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DATED

2022

(1) CHESHIRE EAST BOROUGH COUNCIL

AND

(2) SUPPLIER

**Framework Agreement for the Installation of Public Rights of Way Furniture and Associated
Public Rights of Way and Countryside Access Works**

**LOT 1 - Small Scale Works
LOT 2 – 5m & 6m Bridges
LOT 3 – 8m Bridges
LOT 4 – Non-Standard Works
LOT 5 – Vegetation Clearance**

Cheshire East Borough Council
Westfields
Middlewich Road
Sandbach
Cheshire
CW11 1HZ

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THIS AGREEMENT is made on

2022

BETWEEN:-

- (1) **CHESHIRE EAST BOROUGH COUNCIL** whose principal place of business is at Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ (the "**Council**"); and
- (2) (Co. Number) whose registered address is (the "**Provider**")

BACKGROUND

- (A) The Council issued an Invitation to Tender (ITT) for a Framework Agreement for contractors who are able to install public rights of way furniture and associated public rights of way and countryside access works in the Cheshire East area. On the basis of the Provider's tender, the Council selected the Provider to enter a framework agreement to provide services to the Council on a call-off basis in respect of the Services in Lot 1, Lot 2, Lot 3 and Lot 4 and **Lot 5** in accordance with this Framework Agreement.
- (B) This Framework Agreement sets out the award and ordering procedure for services which may be required by the Council, the main terms and conditions for any Call-Off Contract which the Council may conclude, and the obligations of the Provider during and after the term of this Framework Agreement.
- (C) The Council gives no guarantee about the frequency or volume of business during the contract term. It is the Parties' intention that there will be no obligation for the Council to award any orders whatsoever under this Framework Agreement during its Term.
- (D) Orders placed by the Council shall be made to the Provider whose ITT response was ranked highest provided that Provider has capacity for the order. If this Provider is unavailable then the Council will seek to place the order with the next ranked supplier who does have capacity.
- (E) Any Call-Off Order by the Council under the Framework Agreement shall be made by Order Form and Purchase Order.

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"**Approval**" means the prior written approval of the Council

"**Audit**" means an audit carried out pursuant to Clause 17

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"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires
"Bribery Act"	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Council and the Provider comprising an Order Form and the Call-Off Terms and Conditions (as may be amended pursuant to Clause 7.3.6)
"Call-Off Terms and Conditions"	means the terms and conditions in Schedule 5
"Commencement Date"	[Means PLEASE INSERT]
"Commercially Sensitive¹ Information"	<p>means any Confidential Information comprised of information:-</p> <ul style="list-style-type: none"> (a) which is provided in writing by the Contractor to the Council in confidence and designated as Commercially Sensitive Information; and/or (b) that constitutes a trade secret
"Complaint"	means any formal complaint raised by the Council in relation to the performance of the Framework Agreement or any Call-Off Contract in accordance with Clause 35
"Confidential Information"	<p>means:-</p> <ul style="list-style-type: none"> (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

"DPA"	means the Data Protection Act 2018 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"	mean 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 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
"Framework Agreement"	means this agreement and all Schedules to this agreement
"Framework Agreement Variation Procedure"	means the procedure set out in Schedule 8
"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 Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Council
"Good Industry Practice"	means 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
"Intellectual Property Rights"	means patents, inventions, trade marks, 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
"Management Information"	means the management information specified in Schedule 6
"Material Default"	means any breach of [Clause 7 (Award Procedures), Clause 11 (Safeguard Against Fraud), Clause 14 (Statutory Requirements), Clause 15 (Non-Discrimination), Clause 16 (Provision of Management Information), Clause 17 (Records and Audit Access), Clause 20 (Data Protection), Clause 21 (Freedom of Information) and Clause 29 (Transfer and Sub-contracting)].
"Month"	means a calendar month
"Order"	means an order for Services served by the Council in accordance with the Ordering Procedures
"Order Form"	means a document setting out details of an Order in the form set out in Schedule 4
"Ordering Procedures"	means the ordering and award procedures specified in Clause 7
"Parent Company"	means 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 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto
"Party"	means the Council and/or the Provider

"Prohibited Act"	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</p> <p>(iv) defrauding, attempting to defraud or conspiring to defraud the Council</p>
"Pricing Matrices"	means the pricing matrices set out in Schedule 3
"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 Council
"Requests for Information"	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
"Services"	means the installation services/works detailed in Schedule 1
"Services Framework Providers"	means the providers appointed as Services Framework providers under the Framework Agreement
"Staff"	means all persons employed by the Provider together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement or Call-Off Contracts

"Tender"	means the tender submitted by the Provider to the Council and which is deemed incorporated into this Framework Agreement
"Term"	means the period of three (3) years commencing on the Commencement Date unless or until the Framework Agreement is terminated earlier in accordance with the terms of this Framework Agreement, or it is otherwise lawfully terminated or is extended in accordance with Clause 3.2.
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales
"Year"	means a calendar year

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 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;
- 1.2.8 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;
- 1.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and

1.2.10 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.

2. STATEMENT OF INTENT

2.1 In delivering the Services, the Provider shall operate at all times in accordance with any and all of the Council's published objectives.

2.1.1 the Provider has been appointed and the Council has entered into this Framework Agreement on the basis of the Provider's response to the ITT and, in particular, the representations made by the Provider to the Council in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.

2.2 Clause 2 is an introduction to this Framework Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

3. TERM OF FRAMEWORK AGREEMENT

- 3.1 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 or lawfully extended in accordance with Clause 3.2) shall terminate at the end of the Term.
- 3.2 The Council may seek to extend the Framework Agreement once for a period of one year and if the Council intends to take up the option to extend the Provider shall be notified in writing no later than two months prior to the third anniversary of the Commencement Date (as applicable). If no such notification is issued the Framework Agreement shall automatically expire at the end of the Term.

4. SCOPE OF FRAMEWORK AGREEMENT

- 4.1 This Framework Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services by the Provider to the Council.
- 4.2 The Council may at its absolute discretion and from time to time order Services from the Provider in accordance with the Ordering Procedure during the Term. The Provider acknowledges that there is no obligation for the Council to purchase any Services from the Provider during the Term.
- 4.3 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 Services 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. PROVIDER'S APPOINTMENT

The Council appoints the Provider as a potential provider of the Services referred to in the Specification and the Provider shall be eligible to be considered for the award of Orders for such Services by the Council during the Term.

6. 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 Services from the Provider and that the Council is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

7. AWARD PROCEDURES

Ranking, Contract Monitoring and Review of Services Framework Providers

- 7.1 The Services Framework Providers shall upon their initial appointment under the Framework Agreement be ranked by the Council in an order to be determined by the Council in accordance with the Council's primary evaluation of the successful bidders based upon the application of the award criteria.
- 7.2 The Council may carry out Contract and Performance Monitoring of the provision of the Services throughout the Term in accordance with this Agreement and in particular but without limitation to the requirements and mechanisms set out in the Specification.
- 7.3 The Council may advise the Service Framework Providers on a quarterly basis as to the outcome of its contract monitoring and review.

Awards under the Framework Agreement

- 7.4 If the Council
- 7.5 decide to source Services through the Framework Agreement then it may either:-
 - 7.5.1 award its Services requirements to the current highest ranked successful Services Framework Provider in accordance with the terms laid down in this Framework Agreement (without reopening competition); or
 - 7.5.2 award its Services requirements (without reopening competition) direct to the successful Services Framework Provider that it considers to be most suitable to provide the Services by reason of specific requirements and or circumstances of the End User such as those detailed and described in the Commissioning/Call Off Process of the Specification.

