

**Dated 20**

 **------------**

**FRAMEWORK AGREEMENT**

Between

**THE ROYAL BOROUGH OF KINGSTON UPON THAMES**

And

**[INSERT NAME OF SUPPLIER]**

**Relating To The Delivery Of Print And Design Services**

© The Royal Borough of Kingston Upon Thames

Guildhall

High Street,

Kingston Upon Thames

KT1 1EU

**Contents**

**Clause**

1. Definitions And Interpretation 1

2. Term Of Framework Agreement 6

3. Scope Of Framework Agreement 6

4. Award Procedure 6

5. Contract Performance And Precedence Of Documents 7

6. Prices For Services 9

7. Warranties And Representations 10

8. Service Pre-Requisites 10

9. Reporting And Meetings 11

10. Records And Audit Access 11

11. Confidentiality 12

12. Data Protection 13

13. Freedom Of Information 13

14. Publicity 14

15. Termination 14

16. Suspension Of Supplier's Appointment 17

17. Consequences Of Termination And Expiry 17

18. Dispute Resolution 18

19. Prevention Of Bribery 18

20. Subcontracting And Assignment 20

21. Variations To Framework Agreement 20

22. Third Party Rights 21

23. Severance 21

24. Rights And Remedies 21

25. Waiver 21

26. Entire Agreement 21

27. Notices 22

28. Governing Law And Jurisdiction 23

**Schedule**

Schedule 1 Services and Lots 24

Part 1. Services 24

Part 2. Supplier's Lots 24

Schedule 2 Lots and Award Criteria 25

Part 1. Lots 25

Part 2. Competed Services Award Criteria 26

Schedule 3 Pricing Matrices 27

Schedule 4 Order Form 28

Schedule 5 Framework Agreement Variation Procedure 34

1. Introduction 34

2. Procedure For Proposing A Variation 34

3. Objections To A Variation 35

4. Changes To The Pricing Matrices 35

5. Variations That Are Not Permitted 35

Schedule 6 Call-off Terms and Conditions 36

**THIS FRAMEWORK AGREEMENT** is made the day of **202**

**Parties**

1. **THE ROYAL BOROUGH OF KINGSTON UPON THAMES** whose principal office is at Guildhall, High Street, Kingston Upon Thames, KT1 1EU (the "**Authority** "); and
2. [**INSERT FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [*insert company number*.] **OR** [a charity registered in England and Wales with charity number (*insert charity number*.) and company number [*insert company number*.]] whose [registered office **OR** principal address] is at [*insert address*] (**Supplier**).

**Background**

1. The Authority placed a contract notice [2021/S 000-026235](https://www.find-tender.service.gov.uk/Notice/026235-2021) on 20 October 2021 on the Find a Tender Service seeking tenders from potential service providers for the provision of print and design services (divided into Lots) under a framework arrangement.

1. On the basis of the Supplier's Tender, the Authority selected the Supplier to enter a framework agreement to provide services to the Authority in accordance with this Framework Agreement.

1. This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Parties under this Framework Agreement.

1. It is the Parties' intention that the Authority is not under any obligation to place Orders with the Supplier under this Framework Agreement or at all.

**Agreed Terms**

# Definitions And Interpretation

## The definitions and rules of interpretation in this clause apply in this Framework Agreement.

**Approval:** means the prior written approval of the Authority.

**Audit:** means an audit carried out pursuant to clause 10.

**Auditor:** means the National Audit Office or an auditor appointed by the Authority as the context requires.

**Authorised Representative:** means the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in clause 27.

**Award Criteria:** means the evaluation criteria to be applied in a mini competition as set out in Schedule 2.

**Call-off Terms and Conditions:** means the terms and conditions in Schedule 6.

**Change of Control:** means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

**Commencement Date:** means [*insert date*].

**Confidential Information:** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

**Contract:** means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Authority and the Supplier comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to clause 4.1).

**Default:** means any breach of the obligations of the relevant Party under a Contract (including 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 Protection Legislation:** means the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any replacement legislation coming into effect from time to time (including, when in force the GDPR) together with any codes of practice or other guidance issued.

**Environmental Information Regulations:** mean the Environmental Information Regulations 2004 (*SI 2004/3391*) 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 that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Framework Agreement:** means the terms and conditions included at clause 1 to clause28 and all the Schedules attached hereto.

