

DATED

FRAMEWORK AGREEMENT FOR THE PROVISION OF CLERK OF WORK SERVICES

between

NORTHAMPTONSHIRE COUNTY COUNCIL

and

[SUPPLIER]

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) Northamptonshire County Council whose principal place of business is at One Angel Square, Angel Street, Northampton NN1 1ED. **(Authority)**
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Supplier)**.

BACKGROUND

- (A) The Authority placed a Request For Quotation on 2nd December 2019 via Its eTendering portal seeking Tender bids from potential service providers for the provision of Services to itself under a Framework Agreement.
- (B) On the basis of the Supplier's Tender, the Authority selected the Suppliers to enter a Framework Agreement to provide services to those Customers who place Orders in accordance with this Framework Agreement.
- (C) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Supplier under this Framework Agreement.
- (D) It is the Parties' intention that Customers have no obligation to place Orders with the Supplier under this Framework Agreement or at all.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Approval: means the prior written approval of the Authority.

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

Auditor: means the Authority's internal and external auditors, including the Authority's statutory or regulatory auditors, the Comptroller and Auditor General, their staff or any appointed representatives of the National Audit Office, HM Treasury or the Cabinet Office, any party formally appointed by the Authority to carry out audit or similar review functions and the successors or assigns of any Auditor.

Authorised Representative: means the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in clause 31.

Award Criteria: means the Standard Services Award Criteria and/or the Competed Services Award Criteria as the context requires.

Call-off Terms and Conditions: means the terms and conditions in Schedule 4.

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

Commencement Date: means [DATE].

Competed Services: means the competed services set out in 0 of Schedule 1.

Competed Services Award Criteria: means the award criteria to be applied to Supplemental Tenders received through mini-competitions held for the award of Contracts for Competed Services as set out in [**Error! Reference source not found.** and] the Order Form.

Complaint: means any formal complaint raised by any Customer in relation to the performance under the Framework Agreement or any Contract in accordance with clause 18.

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Customer and the Supplier comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to clause 4.3).

Customer: means the Authority and any other contracting authority (as defined in regulation 2 of the Regulations) described in the [OJEU Notice].

Default: means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Data Protection Legislation: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) [and the guidance and codes of

practice issued by the relevant data protection or supervisory authority and applicable to a party].

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

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

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

Framework Agreement: means this agreement and all Schedules to this agreement.

Framework Agreement Variation Procedure: means the procedure set out in **Error! Reference source not found..**

Framework Providers: means the Supplier and other suppliers appointed as framework providers under this Framework Agreement.

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

GDPR: means the General Data Protection Regulation ((EU) 2016/679).

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

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

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

Law: means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, [enforceable community right within the meaning of section 2 of the European Communities Act 1972], regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Lots: means the Services divided into lots as referred to in the [OJEU Notice] and set out in **Error! Reference source not found..**

Management Information: means the management information specified in Schedule 5.

Month: means a calendar month.

Order: means an official Authority Purchase Order for Services sent by any Customer to the Supplier in accordance with the award procedures in *clause 4*.

Other Contracting Bodies: means all Customers except the Authority.

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

Party: means the Authority and/or the Supplier.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Pricing Matrices: means the pricing matrices set out in Schedule 2.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (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 Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

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

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are

entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority.

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

Services: means the Clerk of Works services detailed in Schedule 1.

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

Standard Services: means the standard services referred to in Schedule 1.

Standard Services Award Criteria: means the award criteria to be applied for the award of Contracts for Standard Services as set out in **Error! Reference source not found.**

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

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

Supplemental Tender: means the documents submitted to a Customer in response to the Customer's invitation to Framework Providers for formal offers to supply it with Competed Services.

Tender: means the tender submitted by the Supplier to the Authority on [DATE].

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

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

UK Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) 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;
- (e) 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;
- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- (h) 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;
- (i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

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

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier to Customers.
- 3.2 The Authority appoints the Supplier as a Framework Provider of the Services and the Supplier shall be eligible to receive Orders for such Services from Customers during the Term.
- 3.3 Customers may at their absolute discretion and from time to time order Services from the Supplier in accordance with the ordering procedure set out in clause 4 during the Term.
- 3.4 If and to the extent that any Services under this Framework Agreement are required the Customer shall:
- (a) enter into a contract with the Supplier for these Services materially in accordance with the terms of the Contract; and
 - (b) comply with the ordering procedure in *clause 4*.
- 3.5 The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Customer for the Services and that the Customer is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

4. AWARD PROCEDURES

Awards under the Framework Agreement

- 4.1 If the Customer decides to source Services through the Framework Agreement then it may:
- (a) satisfy its requirements for the Standard Services by awarding a Contract in accordance with the terms laid down in this Framework Agreement without re-opening competition; or
 - (b) satisfy its requirements for Competed Services by awarding a Contract following a mini-competition conducted in accordance with the requirements of clause 4.3.

