

**DATED**

-----

**FRAMEWORK AGREEMENT**

**between**

**CHESHIRE EAST BOROUGH COUNCIL**

**(AS HOST PARTNER FOR THE CHESHIRE COMMUNITY  
EQUIPMENT SERVICES PARTNERSHIP)**

**and**

**SERVICE PROVIDER**

## THIS CONTENTS

---

### CLAUSE

1:	Definitions .....	2
2.	Interpretation.....	8
3.	Scope and term.....	8
4.	Supplier to have satisfied itself .....	9
5.	Supply of the tasks .....	10
6	Delivery .....	12
7	Cancellation of Orders .....	13
8	Complaints Procedure .....	13
9	Change in Control.....	13
10.	Nominated Council Representative .....	13
11.	Contract Manager .....	13
12	Title to Goods.....	13
13.	Monitoring and reporting.....	13
14.	Supplier's Warranty.....	14
15.	Supplier's Employees .....	16
16.	Price and Payment .....	17
17.	Termination .....	18
18.	Consequences of termination .....	20
19.	Confidentiality .....	21
20.	Data Protection and Equality Duties.....	23
21.	Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) .....	25
22.	Prevention of corruption.....	26
23.	Transfer and sub-contracting.....	27
24.	Intellectual property rights.....	27
25.	Dispute resolution .....	28
26.	Force majeure.....	29
27.	Insurance .....	29
28.	Indemnity and liability .....	30
29.	Customers and customer's premises .....	30
30.	Damage to plant, tackle and tools .....	31
31.	Health and safety .....	31
32.	Inspection of supplier's premises.....	31
33.	Variation.....	31
34.	Waiver.....	31
35.	Severance.....	32
36.	No partnership or agency .....	32
37.	Non Solicitation and Offers of employment .....	32
38.	Obligation to mitigate .....	33
39.	Third party rights .....	33
40.	Notices .....	33

41.	TUPE .....	33
42.	Value for money .....	34
43.	Set off and counter claim .....	34
44.	Entire agreement .....	34
45.	Governing law and jurisdiction .....	34

## **SCHEDULE**

SCHEDULE 1	SPECIFICATION .....	35
SCHEDULE 2	ORDER SELECTION PROCESS .....	35
SCHEDULE 3	TENDER.....	38
SCHEDULE 4	PRICING SCHEDULE .....	39
SCHEDULE 5	CHANGE CONTROL PROCEDURE .....	40
SCHEDULE 6	Call Off Contract - Identified Bodies	44

**BETWEEN:-**

1. **CHESHIRE EAST BOROUGH COUNCIL** as host partner for the Cheshire Community Equipment Services Partnership (CCESP) of Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ ("the **Council**"); and
2. **#####** incorporated and registered in England and Wales with company number **####** whose registered office is at **#####** (**Supplier**).

**BACKGROUND**

- (A) The Council is commissioning services as host partner for CCESP.
- (B) This Framework Agreement is also a means by which Identified Bodies may call off the provision of Equipment and Services specified as Lots 1 to 8 by placing Orders with the Suppliers in accordance with the terms and conditions of the Call Off Contract set out in Schedule 6.
- (C) The Council placed an advertisement in the Official Journal of the European Union OJEU ref **###** dated **#####** ("OJEU Notice") seeking expressions of interest from potential Suppliers for a framework arrangement for  
[The provision of Equipment and Services specified as [Lot 1 to 8] in the Specification being the supply, installation, removal, refurbishment and storage of such Equipment and associated servicing and maintenance.]
- (D) The Supplier was invited to tender and on the basis of the tender submitted was selected by the Council as the Supplier to be appointed to the framework in respect of Lot(s) **[tbc]**.
- (E) The Supplier will enter into this Framework Agreement with the Council for the  
[The provision of Equipment specified as [Lot 1 to 8] in the Specification being the supply, installation, removal, refurbishment and storage of such Equipment and associated servicing and maintenance.]
- (F) This Framework Agreement provides that the Council may call off the provision of the Tasks by placing an Order with the Supplier.
- (G) The Council will place Orders for the Tasks in accordance with the process set out in the Specification and clause 5 and on the terms and conditions set out in this Framework Agreement and such terms and conditions shall be assigned to any Order placed through this arrangement together with any additional terms and conditions contained in that Order.
- (H) Inclusion on the Framework Agreement does not guarantee Orders for any or all of the Tasks.

[Lots 1 to 7 - The Framework Agreement will not be exclusive to one Supplier. The Council cannot guarantee to call off any specific quantities/work during the Term.]

[Lot 8 - The Framework Agreement will be exclusive to one Supplier. However, the Council cannot guarantee to call off any specific quantities/work during the Term.]

## **NOW IT IS HEREBY AGREED AS FOLLOWS**

### **1: DEFINITIONS**

Bribery Act	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 Contact	the terms and conditions set out in Schedule 6 which apply to an Order for Services by an Identified Body.
Change Control Procedures	the procedures for control of change as set out in Schedule 5.
Cheshire Equipment Service (CES)	a partnership consisting of the local authorities and clinical commissioning groups as set out in the Specification which was set up for the purpose of providing Equipment to adults and children who have a need for such equipment by reason of a temporary or permanent disability or health need and require provision of equipment on a temporary or permanent basis for daily living, rehabilitation or nursing need.
Choicequip	The administrative arm of the Cheshire Community Equipment Service
Commencement Date	2016
Confidential Information	any information which has been designated as confidential by either party in writing or ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business affairs, properties, assets, trading practices, developments, trade secrets, Intellectual

property Rights, know-how, personnel, customers and Suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

Contract Manager	the person named in clause 11 or the Call Off Contract as the contract manager and any replacement from time to time.
Customer	individual who has a need for Equipment
Data Protection Legislation	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
Default	any breach of obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act omission, negligence or statement of either party, its employees, agents or sub-Suppliers in connection with or in relation to the subject matter of this Framework Agreement and in respect of which such party is liable to the other.
Documentation	means the user guide and/or operating manual (being the latest variation and matching all upgrades to the Equipment) such that the documentation is sufficient to enable the Customer to use/operate the Equipment.
EIR	the Environmental Information Regulations 2004

