**DATED                                     2018**

**(1) the mayor and burgesses of the loNdon borough of croydon**

**and**

**(2) [PROVIDER]**

|  |
| --- |
| **Framework Agreement**  **FOR THE PROVISION OF BODY TRANSPORTATION SERVICES** |

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**THIS Agreement** is made on 2018

**BETWEEN**:

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Bernard Weatherill House, 8 Mint Walk, Croydon, CR0 1EA(the "**Council**");and

(2) **[PROVIDER NAME]** (Company Number: [ ]) whose registered address is at [ ] (the "**Provider**").

**BACKGROUND**

(A) The Council invited potential providers (including the Provider) on [ ] to tender for the provision of body transportation services under a framework agreement.

(B) The Provider submitted a tender on [ ].

(C) On the basis of the Provider's tender, the Council selected the Provider to enter a framework agreement to provide services for one or both of the Lots as indicated in Schedule 5 (***Lots***) to the Council on a call-off basis in accordance with this Framework Agreement.

(D) This Framework Agreement sets out the award and calling off ordering procedure for services which may be required by the Council, the main terms and conditions for any Call-Off Contract which the Council may conclude, and the obligations of the Provider during and after the term of this Framework Agreement.

(E) It is the Parties' intention that there will be no obligation for the Council to award any orders under this Framework Agreement during its Term.

**IT IS AGREED** as follows:-

# INTERPRETATION

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

|  |  |
| --- | --- |
| “Admission Agreement”  **“Agreement”** | An Agreement which the Council requires a Provider to enter into in circumstances where they become an admitted body to the LGPS;  means this contract; |
| “Approval” | means the prior written approval of the Council; |
| “Audit” | means an audit carried out pursuant to Clause 15; |
| “Auditor” | means the National Audit Office or an auditor appointed under the local audit framework as the context requires; |
| “**Authorised** **Officer**” | means those persons/representatives notified to the Provider in writing by the Council both prior to the Commencement Date and during the Term as being an authorised officer of the Council for general or specific purposes; |
| “Award Criteria”  "Bribery Act" | means the contract award criteria contained in the ITT;  means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| “Call-Off Contract” | means the legally binding agreement (made pursuant to and incorporating the provisions of this Framework Agreement) for the provision of Services made between the Council and the Provider comprising the Call-Off Terms and Conditions; |
| “Call-Off Terms and Conditions” | means the terms and conditions in Schedule 2; |
| “Commencement Date” | means [DATE]; |
| “Commercially Sensitive Information” | means any Confidential Information comprised of information: (a) which is provided in writing by the Provider to the Council in confidence and designated as Commercially Sensitive Information; and/or  (b) that constitutes a trade secret; |
| “Complaint” | means any formal complaint raised by any Contracting Body in relation to the performance of the Framework Agreement or any Call-Off Contract in accordance with Clause 33; |
| **“Confidential Information”** | means:- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA and/or Data Protection Legislation; |
| “Contracting Council” | means any contracting Council as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Council; |
| “Contracting Bodies”  “Controller​, ​Processor​, ​Data Subject​, ​Personal Data​, ​Personal Data Breach​, Data Protection Officer”  **“Data Protection Legislation”​**  **“Data Protection Impact Assessment**”  **“Data Loss Event”**  **“Data Subject Access Request”** | Not Used;  ​ means the definitions given in the GDPR.  Means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this Agreement, including where applicable the Data Protection Act 1998, the Data Protection Bill, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and the GDPR (Regulation (EU) 2016/679), as amended or superseded;  means an assessment by the Council of the impact of the envisaged processing on the protection of Personal Data.  means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.  ​means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| “Employee Liability Information” | means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:  (a) the identity and age of the employee; and  (b) the employee’s written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and  (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and  (d) information about any court or tribunal case, claim or action either brought by the employee against the Council within the previous two years or where the Council has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee’s employment with the Council; and  (e) information about any collective agreement that will have effect after the Commencement Date in relation to the employee under regulation 5(a) of TUPE; |
| “Environmental Information Regulations” | mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; |
| “FOIA” | means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
| “Framework Agreement” | means this agreement, the Call-Off Terms and Conditions, the Tender Documents and all Schedules to this agreement; |
| “Fraud”  **“GDPR”​** | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Contracting Body;  means the General Data Protection Regulation​ (Regulation (EU) 2016/679) |
| “Good Industry Practice” | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances; |
| “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 Freedom of Information Act 2000; |
| “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; |
| “ITT” | means the invitation to tender issued by the Council on [DATE]; |
| “Law”  “LED”  **“Lots”** | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;  ​ Not applicable  means the Framework Lots as set out in Schedule 5 (*Lots*) and as further described within the Tender Documents; |
| “Management Information” | means the performance monitoring information to be provided by the Provider to the Council in accordance with the Services Specification; |
| “Material Default” | means any breach of Clause 5 (Award Procedures), Clause 11 (Statutory Requirements), Clause 13 (Non-Discrimination), Clause 14 (Provision of Management Information), Clause 15 (Records and Audit Access), Clause (Data Protection), Clause 17 (Freedom of Information) and Clause 23(Transfer and Sub-contracting); |
| “Month” | means a calendar month; |
| “New Employees” | means those employees employed on or after the Commencement Date by the Provider to provide the Services in addition to the Transferring Employees; |
| **OJEU Notice** | means the contract notice with reference [OJEU ] published on [ ] 2018; |
| “Order” | means an order for Services served by the Council on the Provider in accordance with Clause 4.2; |
| “Other Contracting Bodies” | Not Used |
| “Parent Company” | means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term “Holding Company” shall have the meaning ascribed by Section 1162 of the Companies Act 2006 or any statutory re-enactment or amendment thereto; |
| “Party” | means the Council and/or the Provider; |
| “Pricing Matrices”  **“Protective Measures”**  **“Provider Personnel”** | means the pricing matrices set out the Provider’s Tender;  ​means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it.  means all directors, officers, employees, agents, consultants and contractors of the Provider and/or of any sub-contractor engaged in the performance of its obligations under this Agreement; |
| “Regulations” | means the Public Contracts Regulations 2015; |
| “Provider’s Final Staff List” | means the list of all the Provider’s personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date; |
| “Provider’s Provisional Staff List” | means the list prepared and updated by the Provider of all the Provider’s personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list; |
|  |  |
| “Regulatory Body” | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Council; |
| “Relevant Employees” | means those employees who are the subject of (or who allege they are the subject of) a Relevant Transfer at the Service Transfer Date; |
| “Relevant Transfer” | means a relevant transfer for the purposes of TUPE; |
| “Replacement Services” | means any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Service Provider; |
| “Replacement Service Provide**r”** | means any third party supplier of Replacement Services appointed by the Council from time to time; |
| “Requests for Information” | means a request for information or an apparent request under the FOIA or the Environmental Information Regulations; |
| “Services” | means the body transportation services more particularly described in the Services Specification at Schedule 1; |
| “Services Framework Providers” | means the Providers appointed as Services Framework Providers under the Framework Agreement; |
| “Service Transfer Date” | means the date on which the Services (or any part of the Services), transfer from the Provider to the Council or any Replacement Service Provider; |
| “Services Specification” | means the specification set out in Schedule 1; |
| “Staff” | means all persons employed by the Provider together with the Provider’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement or Call-Off Contracts; |
| “Staffing Information”  “**Sub-processor**”​ | in relation to all persons detailed on the Provider’s Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the Provider’s personnel are employees, workers, self-employed, Providers or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;  means any third Party appointed to process Personal Data on behalf of the Processor related to this Agreement. |
| “Tender” | means the tender submitted by the Provider to the Council on [DATE]; |
| “Tender Documents” | means the ITT, including supporting documents and the Tender as set out in Schedule 4; |
| “Term” | means the period commencing on the Commencement Date and ending on [DATE] or on earlier termination of this Framework Agreement; |
| “Transferring Employee” | means an employee of the outgoing Provider whose contract of employment transfers with effect from the Commencement Date to the Provider by virtue of the application of TUPE; |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246); |
| “Workforce Code” | means the Code of Practice on Workforce Matters in Local Authority Service Contracts; |
| “Working Days” | means any day other than a Saturday, Sunday or public holiday in England and Wales; and |
| “Year” | means a calendar year. |