**Framework Agreement Variation Procedure:** means the procedure set out in Schedule 5.

**Framework Providers:** means the Supplier and other suppliers appointed as potential providers of services under this Framework Agreement.

**Framework Year:** means a period of twelve (12) months, commencing on the Commencement Date.

**GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679) or any replacement legislation.

**Guidance:** means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

**Information:** has the meaning given under section 84 of the FOIA.

**Intellectual Property Rights:** means patents, inventions, trademarks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including 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.

**Lots:** means the Services divided into lots as referred to in the OJEU Notice and set out in Schedule 1.

**Month:** means a calendar month.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

**FTS Notice:** means the contract notice [2021/S 000-026235](https://www.find-tender.service.gov.uk/Notice/026235-2021) published on Find A Tender Service.

**Order:** means an order for Services and/or goods sent by the Authority to the Supplier in accordance with the award procedures in clause 4.

**Order Form:** means a document setting out details of an Order in the form set out in Schedule 4 or as otherwise agreed in accordance with clause 4.4.

**Party:** means the Authority and/or the Supplier.

**Pricing Matrices:** means the pricing matrices set out in Schedule 3 comprising the schedule of rates and rate cards submitted by the Supplier.

**Prohibited Act:** the following constitute Prohibited Acts:

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

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;

### committing any offence:

#### under the Bribery Act 2010;

#### under legislation creating offences concerning fraudulent acts;

#### at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or

### defrauding, attempting to defraud or conspiring to defraud the Authority.

**Regulations:** means the Public Contracts Regulations 2015 (*SI 2015/102*).

**Regulatory 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 this Framework Agreement or any other affairs of the Authority.

**Requests for Information:** means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Services:** means the print and design services detailed in Schedule 1.

**Staff:** means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Framework Agreement or any Contract.

**Subcontract:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any part of the Services from that third party.

**Subcontractor:** the contractors or service providers that enter into a Subcontract with the Supplier.

**Supplier's Lots:** means the lots to which the Supplier has been appointed under this Framework Agreement as set out in Schedule 1

**Supplier’s Tender:** means the tender submitted by the Supplier to the Authority on [*insert date*].

**Term:** means the period commencing on the Commencement Date and ending on [*insert date*] or on earlier termination of this Framework Agreement.

**Termination Date:** means the date of expiry or termination of this Framework Agreement.

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

**Year:** means a calendar year.

## The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

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

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

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

### 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;

### 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;

### headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

### the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;

### 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;

### 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; and

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

**FRAMEWORK ARRANGEMENT AND AWARD PROCEDURE**

# Term Of Framework Agreement

This Framework Agreement shall take effect on the Commencement Date and (unless it is terminated earlier in accordance with its terms or is otherwise lawfully terminated) shall terminate at the end of the Term.

# Scope Of Framework Agreement

## This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services (in the Supplier’s Lot(s)) by the Supplier to the Authority.

## The Authority appoints the Supplier as a Framework Provider of the Services and the Supplier shall be eligible to receive Orders for such Services in the Supplier’s Lot (s) from the Authority during the Term.

## The Authority may at its absolute discretion and from time to time order Services from the Supplier in accordance with the ordering procedure set out in clause 4 during the Term. If and to the extent that any Services under this Framework Agreement are required, the Authority shall:

### comply with the ordering procedure in clause 4; and

### enter into a Contract with the Supplier for those Services materially in accordance with the terms of the Contract.

## The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

# Award Procedure

## The Authority shall call-off services under this Framework Agreement as follows:

### identify the relevant Lot(s) that its service requirements fall into;

### identify the Framework Providers capable of performing the Services for the service requirements;

### supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

### invite tenders by conducting a mini-competition for its service requirements in accordance with the Regulations and Guidance and in particular:

#### consult in writing with the Framework Providers capable of performing the Contract for the competed services requirements and invite them within a specified time limit to submit a supplemental tender;

#### set a time limit for the receipt by it of the supplemental tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and

#### keep each supplemental tender confidential until the expiry of the time limit for the receipt by it of the supplemental tenders;

### apply the Award Criteria to compliant supplemental tenders submitted through the mini-competition; and

### subject to clause 4.3 place an Order with the successful Framework Provider.

## The Supplier agrees that all supplemental tenders submitted by the Supplier in relation to a mini-competition held pursuant to this clause 4 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued by the Authority in accordance with this clause 4).

