1. identify the Goods required;
     2. identify the Provider who has been accepted onto the Framework Agreement and submitted the most economically advantageous tender for the Goods required;
     3. place a Call-Off Order with the identified Provider which:
        1. states the Standard Call-Off requirements;
        2. identifies the Goods Framework Lot or Lots;
        3. states the price payable for the Standard Call-Offs requirements in accordance with the Pricing Schedule; and
        4. incorporates the terms and conditions of the Call-Off Contract.

**Competed Goods (Awards following Mini-Competitions)**

* 1. A Contracting Body ordering Competed Goods under the Framework Agreement shall:

1. invite all Providers to submit a Further Pricing Schedule for the Competed Goods within a specified time limit;
2. keep each Further Pricing Schedule confidential until the expiry of the time limit for the receipt by it of the Further Pricing Schedules; and
3. apply the Competed Call-Offs Award Criteria to the Providers’ compliant Further Pricing Schedule submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements; and
4. place a Call-Off Order with the successful Provider which:
5. states the requirements;
6. identifies the Goods Framework Lot or Lots;
7. states the price payable in accordance with the Further Pricing Schedule submitted by the successful Provider; and
8. incorporates the terms and conditions of the Call-Off Contract..

6.7 The Provider agrees that all Further Pricing Schedules submitted by the Provider in relation to a mini competition held pursuant to this Clause 6 shall be the Price used by the relevant Contracting Body for all subsequent Standard Call-Offs in accordance with the provisions of Clauses 6.2, 6.3 and 6.4.

6.8 Notwithstanding the fact that a Contracting Body has followed the Ordering Procedures set out in this Clause 6, the Contracting Body shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Contracting Body to place any Call Off-Order.

**Form of Call-Off Order**

6.9 Subject to Clauses 6.1 to 6.8 above, the Contacting Body may place a Call-Off Order with the Provider by serving an order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Provider including systems of ordering involving facsimile, electronic mail or other on-line solutions.

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

**Accepting and Declining Call-Offs**

6.11 Following receipt of a Call-Off Order, the Provider shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of a Call-Off Order) determined by the Contracting Body and notified to the Provider in writing at the same time as the submission of the Call-Off Order (which in any event shall not exceed three (3) Working Days) acknowledge receipt of the Call-Off Order and either:

* 1. notify the Contracting Body that it declines to accept the Call-Off Order; or
  2. notify the Contracting Body that it accepts the Call-Off Order by signing and returning the Call-Off Order.

6.12 If the Provider:

1. notifies the Contracting Body that it declines to accept a Call-Off Order; or
2. the time-limit referred to in Clause 6.10 has expired;

then the offer from the Contracting Body to the Provider shall lapse and the Council may:

1. in the case of a Standard Call-Off offer that Call-Off Order to the Goods Framework Provider that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria;
2. in the case of a Competed Call-Off offer the Call-Off Order to the Provider that submitted the next lowest Further Pricing Schedule.

6.13 The Provider in agreeing to accept such a Call-Off Order pursuant to Clause6.11above shall enter a Call-Off Contract with the Contracting Body for the provision of the Goods referred to in that Call-Off Order. A Call-Off Contract shall be formed on the Contracting Body’s receipt of the signed Call-Off Order provided by the Provider (or such similar or analogous form agreed with the Provider) pursuant to Clause 6.12 above or when the Provider takes action under the Call-Off Order

6.14 Any Council Establishment may place a Call-Off Order directly with the Provider.

1. **WARRANTIES AND REPRESENTATIONS**
   1. The Provider warrants and represents to the Council that:
      * 1. it has full capacity and authority 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;
        2. this Framework Agreement is executed by a duly authorised representative of the Provider;
        3. in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;
        4. as at the Commencement Date, all information, statements and representations contained in the Tender (including statements made in relation to the categories referred to in Regulation 57 of the Regulations) 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 prior to the Commencement Date;
        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 the Framework Agreement;
        6. it has not caused or induced any person to enter such agreement referred to in Clause 7.1 (e) above;
        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 under the Framework;
        8. it has not committed any offence under the Bribery Act 2010;
        9. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with any Contacting Body;
        10. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with a Contracting Body ;
        11. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider’s assets or revenue;

7.2 The Provider warrants and represents to the Other Contracting Bodies the statements in Clause 7.1 above.

1. **BRIBERY**
   1. The Provider:
      * 1. shall not, and shall procure that any Staff shall not, in connection with this Framework Agreement commit a Prohibited Act as defined in the Bribery Act 2010;
        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 Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Framework Agreement;
   2. The Provider shall:
      * 1. if requested, provide the Council with any reasonable assistance 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;
        2. within 5 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this Clause 8 by the Provider and all persons associated with it or other persons who are supplying services or Goods in connection with this Framework Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
   3. If any breach of this Clause 8 is suspected or known, the Provider must notify the Council immediately.
   4. If the Provider notifies the Council that it suspects or knows that there may be a breach of this Clause 8, the Provider 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.
   5. Without prejudice to any other rights and remedies available under this Framework Agreement, the Council may terminate this Framework Agreement by written notice with immediate effect if the Provider or Staff (in all cases whether or not acting with the Provider's knowledge) breach Clause 8 and recover from the Provider the amount of any loss suffered by the Council arising from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Term. In determining whether to exercise the right of termination under this Clause 8, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by Staff not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:
      * 1. with the Provider; or
        2. with the actual knowledge of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or
        3. in circumstances where any one or more of the directors of the Provider or the Sub-Contractor ought reasonably to have had knowledge.
   6. Any notice of termination under Clause 8.5 must specify:
      * 1. the nature of the Prohibited Act;
        2. the identity of the party whom the Council believes has committed the Prohibited Act; and
        3. the date on which this Contract will terminate.
   7. Notwithstanding Clause 37 (Dispute Resolution), any dispute relating to:
      * 1. the interpretation of this Clause 8; or
        2. the amount or value of any gift, consideration or commission;

shall be determined by the Council and its decision will be final and conclusive.

* 1. Any determination under Clause 8 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council;
  2. For the avoidance of doubt the Provider shall be responsible for the acts and omissions of any Sub-Contractor and for the purpose of this Clause 8, any act, default or omission of any Sub-Contractor shall be deemed to be an act, default or omission of the Provider.