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

### words in the singular include the plural and vice versa;

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

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

### references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

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

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

### 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;

### reference to a Clause is a reference to the whole of that clause unless stated otherwise; and

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

# TERM OF FRAMEWORK AGREEMENT

This Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall continue for the Term.

# SCOPE OF FRAMEWORK AGREEMENT

## This Framework Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services in relation to the Lots indicated in Schedule 5 (*Lots*) by the Provider to the Council.

## The Council may at its absolute discretion and from time to time order Services from the Provider in accordance with the Ordering Procedure during the Term.

## The Provider acknowledges that there is no obligation for the Council to purchase any Services from the Provider during the Term;

## The Council may at its absolute discretion and from time to time order Services from the Provider (in accordance with the provisions of Clause 4.2) during the Term

## No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Services to be ordered by it pursuant to this Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any undertaking, statement, promise or representation.

# CALL-OFFS

## The South London Coroners Service (who serve the area covered by the London Boroughs of Sutton and Croydon (Lot1) and Bromley and Bexley (Lot2)) who use the contract will be calling off against these 2 lots/contract.

## Not Used

### Not Used

### Not Used

## The Council intends to place an Order with the Provider for relevant Services and the Provider shall enter into a Call-Off Contract with the Council for the provision of such Services. A Call-Off Contract shall be formed on execution by the Council and the Provider.

# WARRANTIES AND REPRESENTATIONS

## The Provider warrants and represents to the Council that:-

### it has full capacity and Council and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;

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

### in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;

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

### it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;

### it has not caused or induced any person to enter such agreement referred to in Clause 5.1.5;

### no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Council;

### it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Council;

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

### in the three (3) years prior to the date of this Framework Agreement:-

#### it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

#### it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and

#### it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider’s position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

## The Provider warrants and represents to the Council the statements in Clause 5.1.

# CORRUPT GIFTS AND PAYMENTS OF COMMISSION

## The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council or any other public body or person employed by or on behalf of the Council or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the Council or any other public body or person employed by or on behalf of the Council or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

## The Provider warrants that it has not paid commission nor agreed to pay any commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with this Framework Agreement, any Call-Off Contract or any other contract with the Council or any other public body or person employed by or on behalf of the Council or any other public body.