Standard Services (awards without re-opening competition)

- 4.2 Any Customer ordering Standard Services under the Framework Agreement without re-opening competition shall:

- (a) send an Order to the Framework Provider ranked highest following the evaluation of its Tender as set out in **Error! Reference source not found.**;
- (b) if the Framework Provider who was ranked highest is not able to provide the Services, send an Order to the Framework Provider ranked next highest;
- (c) repeat the process set out in clause 4.2(b) until the Order is fulfilled or there are no further Framework Providers qualified to fulfil it.
- (d) the customer will maintain a documented log of project allocation, following the first ranked allocation the next series of work to be allocated will be offered in its first instance to supplier 2 following the protocol set out in 4.2 (b)(c),
- (e) the same process will then follow for the next work to be issued to supplier 3

Competed Services (awards following mini-competitions)

4.3 Any Customer ordering Competed Services under the Framework Agreement shall:

- (a) invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:
 - (i) consult in writing the Framework Providers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit to submit a Supplemental Tender;
 - (ii) set a time limit for the receipt by it of the Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and
 - (iii) keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;
- (b) apply the Competed Services Award Criteria to any compliant Supplemental Tenders submitted through the mini-competition; and
- (c) subject to *clause 4.5* place an Order with the successful Framework Provider.

4.4 The Supplier agrees that all Supplemental Tenders submitted by the Supplier in relation to a mini-competition held pursuant to this clause 4 shall remain open for acceptance for 30 days.

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

4.6 **Form of Order**

- 4.7 Subject to clause 4.1 to clause **Error! Reference source not found.** above, the Customer may place an Order with the Supplier by serving an order in writing in substantially the form set out in Schedule 3 or such similar or analogous form agreed with the Supplier including systems of ordering involving e-mail or other online solutions.

Accepting and declining Orders

- 4.8 Following receipt of an Order, the Supplier shall promptly and in any event within a reasonable period determined by the relevant Customer and notified to the Supplier in writing at the same time as the submission of the Order (which in any event shall not exceed three Working Days) acknowledge receipt of the Order and either:

- (a) notify the Customer in writing and with detailed reasons that it is unable to fulfil the Order; or
- (b) notify the relevant Customer that it is able to fulfil the Order by confirmation in writing including systems of ordering involving e-mail or other online solutions..

- 4.9 If the Supplier:

- (a) notifies the Customer that it is unable to fulfil an Order; or
- (b) the time limit referred to in clause 4.8 has expired;

then the Order shall lapse and the Customer may then send that Order to another Framework Provider in accordance with the procedure set out in clause 4.2(c).

- 4.10 If the Supplier modifies or imposes conditions on the fulfilment of an Order, then the Customer may either:

- (a) reissue the Order incorporating the modifications or conditions; or
- (b) treat the Supplier's response as notification of its inability to fulfil the Order and the provisions of clause 4.9 shall apply.

- 4.11 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Customer. Accordingly, the Supplier shall confirm in writing which shall constitute its offer to the Customer. The Customer shall signal its acceptance of the Supplier's offer and the formation of a Contract by the issuing of an official purchase order.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 5.1 The Supplier shall perform all Contracts entered into with a Customer in accordance with:
- (a) the requirements of this Framework Agreement; and
 - (b) the terms and conditions of the respective Contracts.
- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the Contract;
 - (b) the Supplier's Tender and Supplemental Tender;
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and any appendices to the purchase order
 - (d) any other document referred to in the clauses of the Contract; and
 - (e) Schedule 1, and Appendix 3 to the purchase order Supplemental Tender.

6. PRICES FOR SERVICES

- 6.1 The prices offered by the Supplier for Contracts to the Customer for Standard Services shall be the prices listed in the Pricing Matrix.
- 6.2 The prices offered by the Supplier for Contracts to the Customer for Competed Services shall be tendered in accordance with the requirements of the mini-competition held pursuant to clause 4 not exceeding those prices set out in the Pricing Matrix.

SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS

7. WARRANTIES AND REPRESENTATIONS

The Supplier warrants and represents to the Authority 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 to perform its obligations under this Framework Agreement;
- (b) this Framework Agreement is executed by a duly authorised representative of the Supplier;
- (c) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (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 any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority or Other Contracting Bodies;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
- (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 Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

8. SERVICE PRE-REQUISITES

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

SUPPLIER'S INFORMATION OBLIGATIONS

9. REPORTING AND MEETINGS

- 9.1 The Supplier shall submit Management Information to the Authority in the form set out in Schedule 5 throughout the Term.

- 9.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 5 and the Supplier shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.
- 9.3 The Authority may share the Management Information supplied by the Supplier with any Other Contracting Body upon request.
- 9.4 The Authority may make changes to the nature of the Management Information that the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes.