Equalities Legislation	means all Legislation which makes unlawful discrimination on grounds of sex, sexual orientation, gender reassignment, age, disability, colour, race, ethnic or national origin or religion, marital status, part-time or temporary status in employment or otherwise under the Equality Act 2010 or statutory instruments or codes of practice issued pursuant to it as amended from time to time.
Equipment	means the supply of new and refurbished equipment (also referred to as community equipment) as detailed in the Specification for each respective Lot and further detailed in the Order.
FOIA	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 in relation to such legislation.
Emergency Duty Team (EDT)	An out of hours service which will act in place of Choicequip when Equipment is required out of hours.
Employee	any person employed by the Supplier to perform the Contract which will also include the Supplier's servants, agents, voluntary and unpaid workers and sub-Suppliers and representatives employed by the Supplier in the performance of the Tasks.
Framework Agreement	<p>this over-arching agreement between the Council and the Supplier setting out the terms and conditions which will govern all Orders pursuant to this framework agreement.</p> <p>In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none"> <li>1. these Framework terms and conditions.</li> <li>2. the Order Form,</li> </ol>

3. the Tender except to the extent that any element of the Tender has been included in or amended by the Order;

Framework Manager	the officer appointed by the Council to act on behalf of the Council for the purposes of the Framework Agreement, full details of whom shall be given to the Supplier prior to the Commencement Date
Good Industry Practice	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of services similar to the Tasks under the same or similar circumstances as those applicable to this Contract.
Instructions	The instructions provided in the Specification and the Order and any other information that the Council considers appropriate to the provision of the Tasks.
Intellectual Property Rights	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
Invitation to Tender	the Council's invitation to tender for the Framework Agreement.
Identified Body	means those bodies listed in the OJEU Notice who shall be entitled to call off Services in accordance with the terms and conditions of this Framework Agreement and the Call Off Contract.
Inventory	a list of Equipment either in storage or in use by the Customer.
Key Performance Indicators	The Key Performance Indicators referred to in the Specification.



Key Personnel	those persons named in the Order as being key personnel.
Law	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Supplier is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
Lot	the Lots set out in the Specification and the equipment to be supplied thereunder
Nominated Council Representative	an authorised Officer either employed by the Council or other representative who has been duly authorised to act on behalf of the Council
Order	the issue of an official order by the Council to the Supplier in accordance with clause 5.4 when calling-off any Tasks which, together with these framework terms and conditions constitutes a legally binding contract for the provision of the specified Tasks.
Personal Data	has the same meaning as set out in the Data Protection Act 1998.
Premises	the property at which the Equipment will be delivered and/or the Tasks will be carried out.
Price	the price detailed in the Tender and/or Order paid by the Council to the Supplier in relation to the Tasks.
Pricing Schedule	the prices and rates detailed in Schedule 4.

Prohibited Act	<p>the following constitute Prohibited Acts</p> <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to : <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity</li> </ul> </li> <li>(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</li> <li>(c) Committing any offence <ul style="list-style-type: none"> <li>(i) Under the Bribery Act</li> <li>(ii) Under legislation creating offences concerning fraudulent acts</li> <li>(iii) At common law concerning fraudulent acts relating to this Agreement or any other contract with the Council</li> </ul> </li> <li>(d) Defrauding, attempting to defraud or conspiring to defraud the Council</li> </ul>
Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Services	installation/re-installation, removal, refurbishment, servicing maintenance repair and storage as detailed in the Specification.
Service Schedule	a Schedule of the Equipment referred to in the Specification as having been installed at Customer Premises prior to the Commencement Date of this Contract and which are outside any warranty period that applied to that Equipment and Equipment which comes out of warranty during the Term (which will increase as items of Equipment come out of warranty and decrease as Equipment is decommissioned and removed from the schedule).
Specification	the specification of the Tasks as detailed in Schedule 1.
Supplier	the Supplier and where applicable this shall include the Supplier's employees, sub-Suppliers, agents, representatives and permitted assigns.

Tender	the Supplier's tender for the Services in response to the Council's Invitation to Tender as attached at Schedule 3.
Tasks	the supply of Equipment and the Services set out in the Specification (which phrase shall include some or all of those Tasks).
Term	the period of the Framework Agreement as detailed in clause 3.8.

## **2. INTERPRETATION**

### **2.1 As used in this Framework Agreement:**

- (a) The terms and expressions set out in this Framework Agreement shall have the meanings ascribed therein;
- (b) The masculine includes the feminine and the neuter; and
- (c) The singular includes the plural and vice versa.

### **2.2 A reference 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 statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.**

### **2.3 Headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.**

### **2.4 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules and appendices to this Framework Agreement.**

### **2.5 In the event and to the extent only of any conflict between clauses contained in this Framework Agreement and the Schedules, the Schedules, save for Schedule 3, shall prevail.**

## **3 SCOPE AND TERM**

### **3.1 It is intended that this Framework Agreement constitutes a framework in accordance with the provisions of regulation 33 of the Public Contracts Regulations 2015.**

3.2 The Framework Agreement sets out the terms on which the Supplier will supply the Tasks as ordered from time to time by the Council and, together with any terms and conditions in any Order shall apply to any Order placed through these arrangements.

3.3 The Framework Agreement sets out the terms by which the Supplier will supply the Services as ordered from time to time by an Identified Body. The Framework Agreement and the Call Off Contract set out in Schedule 6 shall apply to any Order placed through these arrangements.

3.4 The Framework Agreement governs the overall relationship of the parties with respect to the Tasks as identified in the Specification and the Order.

3.5 The Framework Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 3 shall not exclude liability in respect of any fraudulent misrepresentation.

3.6 The Framework Agreement and the Supplier's performance there under shall be reviewed in accordance with the Specification.

3.7 The Supplier performs the Tasks on a non-exclusive basis and the Council has the right to employ another person to provide Tasks of the same type as is contemplated by this Framework Agreement if it shall at its absolute discretion think fit to do so.

3.8 The Framework Agreement shall commence on the Commencement Date and shall continue for a period of 4 years unless terminated in accordance with the provisions of the Framework Agreement.

3.9 The Council may at its absolute discretion terminate this Framework Agreement in accordance with clause 17.1.

3.10 For the avoidance of doubt the Council accepted the Supplier's tender in respect of those parts of the Services as are detailed in Schedule 3.