## If the Provider, its Staff or any person acting on the Provider’s behalf, engages in conduct prohibited by Clauses 6.1 or 6.2 above or commits any offence under the Bribery Act 2010 the Council may:-

### terminate the Framework Agreement with immediate effect by giving notice in writing to the Provider and recover from the Provider the amount of any loss suffered by the Council resulting from the termination; or

### recover in full from the Provider and the Provider shall indemnify the Council in full from and against any other loss sustained by the Council in consequence of any breach of this Clause, whether or not the Framework Agreement has been terminated.

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

# CONFLICTS OF INTEREST

## The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council under the provisions of this Framework Agreement or any Call-Off Contract.

## The Provider shall promptly notify and provide full particulars to the Council or the relevant Other Contracting Body if such conflict referred to in Clause 7.1 arises or is reasonably foreseeable to arise.

## The Council reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of this Framework Agreement or any Call-Off Contract. The action of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

## This Clause 7 shall apply during the Term and for a period of two (2) years after its termination or expiry.

# BUSINESS ETHICS

## The Provider agrees that all financial settlements, reports and billings rendered to the Council under the Call-Off Contract shall properly reflect the facts of all activities and transactions made or undertaken by the Provider in the provision of the Services and may be relied upon as being complete and accurate in any further recording or reporting made by the Council for any purpose.

## The Provider shall notify the Customer of any error and correct the statements which are in error in writing promptly upon discovery of any failure to comply with Condition 8.1.

# CALL-OFF CONTRACT PERFORMANCE

## The Provider shall perform all Call-Off Contracts entered into with the Council or any Other Contracting Body in accordance with:-

### the requirements of this Framework Agreement; and

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

## In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

# PRICES FOR SERVICES

## The prices offered by the Provider for Call-Off Contracts to the Council for Services shall be the prices listed in the Provider’s Tender and such prices shall be adjusted annually in accordance with the provisions of Call off Terms and Conditions.

# VEHICLES & EQUIPMENT

## Save as otherwise provided in this Call-Off Contract the Provider shall at its own expense provide, collect and deliver all vehicles and equipment necessary for the provision of the Services and ensure that they are kept and stored in accordance with the provisions of the Call-Off Contract and all legislation, orders, regulations and bye-laws.

## Provider shall at all times be fully responsible for the licensing and payment of all licensing fees, taxes and insurance required in connection with or arising out of the possession or use of all vehicles and equipment, and parts used in the provision of the Services.

## The Provider shall be responsible for the security of all vehicles, equipment and parts and the Council shall not be liable in the event of any loss thereof or damage thereto save in so far as such loss or damage is caused by any deliberate or negligent act of the Council or any of its employees.

## The Provider shall at its own expense put and keep all vehicles and equipment used in the performance of the Services at all times in safe, good, clean and serviceable repair and condition in accordance (where applicable) with all road transport and health and safety legislation and in such condition and appearance as is commensurate with the proper performance of the Call-Off Contract.

## The Provider shall give to the Authorised Officer all information concerning the location, condition, use and operation of all vehicles and equipment which the Authorised Officer may reasonably require and shall at all times permit the Authorised Officer reasonable access to all vehicles and equipment employed in the provision of the Services and to inspect the same. The Authorised Officer shall be entitled to serve upon the Provider a first notice, in writing, requiring the Provider to put any vehicles and equipment in to such condition as is required by the Council and the Provider shall forthwith upon receipt of such notice cause any necessary work to be carried out. The Authorised Officer may also serve the Contract Manager with a notice requiring the vehicles and equipment to be removed from use in connection with the provision of the Services until such time as the first notice has been complied with.

## Vehicles and equipment used in connection with the provision of the Services shall comply with relevant applicable construction and use regulations and be of a design which is entirely suitable for the provision of the Services. The Provider shall ensure that adequate levels of vehicles and equipment are available at all times as lack of suitable vehicles and equipment will not be considered a reason for non-performance of the Services to the standard required under the Call-Off Contract.

## The Provider shall indemnify the Council against all damage to property or injury to persons that occur through the use of vehicles and equipment in the provision of the Services.

## In operating vehicles and equipment the Provider shall:

### take all reasonable and practicable steps to ensure that any vehicle and equipment are used in a careful and proper manner and for the purpose for which they are constructed, designed and/or modified;

### ensure that all vehicles and, where appropriate equipment, are driven only by the holder of a full and current driving licence as required for that category of vehicles or equipment;

### ensure that no vehicles or equipment (where applicable) are loaded at any time in excess of the maximum weights permitted by law in respect of such vehicles and equipment;

### comply with all legislation, rules and regulations governing the use and operation of any vehicles or equipment used in the provision of the Services;

### ensure that no vehicle, or where appropriate equipment, is used when in an unroadworthy or defective condition or whilst failing to comply with any statutory provision regarding its roadworthiness;

### ensure that drivers and operators of vehicles and equipment are responsible for the safe operation and the use of the same;

### ensure that drivers drive safely, responsibly and correctly at all times in accordance with legislation, rules and regulations and that speed limits are observed at all times and reversing only takes place under guidelines;

### ensure that drivers and operators are trained and thoroughly competent in all aspects of the safe use of vehicles and equipment;

### ensure that no vehicles and equipment is used in close proximity to children;

### ensure that the routes including access and egress points to be taken by vehicles and equipment for the purposes required in connection with the performance of the Services, are clearly defined and agreed with the Authorised Officer;

### ensure that all vehicles and equipment are cleaned internally, where appropriate and externally weekly and immediately before servicing and maintained in such a condition so that they present a professional, pleasant image to the public;

### keep accurate up to date service, maintenance and repair records for vehicles and equipment employed in the performance of the Services and shall permit the Authorised Officer access to these records at all reasonable times throughout the Contract Period and for a period of three (3) years thereafter;

### only use vehicles and equipment painted in such manner as conforms with general industry practice; and

### ensure that wherever fuelling and refuelling takes place, it shall only take place in areas to which the public have no access and where the fuel can be stored in a safe manner and used in compliance with the Petroleum Regulation Acts 1928 and 1936.