Form of Order

- 7.6 Subject to Clauses 7.1 to 7.5 above, the Council may place an 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. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 7.10 shall not constitute an Order under this Framework Agreement.

Accepting and Declining Orders

- 7.7 Following receipt of an 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 an Order) determined by the Council and notified to the Provider in writing at the same time as the

submission of the Order (which in any event shall not exceed three (3) Working Days acknowledge receipt of the Order and either:-

- 7.7.1 notify the Council that it declines to accept the Order; or
- 7.7.2 notify the Council that it accepts the Order by signing and returning the Order Form.

7.8 If the Provider:-

- 7.8.1 notifies the Council that it declines to accept an Order; or
- 7.8.2 the time-limit referred to in Clause 7.7 has expired;

then the offer from the Council to the Provider shall lapse and the Council may offer that Order to the Services Framework Provider that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria.

- 7.9 The Provider in agreeing to accept such an Order pursuant to Clause 7.6 above shall enter a Call-Off Contract with the Council for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Council's receipt of the signed Order Form provided by the Provider (or such similar or analogous form agreed with the Provider) pursuant to Clause 7.6.

PART TWO: PROVIDER'S GENERAL FRAMEWORK OBLIGATIONS

8. WARRANTIES AND REPRESENTATIONS

- 8.1 The Provider warrants and represents to the Council that:-
 - 8.1.1 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;
 - 8.1.2 this Framework Agreement is executed by a duly authorised representative of the Provider;
 - 8.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;
 - 8.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender and the Tender Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 8.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting

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of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;

- 8.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 8.1.5 above;
- 8.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Framework Agreement;
- 8.1.8 it has not committed any offence under the Bribery Act;
- 8.1.9 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 the Council;
- 8.1.10 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 the Council;
- 8.1.11 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; and
- 8.1.12 in the three (3) years prior to the date of this Framework Agreement:-
 - (a) 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;
 - (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

8.2 The Provider warrants and represents to the Council the statements in Clause 8.1 above.

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9. PREVENTION OF FRAUD AND CORRUPTION

9.1 The Provider:

9.1.1 shall not, and shall procure that any Staff shall not, in connection with this Agreement commit a Prohibited Act;

9.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

9.2 The Provider shall:

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

9.2.2 within 30 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 9 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

- 9.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.
- 9.4 If any breach of clause 9.1 is suspected or known, the Provider must notify the Council immediately.
- 9.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 9.1, 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.
- 9.6 The Council may terminate this Agreement by written notice with immediate effect if the Provider or Staff (in all cases whether or not acting with the Provider's knowledge) breaches clause 9.1. In determining whether to exercise the right of termination under this clause 9.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, sub-Contractor or supplier 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:
- 9.6.1 with the authority; or,
- 9.6.2 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
- 9.6.3 in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.
- 9.7 Any notice of termination under clause 9.5 must specify:
- 9.7.1 the nature of the Prohibited Act;
- 9.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 9.7.3 the date on which this Agreement will terminate.
- 9.8 Despite clause 38 (Dispute resolution), any dispute relating to:
- 9.8.1 the interpretation of clause 9; or
- 9.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 9.9 Any termination under clause 9.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

10. Compliance with Anti-Slavery and Human Trafficking Laws

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- 10.1 In performing its obligations under the Contract, the Provider shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - (c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 10;
 - (d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement;
 - (e) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with the Framework Agreement; and
 - (f) permit the Council and its third party representatives to inspect the Provider's premises, records, and to meet the Provider's personnel to audit the Provider's compliance with its obligations under this clause 10.
- 10.2 The Provider represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 10.3 The Council may terminate the Framework Agreement with immediate effect by giving written notice to the Provider if the Provider commits a breach of this clause 10.

11. CONFLICTS OF INTEREST

- 11.1 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 Call-Off Contract.
- 11.2 The Provider shall promptly notify and provide full particulars to the Council if such conflict referred to in Clause 11.1 above arises or is reasonably foreseeable to arise.
- 11.3 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 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

11.4 This Clause shall apply during the Term and for a period of [two (2) years]² after its termination or expiry.

12. CALL-OFF CONTRACT PERFORMANCE

12.1 The Provider shall perform all Call-Off Contracts entered into with the Council in accordance with:-

12.1.1 the requirements of this Framework Agreement; and

12.1.2 the terms and conditions of the respective Call-Off Contracts.

12.2 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.

13. PRICES FOR SERVICES

13.1 The prices offered by the Provider for Call Off Contracts for Services shall be the prices listed in the Pricing Matrix and such prices shall be adjusted annually in accordance with the provisions of Schedule 3.

14. 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.

15. NON-DISCRIMINATION

15.1 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).

15.2 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.

PART THREE: PROVIDER'S INFORMATION OBLIGATIONS

16. PROVISION OF MANAGEMENT INFORMATION

- 16.1 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 the Council.
- 16.2 The Council may share the Management Information supplied by the Provider with any third parties in connection with services related to or ancillary to this Agreement.
- 16.3 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.

17. RECORDS AND AUDIT ACCESS

- 17.1 The Provider 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 Call-Off Contracts entered into with the Council and the amounts paid by the Council.
- 17.2 The Provider shall keep the records and accounts referred to in Clause 17.1 above in accordance with good accountancy practice.
- 17.3 The Provider shall afford the Council and/or the Auditor such access to such records and accounts as may be required from time to time.
- 17.4 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 six (6) years after expiry of the Term to the Council and the Auditor.
- 17.5 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 Services 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.
- 17.6 Subject to the Council's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-
 - 17.6.1 all information requested by the Auditor within the scope of the Audit;
 - 17.6.2 reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services; and
 - 17.6.3 access to the Staff.

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17.7 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.

18. CONFIDENTIALITY

18.1 Except to the extent set out in this clause 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 18.2 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 clause 21.5 (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 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.

18.4 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 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 sign a confidentiality undertaking prior to commencing any work in accordance with this Framework Agreement.

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

- (a) to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential

Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;

- (b) to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
- (c) for the purpose of the examination and certification of the Council's accounts;
- (d) 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.

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 18.6 is made aware of the Council's obligations of confidentiality.

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.

19. OFFICIAL SECRETS ACTS

19.1 The Provider shall comply with and shall ensure that its Staff comply with, the provisions of:-

19.1.1 the Official Secrets Act 1911 to 1989; and

19.1.2 Section 182 of the Finance Act 1989.

19.2 In the event that the Provider or its Staff fail to comply with this Clause 19, the Council reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Provider.

20. DATA SECURITY AND DATA PROTECTION LAWS

20.1 The Provider shall comply with the provisions of Schedule 9 which shall apply to this Agreement.

20.2 The Provider shall, if requested to do so by the Council, enter into a Data Sharing Agreement with the Council.

20.3 The provisions of this Clause 20 shall apply during the Term and indefinitely after its expiry or termination.

21. FREEDOM OF INFORMATION

21.1 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.

- 21.2 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.
- 21.3 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.
- 21.4 In no event shall the Council respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 21.5 The Provider acknowledges that (notwithstanding the provisions of Clause 21.2) 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 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 21.2 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.

22. PUBLICITY

- 22.1 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.
- 22.2 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.