#### **4. SUPPLIER TO HAVE SATISFIED ITSELF**

4.1 The Supplier acknowledges that it:

4.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by the Council:

4.1.2 has raised all relevant due diligence questions with the Council before commencement of this Framework Agreement; and

- 4.1.3 has entered into this Framework Agreement in reliance on its own due diligence alone.
- 4.2 The Supplier shall be deemed to have satisfied itself as to the sufficiency and correctness of the Price. Unless otherwise expressly stated in the Framework Agreement or relevant Order the Price shall cover all the Supplier's obligations under the Framework Agreement and everything necessary for the supply of the Tasks under the Framework Agreement.
- 4.3 Unless otherwise expressly stated in the Framework Agreement or the relevant Specification and agreed by the parties, no amendment to the Price on the grounds of any matter relating to any document forming part of the Framework Agreement or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to the Council or any other appropriate means may be made by the Supplier.

## **5. SUPPLY OF THE TASKS**

- 5.1 The Supplier shall perform the Tasks in accordance in all respects with the terms of the Framework Agreement.
- 5.2 Orders placed by Identified Bodies will be in accordance with the Call Off Contract.
- [Lots 1 to 7 - only]**
- 5.3 Subject to clause 5.4, the Council shall be entitled at any time during the Term to place an Order with the Supplier for the supply of the Services.
- 5.4 The Council shall select a Supplier to supply the Services under an Order in accordance with Schedule 2.
- 5.5 The pricing of the Tasks will be in accordance with the Pricing Schedule set out in Schedule 4.
- 5.6 Upon completion of the Order Selection Process set out in Schedule 2:
- 5.6.1 Orders will be processed in accordance with the Council's web based ordering system.
- 5.6.2 The Supplier will carry out and complete the Tasks in accordance with the Specification, this Framework Agreement and the Order.

### **[Lot 8 only]**

The Council shall be entitled at any time during the Term to place an Order with the Supplier for the supply of the Services.

### **[Lots 1 to 8]**

- 5.7 In the event that the Tasks are being called off urgently the Council may issue alternative Instructions to the Supplier to expedite completion and return of the documents as necessary.
- 5.8 The Supplier will carry out the Tasks in accordance in all respects with the terms of this Framework Agreement and the terms and conditions of the relevant Order.
- 5.9 For the avoidance of doubt the Council shall not be responsible for any Tasks that are delivered by the Supplier and that are not the subject of an Order.
- 5.10 The Supplier shall ensure that the Tasks provided pursuant to the Order exceed or meet the requirements of the Specification and, where the purposes for which the Tasks are required is indicated in the Order, either expressly or by implication, shall be fit for that particular purpose.
- 5.11 Without prejudice to any other remedies available if the Supplier fails to perform the Tasks in accordance with the Specification and the Key Performance Indicators are not met then the Council shall be entitled to a reduction in the Charges in respect of such Tasks calculated in accordance with Schedule 4.
- 5.12 The Supplier warrants that the Tasks to be supplied under this Framework Agreement shall comply in all respects with the requirements set out in the Specification and with all relevant requirements of any statute, statutory rule or order or other instrument having the force of law which may be in force at the time when the Tasks are supplied.
- 5.13 The Supplier shall carry out the servicing, inspection and testing of Equipment as detailed in Schedule 1 (Specification) and the Service Schedule.
- 5.14 The Supplier will carry out breakdown services and service repairs as detailed in Schedule 1 (Specification).
- 5.15 The Supplier shall ensure that all Equipment complies with the appropriate specification or code of practice of the British Standard Institution or any European equivalent as set out in Schedule 1 (Specification) (or with any equivalent standard or code which comes in to force during the Term).
- 5.16 The Supplier shall ensure that they have or have access to sufficient Equipment (including parts, spares and fixings) in accordance with the requirements of Schedule 1 (Specification).
- 5.17 The Supplier (or its sub-Suppliers) shall at all times comply with the requirements of Schedule 1 (Specification) in relation to the Premises.

- 5.18 The Supplier shall ensure that all new Equipment supplied is provided with a full one (1) year parts and labour warranty which meets with requirements of the Specification and will provide the Council with a Certificate of Warranty in respect of each individual piece of Equipment.
- 5.19 The Supplier shall ensure that all refurbished equipment is provided with a full parts and labour warranty which meets the requirements of the Specifications (including in respect of the length of the warranty) and where the original warranty has expired or there is less than (6) six months until expiry of that original warranty will provide the Council with a Certificate of Warranty of at least 6 (six) months.
- 5.20 The Supplier will supply (to the Customer) the Documentation with the Equipment upon installation of the Equipment and confirm to the Council that they have done so.
- 5.21 The Supplier will securely retain the certificates of warranty in accordance with the requirements of Schedule 1 (Specification).
- 5.22 The Supplier shall work with the Council to maintain an accurate and up to date Inventory which will meet the requirements of Schedule 1 (Specification).
- 5.23 The Council will have the right to observe the Supplier's performance of the Tasks at any time and at the place of performance of the Tasks.
- 5.24 If the Supplier at any time becomes aware of any material matter that could affect the performance of the Tasks in accordance with the Framework Agreement, the Supplier shall inform the Council immediately.

## **6 DELIVERY**

- 6.1 The Supplier shall comply in all respects with Schedule 1 (Specification) with regard to the delivery and hand over of Equipment and performance of the Services in relation to delivery and hand over.

## **7 CANCELLATION OF ORDERS**

- 7.1 The Council reserves the right to cancel an Order at any time prior to the Equipment having been delivered.
- 7.2 In the event that the Supplier wishes to cancel an Order, the Supplier must provide to the Council the reasons for the request. If as a result an Order is not fulfilled by the Supplier, the Supplier will meet the cost to the Council of that cancellation including the costs of a replacement Supplier and the will reimburse the Council's administrative costs incurred due to the failed Order.

## **8 COMPLAINTS PROCEDURE**

- 8.1 The Supplier shall operate a complaints procedure in accordance with the requirements of the Council as set out in the Specification from the Commencement Date of the Contract and will continue to operate such complaints procedure until the last Order called-off under this Framework Agreement has been completed to the satisfaction of the Council and the last warranty period has expired.

## **9 CHANGE IN CONTROL**

- 9.1 If the Supplier has a change of control (as set out in Clause 17), the Supplier shall inform the Council as soon as reasonably practicable.