# STATUTORY REQUIREMENTS AND CONSENTS

The Provider shall be responsible for complying with all statutory requirements and obtaining all necessary consents required in relation to the performance of this Framework Agreement and any Call-Off Contract (including but not limited to all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of its obligations and all requirements of the ITT).

The Provider warrants that all licences and accreditations which it has referred to in its Tender will be adhered to and remain in place for the duration of this Framework Agreement and any Call-Off Contract.

# NON-DISCRIMINATION

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

## The Provider shall take all reasonable steps to secure the observance of Clause 13.1 by all servants employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of the Framework Agreement.

## The Provider must not do or fail to do anything such that it causes the Council to fail to comply with its obligations in respect of all current relevant Equal Opportunities Legislation and practices.

## The Provider must provide such information as the Authorised Officer may reasonably request for the purpose of assessing the Provider’s compliance with this Clause.

# PROVISION OF MANAGEMENT INFORMATION

## The Provider shall submit Management Information to the Council as required by paragraph 9 of the Services Specification, throughout the Term in respect of any Call-Off Contract entered into with any Contracting Body.

## The Council may share the Management Information supplied by the Provider with any Contracting Body.

## The Council may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) month’s written notice of any changes.

# RECORDS AND AUDIT ACCESS

## The Provider shall keep and maintain until three (3) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Call-Off Contracts entered into with the Council including (but not limited to) a daily record of the nature and quality of the Service performed under the Call-Off Contract and the amounts paid by the Council.

## The Provider shall keep the records and accounts referred to in Clause 15.1 in accordance with good accountancy practice.

## The Provider shall afford the Council (or relevant Contracting Body) and/or the Auditor such access to such records and accounts as may be required from time to time.

## The Provider shall provide such records and accounts (together with copies of the Provider’s published accounts) during the Term and for a period of three (3) years after expiry of the Term to the Council (or relevant Contracting Body) and the Auditor.

## The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

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

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

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

access to the Staff.

### The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Council for the Council’s reasonable costs incurred in relation to the Audit.

# CONFIDENTIALITY

## The Provider shall not and shall ensure that its Staff shall not without written consent of the Authorised Officer, during the Term or at any time thereafter, make use of for its own purposes or disclose to any other person (except as may be required by law), the Framework Agreement or any information contained therein or in any documents or other information provided to the Provider by the Council or the Authorised Officer pursuant to the Framework Agreement, or otherwise obtained or prepared by the Provider pursuant to the Framework Agreement or which shall come into the possession or knowledge of the Provider or any of the Staff, during the Term, all of which information shall be deemed to be confidential.

## The Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider of this Clause. Such indemnity shall be without prejudice to any other rights the Council may have.

## The Provider, and the Staff, shall not communicate with the media nor shall it communicate with any elected member of the Council on any matter concerning the Framework Agreement.

# DATA PROTECTION & FREEDOM OF INFORMATION

## The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor. The only processing that the provider is authorised to do is listed in Schedule (x) by the Council and may not be determined by the Provider.

## The Provider shall notify the Council immediately if it considers that any of the Council’s instructions infringe the Data Protection Legislation.

## The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment and provide the reasons for its opinion. The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

## (a) a systematic description of the envisaged processing operations and the purpose of the processing;

## (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

## c) an assessment of the risks to the rights and freedoms of Data Subjects; and

## (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

## The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

## (a) process that Personal Data only in accordance with Schedule [​X​], unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

## (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council, as appropriate to protect against a Data Loss Event having taken account of the:

## (i) nature of the data to be protected;

## (ii) harm that might result from a Data Loss Event;

## (iii) state of technological development; and

## (iv) cost of implementing any measures;

## (c) ensure that :

## (i) the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule ​X);

## (ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:

## (A) are aware of and comply with the Provider’s duties under this clause;

## (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;

## (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and

## (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

## (d) not transfer Personal Data outside of the EU unless the prior written consent of the Provider has been obtained and the following conditions are fulfilled:

## (i) the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

## (ii) the Data Subject has enforceable rights and effective legal remedies;

## (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

## (iv) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data; and

## (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.

## Subject to clause 17.6, the Provider shall notify the Council immediately if it:

## (a) receives a Data Subject Access Request (or purported Data Subject Access Request);

## (b) receives a request to rectify, block or erase any Personal Data;

## (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

## (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

## (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

## (f) becomes aware of a Data Loss Event.

## The Provider’s obligation to notify under clause 17.5 shall include the provision of further information to the Council in phases, as details become available.

## Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

## (a) the Council with full details and copies of the complaint, communication or request;

## (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

## (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;

## (d) assistance as requested by the Council following any Data Loss Event;

## (e) assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner's Office.

## The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

## (a) the Council determines that the processing is not occasional;

## (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

## (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects. The Provider shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.

## The Provider shall designate a data protection officer if required by the Data Protection Legislation.

## Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:

## (a) notify the Council in writing of the intended Sub-processor and processing;

## (b) obtain the written consent of the Council;

## (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause ​[X]​ such that they apply to the Sub-processor; and

## (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

## The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

## The Council may, at any time on not less than 30 Working Days’ notice, revise this clause 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).

## The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

## The Provider acknowledges that the Framework Agreement and information associated with it is subject to the Freedom of Information Act 2000 (“FoIA”) and the Environmental Information Regulations (“EIRs”). If the Provider submits any information to the Council which it considers confidential or sensitive, the information will only be protected against disclosure of the Council under FoIA or EIRs if it is marked as such at the time of disclosure and if in the Council’s reasonable opinion it qualifies under one of the exemptions set out in the FoIA or EIRs. The Council’s decision on this will be final

## If requested by the Authorised Officer, the Provider agrees to provide all information required by the Council to be made available to the public under FoIA or the EIRs in such format as the Council may reasonably require, at no extra charge to the Council, provided that the Provider shall ensure that such information shall not contain any personal data protected by the Data Protection Legislation against being made available to the public under FoIA. The Provider will provide all such information as soon as reasonably practicable upon the Authorised Officer’s request, and in any event within such a time as will enable the Council to comply with its obligations under FoIA or the EIRs.

## Should the Provider receive a request for information in relation to this Framework Agreement or a Call-Off Contract within 24 hours of receipt it will pass the request and any information necessary to respond to the request to the Council but will not have any contact with the requestor except to confirm that the request has been sent to the Council.

# PUBLICITY

## The Council’s aim is for the highest standard of presentation of the image of their activities to the public, and to ensure a fair and favourable reputation for their services via effective communication to the media and the public. The Provider shall at all times comply with the Council’s policy on publicity as notified to the Provider from time to time. The main provisions are as set out in this Clause 18.

## All information and publicity concerning the Counciland its activities, and those of the Provider in connection with this Contract, shall be subject to prior approval by the Authorised Officer.

## All enquiries received by the Provider from press, radio, television or other media which may concern the Council shall immediately be referred to the Authorised Officer.

## The Provider shall not advertise the fact that it is providing services to the Council other than with the prior written consent of the Authorised Officer.

## The Provider shall notify the Authorised Officer well in advance of any activity under this Contract which is likely to achieve publicity, to enable them to take a positive approach to such activities and deal with them appropriately.

## The Provider shall not use or adapt the Council’s or Other Contracting Body’s corporate logo or images without prior written approval of the Authorised Officer.

## The Provider shall not permit the placing or fixing of any advertising material whatsoever on or in the Council’s or Other Contracting Body’s premises without the prior approval of the Council.

## The Provider shall take all reasonable steps to ensure the observance of the provisions of this Clause 18 by its Staff.

# TERMINATION

## The Council may terminate the Framework Agreement or any Call-Off Contract by serving written notice on the Provider with effect from the date specified in such notice:-

### where the Provider commits a Material Default and:-

#### the Provider has not remedied the Material Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

#### the Material Default is not, in the reasonable opinion of the Council, capable of remedy; or

### where any Contracting Body terminates a Call-Off Contract awarded to the Provider under this Framework Agreement as a consequence of default by the Provider.

## The Council may terminate the Framework Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider’s ability to supply Services under this Framework Agreement.

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

### a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

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

### a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

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

### an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

### it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

### any event similar to those listed in Clause 23.3.1 to Clause 23.3.7 occurs under the law of any other jurisdiction.

## The Provider must inform the Council when there is a change of control of the Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) and Council may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:

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

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

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

## This Framework Agreement can be terminated by the Council without notice on the occurrence of any of:

### this Framework Agreement has been subject to a substantial variation which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;

### the Provider was, at the time when this Framework Agreement was awarded, in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and therefore should not have been awarded this Framework Agreement;

### any competent court makes an award for ineffectiveness of this Framework Agreement under the Public Contracts Regulations 2015 ;

### this Framework Agreement should not have been awarded to the Provider in view of a serious infringement of the obligations of the Treaty on European Union, the TFEU or the Public Contracts Directive 2014 hat has been declared by the Court of Justice of the European Union under a procedure under Article 258 of TFEU.

# CONSEQUENCES OF TERMINATION AND EXPIRY

## Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 20.

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

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

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

### the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or

### the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Services under any Call-Off Contract.

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

## The provisions of Clauses 5, 6, 7, 15, 16, 17, , 21, 22 and 35 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

# LIABILITY

## Neither Party excludes or limits its liability for:-

### death or personal injury caused by its negligence, or that of its staff

### fraud or fraudulent misrepresentation by it or its staff; or

### breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

## The Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff or by any circumstances within its or their control.

# INSURANCE

## Without prejudice to the Council’s rights under the Framework Agreement, the Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Framework Agreement and in respect of each Call-Off Contract including death or personal injury, or loss of or damage to property.