- 22.3 The Provider shall not do anything which may damage the reputation of the Council or bring the Council into disrepute.

PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

23. TERMINATION

Termination on Default

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

23.1.1 where the Provider commits a Material Default and:-

- (a) 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
- (b) the Material Default is not, in the reasonable opinion of the Council, capable of remedy; or

23.1.2 the Council terminates a Call-Off Contract awarded to the Provider under this Framework Agreement as a consequence of default by the Provider.

Termination on Financial Standing

- 23.2 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 Services under this Framework Agreement.

Termination on Insolvency and Change of Control

- 23.3 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:-

23.3.1 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

23.3.2 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

23.3.3 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

- 23.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 23.3.5 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
 - 23.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 23.3.7 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 23.3.8 any event similar to those listed in Clause 23.3.1 to Clause 23.3.7 occurs under the law of any other jurisdiction.
- 23.4 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**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:-
- 23.4.1 being notified that a Change of Control has occurred; or
 - 23.4.2 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

- 23.5 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.

24. SUSPENSION OF PROVIDER'S APPOINTMENT

Without prejudice to the Council's rights to terminate the Framework Agreement in Clause 23 above, if a right to terminate this Framework Agreement arises in accordance with Clause 23, the Council may suspend the Provider's appointment to supply Services by giving notice in writing to the Provider. If the Council provides notice to the Provider in accordance with this Clause 24, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time.

25. CONSEQUENCES OF TERMINATION AND EXPIRY

- 25.1 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 25.

- 25.2 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.
- 25.3 Within thirty (30) Working Days of the date of 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.
- 25.4 The Council shall be entitled to require access to data or information arising from the provision of the Services from the Provider until the latest of:-
 - 25.4.1 the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or
 - 25.4.2 the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Services under any Call-Off Contract.
- 25.5 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.
- 25.6 The provisions of Clauses 8, 9, 10, 11, 17, 18, 19, 20, 26, 27 and 39 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.

PART FIVE: INSURANCE AND LIABILITY

26. LIABILITY

- 26.1 Neither Party excludes or limits its liability for:-
 - 26.1.1 death or personal injury caused by its negligence, or that of its Staff;
 - 26.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
 - 26.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services

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Act 1982 or any other liability which cannot be limited or excluded by applicable law.

- 26.2 Subject to Clause 26.1 each Party's total aggregate liability in connection with this Framework Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to **£1,000,000**. For the avoidance of doubt, the Parties acknowledge and agree that this Clause 26 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.
- 26.3 Subject to Clause 26.2 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 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 by any circumstances within its or their control.

27. INSURANCE

- 27.1 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 including death or personal injury, or loss of or damage to property.
- 27.2 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:-
- 27.2.1 public liability insurance of no less than £5,000,000 to cover all risks in the performance of this Framework Agreement from time to time;
 - 27.2.2 employers' liability insurance with a minimum limit of £10,000,000 indemnity from time to time; and
 - 27.2.3 professional indemnity insurance with a minimum limit of indemnity of £1,000,000 for each individual claim or such higher limit as the Council may reasonably require (and as required by law) from time to time.
- 27.3 Any excess or deductibles under such insurance (referred to in Clause 27.1 and Clause 27.2) shall be the sole and exclusive responsibility of the Provider.
- 27.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under the Framework Agreement.

- 27.5 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.
- 27.6 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.
- 27.7 The Provider shall maintain the insurances referred to in Clause 27.1 and Clause 27.2 for a minimum of [six (6) years] following the expiration or earlier termination of the Framework Agreement.]
- 28. NOT USED**

PART SIX: OTHER PROVISIONS

29. TRANSFER AND SUB-CONTRACTING

29.1 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.

29.2 The Council shall be entitled to:-

29.2.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof 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.

30. 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.

31. RIGHTS OF THIRD PARTIES

Save as provided in Clauses 4, 7 and 8.2 and the rights specified in the Framework Agreement for the benefit of the Council, 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 36.3. 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:

36.3.1 For the Council:-

Address: Cheshire East Borough Council, Municipal Buildings, Earle Street, Crewe, Cheshire CW1 2BJ

For the attention of: Nicola Swinnerton

Email: Nicola.Swinnerton@cheshireeast.gov.uk

36.3.2 For the Provider:-

Address:

For the attention of:

Tel:

Email:

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

37. COMPLAINTS HANDLING AND RESOLUTION

37.1 The Provider shall acknowledge any Complaint made by the Council within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.

37.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Provider shall use its best endeavours to resolve the Complaint within ten (10)

Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

38. **DISPUTE RESOLUTION**

38.1 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.

38.2 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.

38.3 If the dispute cannot be resolved by the Parties pursuant to Clause 36.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 38.5 unless:-

38.3.1 the Council considers that the dispute is not suitable for resolution by mediation; or

38.3.2 the Provider does not agree to mediation.

38.4 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.

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

38.5.1 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 [] to appoint a Mediator;

38.5.2 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 [] to provide guidance on a suitable procedure;

38.5.3 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;

- 38.5.4 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;
- 38.5.5 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
- 38.5.6 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.

39. LAW AND JURISDICTION

Subject to the provisions of Clause 37 and Clause 38, 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.

40. TRANSPARENCY

- 40.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act (the Act) the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act.

Notwithstanding any other term of this Agreement, the Provider hereby gives its consent for the Council to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Council decides.

SIGNED by or on behalf of the Parties on the date which first appears in the Framework Agreement

FOR AND ON BEHALF OF THE PROVIDER

.....

Authorised signatory:

Name:

Title:

I hereby witness and attest this signature of the above named Authorised Signatory

Signature

Name

Address

Date:

FOR AND ON BEHALF OF **CHESHIRE EAST BOROUGH COUNCIL:**

.....
Authorised Signatory

.....
Name

Date:

SCHEDULE 1
INSTALLATION SERVICES/WORKS



Appendix A
Specification Installat

Lot 4	Provider	Ranking
Lot 5	Provider	Ranking

SCHEDULE 3

PRICING

[PLEASE INSERT INFORMATION]

Lots	Furniture Item	Item Price exc VAT
Lot 1		£
		£
		£
		£
		£
	TOTAL	£
Lot 2		£
		£
		£
		£
		£
	TOTAL	£
Lot 3		£
		£
	TOTAL	£
Lot 4		£
		£
	TOTAL	£
Lot 5	Non-standard work	£

The Council shall contact the Provider six weeks prior to each anniversary of the Commencement Date requesting that the Provider review its prices. The Provider shall then review its prices ensuring that they remain competitive. Any proposed changes in price need to be agreed with the Council and will take effect either from the anniversary of the Commencement Date or other date by mutual agreement of the Parties.

For the avoidance of doubt, the Council is unable to re-rank the Providers following the review of prices. The ranking must remain as stated in Schedule 2 of this Agreement.

SCHEDULE 4

ORDER FORM

Template Provided Overleaf

ORDER FORM
Framework Agreement

FROM

Customer	
Service Address	
Invoice Address	
Contact Ref:	Ref: _____ Phone: _____ e-mail: _____
Order Number	<i>To be quoted on all correspondence relating to this Order:</i>
Order Date	

TO

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

1. SERVICES REQUIREMENTS

(1.1) Services [and Deliverables] Required:

<p>.</p>

(1.2) Commencement Date:

(1.3) Price Payable by Customer

(1.4) Completion Date:

3. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]

(3.1) Key Personnel of the Provider 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

4. CONFIDENTIAL INFORMATION

(4.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information:-

(4.2) Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information:-

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding contract with the Customer to provide to the Customer 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 Provider and the Council on [redacted] 2022.