1. **CONFLICTS OF INTEREST**
   1. The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position 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 Provider or Staff and the duties owed to the Council under the provisions of this Framework Agreement or any Contracting Body under a Call-Off Contract.
   2. The Provider shall promptly notify and provide full particulars to the Council and any relevant Other Contracting Body if such conflict as referred to in Clause 9.1 above arises or is reasonably foreseeable to arise.
   3. The Council reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Provider 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 Provider 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 9 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

1. **SAFEGUARD AGAINST FRAUD**

The Provider shall safeguard the Council funding of the Framework Agreement and any Contracting Body funding of any Call-Off Contract against Fraud generally and, in particular, fraud on the part of the Provider or its Staff. The Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

1. **CALL-OFF CONTRACT PERFORMANCE**
   1. The Provider shall perform all Call-Off Contracts entered into with the Contracting Bodies in accordance with:
      * 1. the requirements of this Framework Agreement; and
        2. the terms and conditions of the respective Call-Off Contracts.
   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 a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

1. **PRICES for Goods** 
   1. The prices offered by the Provider for Call-Off Contracts to the Contracting Bodies for Standard Call-Offs shall be the prices listed in the Pricing Schedule
   2. The prices offered by the Provider for Call-Off Contracts to the Council for Competed Call-Offs shall be based on the prices set out in the Further Pricing Schedules tendered in accordance with the requirements of the mini-competition held pursuant to Clause 6.
   3. The Provider acknowledges that where a Contracting Body undertakes an annual Competed Call-Off, the prices submitted in the Further Pricing Schedule shall be the price for subsequent Standard Call-Offs with that Contracting Body and the Price and Pricing Schedule for use by that Contracting Body shall be amended accordingly.

1. **STATUTORY REQUIREMENTS**

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

1. **RESTROSPECTIVE PAYMENTS**

Any retrospective payments offered by the provider under this Framework Agreement are to be paid to the Council as per the details in Schedule 10

1. **NON-DISCRIMINATION**
   1. The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
   2. The Provider shall take all reasonable steps to secure the observance of Clause 15.1 by all servants, employees or agents of the Provider and all suppliers and Sub-Contractors employed in the execution of the Framework Agreement.

1. **PROVISION OF MANAGEMENT INFORMATION**
   1. The Provider shall submit Management Information to the Council in the form set out in Schedule 6 throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into with any Contracting Body.
   2. The Council may share the Management Information supplied by the Provider with any Contracting Body.
   3. The Council may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) month’s written notice of any changes.
2. **RECORDS AND AUDIT ACCESS**
   1. The Provider shall keep and maintain full and accurate records and accounts of the operation of this Framework Agreement including the Goods provided under it until the latest of:
      * 1. the expiry of a period of twelve (12) months following termination or expiry of the Framework Agreement; or
        2. the expiry of a period of three (3) months following the date on which the Provider ceases to provide Goods under any Call-Off Contract.
   2. The Provider shall keep the records and accounts referred to in Clause 17.1 above in accordance with good accountancy practice.
   3. The Provider shall afford the Council or Relevant Contracting Body and/or the Auditor such access to such records and accounts as may be required from time to time.
   4. The Provider shall provide such records and accounts (together with copies of the Provider’s published accounts) during the Term and for a period of one (1) year after expiry of the Term to the Council or relevant Contacting Body and the Auditor.
   5. The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Goods pursuant to the Call-off Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.
   6. Subject to the Council’s rights of confidentiality, the Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including:
      * 1. all information requested by the Auditor within the scope of the Audit;
        2. reasonable access to sites controlled by the Provider and to equipment used in the provision of the Goods; and
        3. access to the Staff.
   7. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 17, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Council for the Council’s reasonable costs incurred in relation to the Audit.
3. **CONFIDENTIALITY**
   1. Except to the extent set out in this Clause 18 or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

18.2 Clause 18.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 20.5 (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or

(e) it is independently developed without access to the other party's Confidential Information.

18.3 The Provider may only disclose the Council’s Confidential Information to its Staff who are directly involved in the provision of the Goods and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

18.4 The Provider shall not, and shall procure that its Staff do not, use any of the Contracting Bodies’Confidential Information received otherwise than for the purposes of this Framework Agreement.

18.5 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this Framework Agreement.

18.6 Nothing in this Framework Agreement shall prevent the Council from disclosing the Provider's Confidential Information:

(a)

(a) to any consultant, Provider or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;

(b) for the purpose of the examination and certification of the Council's accounts;

(c) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which a Contracting Body has used its resources.

18.7 The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 18.2 is made aware of the Council’s obligations of confidentiality, save in so far as the Provider accepts and acknowledges that control over the conduct of such bodies is outside of the control of the Council and as such the Council is not liable.

18.8 Nothing in this Clause 18 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

1. **DATA PROTECTION**

The Provider shall (and shall procure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement.

1. **FREEDOM OF INFORMATION**
   1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations.
   2. The Provider shall and shall procure that its Sub-Contractors shall:

(a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

(b) provide the Council with a copy of all 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’s request; and

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

* 1. The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
  2. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
  3. The Provider acknowledges that (notwithstanding the provisions of Clause 20.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Goods:

1. in certain circumstances without consulting the Provider; or
2. following consultation with the Provider and having taken their views into account;

(c) provided always that where 20.2 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

**21** **PUBLICITY**

21.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Council’s prior written consent.

1. The Council shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Council, including any examination of this Framework Agreement by the Auditor or otherwise.
2. The Provider shall not do anything, which may damage the reputation of the Council or bring the Council into disrepute.

**22. TERMINATION**

**Termination on Default**

22.1 The Council may terminate the Framework Agreement by serving written notice on the Provider with effect from the date specified in such notice:

1. where the Provider commits a Material Default and:
2. the Provider has not remedied the Material Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
3. the Material Default is not, in the reasonable opinion of the Council, capable of remedy.

**Termination on Financial Standing**

22.2 The Council may terminate the Framework Agreement by serving notice on the Provider in writing 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 Provider which adversely impacts on the Provider's ability to supply Goods under this Framework Agreement.

**Termination on Insolvency and Change of Control**

22.3 The Council may terminate this Framework Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:

1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
3. 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
4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
5. 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
6. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
7. being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
8. any event similar to those listed in Clause 22.3. a to Clause 22.3.k occurs under the law of any other jurisdiction.
9. The Provider shall notify the Council immediately if the Provider undergoes a change of control as defined by sections 450, 451 and 750 of the Corporation Tax Act 2010 ("Change of Control"). The Council may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:
10. being notified that a Change of Control has occurred; or
11. where no notification has been made, the date that the Council becomes aware of the Change of Control;

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

**Termination by the Council**

22.4 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 Months written notice to the Provider and all other Providers. The Parties acknowledge that if the Council exercises its rights under Clause this 22.4 it shall exercise its equivalent rights under all agreements with the Providers.

**TUPE and Retendering**

22.6 Not used.

**23. CONSEQUENCES OF TERMINATION AND EXPIRY**

23.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 23.

23.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

23.3 Within thirty (30) Working Days of the date of the Council termination or expiry of the Framework Agreement, the Provider shall return to the Council any data and Confidential Information belonging to the Council in the Provider’s possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Provider’s reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.

23.4 The Council shall be entitled to require access to data or information arising from the provision of the Goods from the Provider until the latest of:

1. the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or
2. the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Goods under any Call-Off Contract.

23.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

23.6 The provisions of Clauses 7, 8, 9, 10, 17, 18, 19, 24, 25 and 34 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

**LIABILITY**

24.1 Neither Party excludes or limits its liability for:

1. death or personal injury caused by its negligence, or that of its Staff;
2. fraud or fraudulent misrepresentation by it or its Staff; or
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.