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

### public liability insurance cover of not less than £5,000,000 (five million pounds) in respect of each and every claim;

### employers’ liability insurance cover not less than £10,000,000 (ten million pounds) in respect of any one incident provided that the sums under this clause must be reviewed by the Parties annually and must be increased by such amounts as the Council reasonably requires;

### motor insurance as required by the Road Traffic Act 1988; and

### professional indemnity insurance with a minimum limit of indemnity of £5,000,000 (five million pounds) for each individual claim or such higher limit as the Council may reasonably require (and as required by law) from time to time.

## Any excess or deductibles under such insurance (referred to in Clause 22.1 and Clause 22.2) shall be the sole and exclusive responsibility of the Provider.

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

## The Provider shall produce to the Council, on request, copies of all insurance policies referred to in this Clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the Framework Agreement then the Provider must notify the Council immediately and the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

## The Provider shall maintain the insurances referred to in Clause 22.1 and Clause 22.2 for a minimum of six (6) years following the expiration or earlier termination of the Framework Agreement.

## The Provider must provide the Council with a summary of all insurance claims notified or made during the preceding year, no later than twenty eight days after the end of each year of this Framework Agreement.

# TRANSFER AND SUB-CONTRACTING

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

## The Council shall be entitled to:-

### assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Other Contracting Body; or

### novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council;

### provided that such assignment, novation or disposals shall not increase the burden of the Provider’s obligations under the Framework Agreement.

# TRANSFER OF UNDERTAKINGS (TUPE) AND PENSIONS

## The Provider hereby warrants that it has properly considered, prior to the Commencement Date of the Framework Agreement, whether it will take any measures in relation to the Relevant Employees as required by TUPE and has informed the Council in good time of such measures so as to enable the outgoing provider to comply with its statutory duties to inform and consult. The Provider further warrants that it has requested any relevant information from the Council as is necessary to make a decision as to whether it will take any such measures. If there are no measures, the Provider will give confirmation of that fact, and shall indemnify the Council against all claims, liabilities, expenses, costs or losses resulting from any failure by it to comply with this obligation.

## The Provider shall be responsible for all remuneration, benefits, entitlements and outgoings for the Transferring Employees and Third Party Employees and any other person who is or will be employed or engaged by the Provider in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Commencement Date.

## The Provider shall employ all New Employees on terms and conditions of employment that are, overall, no less favourable (save as to pensions) than those of the Transferring Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the New Employees.

## The Council and the Provider shall have to regard to the Workforce Code and the Council’s Protocol on Staff Transfers in interpreting and applying the obligations set out in this clause.

## To the extent that TUPE applies or is claimed to apply to this Framework Agreement, the Provider shall indemnify and keep the Council indemnified against each and every cost, claim, liability, expense or demand whatsoever and howsoever arising, incurred or suffered by the Council including without limitation all legal expenses and other professional fees (together with any VAT thereon) arising out of:

#### Any claim or allegation by any person who, immediately prior to the Commencement Date, was an employee of the Council or a previous Provider, that TUPE applies to that person in relation to this Framework Agreement or that they were otherwise an affected employee for the purposes of the duty to inform and consult under TUPE (“Relevant Employees”), and that as a consequence there has been or will be a substantial change in such Relevant Employee’s working conditions including the terms and conditions contained in any collective agreements applicable to their employment or which have derived through custom and practice to his/her detriment.

#### Any act or omission of the Provider in relation to any Relevant Employee or New Employee occurring before, on or after the Commencement Date and any claim for redundancy payments or protective awards and any liability for wrongful dismissal or unfair dismissal or other claim in connection with the transfer of the employment of any Relevant Employee to the Provider.

#### Any failure by the Provider to provide broadly comparable retirement, invalidity, survivor or other such benefits for or in respect of any Affected Employees as such persons would have been entitled to immediately before the Commencement Date.

#### Any failure by the Provider to provide full and accurate information which is required by the Council or the Replacement Service Provider to enable the Council (where applicable) or the Replacement Service Provider to discharge its statutory duties and obligations under TUPE and the Information and Consultation of Employees Regulations 2004.

#### Any failure by the Provider to pay to a Relevant Employee or New Employee any sums due in respect of the period prior to the termination of this Framework Agreement.

#### Any claim by any trade union, staff association or staff body recognized by the Council in respect of all or any of the Relevant Employees arising out of the Provider’s failure to comply with its legal obligations to such trade union, association or body.

## The Provider shall indemnify the Council in full for and against all claims, costs, expenses, liabilities whatsoever and howsoever arising, incurred or suffered by the Council including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to the employment or termination of employment by the Provider of any of the Relevant or New Employees or anything done or omitted to be done in respect of any of the Relevant Employees or New Employees whether before or after the Commencement Date.

## This Framework Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Service Transfer). If a Service Transfer is a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees. If TUPE applies on a Service Transfer the provisions in clause 24.8 to clause 24.13 shall apply.

## The Council and the Provider agree that where, following the Commencement Date, the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Replacement Services Provider. The Provider shall comply with their obligations under TUPE.

## The Provider shall on receiving notice of termination of this Framework Agreement or otherwise, on request from the Council and in addition to as required by TUPE, provide in respect of any person engaged or employed by the Provider in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Provider shall notify the Council of any material changes to this information as and when they occur.

## At least 14 days prior to the Service Transfer Date, the Provider shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's personnel named are Relevant Employees.