For and on behalf of the Provider:-

Name and Title	
Signature	
Date	

For and on behalf of the Customer:-

Name and Title	
Signature	
Date	

SCHEDULE 5

CALL-OFF TERMS AND CONDITIONS

1. GENERAL PROVISIONS

1.1 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 Customer
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires
"Bribery Act"	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation
"Customer"	means the customer(s) identified in the Order Form
"Commencement Date"	means the date set out in the Order Form
"Commercially Sensitive Information"	means the Confidential Information listed in the Order Form 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 that Order Form 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

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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 5.3 (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 Customer and the Contractor consisting of the Order Form and these clauses save that, for the purposes of Clause 1.6.4 only, reference to 'Contract' shall not include the Order Form

"Contractor"

means the person, firm or company with whom the Customer enters into the Contract as identified in the Order Form

"Contract Period"

means the period from the Commencement Date to:-

- (a) the date of expiry set out in Clause 1.3 (Initial Contract Period);

or

- (b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract

"Contract Price"

means the price (exclusive of any applicable VAT), payable to the Contractor by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Contractor of its obligations under the Contract

"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
"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
"Deliverables"	means those deliverables listed in the Order Form
"DPA"	means the Data Protection Act 2018 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"	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
"Equipment"	means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract
"Fees Regulations"	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
"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

"Framework Agreement"	means the framework agreement for the Installation of Public Rights of Way Furniture and related Works between Cheshire East Borough Council and the Contractor dated [REDACTED]
"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 Customer
"Good Industry Practice"	means 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
"Information"	has the meaning given under section 84 of the FOIA
"Initial Contract Period"	means the period from the Commencement Date to the date of expiry set out in Clause 1.3 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trade marks, 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
"Key Personnel"	means any individual identified in the Order Form as being key personnel
"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 Contractor is bound to

	comply
"Month"	means calendar month
"Order"	means the order submitted by the Customer to the Contractor in accordance with the Framework Agreement
"Order Form"	means the order submitted to the Contractor by the Customer in accordance with the Framework Agreement which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards
"Parent Company"	means any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate Holding Company of the Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged by the same or similar business to the Contractor. The term " Holding Company " shall have the meaning ascribed in Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto
"Party"	means the Contractor or the Customer
"Tender Response"	means the response submitted by the Contractor to the Tender issued by Cheshire East Borough Council
"Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Customer or the Contractor prior to or independently of the performance by the Customer or the Contractor of their obligations under the Contract and in respect of the Customer includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
"Premises"	means the location where the Services are to be supplied, as set out in the Order Form
"Prohibited Act"	the following constitute Prohibited Acts: <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

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

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Customer; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Customer

"Project Specific IPRs"

means:-

(a) IPRs in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract including, any Deliverables and all updates and amendments of these items; and/or

(b) IPRs arising as a result of the performance of the Contractor's obligations under the Contract

"Property"

means the property, other than real property, issued or made available to the Contractor by the Customer in connection with the Contract

"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 Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form

"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 the Contract or any other affairs of the Customer

"Replacement Contractor" means any third party service provider appointed by the Customer to supply any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services 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)

"Services" means the Installation of Public Rights of Way Furniture and related Works to be supplied as specified in the Order Form

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

Staff Vetting Procedures means the Customer's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including but not limited to, the provisions of the Official Secrets Act 1911 to 1989.

"Tender" means the document(s) submitted by the Contractor to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Services pursuant to the Framework Agreement

"Variation" has the meaning given to it in Clause 6.3 (Variation)

"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

1.2 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

1.3 Initial Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

1.4 Contractor's Status

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

1.5 Customer's Obligations

Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer 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 Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Contractor.

1.6 Entire Agreement

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- 1.6.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 1.6.2 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.
- 1.6.3 Nothing in Clauses 1.6.1 or 1.6.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 1.6.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
- (a) the Order Form;
 - (b) the clauses of the Contract; and
 - (c) any other document referred to in the clauses of the Contract.
- 1.6.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

1.7 Notices

- 1.7.1 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.
- 1.7.2 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) or by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 1.7.3. 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.
- 1.7.3 For the purposes of Clause 1.7.2, the address of each Party shall be:-
- (a) for the Customer: the address set out in the Order Form.

(b) for the Contractor: the address set out in the Framework Agreement.

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

1.8 **Mistakes in Information**

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

1.9 **Conflicts of Interest**

1.9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Customer under the provisions of the Contract.

1.9.2 The Contractor shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 1.9.1 above arises or is reasonably foreseeable.

1.9.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer 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 Customer.

1.9.4 This clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

1.10 **Prevention of Fraud**

1.10.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

1.10.2 The Contractor shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

1.10.3 If the Contractor or its Staff commits any Fraud in relation to the Contract or any other contract with the Customer, the Customer may:-

(a) terminate the Contract with immediate effect by giving the Contractor notice in writing and recover from the Contractor the amount of any loss suffered by the Customer resulting

from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or

- (b) recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

2. SUPPLY OF SERVICES

2.1 The Services

- 2.1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contact Price. The Customer may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- 2.1.2 If the Customer informs the Contractor in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 2.1.3 Subject to the Customer providing Approval in accordance with Clause 2.2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

2.2 Provision and Removal of Equipment

- 2.2.1 Unless otherwise stated in the Order Form, the Contractor shall provide all the Equipment necessary for the supply of the Services.
- 2.2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 2.2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

- 2.2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 2.2.5 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:-
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 2.2.6 On completion of the Services, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

2.3 Manner of Carrying Out the Services

- 2.3.1 The Contractor 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 the Contract the Contractor shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 2.3.2 The Contractor shall ensure that all Staff 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.

2.4 Key Personnel

- 2.4.1 The Parties have agreed to the appointment of the Key Personnel. The Contractor shall, and shall procure that any sub-contractor shall, obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one month's written notice must be provided by the Contractor of its intention to replace Key Personnel.
- 2.4.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Contractor or sub-contractor. The Customer may interview the candidates for Key Personnel positions before they are appointed.
- 2.4.3 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be

as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 2.4.4 The Customer may also require the Contractor to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

2.5 **Contractor's Staff**

- 2.5.1 The Customer may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:-

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

- 2.5.2 At the Customer's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

- 2.5.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.

- 2.5.4 If the Contractor fails to comply with Clause 2.5.2 within two (2) Months of the date of the request then the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- 2.5.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Clause 2.5.2 shall be final and conclusive.

- 2.5.6 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Staff employed or engaged by the Contractor at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

2.6 **Inspection of Premises**

Save as the Customer may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

2.7 Licence to occupy Premises

- 2.7.1 Any land or Premises made available from time to time to the Contractor by the Customer in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 2.7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
- 2.7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Customer at the Contractor's expense. The Customer shall undertake modification work approved by the Customer in writing without undue delay. Ownership of such modifications shall rest with the Customer.
- 2.7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises and conduct of personnel at the Premises as determined by the Customer, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 2.7.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

2.8 Property

- 2.8.1 Where the Customer issues Property free of charge to the Contractor such Property shall be and remain the property of the Customer and the Contractor irrevocably licences the Customer and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and at all times the Contractor shall possess the Property as fiduciary agent and bailee of the Customer. The Contractor shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Customer's request, store

the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 2.8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Customer otherwise within [five (5)] Working Days of receipt.
- 2.8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 2.8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 2.8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Contractor shall inform the Customer within [two [2]] Working Days of becoming aware of any defects appearing in or losses or damage occurring to, the Property.