24.2 The Provider 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 Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. This Clause 24.2 shall not apply to the extent that the Provider 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, or the negligence or Default of its Staff or sub-contractors, or by any circumstances within its or their control.

**25. INSURANCE**

25.1 The Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Framework Agreement and any Call-Off Contracts awarded under it, including death or personal injury, or loss of or damage to property. Without prejudice to Clause 25.2 below, the Provider shall as a minimum effect and maintain insurance cover to the level confirmed by the Provider in the Tender.

25.2 The Provider shall effect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement:

1. public liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time; and
2. employers' liability insurance with a minimum limit of indemnity as required by law from time to time.

25.3 Any excess or deductibles under such insurance (referred to in Clause 25.1 and Clause 25.2) shall be the sole and exclusive responsibility of the Provider.

25.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under the Framework Agreement.

25.5 The Provider shall produce to the Council, 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.

25.6 If, for whatever reason, the Provider 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 may recover the costs of such arrangements from the Provider.

25.7 The Provider shall maintain the insurances referred to in Clause 25.1 and Clause 25.2 for a minimum of six (6) years following the expiration or earlier termination of the Framework Agreement.

**26** **TRANSFERs AND SUB-CONTRACTING**

26.1 The Framework Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Council. The Provider shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

26.2 The Council shall be entitled to novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council provided that such assignment, novation or disposals shall not increase the burden of the Provider’s obligations under the Framework Agreement.

**27 PENSIONS**

Not used.

**28** **Variations TO THE FRAMEWORK AGREEMENT**

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 8.

**29 CONTINOUS IMPROVEMENT**

29.1 The Provider is required to collaborate with the Council throughout the term of this Framework Agreement to achieve continuous improvement in the quality and delivery of the Goods in accordance with the Council’s obligations under Part I of the Local Government Act 1999.

29.2 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Goods. As part of this obligation the Provider shall identify and report to the Authorised Officer quarterly in the first 12 months of the Framework Agreement and once every six months for the remainder of the Term on:

* 1. the emergence of new and evolving relevant technologies which could improve the Goods;
  2. new or potential improvements to the Goods including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and Council support Goods in relation to the Goods;
  3. new or potential improvements to the interfaces or integration of the Goods with other services/Goods provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
  4. changes in ways of working that would enable the Goods to be delivered at lower costs and/or at greater benefits to the Council.

Such obligation to collaborate shall include but not be limited to, providing the Council with access (as reasonably required) to such of the Provider’s premises as are used in the delivery of the Goods and/or such of the Provider’s data as relates to the Goods.

**30 BUSINESS CONTINUITY PLAN**

30.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to make sure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing services or Goods which underpin the Council’s service provision must be able to continue to provide those Goods in the event of an emergency. The Provider shall use its reasonable endeavours:

* 1. to prepare a robust Business Continuity Plan that makes sure of the continuation of any Call-Off Contracts under this Framework Agreement ;
  2. upon request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time-to-time);
  3. to allow the Council at its discretion from time-to-time to monitor the Provider’s business continuity arrangements;
  4. to notify the Council if an incident occurs which activates the Provider’s Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
  5. to provide the Council with details of how the Provider managed any incident which resulted in the activation of the Provider’s Business Continuity Plan and any consequential amendments made to the Provider’s processes and/or procedures afterwards.

**31** **RIGHTS OF THIRD PARTIES**

Save as provided in Clauses 3, 6 and 7.2, a person who is not party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.

**32** **SEVERABILITY**

32.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.

32.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

**33** **CUMULATIVE REMEDIES**

Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**34** **WAIVER**

34.1 The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

34.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 36.

34.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

**35** **ENTIRE AGREEMENT**

35.1 This Framework Agreement 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.

35.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

35.3 Nothing in this Clause 35 shall operate to exclude Fraud or fraudulent misrepresentation.

**36** **NOTICES**

36.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

36.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 34.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

36.3 For the purposes of Clause 36.2, the address of each Party shall be:

1. For the Council :

* C/O: [ ]
* For the attention of: [ ]
* Tel: [ ]
* Fax: [ ]
* Email: [ ]

1. For the Provider:

* [                    ]
* Address: [ ]
* For the attention of: [ ]
* Tel: [ ]
* Fax: [ ]
* Email: [ ]

Either Party may change its address for service by serving a notice in accordance with this Clause.

**37** **DISPUTE RESOLUTION**

37.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 36 above.

37.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

37.3 If the dispute cannot be resolved by the Parties pursuant to Clause 37.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 37.5 unless:

1. the Council considers that the dispute is not suitable for resolution by mediation; or
2. the Provider does not agree to mediation.

37.4 The obligations of the Parties under the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its employees, personnel and associates shall comply fully with the requirements of the Framework Agreement at all times.

37.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

1. a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator;
2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**38 JURISDICTION**

Subject to the provisions of Clause 37 (Dispute Resolution), the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English law.

**SCHEDULE 1 – GOODS AND LOTS**

**PART A**

[INSERT SPECIFICATION]

**PART B**

**GOODS FRAMEWORK LOTS**

**PART C**

**PROVIDER’S LOTS**

[DESCRIPTION OF PROVIDER’S LOTS TO BE INSERTED]

**PART D**

**TENDER**

[INSERT PROVIDER’S TENDER]

**SCHEDULE 2 - AWARD CRITERIA**

(insert award criteria here)

**SCHEDULE 3 – PRICING SCHEDULE**

[INSERT COMPLETED PRICING SCHEDULE]

**SCHEDULE 4 – CALL-OFF ORDER**

**Framework Agreement** (or other forms as required)

**FROM**

|  |  |
| --- | --- |
| **Council** |  |
| **Delivery Address:** |  |
| **Invoice Address:** |  |
| **Contact Ref:** | Ref:  Phone:  e-mail: |
| **Order Number:** | *To be quoted on all correspondence relating to this Order:* |
| **Order Date:** |  |

**TO**

|  |  |
| --- | --- |
| **Provider:** | [insert Provider's name] |
| **For the attention of:**  **E-mail:**  **Telephone number:** |  |
| **Address:** |  |

|  |
| --- |
| **1. ORDER REQUIREMENTS** |
| **(1.1) Goods Required:** |
| **(1.2) Delivery Date (where relevant:** |
| **(1.3) Location at which the Goods are to be provided (where relevant);** |
| **(1.4) Discounts *(if appropriate)*** |

|  |
| --- |
| **2 MINI-COMPETITION CALL-OFF ORDER - ADDITIONAL REQUIREMENTS** |
| **(2.1) Supplemental Requirements in addition to Call-off Terms and Conditions:** |
| **(2.2) Variations to Call-off Terms and Conditions** |