## **10. NOMINATED COUNCIL REPRESENTATIVE**

- 10.1 The officer appointed by the Council to act on behalf of the Council for the purposes of the Contract, full details of whom shall be given to the Supplier prior to the Commencement Date

## **8 CONTRACT MANAGER**

- 11.1 The Supplier shall employ a competent and authorised Contract Manager empowered to act on behalf of the Supplier for all purposes connected with this Contract.
- 11.2 The Supplier shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Supplier shall give maximum possible notice to the Council before changing its Contract Manager.

## **12. TITLE TO GOODS**

- 12.1 Title in any goods provided as part of the Tasks shall pass to the Council upon delivery or early payment without prejudice to any rights of rejection which may accrue to the Council under this Contract or otherwise.

## **13. MONITORING AND REPORTING**

- 13.1 The Supplier shall:
- 13.1.1 appropriately manage its provision under all Orders in accordance with the reasonable requests of the Council;
- 13.1.2 be required to provide the Council with accurate and up to date management information as detailed in the Specification in relation to the Framework Agreement at the required frequency through the Term. Such information



shall include but not be limited to the volume and value of the Orders, the Equipment supplied, the Works performed and Services provided;

- 13.1.3 on reasonable notice grant to the Council and/or the Council's external and internal auditors access to any relevant data or documentation relating to the Framework Agreement and the supply of the Tasks for the purpose of carrying out an audit.
- 13.2 The Supplier shall hold quarterly performance review meetings in respect of the Framework Agreement with the Council. This meeting shall include a review of information and data on performance of the Tasks, Council enquiries and complaints and the volume and value of Orders and the Key Performance Indicators. The Supplier shall co-operate fully in providing this and any other financial and statistical information required by the Council during the course of each review.

#### **14. SUPPLIER'S WARRANTY**

- 14.1 The Supplier warrants that it has full capacity and authority and all necessary consents (including but not limited to where its procedures so require the consent of its parent Company) to enter into and perform the Framework Agreement and that the Framework Agreement is executed by the duly authorised representatives of the Supplier;
- 14.2 The Supplier warrants to the Council that the Services will be provided:
  - 14.2.1 in a proper, skilful and workmanlike manner;
  - 14.2.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
  - 14.2.3 in accordance with this Framework Agreement and any descriptions provided by the Supplier;
  - 14.2.4 to the reasonable satisfaction of the Nominated Council Representative;
  - 14.2.5 in a way that the Supplier takes every reasonable precaution to safeguard the Premises and the Customer's property entrusted to the care of the Supplier.
- 14.3 The Supplier warrants to the Council that the Equipment provided will be:
  - 14.3.1 fit for purpose as set out in the Specification;

- 14.3.2 be free from defects in design, material and workmanship; and
  - 14.3.3 provided in accordance with the Framework Agreement and correspond with any drawings, samples or descriptions provided by the Supplier;
  - 14.3.4 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 14.4 The Supplier shall respond promptly to all complaints, oversights and omissions and shall as soon as is reasonably possible make good any default on its part at its own expense.
- 14.5 Without prejudice to the Council's rights to terminate under clause 17 (Termination). If any of the Tasks supplied are not in accordance with this Framework Agreement or an individual Order, the Council shall be entitled to:
- 14.5.1 require the Supplier to provide Replacement Tasks in accordance with this Framework Agreement as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so.
  - 14.5.2 should the Supplier fail to provide Replacement Tasks in accordance with paragraph 14.5.1 then the Council may at its absolute discretion appoint a Replacement Supplier to supply Replacement Tasks
  - 14.5.3 subject to clause 28 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Tasks together with payment of any additional expenditure over and above the price reasonably incurred by the Council in obtaining Replacement Tasks.

## **15. SUPPLIER'S EMPLOYEES**

- 15.1 The Supplier shall select, employ, train, furnish and deploy in and about the performance of this Framework Agreement only such persons as are of good character and who are appropriately skilled and experienced, qualified and trained so as to meet or exceed the requirements of the Specification.
- 15.2 The Supplier shall ensure that all necessary Disclosure and Barring checks are made and references taken up prior to appointment and the Supplier will comply with the Council's requirements in relation to safeguarding as set out in this Framework Agreement and as additionally communicated to the Supplier during the Term.

- 15.3 The Supplier shall ensure that its contracts with its sub-Suppliers (if any) include provisions in the same terms and clause 15.1 and 15.2 above.
- 15.4 The Supplier shall ensure that it (or its sub-Suppliers) employ sufficient Employees to ensure that the Tasks are provided at all times and in accordance with this Framework Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of Employees is available to supply the Tasks in accordance with the Framework Agreement during Employee holidays or absence through sickness or any other cause.
- 15.5 Should access to Customer Premises be refused at any time to any Employee of the Supplier, its agents, sub-Supplier it shall not diminish the Supplier's obligation of performance arising under Framework Agreement and/or any Order.
- 15.6 The Council reserves the right under this Framework Agreement to refuse to admit or to withdraw permission to remain on, any Premises:
- 15.6.1 any member of the Supplier's Employees; and/or
- 15.6.2 any person employed or engaged by a sub-Supplier, agent or servant of the Supplier
- whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 15.7 When directed by the Council, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with this Framework Agreement to any Premises, specifying the capacities in which they are concerned with this Framework Agreement and giving such other particulars as the Council may reasonably desire.
- 15.8 The Supplier's Employees, engaged within the boundaries of any of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be communicated from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 15.9 The decision of the Council as to whether any person is to be refused access to any Premises occupied by or on behalf of the Council shall be final and conclusive.
- 15.10 The Supplier shall replace any of the Supplier's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill

and care. Following the removal of any of the Supplier's Employees for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Tasks.

- 15.11 The Supplier shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

## **16. PRICE AND PAYMENT**

- 16.1 The charges made for the Tasks shall be fixed in accordance with the Pricing Schedule for the Term.

- 16.2 The Council shall pay the Price calculated in accordance with the Specification, Pricing Schedule and relevant Order and in accordance with the invoicing procedure and payment profile specified in the Pricing Schedule.

- 16.3 The Price is exclusive of Value Added Tax. The Council will pay to the Supplier such Value Added Tax on the Price at the rate and in the manner prescribed by law from time to time provided that the Supplier has issued a valid tax notice in respect thereof.

- 16.4 For the avoidance of doubt any reduction in prices and costs shall be passed through to the Council at the earliest practicable opportunity.

- 16.5 The Council shall pay the Price to the Supplier within 30 days of receipt of an undisputed invoice from the Supplier. Any invoices for payment submitted by the Provider are to be considered and verified by the Council in a timely fashion and undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed.