2.9 Offers of Employment

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

3. PAYMENT AND CONTRACT PRICE

3.1 Contract Price

- 3.1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 3.2 (Payment and VAT).
- 3.1.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

3.2 Payment and VAT

- 3.2.1 The Customer shall pay all sums due to the Contractor within thirty (30) days of receipt of a valid invoice, submitted in accordance with the payment profile set out in the Order Form.
- 3.2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

- 3.2.3 Where the Contractor enters into a sub-contract with a supplier or contractor 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 Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 3.2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 3.2.5 The Contractor shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 3.2.5 shall be paid by the Contractor to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 3.2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.

3.3 Recovery of Sums Due

- 3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Customer.
- 3.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 3.3.3 The Contractor shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Contractor.
- 3.3.4 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.

3.4 Euro

- 3.4.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Customer.

3.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 3.4.1 by the Contractor.

4. STATUTORY OBLIGATIONS AND REGULATIONS

4.1 Prevention of Bribery

The Contractor:

4.1.1 shall not, and shall procure that any Staff shall not, in connection with this Agreement commit a Prohibited Act;

4.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Agreement.

The Provider shall:

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

4.1.4 within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Provider) compliance with this clause 9 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Customer may reasonably request.

4.1.5. The Provider shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

4.1.6 If any breach of clause 9.1 is suspected or known, the Provider must notify the Customer immediately.

4.1.7 If the Provider notifies the Customer that it suspects or knows that there may be a breach of clause 9.1, the Provider must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documentation.

4.1.8 The Customer may terminate this 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 9.1. In determining whether to exercise the right of termination under this clause 9.5, the Customer shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, sub-contractor or supplier not acting independently of the Provider. The expression "not acting independently of"

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(when used in relation to the Provider or a sub-contractor) means and shall be construed as acting:

4.1.8.1 with the authority; or,

4.1.8.2 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

4.1.8.3 in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

4.1.9 Any notice of termination under clause 9.5 must specify:

4.1.9.1 the nature of the Prohibited Act;

4.1.9.2 the identity of the party whom the Customer believes has committed the Prohibited Act; and

4.1.9.3 the date on which this Agreement will terminate.

4.1.10 Despite clause 38 (Dispute resolution), any dispute relating to:

4.1.10.1 the interpretation of clause 9; or

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

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

4.1.11 Any termination under clause 9.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

4.2 **Discrimination**

4.2.1 The Contractor 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).

4.2.2 The Contractor shall take all reasonable steps to secure the observance of Clause 4.2.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

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

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 and does not apply to the Crown.

4.4 Environmental Requirements

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer'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.

4.5 Health and Safety

4.5.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

4.5.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

4.5.3 The Contractor shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

4.5.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

4.5.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

5. PROTECTION OF INFORMATION

5.1 Data Security and Data Protection Laws

5.1.1 The Provider shall comply with the provisions of Schedule 9 to the Framework Agreement between the Council and the Provider which shall apply to this Call-Off Contract

5.2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

5.2.1 The Contractor shall comply with and shall ensure that its Staff comply with, the provisions of:-

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

5.2.2 In the event that the Contractor or its Staff fail to comply with this Clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Contractor.

5.3 Confidential Information

5.3.1 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.

5.3.2 Clause 5.3.1 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 5.4 (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 Agreement; or
- (e) it is independently developed without access to the other Party's Confidential Information.

5.3.3 The Contractor may only disclose the Customer'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.

5.3.4 The Contractor shall not, and shall procure that its Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

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

5.3.6 Nothing in this Contract shall prevent the Customer from disclosing the Contractor's Confidential Information:

- (a) to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is

confidential and is not to be disclosed to a third party which is not part of any Crown Body;

- (b) to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
- (c) for the purpose of the examination and certification of the Customer's accounts;
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

5.3.7 The Customer shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 5.3.6 is made aware of the Customer's obligations of confidentiality.

5.3.8 Nothing in this clause 5.3 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.

5.4 **Freedom of Information**

- 5.4.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 5.4.2 The Contractor shall and shall procure that its Sub-contractors shall:
- (a) transfer to the Customer 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 Customer with a copy of all Information in its possession, or power in the form that the Customer requires within [five] Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer 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.
- 5.4.3 The Customer 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.
- 5.4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 5.4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 5.4.2) the Customer 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 Contractor or the Services:
- (a) in certain circumstances without consulting the Contractor; or
 - (b) following consultation with the Contractor and having taken their views into account;
 - (c) provided always that where 5.4.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 5.4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 5.4.7 The Contractor acknowledges that the Commercially Sensitive Information listed in schedule 7 is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 5.4.5.

5.5 **Publicity, Media and Official Enquiries**

UNCLASSIFIED

- 5.5.1 The Contractor shall not make any press announcements or publicise the Contract in any way without the Customer'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.
- 5.5.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 5.5.3 The Contractor shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

5.6 Security

- 5.6.1 The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that all Staff comply with such requirements.
- 5.6.2 The Customer shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request an opportunity to inspect its physical security arrangements.

5.7 Intellectual Property Rights

- 5.7.1 Save as granted elsewhere under the Contract, neither the Customer nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 5.7.2 The Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Customer Pre-Existing IPR or the Project Specific IPRs to any third party.
- 5.7.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The Contractor hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
- 5.7.4 The assignment under Clause 5.7.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 5.7.5 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.
- 5.7.6 If requested to do so by the Customer, the Contractor shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under

Clause 5.7.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

- 5.7.7 The Customer hereby grants to the Contractor a non-exclusive, revocable, non assignable licence to use the Customer Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Contractor to provide the Services.
- 5.7.8 Prior to using any third party Intellectual Property Rights, the Contractor shall obtain the Approval of the Customer. The Contractor shall provide the Customer with details of any third party licence required by the Contractor and/or the Customer in order for the Contractor to carry out its obligations under the Contract using the third party Intellectual Property Rights. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 5.7.9 Where the Contractor is granted Approval by the Customer to use the third party rights, the Contractor shall procure that the owner of third party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.
- 5.7.10 The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the performance by the Contractor of the Services and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- (a) items or materials based upon designs supplied by the Customer; or
 - (b) the use of data supplied by the Customer which is not required to be verified by the Contractor under any provision of the Contract.
- 5.7.11 The Customer shall notify the Contractor in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Contractor:-
- (a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Customer; and

- (c) shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).

5.7.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-

- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer;

and in the event that the Contractor is unable to comply with Clauses 5.7.12(a) or 5.7.12(b) within 20 Working Days of receipt of the Contractor's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Contractor shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

5.7.13 In the event that a modification or substitution in accordance with Clause 5.7.12(a) is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Clause 5.7.12(b) the Customer shall be entitled to delete the relevant Service from the Contract.

5.7.14 This Clause 5.7 sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right as a result of the provision of the Services or the provision of the Deliverables hereunder. This shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise hereunder.

5.8 **Records and Audit Access**

5.8.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period (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 Services provided under it, the Call-Off Contracts entered into with the Customer and the amounts paid by the Customer.

5.8.2 The Contractor shall keep the records and accounts referred to in Clause 5.8.1 above in accordance with good accountancy practice.