**By signing and returning this Order the PROVIDER agrees** to enter a legally binding contract with the Council to provide to the Council the Goods specified in this Order (together with where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Provider and the Council on **[DATE].**

|  |  |
| --- | --- |
| **For and on behalf of the Provider:** | |
| Name and Title |  |
| Signature |  |
| Date |  |

|  |  |
| --- | --- |
| **For and on behalf of the Council:** | |
| Name and Title |  |
| Signature |  |
| Date |  |

**SCHEDULE 5**

**FRAMEWORK AGREEMENT FOR AUDIO VISUAL AIDS & EQUIPMENT & ACCESSORIES**

**CALL-OFF TERMS AND CONDITIONS FOR goods**

**DURHAM COUNTY COUNCIL**

**CALL-OFF TERMS AND CONDITIONS FOR GOODS**

1. **GENERAL PROVISIONS**

Definitions

In the Contract, unless the context otherwise requires the following provisions shall have the meanings given to them below:

**"Approval"** and **"Approved"** means the written consent of the Council

**“Auditor”** means the National Audit Office or an auditor appointed by the Audit Commission as the context requires

**“Business Continuity Plan”** means the plan setting out the Provider’s proposed methodology to ensure continuance of the Contract in the event of an emergency;

**"Commencement Date"** means the commencement date set out in the Order

**"Commercially Sensitive Information"** means any Confidential Information comprised of information:

(a) which is provided by the Provider and designated as commercially sensitive information by the Council for the period set out in the Order and/or

(b) that constitutes a trade secret

**"Confidential Information"** means:

(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and

(b) the Commercially Sensitive Information

and does not include any information:

(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 6.2 -6.9 (Confidential Information);

(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information

**“Contract”** means the written agreement between the Council and the Provider consisting of the Order Form and these clauses;

**"Contract Price"** means the price (exclusive of any applicable VAT), payable to the Provider by the Council under the Contract, as set out in the Order, for the full and proper performance by the Provider of its obligations under the Contract

**"Contracting Authority"** means any Contracting Body as defined in the Framework Agreement other than the Council.

**“Contacting Body”** has the same meaning as that set out in the Framework Agreement;

**“Council”** means the County Council of Durham of County Hall, Durham DH1 5UL or the Contracting Body identified in the Order Form (which ever body has placed the Order);

**"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 Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other

**“Data Subject”** shall have the same meaning as set out in the Data Protection Act 1998;

**"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 Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other

**“Delivery Instructions”** any instructions provided in the Order and any other information that the Council considers appropriate to the provision of the Goods;

**"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

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

"**Force Majeure"** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

(a) any industrial action occurring within the Provider’s or any sub-contractor’s organisation; or

(b) the failure by any sub-contractor to perform its obligations under any sub-contract

**"Fraud"** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Council;

**“Framework Agreement**” means the framework agreement for the provision of Audio Visual Aids between the Council and the Provider dated XXX

**“Goods”** means the goods to be supplied as specified and all associated services provided by the Provider in relation to those goods;

**"Information"** has the meaning given under Section 84 of the FOIA

**"Intellectual Property Rights" and "IPRs"** means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

**"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, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply

**“Liabilities”** all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;

**"Month"** means calendar month;

**“Order”** means the order submitted by a Contracting Body to the Provider in accordance with the Framework Agreement;

**“Order Form”** means the order form submitted by the Contracting Body to the Provider in accordance with the Framework Agreement;

**"Parent Company"** means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed in Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

**"Party"** means the Provider or the Council

**“Payment Terms”** means the payment terms set out in the Order and Clause 4

**"Premises"** means the delivery address where the Goods are to be supplied, as set out in the delivery instructions

**"Provider”** means the person, firm or company with whom the Council enters into the Contract as identified in the Order

**"Quality Standards"** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Specification) and any other quality standards set out in the Specification

**"Regulatory Body / Bodies**" 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 the Contract or any other affairs of the Council

**"Replacement Provider"** means any third party provider of Goods appointed by the Council to supply any goods which are substantially similar to any of the Goods, and which the Council receives in substitution for any of the Goods following the expiry, termination or partial termination of the Contract

**"Request for Information"** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “Request” shall apply)

**"Staff"** means all persons employed by the Provider to perform its obligations under the Contract together with the Provider’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract

**"Tender"** means the tender or quotation document(s) submitted by the Provider to the Council in response to the Council’s invitation to providers for offers to supply it with Goods

**“Terms and Conditions”** the terms and conditions set out in this document;

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994

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

**Interpretation**

1 The interpretation and construction of the Contract including any schedules and appendices shall be subject to the following provisions:

1.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.1.2 words importing the masculine include the feminine and the neuter;

11.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

1.1.4 references to any person shall include natural 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 or transferees;

1.1.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

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

1.1.7 reference to a clause is a reference to the whole of that clause unless stated otherwise.

**Provider’s Status**

1.2 At all times during the Contract the Provider shall be an independent Provider 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.

**Council’s Obligations**

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

**Entire Agreement**

1.4 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.

1.5 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

1.6 Nothing in Clauses 1.4 and 1.5 shall operate to exclude Fraud or fraudulent misrepresentation.

1.7 In the event of and only to the extent of any conflict between the Contract documents, and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

(a) the Order and Order Form;

(b) the clauses of the Contract

(c) The remaining Schedules (if any); and

(d) any other document referred to in the clauses of the Contract.

**Notices**

1.9 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

1.10 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 1.11 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

1.11 For the purposes of Clause 1.10 the address of each Party shall be:

a) for the Council: the address set out in the Order;

b) for the Provider: the address set out in the Order.

1.12 Either Party may change its address for service by serving a notice in accordance with this Clause.

**Mistakes in Information**

1.13 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the supply of the Goods and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

**Conflicts of Interest**

1.14 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position 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 Provider or Staff and the duties owed to the Council under the provisions of the Contract.

1.15 The Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in Clause 1.14 above arises or is reasonably foreseeable.

1.16 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider 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 Provider and the duties owed to the Council under the provisions of the Contract. The actions 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.

**Prevention of Fraud**

1.17 The Provider shall take all reasonable steps to prevent any Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Council.

1.18 The Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

1.19 If the Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Council the Council may:

a) terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; and/or

b) recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this Clause 1.19.

1.20 This Clause shall apply for the duration of the Contract and for a period of two (2) years after expiry of the Contract.

2. **SUPPLY OF GOODS**

**The Goods**

2.1 The Provider shall supply the Goods in accordance with the Council’s requirements as stated in the Specification, and in accordance with 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.

2.2 If requested by the Council the Provider shall provide the Council with samples of Goods for evaluation and approval, at the Provider’s cost and expense and such requests shall be acted upon immediately.

2.3 The Provider shall ensure that the Goods are fully compatible with any of the Council’s equipment, to the extent set out in the Specification.

2.4 The Provider acknowledges that the Council relies on the skill and judgment of the Provider in the supply of the Goods and the performance of its obligations under the Contract.

**Delivery**

2.5 The Provider shall deliver the Goods at the time(s) and date(s) specified in the delivery instructions.

2.6 Delivery lead times from point of order to receipt of goods should not exceed four (4) working days.

2.7 Unless otherwise stated in the delivery instructions, where the Goods are delivered by the Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises.