## Notwithstanding the fact that the Authority has followed the procedure set out above for ordering Services, the Authority may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Framework Agreement shall oblige the Authority to place any Order for Services.

## The Authority may place an Order with the Supplier by serving an Order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Supplier including systems of ordering involving fax, e-mail or other online solutions.

# Contract Performance And Precedence Of Documents

## The Supplier shall perform all Contracts entered into with the Authority in accordance with:

### the requirements of this Framework Agreement; and

### the terms and conditions of the relevant Contract.

## The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:

### all applicable Law regarding health and safety; and

### the Health and Safety Policy whilst at the Authority Premises.

## Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of the Services. The Supplier shall instruct the Supplier's Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## Without limiting the general obligation set out in this Framework Agreement, the Supplier shall (and shall procure that the Supplier's Staff shall):

### perform its obligations under this Framework Agreement (including those in relation to any Contract) in accordance with:

#### all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

#### the Authority’s equality and diversity policy as provided to the Supplier from time to time; and

#### any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

### take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## The Supplier shall at all times at its own cost comply with the relevant requirements of the Environmental Protection Act 1990 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to the protection of the environment, water protection and disposal of waste.

## The Supplier shall at all times also at its own cost comply with the relevant requirements of the Climate Change Act 2008, and where appropriate have regard to the Energy Act 2008 and 2010 and or any statutory amendment or re-enactment, Regulations, Statutory Instruments or Orders pertaining to tackling climate change and addressing the national energy issues.

## The Supplier shall comply with the Council’s Environmental Policy Statement, provided to it by the Authority from time to time. The Supplier shall nominate a person responsible for environmental protection matters and shall ensure that all the Supplier’s Staff are fully conversant with and comply with the requirements of the said Act in the course of performance of this Framework Agreement including any Contract.

## The Supplier shall as far as it is practicable and relevant to the delivery of the Services, put in place measures to minimise its impact on and ability to adapt to climate change and energy issues.

## The Authority’s Representative shall notify the Supplier in the event of non-compliance with environmental protection and climate change matters which come to the attention of the Authority, and where appropriate shall allow the Supplier a reasonable period to rectify such non-compliance. In the event of continued non-compliance the Authority’s Representative shall be empowered to suspend the provision of the Services. The Supplier shall not resume provision of the Services until the Authority’s Representative is satisfied that the non-compliance has been rectified.

## In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

### the clauses of the Call-Off Terms;

### the Order Form except Appendix 2 (Supplemental Tender) to the Order Form;

### the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2 of the Framework Agreement, the Supplier's Tender, and Appendix 2 to the Order Form (Supplemental Tender);

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

### Schedule 1, part 2 of the Framework Agreement, the Supplier's Tender, Supplemental Tender.

# Prices For Services

## The prices offered by the Supplier for the Services shall be based on the prices set out in the Pricing Matrices and tendered in accordance with the requirements of the mini-competition held pursuant to clause 4.

**SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS**

# Warranties And Representations

The Supplier warrants and represents to the Authority that:

### 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;

### this Framework Agreement is executed by a duly authorised representative of the Supplier;

### in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;

### as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;

### 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 that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority;

### 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 Contract; and

### 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 Supplier 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 Supplier's assets or revenue.

# Service Pre-Requisites

## The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

## Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

**SUPPLIER'S INFORMATION OBLIGATIONS**

# Reporting And Meetings

## The Supplier shall submit such management information or report to the Authority as the Authority may require from time to time throughout the Term within the period stipulated by the Authority in its request for such information.

## The Authorised Representatives shall meet from time to time throughout the Term upon the request of the Authority and the Supplier shall, at each meeting, present its previously circulated management information or report presented to the Authority under clause 9.1.

# Records And Audit Access

## The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with the Authority and the amounts paid by the Authority under each Contract.

## The Supplier shall keep the records and accounts referred to in clause 10.1 above in accordance with good accountancy practice.

## The Supplier shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.

## The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six (6) years after expiry of the Term to the Authority, any Regulatory Bodies and the Auditor.

## The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Contract(s); save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.