10. RECORDS AND AUDIT ACCESS

- 10.1 The Supplier shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with the Customer and the amounts paid.
- 10.2 The Supplier shall keep the records and accounts referred to in clause 10.1 above in accordance with good accountancy practice.
- 10.3 The Supplier shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 10.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of seven years after expiry of the Term to the Authority (or relevant Customer) and the Auditor.
- 10.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 10.6 Subject to the Authority's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit.

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

11. CONFIDENTIALITY

- 11.1 Subject to clause 11.2, the Parties shall keep confidential the Confidential Information of the Parties and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

- 11.2 Clause 11.1 shall not apply to any disclosure of information:

- (a) required by any applicable law or to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
- (c) that is reasonably required by Other Contracting Bodies;
- (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;
- (e) by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 19;
- (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (i) by the Authority relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

12. DATA PROTECTION

- 12.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve,

remove or replace, a party's obligations under the Data Protection Legislation. In this clause, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the data controller and the Supplier is the data processor. Schedule 8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 12.3 Without prejudice to the generality of clause 12.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 12.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Authority (as set out in Schedule 6), unless the Supplier is required by the **Applicable Laws** to otherwise process the Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Authority;
 - (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and

evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (d) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Authority immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for audits by the Authority or the Authority's designated auditor pursuant to

clause 10 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;

- (i) indemnify the Authority against any losses, damages, cost or expenses incurred by the Authority arising from or in connection with any breach by the Supplier of its obligations under this clause 12.

12.5 Where the Supplier intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Authority to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 12.

12.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

12.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

13. FREEDOM OF INFORMATION

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

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

14. PUBLICITY

- 14.1 Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.
- 14.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.
- 14.3 The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

15. TERMINATION

Termination on Default

- 15.1 The Authority may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:
- (a) where the Supplier commits a material breach and:
 - (i) the Supplier has not remedied the material breach to the satisfaction of the Authority within 10 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or

- (b) where any Customer terminates a Contract awarded to the Supplier under this Framework Agreement as a consequence of a material breach by the Supplier;
- (c) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

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

- (a) a substantial portion of this agreement; or
 - (b) any of the obligations set out in this agreement,
- over any 3 month period during the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Termination on insolvency and Change of Control

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

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- (c) 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;

- (d) 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);
- (e) 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;
- (f) 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;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) 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;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3(a) to clause 15.3(h) (inclusive); or
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.4 The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate the Framework Agreement by giving notice in writing to the Supplier 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 Authority becomes aware of the Change of Control;

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

Termination by Authority for convenience

15.5 The Authority 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 one Months' written notice to the Supplier .

16. SUSPENSION OF SUPPLIER'S APPOINTMENT

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

17. CONSEQUENCES OF TERMINATION AND EXPIRY

- 17.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier 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 17.
- 17.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 17.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Supplier's reasonable data conversion expenses), together with other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 17.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 17.5 The provisions of clause 7, clause 10, clause 11, clause 12, clause 13, clause 14, clause 17, clause 20, and clause 29 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.

18. COMPLAINTS HANDLING AND RESOLUTION

Within two Working Days of a request by the Authority, the Supplier shall provide full details of a Complaint to the Authority, including details of steps taken to its resolution.

- 18.1 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

19. DISPUTE RESOLUTION

- 19.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the CAPITAL PROJECTS MANAGER of the Authority and OPERATIONS DIRECTOR of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the CAPITAL PROJECTS MANAGER of The Authority and OPERATIONS DIRECTOR of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the HEAD OF ESTATES & FACILITIES of the Authority and MANAGING DIRECTOR of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the HEAD OF ESTATES & FACILITIES of the Authority and MANAGING DIRECTOR of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve.

The mediation will start not later than 30days after the date of the ADR notice.

- 19.2 The commencement of mediation shall not prevent the parties commencing or continuing [court or arbitration proceedings in relation to the Dispute under clause 29 which clause shall apply at all times.
- 19.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by arbitration proceedings in accordance with clause 29 in this Agreement.

GENERAL PROVISIONS

20. PREVENTION OF BRIBERY

20.1 The Supplier:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Framework Agreement.

20.2 The Supplier shall:

- (a) 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 2010; and
- (b) 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 Supplier) compliance with this clause 20 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

- 20.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer within the Tender) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 20.4 If any breach of clause 20.1 is suspected or known, the Supplier must notify the Customer immediately.
- 20.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of clause 20, the Supplier 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 documents. [This obligation shall continue for 7 years following the expiry or termination of this Framework Agreement.
- 20.6 The Customer may terminate this Framework Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 20.1. In determining whether to exercise the right of termination under this clause 20.6, the Customer shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
- (a) with the authority or with the actual knowledge of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or
 - (b) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had such knowledge.
- 20.7 Any notice of termination under clause 20.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Framework Agreement will terminate.
- 20.8 Despite clause 19, any dispute relating to:
- (a) the interpretation of this clause 20; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer and its decision shall be final and conclusive.