- 16.6 The Council reserves the right to withhold payment of all or part of the Price, without payment of interest, where the Supplier has:

16.6.1 failed to deliver the Tasks at all; or

16.6.2 the Tasks that have been delivered are, in the reasonable opinion of the Council, unsatisfactory or inadequate and any invoice will not be paid unless or until the Tasks have been delivered to the Council's satisfaction

- 16.7 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 25. Provided that the sum has been disputed in good faith, interest due on any sums in

dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.

- 16.8 Subject to clause 16.7, interest shall be payable on the late payment of any undisputed payments properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue.
- 16.9 Where the Supplier enters into a sub-Contract with a sub-supplier or contractor for the purpose of performing the Contract it shall cause a term to be included in such a sub-Contract that requires payment to be made of undisputed sums by the Supplier to the sub-supplier within a specified time period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

## **17. TERMINATION**

- 17.1 The Council may terminate this Framework Agreement by giving the Supplier not less than 3 months' notice in writing of such termination prior to that date.
- 17.2 The Council may at any time by notice in writing terminate the Framework Agreement as from the date of service of such notice if;
  - 17.2.1 The Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **or** (being a partnership) has any partner to whom any of the foregoing apply; or
  - 17.2.2 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party; or
  - 17.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier; or
  - 17.2.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint

- an administrator is given or if an administrator is appointed, over the Supplier (being a company); or
- 17.2.5 the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- 17.2.6 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier; or
- 17.2.7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or
- 17.2.8 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2.1 to clause 17.2.10 (inclusive); or
- 17.2.9 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 17.2.10 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- 17.2.11 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 17.3 The Council may at any time by notice in writing terminate the Framework Agreement or an Order called off under the terms of this Framework Agreement forthwith, if the Supplier is in Default of any obligation under the Framework Agreement or Order and:
- (a) The Default is capable of remedy and the Supplier shall have failed to remedy the Default within thirty (30) days of written notice to the Supplier specifying the Default and requiring its remedy; or
  - (b) The Default is not capable of remedy.
- 17.4 The Council reserves the right to perform the Tasks at any time in whole or part itself where the Supplier is in breach of this Contract.
- 17.5 This Contract may be terminated in accordance with the Force Majeure termination rights as specified in clause 26.
- 17.6 The Council may terminate this Contract in accordance with clause 22 if the Supplier, or any sub-Supplier, commits a Prohibited Act.

- 17.7 The Council has relied on the information provided by the Supplier contained in the Tender and any presentation made to the Council prior to its acceptance and the Council entering into the Framework Agreement, including information as to Price and any material misrepresentation contained therein shall entitle the Council to terminate this Framework Agreement immediately.
- 17.8 Subject to clauses 17.9 to 17.11, termination of any Order shall not affect any other Order or this Framework Agreement.
- 17.9 The Framework Agreement and/or any subsequent Order may be terminated by the parties in accordance with any termination provisions detailed in the relevant Order.
- 17.10 Following termination of the Framework Agreement the Supplier shall at the absolute discretion of the Council continue to fulfil such Order/s that may be continuing or outstanding or that it may receive in accordance with the Framework Agreement up to the date of termination.
- 17.11 Following termination of this Framework Agreement, the Council may at its absolute discretion decide to terminate any continuing or outstanding Order/s.

## **18. CONSEQUENCES OF TERMINATION**

- 18.1 If this Framework Agreement is terminated as provided in clause 17 above and is not re-instated, the Council shall:
- 18.1.1 shall cease to be under an obligation to make further payment until costs, loss and/or damage to the Council resulting from or arising out of the termination of the Framework Agreement shall have been calculated and provided such calculation shows a sum or sums due to the Supplier;
  - 18.1.2 may retain any sums due to the Supplier howsoever arising to set off against any sum due to the Council from the Supplier under the terms of the Framework Agreements and/or Order/s or otherwise. Sums due to the Council shall include the reasonable and demonstrable costs to the Council of the time spent by its officers in terminating this Framework Agreement and in making alternative arrangements for the provision of the Tasks. Exercise of right shall not be done capriciously, vexatiously or unreasonably.

- 18.2 Termination in accordance with clause 17 above or otherwise shall not prejudice or affect any right of action or remedy which shall have accrued or shall hereafter accrue to either party.

## **19. CONFIDENTIALITY**

- 19.1 Each party:

19.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

19.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Framework Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Framework Agreement.

- 19.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Framework Agreement:

19.2.1 is given only to such of its Employees, sub-Suppliers and agents engaged in connection with the Framework Agreement and only to the extent necessary for the performance of the Framework Agreement;

19.2.2 is treated as confidential and not disclosed (without prior approval) or used by any Employees, sub-Suppliers or agents otherwise than for the purposes of the Framework Agreement.

- 19.3 Where it is considered necessary in the opinion of the Council the Supplier shall ensure that its Employees, sub-Suppliers and agents sign a confidentiality undertaking before commencing work in connection with the Framework Agreement. The Supplier shall ensure that its staff, sub-Suppliers and agents are aware of the Supplier's confidentiality obligations under this Framework Agreement.

- 19.4 The Supplier shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Framework Agreement.

- 19.5 The provisions of Clauses 19.1 to 19.4 shall not apply to any Confidential Information received by one party from the other:

19.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause);



19.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

19.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

19.5.4 is independently developed without access to the Confidential Information; or

19.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR.

19.6 Nothing in this Clause shall prevent the Council from:

19.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Council's or the Council' accounts; or

19.6.2 disclosing any Confidential Information obtained from the Supplier to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Framework Agreement;

Provided that in disclosing information under 19.6.2 the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.

19.7 The Supplier shall not without the prior written consent of the Council divulge the existence of the Framework Agreement or any Order or disclose any information relating to or contained in the Framework Agreement to any person who is not engaged in the performance of the Framework Agreement.

17.8 In the event that the Supplier fails to comply with this Clause 19, the Council reserves the right to terminate the Framework Agreement by notice in writing with immediate effect.

19.9 The provisions of this Clause 19 shall apply notwithstanding termination of the Framework Agreement

## **20. DATA PROTECTION AND EQUALITIES DUTIES**

20.1 With respect to the parties' rights and obligations under this agreement, the parties agree that the Council is the Data Controller and that the Supplier is the Data Processor.