## Subject to the Authority's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

### all information requested by the Auditor within the scope of the Audit;

### reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and

### access to the Staff.

## The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 10, unless the Audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

# Confidentiality

## Subject to clause 11.2, the Parties shall keep confidential the Confidential Information of the other Party, all matters relating to this Framework Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

## Clause 11.1 shall not apply to any disclosure of information:

### required by any applicable law, including any disclosures required under the FOIA or the Environmental Information Regulations;

### that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;

### where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;

### by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;

### to enable a determination to be made under clause 18 (Dispute Resolution);

### which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;

### by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and

### by the Authority relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

# Data Protection

## The Supplier shall (and shall procure that any of its Staff involved in the provision of the Services shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Contract.

## Notwithstanding the general obligation in clause 12.1, where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

### provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;

### promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 12.2; and

### ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

# Freedom Of Information

## The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

### provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

### transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

### provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

### not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

## The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

# Publicity

## Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.

## The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.

## The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

**FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**

# Termination

**Termination on Default**

## The Authority may terminate this Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:

### where the Supplier commits a material breach and:

#### the Supplier has not remedied the material breach to the satisfaction of the Authority within fifteen (15) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

#### the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or

### where the Authority terminates a Contract awarded to the Supplier under this Framework Agreement as a consequence of a material breach by the Supplier;

### any warranty given by the other party in clause 7 of this Framework Agreement is found to be untrue or misleading;

### if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

## For the purposes of clause 15.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

### a substantial portion of this Framework Agreement; or

### any of the obligations set out in clauses [LEGAL TO INSERT IN FINAL DRAFT],

### a persistent Default in any [NUMBER] month period during the term of this Framework Agreement.

### In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**Termination on insolvency and Change of Control**

## Without affecting any other right or remedy available to it, the Authority may terminate this Framework Agreement with immediate effect by giving written notice to the Supplier if:

### the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];

### the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier];

### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];

### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);

### the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

### a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

### [the Supplier (being an individual) is the subject of a bankruptcy petition or order;]

### a creditor or encumbrancer of the Supplier 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 Supplier's assets and such attachment or process is not discharged within fourteen (14) days;

### any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3(a) to clause 15.3(h) (inclusive); or

### the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate this Framework Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:

### being notified that a Change of Control has occurred; or

### where no notification has been made, the date that the Authority becomes aware of the Change of Control;

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

**Termination by Authority For Convenience**

## The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Services at any time by giving three **(3)** Months' written notice to the Supplier and all other Framework Providers. The Parties acknowledge that if the Authority exercises its rights under this clause 15.5 it shall exercise its equivalent rights under all agreements with the Framework Providers.

# Suspension Of Supplier's Appointment

Without prejudice to the Authority's rights to terminate this Framework Agreement in clause 15 (Termination) above, if a right to terminate this Framework Agreement arises in accordance with clause 15, the Authority may suspend the Supplier's right to receive Orders in any or all Supplier's Lots by giving notice in writing to the Supplier. If the Authority provides notice to the Supplier in accordance with this clause 16, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

# Consequences Of Termination And Expiry

## Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this clause 17.

## Unless expressly stated to the contrary, the service of a notice to terminate this Framework Agreement shall not operate as a notice to terminate any Contract made under this Framework Agreement. Termination or expiry of this Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

## Within fifteen (15) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Supplier'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 Authority, 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 this Framework Agreement, or such period as is necessary for such compliance.

## 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 before termination or expiry.

## The provisions of clause 7, clause 10, clause 11, clause 12, clause 13, clause 14, clause 17, clause 19, and clause 28 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.

# Dispute Resolution

## If a dispute arises out of or in connection with this Framework Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Framework Agreement, the Parties shall follow the procedure set out in this clause:

### either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Corporate Communication and Engagement Manager (Campaigns) of the Authority and [*insert employee title*] of the Supplier shall attempt in good faith to resolve the Dispute;

###  if the Corporate Communication and Engagement Manager (Campaigns) of The Authority and [*insert employee title*] of the Supplier are for any reason unable to resolve the Dispute within thirty [30] days of service of the Dispute Notice, the Dispute shall be referred to the Communications Manager of the Authority and [*insert senior officer title*] of the Supplier who shall attempt in good faith to resolve it; and

###  if the Communications Manager of the Authority and [*insert senior officer title* ] of the Supplier are for any reason unable to resolve the Dispute within thirty [30] days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than fourteen [14] days after the date of the ADR notice.