- 20.9 Any termination under this clause 20 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

21. SUBCONTRACTING AND ASSIGNMENT

- 21.1 Subject to clause 21.2 and clause 21.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Supplier subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.
- 21.2 The Authority shall be entitled to novate the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 21.3 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
 - (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

22. THIRD PARTY RIGHTS

- 22.1 Except as provided in clause 3, clause 4 a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 22.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

23. SEVERANCE

- 23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent

necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

- 23.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25. INTEREST

- 25.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) Period. From when the overdue sum became due, until it is paid.

26. WAIVER

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

27. ENTIRE AGREEMENT

- 27.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 27 shall operate to exclude any liability for fraud.

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

28. NOTICES

- 28.1 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.

- 28.2 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 or e-mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 28.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or sooner where the other Party acknowledges receipt of such letters, e-mail.

- 28.3 For the purposes of clause 28.2, the address of each Party shall be:

- (a) For the Authority:

L A CURRIE

Address: ONE ANGEL SQUARE, ANGEL STREET, NORTHAMPTON
NN1 1ED

For the attention of: LESLEY A CURRIE

E-mail: lecurrie@northamptonshire.gov.uk

- (b) For the Supplier:

[NAME OF SERVICE PROVIDER'S AUTHORISED
REPRESENTATIVE]

Address:

For the attention of:

Tel:

Fax:

E-mail:

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

29. GOVERNING LAW AND JURISDICTION

- 29.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 29.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF AUTHORITY] Director

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF SERVICE PROVIDER] Director

Schedule 1 Services

SPECIFICATIONS FOR ALL STANDARD SERVICES ARE AS SET OUT IN THE TENDER

Part 1. Standard Services Award Criteria

Criterion number	Criterion	Percentage weightings (or rank order of importance where applicable)
1	[As set out in ITT]	[As set out in ITT]
2	[As set out in ITT]	[As set out in ITT]
3	[As set out in ITT]	[As set out in ITT]
4	[As set out in ITT]	[As set out in ITT]
5	[As set out in ITT]	[As set out in ITT]

Schedule 2 Pricing Matrices

[INSERT RELEVANT PRICING MATRICES SUBMITTED IN SERVICE PROVIDER'S TENDER FOR THE SERVICES FOR EACH OF THE SERVICE PROVIDER'S LOTS]

Hourly Rate (calculated based on a 7 hour day)	
Day Rate (calculated based on a 7 hour day)	
Travel ppm	
Report provision	

Pricing revisions

The prices contained in the Pricing Matrix are fixed for the duration of the Term.

Schedule 3 Order

The order will be by way of a Purchase Order from the Councils representative and will be for the services as set out in the Tender opportunity at the agreed pricing as Tendered by the supplier. The Purchase Order Terms & Conditions are superseded by the Terms and Conditions of this Framework. The Purchase Order will be preceded by written confirmation between the customer and the supplier ascertaining the offer and acceptance of the work, this may be by way of electronic mail.

Appendix 1: Specification for the Services

Appendix 2: Supplier's Tender

Appendix 3: Supplemental Tender (for Competed Services)

Schedule 4 Call-off Terms and Conditions

See specific Framework Call Off Terms & Conditions

Schedule 5 Contract management

1. MEETINGS

1.1 Type –

- (a) Contract Management;
- (b) Site Progress;
- (c) Project issue specific

1.2 Quorum

- (a) One per month
- (b) One per month
- (c) As required

1.3 Frequency – As per 1.2

1.4 Agenda TBC

2. REPORTS

2.1 Type

- (a) Site visit report
- (b) Non-conformance
- (c) Health & Safety

2.2 Contents

- (a) Site details, Trades on site; works completed; variation to NBS, Design, Regulations; works witnessed; H&S; supporting photographs;

2.3 Frequency

- (a) Per site visit within 48 hours

2.4 Circulation list

- (a) Capital Projects Manager
- (b) Construction Programme Manager
- (c) Construction Project Manager

- (d) Contract Administrator
- (e) Architect/Building Surveyor
- (f) Quantity Surveyor
- (g) Contractor

Schedule 6 Data processing

1. The Supplier shall comply with any further written instructions with respect of processing by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.
3. Processing by the Supplier
 - 3.1 Scope
 - 3.2 Nature
 - 3.3 Purpose of processing
 - 3.4 Duration of processing
 - 3.5 Types of Personal Data
 - 3.6 Categories of Data Subject

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF AUTHORITY] Director
Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF SERVICE PROVIDER] Director