2.8 Except where otherwise provided in the delivery instructions, delivery shall include the unloading, or stacking but not installation of the Goods by the Staff or the Provider’s suppliers or carriers at such place as the Council or duly authorised person shall reasonably direct.

2.9 Time of delivery shall be of the essence and if the Provider fails to deliver the Goods within the time specified in the delivery instructions, the Council may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Council.

2.10 The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Council elects not to accept such over-delivered Goods it shall give notice in writing to the Provider to remove them within five (5) Working Days and to refund to the Council 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 Council may dispose of such Goods and charge the Provider for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Provider unless they are accepted by the Council. The Council shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the delivery instructions.

2.11 Unless expressly agreed to the contrary, the Council shall not be obliged to accept delivery by instalments. If, however, the Council does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole of any unfulfilled part of the Contract without further liability to the Council.

2.12 The Provider shall deliver the Goods in accordance with the requirements of the Supply Chain Agreement relevant to the appropriate delivery point. See Appendix 1.

**Ownership and Risk**

2.13 Title and risk in the Goods shall, without prejudice to any other rights or remedies of the Council, pass to and remain with the Council on the supply or delivery of the Goods whichever is the earliest.

**Non-Delivery**

2.14 Where specified by the Council on dispatch of any consignment of the Goods the Provider shall send the Council an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Council on the due date for delivery, the Council shall, (provided that the Council has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Provider that the Goods have not been delivered and may request the Provider free of charge to deliver substitute Goods within the timescales specified by the Council or terminate the Contract.

**Inspection, Rejection and Guarantee**

2.15 The Council or its authorised representatives may inspect or test the Goods either completed or in the process of manufacture during normal business hours on reasonable notice at the Provider’s premises and the Provider shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Council of any rights or remedies in respect of the Goods and the Council reserves the right to reject the Goods in accordance with Clause 2.16.

2.16 The Council may by written notice to the Provider reject any of the Goods which fail to conform to the approved sample or fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to the Council of such Goods. If the Council rejects any of the Goods pursuant to this Clause the Council may (without prejudice to other rights and remedies) either:

(a) have such Goods promptly, and in any event within 3 Working Days, either repaired by the Provider or replaced by the Provider with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

(b) treat the Contract as discharged by the Provider’s breach and obtain a refund from the Provider in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Council in obtaining other goods in replacement provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

2.17 The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.

2.18 Any Goods rejected or returned by the Council as described in Clause 2.16 shall be returned to the Provider at the Provider’s risk and expense.

**Labelling and Packaging**

2.17 The Goods shall be packed and marked in a proper manner and in accordance with the Council’s instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the batch number, order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

3. **CONTRACT PERFORMANCE**

3.1 The Provider shall perform its obligations under the Contract:

(a) with appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

(b) in a timely manner; and

(c) in compliance with all applicable Laws, 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.

3.2 The Provider shall ensure that:

(a) the Goods conform in all respects with the Specification and, where applicable, with any sample approved by the Council;

(b) the Goods operate in accordance with the relevant technical specifications and correspond with any other requirements set out in the Specification;

(c) the Goods conform in all respects with all applicable Laws; and

(d) the Goods are free from defects in design, materials and workmanship and fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Provider by the Council.

(e) Any complaints received from the Council are investigated and responded to within 48 hours.

3.3 For the avoidance of doubt in relation to services provided by the Provider in relation to the Goods:

a) in consideration of the payment of the Price, the Provider shall supply the services during the Contract Period in relation to this Contract in a proper, skilful and workmanlike manner; and in accordance with the Council’s requirements

b) The Council may inspect and examine the manner in which the Provider provides the services on reasonable notice.

c) Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

d) For the avoidance of doubt, the Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of services has not been specified in this Contract, the Provider shall agree the relevant standard of the services with the Council prior to the supply of the services and, in any event, the Provider shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.

e) The Provider shall ensure that a sufficient number of Employees are in place to supply the Services and that all Employees supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

f) The Council shall have the right to require the Provider to attend such ad hoc performance review meetings as the Council (acting reasonably) shall request.

g) If the Provider at any time becomes aware of any material matter that could affect the performance of the Services in accordance with this Contract, the Provider shall inform the Council immediately.

4. **PRICE AND PAYMENT**

**Contract Price**

4.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clauses 4.3 to 4.11 inclusive (Payment and VAT).

4.2 The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with the Contract.

**Payment and VAT**

4.3 In consideration of the Provider performing its obligations under the Contract, the Council shall pay all sums due to the Provider, thirty (30) days from the receipt of a valid invoice, submitted in accordance with the Payment Terms set out in the Contract.

4.4 All payments to the Provider will be made via BACS transfer. The Council is under no obligation to make payments to the Provider by any method other than BACS transfer unless they have specifically agreed, in writing, to do so.

4.5 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

4.6 If the Council agrees to delivery by instalments in accordance with Clause 2.11 payments may also be made in corresponding instalments at the discretion of the Council.

4.7 Where the Provider enters into a sub-contract with a supplier or Provider for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

4.8 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.

4.9 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Provider’s failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause shall be paid by the Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

4.10 The Provider shall not suspend the supply of the Goods unless the Provider is entitled to terminate the Contract under Clause 9.4 – 9.5 (Termination on Default) for failure to pay undisputed sums of money.

4.11 Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced under the provisions of this Clause 4 in accordance with the Late Payment of Commercial Debts (Interest) Act 1998

**Recovery of Sums Due**

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

4.13 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.

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

4.15 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

5. **STATUTORY OBLIGATIONS AND REGULATIONS**

**Prevention of Bribery**

5.1 The Provider:

a) shall not, and shall procure that any Employee shall not, in connection with this Contract commit a Prohibited Act which for the purposes of these clauses 5.1 -5.9 only shall be as defined in the Bribery Act;

b) 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 Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

5.2 The Provider shall:

a) if requested, provide the Council with any reasonable assistance 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;

b) within 5 Working Days, of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with clause 5.1 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

5.3 If breach of clause 5.1 is suspected or known, the Provider must notify the Council immediately.

5.4 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 5.1, the Provider 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.

5.5 Without prejudice to any other rights and remedies available under this Contract, the Council may terminate this Contract by written notice with immediate effect if the Provider or an Employee (in all cases whether or not acting with the Provider's knowledge) breaches clause 5.1 and recover from the Provider the amount of any loss suffered by the Council arising from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. In determining whether to exercise the right of termination under this clause H5.5, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an Employee not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

a) with the Provider; or,

b) with the actual knowledge of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or

c) in circumstances where any one or more of the directors of the Provider or the Sub-Contractor ought reasonably to have had knowledge.

5.6 Any notice of termination under clause 5.5 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 Contract will terminate.