## The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 28 which clause shall apply at all times.

**GENERAL PROVISIONS**

# Prevention Of Bribery

## The Supplier:

### shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and

### 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 Authority, 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 Authority before execution of this Framework Agreement.

## The Supplier shall:

### if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

### within thirty [30] Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 19 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

## The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

## If any breach of clause 19.1 is suspected or known, the Supplier must notify the Authority immediately.

## If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clause 19.1, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents.

## The Authority may terminate this Framework Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 19.1. In determining whether to exercise the right of termination under this clause 19.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:

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

### in circumstances where any one or more of the directors of the Supplier ought reasonably to have had such knowledge.

## Any notice of termination under clause 19.6 must specify:

### the nature of the Prohibited Act;

### the identity of the party whom the Authority believes has committed the Prohibited Act; and

### the date on which this Framework Agreement will terminate.

## Despite clause 18, any dispute relating to:

### the interpretation of this clause 19; or

### the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

## Any termination under this clause 19 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

# Subcontracting And Assignment

## Subject to clause 20.2 and clause 20.3, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other Party, neither may the Supplier subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

## The Authority shall be entitled to novate this Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

## Provided that the Authority has given its prior written consent, the Supplier shall be entitled to novate this Framework Agreement where:

### the specific change in contractor was provided for in the procurement process for the award of this Framework Agreement;

### there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Framework Agreement.

# Variations To Framework Agreement

Any variations to this Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 5.

# Third Party Rights

## A person who is not a party to this Framework Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Framework Agreement are not subject to the consent of any other person.

# Severance

## If any provision or part-provision of this Framework Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Framework Agreement.

## If any provision or part-provision of this Framework Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# Rights And Remedies

The rights and remedies provided under this Framework Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

# Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Framework Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# Entire Agreement

## This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 26 shall operate to exclude any liability for fraud.

## Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Framework Agreement.

# Notices

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

## 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), or by fax or e-mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 27.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or fax or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail.

## For the purposes of clause 27.2, the address of each Party shall be:

### For the Authority:

Address:

For the attention of:

Tel:

Fax:

E-mail:

### For the Supplier:

Address:

For the attention of:

Tel:

Fax:

E-mail:

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

# Governing Law And Jurisdiction

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

## Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

| EXECUTED  |   |
| --- | --- |
| by **THE ROYAL BOROUGH OF KINGSTON** acting by and under the signature of |  |
|  |  |
| Name: | ................................. |
|   | Signature  |
| Position: |  |
| EXECUTED  |   |
| by **[INSERT NAME OF SUPPLIER]** |   |
| acting by and under the signature of: |   |
| Name: | ................................. |
|   | Signature  |
| Position: |  |

1. **Services and Lots**

1. **Services**

1. **Supplier's Lots**
2. **Lots and Award Criteria**
3. **Lots**

The Lots have been awarded as follows:

**Lot 1**

| **Framework Providers** |
| --- |
|  |
|  |
|  |
|  |
|  |

**Lot 2**

| **Framework Providers** |
| --- |
|  |
|  |
|  |
|  |
|  |

1. **Competed Services Award Criteria**

| **Criterion number** | **Criterion** | **Percentage weightings** (or rank order of importance where applicable) |
| --- | --- | --- |
| 1 | Price | 60% |
| 2 | Quality (response to brief) | 40% |

1. **Pricing Matrices**

The prices contained in the Pricing Matrix are subject to revision on an annual basis in line with the percentage increase in the Retail Prices Index in the preceding 12-month period. The first such increase shall take effect eighteen (18) months after the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index at the beginning of the last month of the previous Framework Year.

1. **Order Form**

**ORDER FORM**

**FROM**

| **Authority:** |   |
| --- | --- |
| **Service address:** |   |
| **Invoice address:** |   |
| **Authorised Representative:** | Ref:Phone:E-mail: |
| **Order number:** | To be quoted on all correspondence relating to this Order: |
| **Order date:** |   |