## The Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services (or any part of) as the Services.

## The Provider warrants that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.

## The Provider shall not during the final twelve (12) months of the term of this Framework Agreement or during the final twelve months of any extension to this Framework Agreement:

#### Undertake a reorganisation of staff employed in the performance of this Framework Agreement or working methods other than in accordance with a scheme that has been submitted to and approved in writing by the Council Representative.

#### Award any pay rise which exceeds the Index without first having obtained the written consent of the Council Representative.

#### Agree or implement any alteration to the terms and conditions on which staff are employed on under the Framework Agreement without first having obtained the written consent of the Council Representative.

#### Dismiss any of the Relevant or New Employees except with the Council’s consent, which shall not be unreasonably withheld. The Provider shall use its reasonable endeavours to retain the services of each of the Relevant or New Employees to the intent that their respective contracts of employment shall be continued until the date of termination or re-tender of this Framework Agreement.

#### Incur any liability without discharging such liability for breach of contract, redundancy payments (including protective awards) or for damages for compensation for wrongful dismissal, unfair dismissal or discrimination or otherwise or for failure to comply with any order for reinstatement or re-engagement of any Relevant Employee or other employee, agency staff, consultant or independent Provider engaged in connection with the Framework Agreement or for the actual or proposed termination or suspension of employment or variation of any contract of employment of any employee of the Provider employed in connection with the Framework Agreement.

## All salaries and other emoluments including holiday pay tax and national insurance payments and contributions to retirement benefit schemes relating to the Relevant or New Employees shall be borne by the Provider up to the date of termination or expiry of this Framework Agreement and all necessary apportionments shall be made.

## The Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Service Provider against all losses, except indirect losses incurred by the Council or any Replacement Service Provider in connection with or as a result of any claim or demand against the Council or any Replacement Service Provider by:

#### any person who is or has been employed or engaged by the Provider in connection with the provision of any of the Services; or

#### any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider after the Service Transfer Date),

## arising from or connected with any failure by the Provider to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Commencement Date.

## The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Service Transfer will be fulfilled.

## The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 24.8 to clause 24.16, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Provider or the Council in its own right under to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

## Despite clause 24.17, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

## The Provider shall ensure that all Transferring Employees and New Employees (where applicable) are offered appropriate pension provision within the meaning of the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

## The Provider shall indemnify and keep the Council indemnified on demand against each and every cost, claim, liability, expense or demand arising out of or connected with any claim or other legal recourse by any Relevant or New Employees or any trade union or employee representative of any Transferring or New Employees against the Council which relates to any actual or alleged act or omission of the Provider arising during the period from and including the Commencement Date and until and including the date of the termination of the Framework Agreement, (including, for the avoidance of doubt, the Provider failing to meet any of its obligations under this Clause 24.20).

# RIGHTS OF THIRD PARTIES

Save as provided in Clauses 3, 4, 5.2 and 24.17 and the rights specified in the Framework Agreement for the benefit of the Council, a person who is not party to this Framework Agreement has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any third party.

# SEVERABILITY

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

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

# CUMULATIVE REMEDIES

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

# WAIVER

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

## No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 30.

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

# ENTIRE AGREEMENT

## This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

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

## Nothing in this Clause 29 shall operate to exclude Fraud or fraudulent misrepresentation.

# PARTNERSHIP OR AGENCY

## Nothing in this Framework Agreement creates a partnership or relationship of agency between the Council and the Provider.

## Neither the Provider nor the Provider’s Staff shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by the Framework Agreement.

## Neither the Provider nor the Provider’s Staff shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

## Neither the Provider nor the Provider’s Staff shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

# OBSERVANCE OF STATUTORY REQUIREMENTS

## The Provider shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Byelaws, Directives or the like, to be observed and performed in connection with the Services provided under the Call-Off Contract, and shall indemnify the Council accordingly against any loss or damage caused by non-compliance with any such legal provisions.

# NOTICES

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

## Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 36.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

## For the purposes of Clause 32.2, the address of each Party shall be:

### For the Council:-

[ ]

Address:

For the attention of:

Tel:

Fax:

Email:

### For the Provider:-

[ ]

Address:

For the attention of:

Tel:

Fax:

Email:

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

# COMPLAINTS HANDLING AND RESOLUTION

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

## Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

## Within two (2) Working Days of a request by the Council, the Provider shall provide full details of a Complaint to the Council, including details of steps taken to its resolution.

# DISPUTE RESOLUTION

## The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 30 above.

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

## If the dispute cannot be resolved by the Parties pursuant to Clause 34.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 34.5 unless:-

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

### the Provider does not agree to mediation.

In which case the provisions of clause 34.5.6 will apply.

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

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

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

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

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

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

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

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

# LAW AND JURISDICTION

Subject to the provisions of Clause 33 and Clause 34, the Council and the Provider accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English Law.