- 5.8.3 The Contractor shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 5.8.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Customer and the Auditor.
- 5.8.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 5.8.6 Subject to the Customer's rights of Confidential Information, the Contractor 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 Customer within the scope of the audit;
 - (b) reasonable access to sites controlled by the Contractor and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 5.8.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5.8, unless the audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

6. CONTROL OF THE CONTRACT

6.1 Transfer and Sub-Contracting

- 6.1.1 The Contractor 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 Contractor of any of its obligations or duties under the Contract.
- 6.1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 6.1.3 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Contractor to the Customer as soon as reasonably practicable.
- 6.1.4 Subject to Clause 6.1.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-

- (a) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- (b) any private sector body which substantially performs the functions of the Customer,

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

6.1.5 Any change in the legal status of the Customer shall not, subject to Clause 6.1.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

6.1.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 6.1.4 to "the Transferee"-

- (a) the rights of termination of the Customer in Clauses 8.1 (Termination on insolvency and change of control) and 8.2 (Termination on Default) shall be available to the Contractor 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 Contractor.

6.1.7 The Customer may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor'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.

6.1.8 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.

6.2 **Waiver**

6.2.1 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.

- 6.2.2 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 1.7 (Notices).
- 6.2.3 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.

6.3 Variation

- 6.3.1 Subject to the provisions of this Clause 6.3, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 6.3.2 The Customer may request a Variation by completing and sending the Variation form attached at Appendix 1 ("**the Variation Form**") to the Contractor giving sufficient information for the Contractor to assess the extent of the Variation and any additional cost that may be incurred. The Contractor shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 6.3.3 In the event that the Contractor is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:-
- (a) agree to continue to perform their obligations under the Contract without the Variation; or
 - (b) terminate the Contract with immediate effect, except where the Contractor has already delivered part or all of the Order in accordance with the Order Form or where the Contractor 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 Clause 9.2.
- 6.3.4 If the Parties agree the Variation and any variation in the Contract Price, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

6.4 Severability

- 6.4.1 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.
- 6.4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the

Contractor shall immediately commence good faith negotiations to remedy such invalidity.

6.5 Remedies in the event of inadequate performance

6.5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 8.2 (Termination on Default) of the Contract.

6.5.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Customer may, without prejudice to its rights under Clause 8.2 (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 Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Customer that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (c) terminate, in accordance with Clause 8.2 (Termination on Default), the whole of the Contract; and/or
- (d) charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

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

6.5.4 In the event that the Contractor:-

- (a) fails to comply with Clause 6.5.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with Clause 6.5.3 above;

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

6.6 Cumulative Remedies

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.

6.7 Monitoring of Contract Performance

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

6.8 Extension of Initial Contract Period

Subject to satisfactory performance of its obligations under the Contract by the Contractor during the Initial Contract Period, the Customer may, by giving written notice to the Contractor not less than four (4) Weeks prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

7. LIABILITIES

7.1 Liability, Indemnity and

7.2

7.2.1 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;
- (b) Fraud or fraudulent misrepresentation;
- (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;
- (d) any claim under Clause 7.3; or
- (e) any claim under the indemnity in Clause 5.7.10.

7.2.2 Subject to Clause 7.1.3 and Clause 7.1.4 the Contractor shall indemnify and keep indemnified the Customer 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 Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

7.2.3 Subject always to Clause 7.1.1 and Clause 7.1.4, the liability of either Party for Defaults shall be subject to the following financial limits:-

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £1,000,000; and
- (b) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of £50,000 or 50 per cent of the Contract Price payable by the Customer to the Contractor in the year in which the liability arises.

7.2.4 Subject to Clause 7.1.1, 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.

7.2.5 The Customer may, amongst other things, recover as a direct loss:-

- (a) any additional operational and/or administrative expenses arising from the Contractor's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Contractor's Default; and
- (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Contractor.

7.2.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Contractor to any other person,

but this shall not be taken to exclude or limit any liability of the Customer to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

- 7.2.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 7.2.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 7.2.9 The Contractor shall give the Customer, 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.
- 7.2.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 7.2.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 7.1.2.

7.3 Professional Indemnity

The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £1,000,000 for each individual claim [or such higher limit as the Customer may reasonably require (and as required by law) from time to time]. Such insurance shall be maintained for a minimum of [6 (six)] years following the expiration or earlier termination of the Contract.

7.4 Taxation, National Insurance and Employment Liability

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Contractor shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

7.5 Warranties and Representations

7.5.1 The Contractor 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 Contractor;
- (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 the Tender Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer 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 affect 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 Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (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 Services shall be provided 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
- (k) 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.

8. DEFAULT, DISRUPTION AND TERMINATION

8.1 Termination on insolvency and change of control

- 8.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor:-
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (b) a 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 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause 8.1.1(a) – 8.1.1(g) occurs under the law of any other jurisdiction.

8.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Contractor 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 Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor'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 Contractor 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 Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3 The Contractor shall notify the Customer immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer 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 Customer 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.

8.2 Termination on Default

- 8.2.1 The Customer may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a Default and if:-
- (a) the Contractor has not remedied the Default to the satisfaction of the Customer within [ten (10)] Working Days, or such other period as may be specified by the Customer, 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 Customer, capable of remedy; or
 - (c) the Default is a material breach of the Contract.
- 8.2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 8.2.3 If the Customer fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within [ninety (90)] Working Days of the date of such written notice, the Contractor 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 Customer exercising its rights under Clause 3.3 (Recovery of Sums Due).

8.3 Break

The Customer shall have the right to terminate the Contract at any time by giving written notice to the Contractor with immediate effect. If termination pursuant to this Clause 8.3 occurs between 12 and 4 hours before the agreed start time for an assignment of work to the Contractor by the Customer then a the Contractor may charge the Customer a cancellation fee of no more than 25% of the Minimum Number of Hours (as defined in Schedule 1 to the Framework Agreement). If termination pursuant to this Clause 8.3 occurs less than 4 hours before the agreed start time for an assignment of work then the Contractor may charge the Customer a cancellation charge of no more than 50% of the Minimum Chargeable Hours (as defined at Schedule 1 Specification).

8.4 Framework Agreement

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

8.5 Consequences of Expiry or Termination

- 8.5.1 Where the Customer terminates the Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 8.2 (Termination on Default), no further payments shall be payable by the Customer to the Contractor until the Customer has established the final cost of making those other arrangements.
- 8.5.2 Subject to Clause 7, where the Customer terminates the Contract under Clause 8.3 (Break), the Customer shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 8.3 (Break).
- 8.5.3 The Customer shall not be liable under Clause 8.5.2 to pay any sum which:-
- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period.
- 8.5.4 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 Customer or the Contractor under [Clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Data Protection Act), 5.2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 5.3 (Confidential Information), 5.4 (Freedom of Information), 5.7 (Intellectual Property Rights), 5.8 (Records and Audit Access), 6.6 (Cumulative Remedies), 7.1 (Liability, Indemnity

and Insurance), 7.2 (Professional Indemnity), 8.5 (Consequences of Expiry or Termination), 8.7 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction)].

8.6 Disruption

- 8.6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 8.6.2 The Contractor shall immediately inform the Customer 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.
- 8.6.3 In the event of industrial action by the Staff, the Contractor shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 8.6.4 If the Contractor's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 8.6.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

8.7 Recovery upon Termination

- 8.7.1 On the termination of the Contract for any reason, the Contractor shall:
 - (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPR's and the Project Specific IPR's 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 Services;
 - (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Contractor under clause 2.2. 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 Customer to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.