20.2 The Supplier shall:

- 20.2.1 Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this agreement or as otherwise notified by the Council to the Supplier during the Term);
- 20.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any regulatory body;
- 20.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 20.2.4 take reasonable steps to ensure the reliability of any Supplier Employees who have access to the Personal Data;
- 20.2.5 provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;
- 20.2.6 promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 20.2.3;
- 20.2.7 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation;
- 20.2.8 obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors for the provision of the Services and ensure that it has in place appropriate contractual measures to ensure the security of the Personal Data;
- 20.2.9 ensure that all Supplier Employees required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 20;
- 20.2.10 ensure that none of the Supplier Employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- 20.2.11 notify the Council (within five (5) Working Days) if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data; or
  - (ii) a complaint or request relating to the Council's obligations under the Data Protection Legislation;

20.2.12 provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:

- (i) providing the Council with full details of the complaint or request;
- (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
- (iii) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
- (iv) providing the Council with any information requested by the Council;

20.2.13 permit the Council, to inspect and audit, in accordance with Clause 13, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub- contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Supplier is in full compliance with its obligations under this agreement;

provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Council);

20.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation

20.4 The Supplier shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause by the Supplier and/or any act or omission of any staff, sub-Supplier or agent.

20.5 The Supplier shall not unlawfully discriminate within the meaning and scope of any Equalities Legislation.

20.6 The Supplier shall (and shall use its reasonable endeavours to procure that its employees shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement and shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

20.7 The Supplier shall take all reasonable steps to secure the observance of clauses 20.6 and 20.7 by all servants, Employees, sub-Suppliers, or agents of the Supplier

**21. FREEDOM OF INFORMATION ACT 2000 (FOIA) AND THE ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR).**

- 21.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these Information disclosure requirements.
- 21.2 The Supplier shall and shall procure that its Employees, sub-Suppliers and agents shall:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt 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 requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 21.3 The Council shall be responsible for determining at its absolute discretion whether any Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
  - (b) is to be disclosed in response to a Request for Information, and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 21.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 21.5 The Supplier acknowledges that the Council may be obliged under the FOIA or the EIR to disclose Information:
- (a) without consulting with the Supplier, or
  - (b) following consultation with the Supplier and having taken its views into account.
- 21.6 The Supplier shall ensure that all Information produced in the course of the Framework Agreement or relating to the Framework Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

- 21.7 The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 21.5.
- 21.8 The Supplier acknowledges that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the text of this Framework Agreement and the Orders are not confidential information. The Council shall be responsible for determining in its absolute discretion whether any part of this Framework Agreement or its Schedules or the Orders are exempt from disclosure in accordance with the provisions of the FOIA.

## **22. PREVENTION OF CORRUPTION**

- 22.1 The Supplier warrants that in entering the Framework Agreement it has not committed any Prohibited Act.
- (a) If the Supplier or any sub-Supplier (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with paragraphs (b) to (e) below.
  - (b) If a Prohibited Act is committed by the Supplier or by an employee not acting independently of the Supplier, then the Council may terminate the Framework Agreement by giving notice to the Supplier.
  - (c) If the Prohibited Act is committed by an employee of the Supplier acting independently of the Supplier, then the Council may give notice to the Supplier of termination and the Framework Agreement will terminate, unless within 30 days of receipt of such notice the Supplier terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
  - (d) If the Prohibited Act is committed by a Sub-Supplier or by an employee of that Sub-Supplier not acting independently of that Sub-Supplier, then the Council may give notice to the Supplier of termination and the Framework Agreement will terminate, unless within 30 days of receipt of such notice the Supplier terminates the relevant Sub-Contract and procures the performance of such part of the Services by another person.
  - (e) If the Prohibited Act is committed by an employee of a Sub-Supplier acting independently of that Sub-Supplier, then the Council may give notice to the Supplier of termination and the Framework Agreement will terminate, unless within 30 days of receipt of such notice the Sub-Supplier terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

- (f) If the Prohibited Act is committed by any other person not specified in paragraphs (b) to (e) above, then the Council may give notice to the Supplier of termination and the Framework Agreement will terminate unless within 30 days of receipt of such notice, the Supplier procures the termination of such person's employment and of the appointment of their employer (where not employed by the Supplier or the Sub-Suppliers) and (if necessary) procures the performance of such part of the Services by another person.
- (g) Any notice of termination under this Clause shall specify:
  - (i) the nature of the Prohibited Act;
  - (ii) the identity of the party whom the Council believes has committed the Prohibited Act;
  - (iii) the date on which the Framework Agreement will terminate, in accordance with the applicable provision of this Clause 22; and

22.2 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:

- (a) Interpretation of this clause 22; or
- (b) The right of the Council under this clause 22 to terminate this Framework Agreement.

## **23. TRANSFER AND SUB-CONTRACTING**

23.1 The Framework Agreement is personal to the Supplier. The Supplier shall not at any time, assign, novate, subcontract or otherwise dispose of the Framework Agreement or any part thereof without the prior consent in writing of the Council.

23.2 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its sub-Suppliers as though they were its own.

## **24. INTELLECTUAL PROPERTY RIGHTS**

24.1 It is a condition of the Framework Agreement that the delivery of the Tasks and/or the Customer's possession, use and operation of the Equipment parties will not infringe any Intellectual Property Rights of any third party and the Supplier shall during and after the Term on written demand indemnify and keep indemnified without limitation the Council against all liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause.

24.2 At the termination of the Framework Agreement the Supplier shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Tasks, including any back-up media.