5.7 Notwithstanding clauses 10.2 – 10.6 (Dispute Resolution), any dispute relating to:

a) the interpretation of these clauses 5.1 - 5.9; 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

5.8 Any termination under clause 5.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

5.9 For the avoidance of doubt, the Provider shall be responsible for the acts and omissions of any Sub-Contractor and for the purpose of these clauses 5.1 – 5.9, any act, default or omission of any Sub-Contractor shall be deemed to be an act, default or omission of the Provider.

**Discrimination**

5.10 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

5.11 The Provider shall take all reasonable steps to secure the observance of Clause 5.10 by all servants, employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of the Contract.

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

5.12 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**Environmental Requirements**

5.13 The Provider shall perform its obligations under the Contract 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.

**Business Continuity Plan**

5.14 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing services or goods which underpin the Council’s service provision must be able to continue to provide in the event of an emergency. The Provider shall use its reasonable endeavours:-

a) to prepare a robust Business Continuity Plan that ensures the continuation of this Contract;

b) on request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time to time);

c) to allow the Council at its discretion from time to time to monitor the Provider’s business continuity arrangements;

d) to notify the Council if an incident occurs which activates the Provider’s Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and

e) to provide the Council with details of how the Provider managed any incident which resulted in the activation of the Provider’s Business Continuity Plan and any consequential amendments made to the Provider’s processes and/or procedures thereafter.

6. **PROTECTION OF INFORMATION**

**Data Protection**

6.1 The Provider shall (and shall procure that all of its Staff) comply with any notification requirements under the Data Protection Act 1998 and both Parties will duly observe all of their obligations under the Data Protection Act 1998 which arise in connection with the Contract.

**Confidential Information**

6.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

6.3 Clause 6.2 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clauses 6.10 - 6.16 inclusive (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other party's Confidential Information.

6.4 The Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

6.5 The Provider shall not, and shall procure that its Staff do not, use any of the Council’s Confidential Information received otherwise than for the purposes of this Contract.

6.6 At the written request of the Council, the Provider shall procure that those members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

6.7 Nothing in this Agreement shall prevent the Council from disclosing the Provider's Confidential Information:

(a) to any other Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities, (where relevant) on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;

(b) for the purpose of the examination and certification of the Council's accounts;

(c) for 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.

6.8 The Council shall use all reasonable endeavours to ensure that any person to whom the Provider's Confidential Information is disclosed pursuant to Clause 6.7 is made aware of the Council's obligations of confidentiality.

6.9 Nothing in these Clauses 6.2 – 6.9 inclusive shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

**Freedom of Information**

6.10 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

6.11 The Provider shall and shall procure that its Sub-contractors shall:

(a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

(b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

6.12 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

6.13 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

6.14 The Provider acknowledges that (notwithstanding the provisions of Clause 6.11) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:

(a) in certain circumstances without consulting the Provider; or

(b) following consultation with the Provider and having taken their views into account;

(c) provided always that where 6.11 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

6.15 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

6.16 The Provider acknowledges that where it notifies the Council of its view that information is considers to constitute Commercially Sensitive Information such notification is of indicative value only and that the Council may be obliged to disclose it in accordance with Clause 6.14.

**Publicity, Media and Official Enquiries**

6.17 The Provider shall not make any press announcements or publicise the Contract in any way without the Council’s prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this Clause.

6.18 The Council shall be entitled to publicise the Contract in accordance with any legal obligation upon the Council, including any examination of the Contract by the Auditor.

6.19 The Provider shall not do anything or cause anything to be done, which may damage the reputation of the Council or bring the Council into disrepute.

**Security**

6.20 The Provider shall comply with all reasonable security requirements of the Council while on the Premises and shall ensure that all Staff complies with such requirements.

6.21 The Council shall provide the Provider upon request copies of its written security procedures and shall afford the Provider upon request an opportunity to inspect its physical security arrangements.

**Records and Audit Access**

6.22 The Provider shall keep and maintain until one (1) year after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods provided under it, the Call-Off Contracts entered into with the Contracting Authority and the amounts paid by each Contracting Authority.

6.23 The Provider shall keep the records and accounts referred to in Clause 6.22 above in accordance with good accountancy practice.

6.24 The Provider shall on request afford the Council, the Council's representatives and/or the Auditor such access to such records and accounts as may be required from time to time.

6.25 The Provider shall provide such records and accounts (together with copies of the Provider’s published accounts) during the Contract Period and for a period of one (1) year after the expiry of the Contract Period to the Council and the Auditor.

6.26 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the supply of the Goods save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Council.

6.27 Subject to the Council's rights of Confidential Information, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

(a) all information requested by the Council within the scope of the audit;

(b) reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and

(c) access to Staff.

6.28 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 6.22 – 6.27 inclusive, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

7. **CONTROL OF THE CONTRACT**

**Transfer and Sub-Contracting**

7.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.

7.2 Where the Authority considers whether there are grounds for the exclusion of a sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

(a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;

(b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

7.3 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

7.4 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.

7.5 Subject to Clause 7.7, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority; or

(b) any other body established under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

(c) any private sector body which substantially performs the functions of the Council;

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under the Contract.

7.6 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause 7.7, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

7.7 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 7.5, to a body which is not a Contracting Authority, or if there is a change in the legal status of the Council, such that it ceases to be a Contracting Authority, (in the remainder of this Clause both such bodies being referred to as "the Transferee"):

(a) the rights of termination of the Council in Clauses 9.1 (Termination on insolvency and change of control) and 9.4 - 9.5 (Termination on Default) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.

7.8 The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider’s obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider’s obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

7.9 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

**Waiver**

7.10 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

7.11 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.3 -1.6 inclusive (Notices).

7.12 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**Variation**

7.13 Subject to the provisions of these Clauses 7.13 – 7.16, the Council may request a variation to Goods ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a “Variation”.

7.14 The Council may request a Variation by completing and sending the Variation form attached at Appendix 1 (“the Variation Form”) to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

7.15 In the event that the Provider is unable to provide the Variation to the Goods or where the Parties are unable to agree a change to the Contract Price, the Council 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 Provider has already delivered part or all of the Order in accordance with the delivery instructions or where the Provider can show evidence of substantial work being carried out to fulfil 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 at Clauses 10.2 – 10.6.

7.16 If the Parties agree the Variation and any variation in the Contract Price, the Provider 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.

**Severability**

7.17 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

7.18 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

**Remedies in the event of inadequate performance**

7.19 Where a complaint is received about the standard of Goods or about the manner in which any Goods have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Provider’s obligations under the Contract, then the Council shall take all reasonable steps to investigate the complaint.

The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with Clauses 9.4 – 9.5 (Termination on Default) of the Contract.

7.20 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under Clause 9.4 – 9.5 (Termination on Default), do any of the following:

(a) without terminating the Contract, itself supply or procure the supply of all or part of the Goods until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Goods in accordance with the Contract;

(b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods 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;

(c) terminate, in accordance with Clause 9.4 – 9.5 (Termination on Default), the whole of the Contract; and/or

(d) charge the Provider for and the Provider shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Goods by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Goods and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

7.21 If the Provider fails to supply any of the Goods in accordance with the provisions of the Contract and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) Working Days of the Council’s instructions or such other period of time as the Council may direct.