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

8.7.2 If the Contractor fails to comply with clause 8.7.1 (a) and (b), the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

8.7.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 8.7.1 (c) and (d) free of charge. Otherwise, the Customer shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

8.7.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 5.7.7 shall automatically terminate without the need to serve notice.

8.8 Force Majeure

The Customer reserves the right to defer the date for the performance of or payment for the Services or to terminate this Agreement if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or industrial disputes (whether involving the workforce of the Customer or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law, or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

9. DISPUTES AND LAW

9.1 Governing Law and Jurisdiction

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.

9.2 Dispute Resolution

9.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the 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.

9.2.2 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.

- 9.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 9.2.5 unless:
- (a) the Customer considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Contractor does not agree to mediation.
- 9.2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 9.2.5 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 [specify relevant mediation provider, eg the Centre for Effective Dispute Resolution] 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 [specify relevant mediation provider]³ 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 written opinion. 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.

10. TRANSPARENCY

- 10.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act (the Act) the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act.
- 10.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Customer to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Customer decides.

VARIATION FORM

Call-Off Terms and Conditions For Services/Works

[Name of Lot]
.....

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[] ("the Customer")

and

[] ("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

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SCHEDULE 6

MANAGEMENT INFORMATION REQUIREMENTS

NOT USED

SCHEDULE 7

COMMERCIALLY SENSITIVE INFORMATION

Any personal information of End Users (as defined in Schedule 1) which the Provider or sub-contractors / freelance workers appointed by the Provider may become aware of or party to, regardless of the nature in which the information was conveyed to these parties (verbal, written, signed etc), in connection with the provision of services under the Framework Agreement

All Council Information that the Provider or sub-contractors / freelance workers appointed by the Provider may become aware of or party to regardless of the nature in which the information was conveyed to these parties (verbal, written, signed etc) in connection with the provision of services under the Framework Agreement

SCHEDULE 8

FRAMEWORK AGREEMENT VARIATION PROCEDURE

1. Introduction

- 1.1 Schedule 8 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
- 1.2 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 Services.

2. Procedure for proposing a Variation

- 2.1 Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Council shall serve each Services Framework Provider with written notice of the proposal to vary the Framework Agreement ("Notice of Variation").
- 2.3 The Notice of Variation shall:-
 - 2.3.1 contain details of the proposed variation providing sufficient information to allow each Services Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and

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- 2.3.2 require each Services Framework Provider to notify the Council within [7] days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 Upon receipt of the Notice of Variation, each Services Framework Provider has [7] days to respond in writing with any objections to the variation.
- 2.5 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 Services Framework Provider with a written agreement detailing the variation to be signed and returned by each Services Framework Provider within [7] days of receipt.
- 2.6 Upon receipt of a signed agreement from each Services Framework Provider, the Council shall notify all Services Framework Providers in writing of the commencement date of the variation.

3. Objections to a Variation

- 3.1 In the event that the Council receives one or more written objections to a variation, the Council may:-
 - 3.1.1 withdraw the proposed variation; or
 - 3.1.2 propose an amendment to the variation.

4. Changes to the Pricing Matrices

- 4.1 Where a Services 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 Services Framework Provider that any additional costs to the Services Framework Provider will be kept to a minimum.
- 4.2 The Council may require the Services Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.
- 4.3 Where a change to a Services Framework Provider's Pricing Matrices is agreed by the Council, the Council shall notify its acceptance of the change to the Services Framework Provider in writing.
- 4.4 In the event that the Council and the Services Framework Provider cannot agree to the changes to the Pricing Matrices, the Council may:-
 - 4.4.1 withdraw the variation; or
 - 4.4.2 propose an amendment to the variation

5. Variations which are not permitted

- 5.1 In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation which:-
 - 5.1.1 may prevent one or more of the Services Framework Providers from performing its obligations under the Framework Agreement; or is in contravention of any Law.

SCHEDULE 9

DATA PROTECTION

1. Definitions

"Affiliates" any entity that is owned or controlled by the Council, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise

"Applicable Laws" means (a) European Union or Member State laws with respect to any Council Personal Data in respect of which the Council is subject to Data Protection Laws; and (b) any other applicable law with respect to any Council Personal Data in respect of which the Council is subject to any other Data Protection Laws;

"Council" means Cheshire East Borough Council and its Affiliates;

"Council Data" means any data processed by a Contracted Processor on behalf of the Council pursuant to or in connection with this Agreement;

"Council Personal Data" means any Personal Data Processed by a Contracted Processor on behalf of the Council pursuant to or in connection with this Contract;

"Contracted Processor" means the Provider or a Subprocessor;

"Data Breach" has the meaning given to it in the Information Governance Review 2013.

"Data Controller" has the meaning given to it in the DPA

"Data Processor" shall have the same meaning as set out in the Data Protection Act 1998.

"Data Protection Laws" means (i) the GDPR, the LED and any applicable national implementing (i) the GDPR, the LED and any applicable national implementing Laws , as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy (iii) all applicable Law about the processing of personal data and privacy;

"Delete / Deletion" means deletion, removal of the Council Personal Data from the Provider's system using software certified to recognised international standards, including but not limited to, CESG HMG Infosec. Standard No: 5 Secure Sanitisation (Baseline and Enhanced);

"DPA 2018" Data Protection Act 2018;

"European Economic Area" the European Economic Area (EEA) which consists of the European Union and all the European Free Trade Association (EFTA) countries except Switzerland.

"EEA" means the European Economic Area;

"GDPR": means EU General Data Protection Regulation EU 2016/679.

"Governing Body" in respect of any party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that party.

“Information Governance Lead” an employee of the Provider who is responsible for information governance.

“LED” means the Law Enforcement Directive (Directive (EU) 2016/680)C

“Personal Data” shall have the same meaning as set out in the Data Protection Act 1998.

"Restricted Transfer" means:

- i. a transfer of Council Personal Data from the Council to a Contracted Processor; or
- ii. an onward transfer of Council Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);

"Services" means the services and other activities to be supplied to or carried out by or on behalf of the Provider for the Council pursuant to this Contract;

"Subprocessor" means any person (including any third party, but excluding an employee of the Provider or any of its sub-contractors) appointed by or on behalf of the Provider to Process Personal Data on behalf of the Council in connection with this Contract; and

The terms, **"Commission"**, **"Controller"**, **"Data Subject"**, **"Member State"**, **"Personal Data"**, **"Personal Data Breach"**, **"Processing"** and **"Supervisory Authority"** shall have the same meaning as in the GDPR.

2. DATA SHARING AGREEMENTS

- 2.1 The Provider will enter into such data sharing agreements with the Council as it requires in such form as it requires and in accordance with any provisions set out in Schedule 1.

3. THE COUNCIL AS DATA CONTROLLER

- 3.1 The parties acknowledge that:

In relation to Personal Data processed by the Provider for the purpose of delivering the Services the Council will be the sole Data Controller.

- 3.2 The Provider must ensure that all Personal Data processed by the Provider in the course of delivering the Services is processed in accordance with the relevant parties' joint obligations under the DPA.