## **25. DISPUTE RESOLUTION**

- 25.1 If any dispute or difference of any kind whatsoever shall arise between the Council and the Supplier in connection with or arising out of this Framework Agreement or the carrying out of the Tasks including an dispute as to a decision, opinion, instruction, direction, certificate or valuation given under this Framework Agreement (whether before or after the termination, abandonment or breach of this Framework Agreement) it shall be referred in the first instance to the Council's Framework Manager.
- 25.2 The Council's decision in any such matter shall be provided in writing to the Supplier.
- 25.3 If the Supplier does not accept the Council's decision it shall within fourteen (14) days of receipt of the written decision refer it to an officer of suitable seniority or an appropriate nominated officer of each party for resolution and such officers shall meet for discussion within 14 days or longer as the parties may agree.
- 25.4 A dispute not resolved in accordance with clauses 25.1 to 25.3, shall next be referred at the request of either party to a mediator appointed by agreement between the parties and such appointment shall be made not later than 28 days or longer period as the parties may agree after service of a request in writing by either party to do so. The parties shall contribute equally to the costs of mediation.
- 25.5 Where one party refuses to agree or appoint a mediator, or fails to do so within the time specified, in accordance with clause 25.4 the other party, may give notice in writing to the party in default that it proposes to appoint a mediator to act as sole mediator and if the party in default does not within 7 clear days of that notice being given agree an arbitrator or make the required appointment, and notify the other party that it has done so, the other party may appoint a mediator as sole mediator. The parties shall contribute equally to the costs of mediation.
- 25.6 Where parties fail to reach an agreement to resolve the dispute through the mediation procedure detailed in clauses 25.4 and 25.5, either party may pursue any other available remedy in accordance with this Contract. For the avoidance of any doubt where parties fail to reach an agreement both parties shall contribute equally to the costs of mediation.
- 25.7 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

- 25.8 For the avoidance of doubt this clause 25 shall not be invoked where the Council wishes to terminate the Framework Agreement under clause 17 (Termination).

## **26. FORCE MAJEURE**

- 26.1 Under this Framework Agreement the term force majeure means any cause materially affecting the performance by a party of its obligations under this Framework Agreement arising from any act beyond its reasonable control and affecting either party, including but not limited to, act of god, war, industrial action (subject to clause 26.4), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
- 26.2 Neither the Council nor the Supplier shall be considered to be in breach of its obligations under this Framework Agreement to the extent that the performance of its obligations is prevented by a force majeure event.
- 26.3 If the effect of a force majeure event continues for more than ninety (90) days then either party may give notice to the other to terminate this Framework Agreement in whole or in part forthwith provided that the termination applies only to such part of this Framework Agreement as is affected by force majeure. In such circumstances neither party shall have a further liability to the other save for any outstanding liabilities arising prior to the force majeure event.
- 26.4 Industrial action by, or illness or shortage of the Supplier's Employees, agents, sub-Suppliers, failure or delay by any of the Supplier's own suppliers to supply goods, components, services or materials or the Supplier's warranties set out in clause 14 hereto shall not be regarded as a force majeure event.

## **27 INSURANCE**

- 27.1 The Supplier shall effect and maintain at all times during the continuance of this Framework Agreement and for twelve months thereafter (or such longer period as, depending on the basis of the claims covered by the insurance, will effect cover for the minimum period applicable to any relevant claim) and in respect of any one claim, and without limit, in respect of the number of claims made in any twelve (12) month period of insurance:
- (a) Employer's Liability Insurance of not less than ten (10) million pounds,
  - (b) Public Liability Insurance of not less than ten (10) million pounds with no abuse exclusion/inner limit. Cover must extend to include Products Liability to the same limit in the aggregate in any one period;



- (c) Professional Indemnity Insurance of not less than one (1) million pounds; and
- (d) Contents insurance of sufficient level to cover replacement of Equipment stored on the Supplier's premises from time to time.

such insurance to be effected with a reputable insurance company.

27.2 The Supplier shall prior to the Commencement Date and on each anniversary of the Commencement date and/or upon request provide evidence that all premiums relating to such insurances have been paid.

27.3 If the Supplier does not maintain the necessary insurances under this Contract the Council may insure against any risk in respect of the default and may charge the Supplier the cost of such insurance together with a reasonable administration charge.

## **28 INDEMNITY AND LIABILITY**

28.1 Neither party seeks to exclude or limit its liability for:

- (a) death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
- (b) fraudulent misrepresentation; or
- (c) any other matter in respect of which, as a matter of law, liability cannot be excluded or limited.

28.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

28.3 The Supplier shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Supplier's negligence, any defect or fault in the Tasks or any act or omission of the Supplier in delivering the Tasks.

## **29. CUSTOMERS AND CUSTOMER'S PREMISES**

29.1 The Supplier (or its sub-Suppliers) shall at all times comply with the requirements of the Specification in relation to the Customers and the Customer's Premises.

### **30. DAMAGE TO PLANT, TACKLE AND TOOLS**

- 30.1 All plant, tackle and tools at the Premises provided by or on behalf of the Supplier shall stand at the risk and be in the sole charge of the Supplier.
- 30.2 The Supplier shall be required to remove all such plant, tackle and tools which it brings to the Premises.
- 30.3 The Supplier shall ensure that all such plant, tackle and tools shall meet the minimum safety standards required by law.

### **31 HEALTH AND SAFETY**

The Supplier shall comply with the requirements set out in the Specification and all relevant health and safety legislation in force, accepted industry best practice and all its own health and safety policies from time to time and the Supplier shall at its own cost provide copies of such policies to the Council upon request by the Council.

### **32. INSPECTION OF SUPPLIER'S PREMISES**

The Supplier shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Supplier's premises and the Council's property stored thereon in relation to this Framework Agreement.

### **33. VARIATION**

- 33.1 No variation of this Framework Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of its parties.
- 33.2 Where the Council or the Supplier identify a need for a change to this Framework Agreement they shall use the procedure for Change Control in Schedule 5,

### **34. WAIVER**

- 34.1 A waiver of any right or remedy under this Framework Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to this Framework Agreement to exercise any right or remedy provided under this Framework Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

- 34.2 No single or partial exercise of any right or remedy provided under this Framework Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

### **35. SEVERANCE**

- 35.1 If any court or competent authority finds that any provision of this Framework Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Framework Agreement shall not be affected.

- 35.2 If any invalid, unenforceable or illegal provision of this Framework Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### **36 NO PARTNERSHIP OR AGENCY**

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

### **37. NON SOLICITATION AND OFFERS OF EMPLOYMENT**

- 37.1 The Supplier agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Term or for a period of 12 months following termination of this Framework Agreement:

37.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Framework Agreement or at any time during the period of one month immediately preceding the date of termination; or

37.1.2 attempt, or knowingly assist or procure any other person to do the above.

### **38. OBLIGATION TO MITIGATE**

- 38.1 The rights and remedies of the Supplier and the Council under this Contract are without prejudice to their obligations at common law to mitigate their losses.