**TO**

| **Pinter OR Designer:** |  |
| --- | --- |
| **For the attention of:****E-mail:****Telephone number:** |   |
| **Address:** |   |

| **1. SERVICES REQUIREMENTS** |
| --- |
| **(1.1) Services [and deliverables] required:**   |
| **(1.2) Service Commencement Date:**  |
| **(1.3) Price payable by Authority and payment profile:**  |
| **(1.4) Completion date (including any extension period or periods):**   |
| **2 MINI-COMPETITION ORDER: ADDITIONAL REQUIREMENTS** |
| **(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:**     |
| **(2.2) Variations to Call-off Terms and Conditions:**     |

| **3. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]** |
| --- |
| **(3.1) Key personnel of the Supplier to be involved in the Services [and deliverables]:**  |
| **(3.2) Performance standards:**   |
| **(3.3) Location(s) at which the Services are to be provided:**   |
| **(3.4) Quality standards:**   |
| **(3.5) Contract monitoring arrangements:**   |
| **(3.6) Management Information and meetings** |

| **4. CONFIDENTIAL INFORMATION** |
| --- |
| **(4.1) The following information shall be deemed Confidential Information:**   **(4.2) Duration that the information shall be deemed Confidential Information:**  |

| **5. INSURANCE** |
| --- |
| **(5.1)** The Printer shall be liable for any and all losses, liabilities or costs (including reasonable legal costs) incurred by the Authority in connection with the Printer’s performance of the Contract and shall maintain in force during the period of the Contract and for six (6) years thereafter as a minimum the following insurance cover with reputable insurers acceptable to the Authority in the amounts set out below:5.1.1 Employer’s Liability Insurance of not less than £5,000,000 for each and every claim, act or occurrence or series of claims, acts or occurrences; and5.1.2 Public Liability Insurance of not less than £5,000,000 for each and every claim, act or occurrence or series of claims, acts or occurrences.5.1.3 Professional Indemnity Insurance of not less than £500,000 for each and every claim, act or occurrence or series of claims, acts or occurrences. [LOT 1 DESIGN SERVICES ONLY]The Printer shall give the Authority, on request, copies of all insurance policies referred to in this clause 5 or a broker's verification of insurance to demonstrate that the appropriate cover as required by this clause 5 is in place, together with receipts or other evidence of payment of the latest premiums due in respect of such insurances. |

**BY SIGNING AND RETURNING THIS ORDER FORM** [*insert name of Printer or Designer*] **AGREES** to enter a legally binding contract with the Authority to provide to the Authority the Services specified in this Order Form (together with, where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Framework Agreement entered into by the Supplier and the Authority on [*insert date*].

For and on behalf of [*insert name of Printer or Designer*]:

| Name and title |   |
| --- | --- |
| Signature |   |
| Date |   |
| Supplier's Authorised Representative for the Contract (if different) | [NAME] |

For and on behalf of the Royal Borough of Kingston Upon Thames:

| Name and title |   |
| --- | --- |
| Signature |   |
| Date |   |

**Appendix 1: Specification for the Services**

**Appendix 2: Supplementary Tender[[1]](#footnote-0)**

1. **Framework Agreement Variation Procedure**

1. **Introduction**
	1. This Schedule 5 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.

* 1. The Authority may propose a variation to the Framework Agreement under this Schedule 5 only where the variation does not amount to a material change in the Framework Agreement or the Services.

1. **Procedure For Proposing A Variation**
	1. Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
	2. In order to propose a variation, the Authority shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Notice of Variation**).
	3. The Notice of Variation shall:
		1. contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
		2. require each Framework Provider to notify the Authority within [NUMBER] days of any proposed changes to the prices set out in its Pricing Matrices.

* 1. On receipt of the Notice of Variation, each Framework Provider has [NUMBER] days to respond in writing with any objections to the variation.
	2. Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within [NUMBER] days of receipt.
	3. On receipt of a signed agreement from each Framework Provider, the Authority shall notify all Framework Providers in writing of the commencement date of the variation.

1. **Objections To A Variation**

In the event that the Authority receives one or more written objections to a variation, the Authority may:

* + 1. withdraw the proposed variation; or
		2. propose an amendment to the variation.

1. **Changes To The Pricing Matrices**
	1. Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.
	2. The Authority may require the 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 Framework Provider's Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Framework Provider in writing.
	4. In the event that the Authority and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Authority may:
		1. withdraw the variation; or
		2. propose an amendment to the variation.

1. **Variations That Are Not Permitted**

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

* + 1. may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
		2. is in contravention of any Law.
1. **Call-off Terms and Conditions**
1. This should be the mini competition tender received [↑](#footnote-ref-0)