7.22 In the event that the Provider:

(a) fails to comply with Clause 7.21 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

(b) persistently fails to comply with Clause 7.21 above;

the Council may terminate the Contract with immediate effect by giving the Provider notice in writing.

7.23 Without prejudice to any other right or remedy which the Council may have, if any Goods are not supplied in accordance with, or the Provider fails to comply with any of the terms of, the Contract the Council 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 have been accepted by the Council:

(a) to rescind the Order;

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

(c) at the Council’s option to give the Provider the opportunity at the Provider’s expense to either remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(d) to refuse to accept any further deliveries of the Goods but without any liability to the Council;

(e) to carry out at the Provider’s expense any work necessary to make the Goods comply with the Contract; and

(f) to claim such damages as may have been sustained in consequence of the Provider’s breach or breaches of the Contract.

**Cumulative Remedies**

7.24 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**Monitoring of Contract Performance**

7.25 The Provider shall comply with the monitoring arrangements set out in the Contract including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

8. **LIABILITIES**

**Liability, Indemnity and Insurance**

8.1 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 Staff;

(b) Fraud or fraudulent misrepresentation by it or its Staff; 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;

8.2 Subject to Clause 8.3 the Provider shall indemnify and keep indemnified the Council 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 or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff 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 Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider 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 Council or by breach by the Council of its obligations under the Contract.

8.3 Subject to Clause 8.1., in no event shall either Party be liable to the other for any:

(a) loss of profits;

(b) loss of business;

(c) loss of revenue;

(d) loss of or damage to goodwill;

(e) loss of savings (whether anticipated or otherwise); and/or

(f) any indirect or consequential loss or damage.

8.4 The Council may, amongst other things, recover as a direct loss:

(a) any additional operational and/or administrative expenses arising from the Provider's Default;

(b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's Default; and

(c) the additional cost of procuring replacement Goods following termination of the Contract as a result of a Default by the Provider.

8.5 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.

8.6 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (which as a minimum shall comply with the level of cover set out in the Tender) in respect of all risks which may be incurred by the Provider, arising out of the Provider’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 Provider. Such insurance shall be maintained during the period over which the Contract is performed and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

8.7 The Provider shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

8.8 The Provider shall give the Council, on request, copies of all insurance policies referred to in this Clause 8 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.

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

8.10 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 8.1(b).

**Warranties and Representations**

8.11 The Provider warrants and represents that:

(a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

(b) the Contract is executed by a duly authorised representative of the Provider;

(c) in entering the Contract it has not committed any Fraud;

(d) as at the Commencement Date, all information, statements and representations contained in the Tender and (where relevant) the Pre-Qualification Questionnaire response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of the Contract and it will 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;

(e) 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;

(f) 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;

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

(h) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

(i) the obligations undertaken by the Provider shall be discharged and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

(j) in the three (3) years prior to the date of the Contract:

(i) it has 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; and

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

9. **DEFAULT, DISRUPTION AND TERMINATION**

**Termination on insolvency and change of control, or disqualification**

9.1 The Council may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:

(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 shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

(c) 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

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(e) 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

(f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

(g) being a "small company" within the meaning of Section 382 of the Companies Act 2006 , a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in Clause 9.1 (a) - (g) occurs under the law of any other jurisdiction.

9.2 The Council may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

(a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider’s creditors; or

(b) a petition is presented and not dismissed within 14 days or order made for the Provider’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider’s assets and such attachment or process is not discharged within 14 days; or

(f) being an individual, dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

(g) the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

9.3 The Provider shall notify the Council immediately if the Provider undergoes a change of control as defined by section 450, 451, 707 and 1124 of the Corporation Tax Act 2010 ("Change of Control"). The Council may terminate the Contract by notice in writing with immediate effect within six months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

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

**Termination on Default**

9.4 The Council may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider commits a Default and if:

(a) the Provider has not remedied the Default to the satisfaction of the Council within three (3) Working Days, or such other period as may be specified by the Council, 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 Council, capable of remedy; or

(c) the Default is a material breach of the Contract.

9.5 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause 4.12 – 4.15 (Recovery of Sums Due).

**Break**

9.6 The Council shall have the right to terminate the Contract at any time by giving ninety (90) days written notice to the Provider.

**The Public Contracts Regulations 2015**

9.7 The Council reserves the right to terminate the Contract where:

a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015; or

b) the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

c) the contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

**Consequences of Expiry or Termination**

9.8 Where the Council terminates the Contract under Clause 9.4 – 9.5 (Termination on Default) and then makes other arrangements for the supply of Goods, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 9.4 – 9.5 (Termination on Default), no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.

9.9 Subject to Clause 8 where the Council terminates the Contract under Clauses 9.6 (Break) and 9.7 (The Public Contracts Regulations 2015), the Council shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Clause 9.6 (Break) or Clause 9.7 (The Public Contracts Regulations 2015).

9.10 The Council shall not be liable under Clause 9.9 to pay any sum which:

(a) was claimable under insurance held by the Provider, and the Provider 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 Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

9.11 Save as otherwise expressly provided in the Contract:

(a) 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; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clauses 4.3 – 4.11 (Payment and VAT), Clauses 4.12 – 4.15 (Recovery of Sums Due), Clauses 5.1 – 5.9 (Prevention of Bribery), Clauses 6.2 – 6.9 (Confidential Information), Clauses 6.10 – 6.16 (Freedom of Information), Clauses 6.22 – 6.28 (Records and Audit Access), Clause 7.24 (Cumulative Remedies), Clause 8 (Liability, Indemnity and Insurance), Clauses 9.9 – 9.11 (Consequences of Expiry or Termination), and Clause 10.1 (Governing Law and Jurisdiction).

**Disruption**

9.12 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.

9.13 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

9.14 In the event of industrial action by the Staff, the Provider shall seek the Council’s Approval to its proposals for the continuance of the supply of the Goods in accordance with its obligations under the Contract.

9.15 If the Provider’s proposals referred to in Clause 9.15 are considered insufficient or unacceptable by the Council acting reasonably then the Contract may be terminated with immediate effect by the Council by notice in writing.

9.16 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

**Recovery upon Termination**

9.17 On the termination of the Contract for any reason, the Provider shall:

(a) immediately return to the Council all Confidential Information and any IPRs belonging to the Council, in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Goods;

(b) immediately deliver to the Council all property (including materials, documents, information and access keys) that may have been provided to the Provider by the Council. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Goods to the Replacement Provider and/or the completion of any work in progress.

(d) promptly provide all information concerning the provision of the Goods which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.

9.18 If the Provider fails to comply with Clause 9.17 (a) and (b), the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.