### **39. THIRD PARTY RIGHTS**

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

### **40. NOTICES**

- 40.1 Any notice which either party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other party at its address specified in the Framework Agreement either by hand, first class post, or recorded delivery.
- 40.2 For the purposes of Clause 40.1 above the address of each party shall be specified in the relevant Services Specification. Either party may change address for service by notice as provided in this Clause 40.
- 40.3 This clause 40 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 40.4 A notice or other communication required to be given under or in connection with this Framework Agreement shall not be validly served if sent by facsimile or e-mail.

### **41. TUPE**

- 41.1 The Supplier will provide the Council on demand, at no cost to the Council and in a reasonable time which the Council may stipulate with such information regarding the terms and conditions of its Employees involved in the provision of the Services as the Council reasonably requires in order to decide whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or as may be amended) (TUPE) apply upon expiry or termination of this Framework Agreement or any of the Orders made under this Framework Agreement

- 41.2 The Supplier shall indemnify and keep indemnified the Council from and against all employment liabilities arising directly as a result of the acts or omissions of the Supplier and which relate to claims brought by any employees or by a trade union or other employee representative in respect of or in any way relating to any period on or prior to the date of employee transfer envisaged by this clause 41.

## **42. VALUE FOR MONEY**

- 42.1 Throughout the Term the parties shall, acting reasonably, work together to ensure that the Framework Agreement and the Supplier's performance of the Services represents value for money and best value generally.

## **43. SET OFF AND COUNTER CLAIM**

- 43.1 The Council may set off against any sums due to the Council under this Framework, individual Orders called-off under it or otherwise any lawful set-off or counterclaim to which the Council may at any time be entitled.

## **44. ENTIRE AGREEMENT**

- 44.1 This Framework Agreement constitutes the entire understanding between the parties relating to the subject matter of this Framework Agreement and, save as may be expressly references or referred to herein supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

## **45. GOVERNING LAW AND JURISDICTION**

This Framework Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

This agreement is executed as a Deed and has been delivered and takes effect on the date stated at the beginning of it.

**THE COMMON SEAL** of  
**CHESHIRE EAST BOROUGH COUNCIL**  
was hereunto affixed to this Deed  
in the presence of:

EXECUTED as a Deed by

acting by

Director

**SCHEDULE 1**  
**SPECIFICATION**

## **SCHEDULE 2**

### **ORDER SELECTION PROCESS [LOTS 1 – 7]**



### **Schedule 3 Tender**

**Schedule 4**  
**Pricing Schedule**

## **Schedule 5**

### **Change Control Procedures**

#### **1. Principles**

- 1.1 Where the Council or the Supplier see a need to change the Framework Agreement the Council may at any time request, and the Supplier may at any time recommend, such change only in accordance with the formal Change Control Procedure (CCP) as set out at paragraph 2.
- 1.2 Neither the Council nor the Supplier shall unreasonably withhold its agreement to any change.
- 1.3 Until such time as a change to the Framework Agreement is made in accordance with the Change Control Procedure, the Supplier shall, unless otherwise agreed in writing, continue to supply the Services specified in any Order as if the request or recommendation had not been made.
- 1.4 Any discussions which may take place between the Council, and the Supplier in connection with a request or recommendation before the authorisation of a resultant change to the Framework Agreement shall be without prejudice to the rights of either party.
- 1.5 Any work undertaken by the Supplier, its sub-Suppliers or agents which has not been authorised in advance by a change to the Framework Agreement and which has not been otherwise agreed in accordance with the provisions of paragraph 1.3 shall be undertaken entirely at the expense and liability of the Supplier.

#### **2. Procedures**

- 2.1 All requests shall be considered by appropriate representatives of the Council and the Supplier.
- 2.2 Discussion between the representatives of the Council and the Supplier concerning a change to the Framework Agreement shall result in any one of the following:
  - 2.2.1 no further action being taken;

- 2.2.2 a request to change the Framework Agreement by the Council,  
or
- 2.2.3 a recommendation to change the Framework Agreement by the  
Supplier.
- 2.3 Where a written request for a change is received from the Council the  
Supplier shall, unless otherwise agreed, submit two copies of a  
Change Control Note (CCN) signed by the Supplier to the Council  
within two weeks of the date of the request.
- 2.4 A recommendation to change by the Supplier shall be submitted direct  
to the Council in the form of two copies of a CNN signed by the  
Supplier at the time of such recommendation.
- 2.5 Each CNN shall contain:
  - 2.5.1 the title of the change;
  - 2.5.2 the originator and date of the request or recommendation for the  
change;
  - 2.5.3 the reason for the change;
  - 2.5.4 full details of the change including any specifications;
  - 2.5.5 the price, if any, of the change;
  - 2.5.6 a timetable for implementation together with any proposals for  
acceptance of the change;
  - 2.5.7 a schedule of payments if appropriate;
  - 2.5.8 details of the likely impact, if any, of the change on other  
aspects of the Framework Agreement including but not limited  
to:
    - 2.5.8.1 the timetable for the provision of the Services;
    - 2.5.8.2 the period of this Agreement;
    - 2.5.8.3 the personnel to be provided;
    - 2.5.8.4 the Price;
    - 2.5.8.5 the payment profile;

- 2.5.8.6 performance levels;
  - 2.5.8.7 working arrangements;
  - 2.5.8.8 other contractual issues;
- 2.5.9 the date of expiry of validity of the CCN; and
- 2.5.10 provision for signature by the Council and by the Supplier.
- 2.6 For each CCN submitted the Council shall, within the period of the validity of the CCN:
  - 2.6.1 allocate a sequential number to the CCN;
  - 2.6.2 evaluate the CCN and, as appropriate:
    - 2.6.2.1 request further information, or
    - 2.6.2.2 arrange for the two copies of the CCN to be signed by or on behalf of the Council and return one of the copies to the Supplier; or
    - 2.6.2.3 notify the Supplier of the rejection of the CCN.
- 2.7 If the Supplier considers that the preparation of a CCN, requested by the Council would necessitate significant allocation of resources over and above those stated in the Framework Agreement the Supplier will notify the Council accordingly and on agreement by the Council the Supplier will make a proposal for a paid study of the cost and implications of producing the required CCN. Pending the Council's acceptance of that proposal the Supplier will be relieved of his obligations to produce such CCN.
- 2.8 A CCN signed by the Council and by the Supplier shall constitute an amendment to the Framework Agreement.

**Schedule 6**  
**Call off Contract – Identified Bodies.**