4. THE PROVIDER AS DATA PROCESSOR

- 4.1 Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of the Council, the Provider must:

- 4.1.1 Process relevant Personal Data only to the extent necessary to perform its obligations under this Contract, and only in accordance with instructions given by the Council;

- 4.1.2 Take appropriate technical and organisational measures against any unauthorised or unlawful processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the state of technological development, the nature of the data to be protected and the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
- 4.1.3 Take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedure identified in clause 3.2; and
- 4.2 Not cause or allow Personal Data to be transferred outside the United Kingdom or the EEA.

5. RESPONSIBILITIES WHEN ENGAGING SUB-CONTRACTORS

Processing of Personal Data

- 5.1 The Provider warrants and represents that, before any Subprocessor, Processes any Council Personal Data on behalf of the Council, the Provider shall enter into an agreement with the Subprocessor that is compliant with Applicable Laws for the Processing of any Council Personal Data.
- 5.2 The Provider shall:
 - 5.2.1 comply with all applicable Data Protection Laws in the Processing of Council Personal Data;
 - 5.2.2 not Process Council Personal Data other than on the Council's documented instructions unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case the Provider shall to the extent permitted by Applicable Laws inform the relevant Council of that legal requirement before the relevant Processing of that Personal Data; and
 - 5.2.3 not make or permit any Subprocessor to make any Restricted Transfers.
- 5.3 The Provider will (and will instruct each Subprocessor) to Process Council Personal Data, as reasonably necessary for the provision of the Services pursuant to this Contract.
- 5.4 Annex 1 to this Schedule 9 sets out certain information regarding the Contracted Processors' Processing of Council Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). The Council may make reasonable amendments to Annex 1 by written notice to the Provider from time to time as the Council reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this Contract) confers any right or imposes any obligation on any party to this Contract.
- 5.5 The Provider shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to Council Personal Data, ensuring in each case that access is strictly

limited to those individuals who need to know / access the relevant Council Personal Data, as strictly necessary for the purposes of this Contract, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

- 5.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Provider shall in relation to Council Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 5.7 In assessing the appropriate level of security, the Provider shall in particular take account of the risks that are presented by Processing, in particular from a Personal Data Breach.
- 5.8 The Provider will appoint (and require that each Subprocessor appoints) Subprocessors in accordance with this Schedule.
- 5.9 The Provider may continue to use those Subprocessors already engaged by the Provider as at the date of this Framework Agreement, subject to the Provider in each case as soon as practicable meeting the obligations set out in clause 5.5.
- 5.10 The Provider shall give the Council prior written notice of the proposed appointment of each Subprocessor and, where appropriate during the Contract Term, each new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. The Provider shall not appoint (nor disclose any Council Personal Data to) the proposed Subprocessor except with the prior written consent of the Council.
- 5.11 With respect to each Subprocessor, the Provider shall:
 - 5.11.1 before the Subprocessor first Processes Council Personal Data carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Council Personal Data required by this Contract;
 - 5.11.2 ensure that the arrangement between the Provider, and the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Council Personal Data as those set out in this Contract and meet the requirements of article 28(3) of the GDPR;
 - 5.11.3 ensure that the Subprocessor shall not make a Restricted Transfer of any Council Personal Data; and
 - 5.11.4 provide to the Council for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Contract) as the Council may request from time to time.
- 5.12 The Provider shall ensure that each Subprocessor performs the obligations under this Schedule, as they apply to Processing of Council Personal Data

carried out by that Subprocessor, as if it were party to this Contract in place of the Provider.

- 5.13 Taking into account the nature of the Processing, the Provider shall assist the Council by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council's obligations, as reasonably understood by the Council, to respond to requests to exercise Data Subject rights under the Data Protection Laws.
- 5.14 The Provider shall:
- 5.14.1 promptly notify the Council if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Council Personal Data; and
 - 5.14.2 ensure that the Contracted Processor does not respond to that request except on the documented instructions of the Council or as required by Applicable Laws to which the Contracted Processor is subject, in which case the Provider shall to the extent permitted by Applicable Laws inform the Council of that legal requirement before the Contracted Processor responds to the request.
- 5.15 The Provider shall notify the Council without undue delay upon the Provider or any Subprocessor becoming aware of a Personal Data Breach affecting Council Personal Data, providing the Council with sufficient information to allow the Council to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
- 5.16 The Provider shall co-operate with the Council and take such reasonable commercial steps as are directed by the Council to assist in the investigation, mitigation and remediation of each such Personal Data Breach.
- 5.17 The Provider shall provide reasonable assistance to the Council with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Council reasonably considers to be required of the Council by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Council Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors.
- 5.18 Subject to clauses 5.19 and 5.20 the Provider shall promptly and in any event within 30 days of the date of cessation of any Services involving the Processing of Council Personal Data (the "Cessation Date"), Delete and procure the Deletion of all copies of those Council Personal Data.
- 5.19 Subject to clause 5.20, the Council may in its absolute discretion by written notice to the Provider within 30 of the Cessation Date require the Provider to (a) return a complete copy of all Council Personal Data to the Council by secure file transfer in such format as is reasonably notified by the Council to the Provider; and (b) Delete and procure the Deletion of all other copies of Council Personal Data Processed by any Contracted Processor. the Provider shall comply with any such written request within 30 days of the Cessation Date.
- 5.20 Each Contracted Processor may retain Council Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that the Provider shall ensure

the confidentiality of all such Council Personal Data and shall ensure that such Council Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

5.21 The Provider shall provide written certification to the Council that it has fully complied with this clause 6 within 30 days of the Cessation Date.

5.22 The Provider shall make available to the Council on request all information necessary to demonstrate compliance with this Contract, and shall allow for and contribute to audits, including inspections, by the Council or an auditor mandated by the Council in relation to the Processing of Council Personal Data by the Contracted Processors.

5.23 Information and audit rights of the Council only arise under clause 5.22 to the extent that this Contract does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, article 28(3)(h) of the GDPR).

5.24 The Council when undertaking an audit shall give the Provider reasonable notice of any audit or inspection to be conducted under clause 5.22 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to the Contracted Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Contracted Processor need not give access to its premises for the purposes of such an audit or inspection:

5.24.1 to any individual unless he or she produces reasonable evidence of identity and authority;

5.24.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and the Council undertaking an audit has given notice to the Provider that this is the case before attendance outside those hours begins; or

5.24.3 for the purposes of more than one audit or inspection, in respect of each Contracted Processor, in any calendar year, except for any additional audits or inspections which:

5.24.3.1 the Council when undertaking an audit reasonably considers necessary because of genuine concerns as to the Provider's compliance with this Contract; or

5.24.3.2 the Council is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,

where the Council when undertaking an audit has identified its concerns or the relevant requirement or request in its notice to the Provider of the audit or inspection.

ANNEX 1: DETAILS OF PROCESSING OF COUNCIL PERSONAL DATA

This Annex 1 includes certain details of the Processing of Council Personal Data as required by Article 28(3) GDPR.

Contract Title	Contract for the Provision of Public Rights of Way Furniture and Associated Public Rights of Way Works
Subject matter and duration of the Processing of Council Personal Data	The subject matter and duration of the Processing of Council Personal Data are set out in this Agreement
The nature and purpose of the Processing of Council Personal Data	Enabling the carrying out of works on land owned by private landowners.
The categories of Council Personal Data to be Processed	The names, addresses and contact details of landowners, land managers, tenants and agents.
The categories of Data Subject to whom Council Personal Data relates	Members of the public who are landowners or tenants on whose land works are to be carried out by the Provider.
The obligations and rights of the Council	The obligations and rights of the Council are set out in this Agreement.