9.19 Where the end of the Contract Period arises due to the Provider’s Default, the Provider shall provide all assistance under Clause 9.17 (c) and (d) free of charge. Otherwise, the Council shall pay the Provider’s reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

**Force Majeure**

9.20 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 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

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

9.22 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 9.22 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.

10. **DISPUTES AND LAW**

**Governing Law and Jurisdiction**

10.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.

**Dispute Resolution**

10.2 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

10.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

10.4 If the dispute cannot be resolved by the Parties pursuant to Clause 10.2 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 10.6 unless:

(a) the Council considers that the dispute is not suitable for resolution by mediation; or

(b) the Provider does not agree to mediation.

10.5 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.

10.6 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator;

(b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

(c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

(d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

(e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

(f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**SCHEDULE 6 – MANAGEMENT INFORMATION REQUIREMENTS**

**APPENDIX 1**

**SUPPLY CHAIN AGREEMENTS**

YPO SCA attached as the example.

They will include the following points as a minimum:

* All deliveries must be made by personnel wearing clean, protective clothing and an identification badge bearing the company name and the person’s name.
* Vehicles must be clean, to food standard, well maintained and be suitable for the category being delivered.
* Speed limits at sites must be observed and if no speed limits are shown then 5 miles per hour must not be exceeded.
* Vehicles must have their engines switched off whilst parked or making a delivery.
* Deliveries must be accompanied by a delivery note showing quantity, description and order number.
* The delivery note must be given to the receiving officer at the beginning of the delivery so that goods can be checked at the time of the delivery.
* All deliveries must be palletised. Multi-product pallets will be accepted where an additional pallet is used to separate each and every product line.

**APPENDIX 2**

**VARIATION FORM**

**CALL-OFF TERMS AND CONDITIONS FOR GOODS**

**[**Name of Lot**][[1]](#footnote-1)……………………………………………………………………………………………**

**No of Order Form being varied:………………………………………………………………………**

**Variation Form No:………………………………………………………………………………………**

**BETWEEN:**

|  |
| --- |
| [ ][[2]](#footnote-2) (“**the Customer”**)  and  [ ][[3]](#footnote-3) (**“the Contractor”**) |

1. The Order is varied as follows; [list details of the Variation].
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Customer**

|  |  |
| --- | --- |
| Signature: |  |
| Date: |  |
| Name in Capitals: |  |
| Address: |  |
|  |  |

**Authorised to sign for and on behalf of the Contractor**

|  |  |
| --- | --- |
| Signature: |  |
| Date: |  |
| Name in Capitals: |  |
| Address: |  |
|  |  |

**SCHEDULE 6**

**MANAGEMENT INFORMATION REQUIREMENTS**

**Not used**

**SCHEDULE 7 – COMMERCIALLY SENSITIVE INFORMATION**

**SCHEDULE 8 – FRAMEWORK AGREEMENT VARIATION PROCEDURE**

1. **Introduction**
   1. Schedule 8 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Framework Agreement.
   2. The Council may propose a variation to the Framework Agreement under Schedule 8 only where the variation does not amount to a material change in the Framework Agreement or the Goods.
2. **Procedure for proposing a Variation**
   1. Except where paragraph 5 applies, the Council may propose a variation using the procedure contained in this paragraph 2.
   2. In order to propose a variation, the Council shall serve each Goods Framework Provider with written notice of the proposal to vary the Framework Agreement (“Notice of Variation”).

* 1. The Notice of Variation shall:

contain details of the proposed variation providing sufficient information to allow each Goods Framework Provider to assess the variation and consider whether any changes shall be to the prices set out in its Pricing Matrices are necessary; and

* + 1. require each Goods Framework Provider to notify the Council within 14 days of any proposed changes to the prices set out in its Pricing Matrices.
  1. Upon receipt of the Notice of Variation, each Goods Framework Provider has 14 days to respond in writing with any objections to the variation.
  2. Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve each Goods Framework Provider with a written agreement detailing the variation to be signed and returned by each Goods Framework Provider within 14 days of receipt.
  3. Upon receipt of a signed agreement from each Goods Framework Provider, the Council shall notify all Goods Framework Providers in writing of the commencement date of the variation.

1. **Objections to a Variation**
   1. In the event that the Council receives one or more written objections to a variation, the Council may:
      1. withdraw the proposed variation; or
      2. propose an amendment to the variation.
2. **Changes to the Pricing Matrices**
   1. Where a Goods Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Council may require further evidence from the Goods Framework Provider that any additional costs to the Goods Framework Provider will be kept to a minimum.
   2. The Council may require the Goods Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.
   3. Where a change to a Goods Framework Provider’s Pricing Matrices is agreed by the Council, the Council shall notify its acceptance of the change to the Goods Framework Provider in writing.
   4. In the event that the Council and the Goods Framework Provider cannot agree to the changes to the prices set out in the Pricing Matrices, the Council may:
      1. withdraw the variation; or
      2. propose an amendment to the variation.
3. **Variations which are not permitted**
   1. In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation which:
      1. may prevent one or more of the Goods Framework Providers from performing its obligations under the Framework Agreement; or
      2. is in contravention of any law.

**SCHEDULE 9 - STATEMENT OF GOOD STANDING**

*[For Information only: This is the template to be used for the document referred to in Clause 3.5 of the Framework Agreement The Provider must complete this and leave in or delete the words in square brackets as appropriate]]*

Durham County Council and [Provider]

Providers’ Framework Agreement

Certificate of Confirmation of Good Standing

To:- County Council of Durham

We hereby confirm that as at the date of this Certificate:-

1. Having regard to financial performance (including any losses and/or claims giving rise to material contingent liabilities), the financial standing of the Company (and/or Guarantor where a guarantee was offered) as reflected in the information supplied in our Pre-Qualification Questionnaire response to the Invitation to Tender dated xxxxx [remains unchanged in all material respects] [remains unchanged save for the following]:-
2. Our financial standing [and that of our Parent] is of sufficient strength to allow us to fulfil our [respective] obligations under the Framework Agreement dated [ ] 20xx.

Dated ……………………………………………

Signed …………………………………………..

Status ……………………………………………

**SCHEDULE 10 RETROSpeCTIVE PAYMENTs**

**Not used**

**SCHEDULE 11**

|  |  |
| --- | --- |
| **EXECUTED as a DEED**  (but not delivered until the  Date of it) **by the affixing of THE**  **COMMON SEAL OF THE COUNTY**  **COUNCIL OF DURHAM**  By Order:  Authorised Sealing Officer  (A permanent Officer  of the County Council) |  |

**For and on behalf of the Provider**…………………………………………………………………………………

(Director/Company Secretary)

|  |  |
| --- | --- |
| **SIGNATURE:**  Name:  Date: |  |

(Director)

|  |  |
| --- | --- |
| **SIGNATURE:**  Name:  Date: |  |

1. To be inserted [↑](#footnote-ref-1)
2. Insert name of Contracting Authority [↑](#footnote-ref-2)
3. Insert name of Contracting Authority [↑](#footnote-ref-3)