# Anti-Slavery and Human Trafficking Laws

## In performing its obligations under the agreement, the Provider shall:

### comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

### not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

### include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 36.1

**EXECUTED AS A DEED** by or on behalf of the Parties on the date which first appears in the Framework Agreement

|  |  |  |
| --- | --- | --- |
| **THE COMMON SEAL of THE MAYOR AND**  **BURGESSES OF THE LONDON BOROUGH** )  **OF CROYDON** was hereunto affixed in  the presence of:-  By Order  **[ of ]** | )  )  )  ) |  |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by  for and on behalf of the Provider  (Director/Company Secretary) | )  )  ) |  |
| **EXECUTED** by  for and on behalf of the Provider  (Director) | )  )  ) |  |

SCHEDULE 1 – SERVICES SPECIFICATION

SCHEDULE 2 – CALL-OFF TERMS AND CONDITIONS

**CONDITIONS OF CONTRACT FOR THE COLLECTION OF BODIES AND**

**DELIVERY TO THE PUBLIC MORTUARIES**

**THIS CALL-OFF CONTRACT** is made on 201[ ]

**BETWEEN**:

1. [INSERT NAME OF CONTRACTING BODY]whose principal place of business is at [INSERT ADDRESS] (the “Customer”) ; and
2. [NAME OF PROVIDER] (Company Number: [NUMBER]) whose registered address is at [ADDRESS] (the “Provider”).
3. **DEFINITIONS & INTERPRETATION**
   1. In this Call-Off Contract, unless the context otherwise requires capitalised terms which are defined in the Framework Agreement shall have the same meaning in this Call-Off Contract and the following additional provisions shall have the meanings given to them below:-

|  |  |
| --- | --- |
| “**Contract Documents**” | means this Call-Off Contract, and the Framework Agreement entered into between the Provider and the Customer. |
| “**Contract Manager**” | means the person appointed by Provider as the contract manager pursuant to Condition 5. |
| “**Contract Period**” | means the period during which the Call-Off Contract shall remain in force in accordance with Condition 1.2. |
| “**Contract Price**” | means the price, exclusive of VAT, payable by the Customer to the Provider for the full and proper performance by the Provider of the Services as stated in the Call-Off Contract. |
| “**Coroner**” | means the H.M. Coroner for the Southern Coroners District of Greater London. |
| **“Mortuary**” | means any one or more of the public mortuaries located at Princess University Hospital, Farnborough, Kent; Thornton Road, Thornton Heath, Surrey; St. Helier Hospital, Carshalton, Surrey, and Queen Mary’s Hospital, Sidcup, Kent. |
| “**Services**” | means the services described in the Specification. |

* 1. The terms of the Framework Agreement shall apply in this Call-Off Contract as if they were set out in this Call-Off Contract in full with the relevant changes made, save to the extent that there is any inconsistency between these Conditions and the terms of the Framework Agreement, in which case the terms of this Call-Off Contract shall prevail.

1. **CONTRACT PERIOD**
   1. The Call-Off Contract shall commence upon written acceptance of the Provider’s Tender on [DATE] (the “Commencement Date”) and shall continue in force for a period of three (3) years.
   2. Not later than six (6) months before the end of the Call-Off Contract the Customer will consider extending this Call-Off Contract for a period of up to but not exceeding 2 (two) years. The Authorised Officer shall review the performance of the Provider during the Contract Period from the Commencement Date. If the Authorised Officer is entirely satisfied with regard to the performance of the Provider, the Authorised Officer may on behalf of the Customer enter into negotiations with the Provider to decide whether the Call-Off Contract shall be extended for a period (or periods) of up to but not exceeding 2 (two) years (the “Extended Period”).
   3. If a decision is made in principle to so extend the Call-Off Contract then the Authorised Officer shall arrange for the relevant Renewal Notice and Reply Notice to be exchanged by the Parties in a form approved by the Authorised Officer in accordance with the relevant requirements. Such notices shall be exchanged not later than three (3) months before the expiry of the then current term of the Call-Off Contract.
   4. The Provider undertakes that it will throughout the Contract Period make available to the Customer within thirty (30) days after the formal adoption thereof its audited accounts together with any statement or internal control report issued by the Provider’s auditors for the time being qualifying such accounts (or, if the Provider is a partnership, sole trader or other entity, its accounts or other suitable financial statements).
2. **PROVIDER’S OBLIGATIONS**
   1. The Provider must from the Commencement Date provide the Services comprehensively and strictly in accordance with the provisions of this Call-Off Contract to the reasonable satisfaction of H.M. Coroner and the Customer, in an efficient, professional, ethical and courteous manner and in a way which enhances the interests and reputation of the Customer, and (but without limitation) in accordance with:
      1. any applicable Laws, consents and Good Industry Practice as are relevant to the Service (including such standards or guidance as come into force after the Commencement Date);
      2. any registration requirements; and
      3. the Contract Documents, including the Specification and any method statements provided by the Provider.
   2. The Provider must make sure that the requirements of this Call-Off Contract and any relevant policies of the Provider have been drawn to the attention of all of the Staff; and that its Staff have a detailed knowledge of them and are required to comply fully.
   3. Meetings: The Provider must attend such meetings as the Authorised Officer may require in connection with the Call-Off Contract at no additional cost to the Customer.
   4. Inspection: The Provider must allow anyone authorised by the Customer to enter and inspect any premises or vehicles used, or inspect any equipment or materials used, or question any member of Staff engaged, in the performance of the Call-Off Contract without prior notice at any reasonable time.
3. **THE CONTRACT** 
   1. The Provider must provide the Services in accordance with the terms and conditions of this Call-Off Contract. No change may be made to these terms except as agreed in accordance with this Call-Off Contract or with the consent of both parties.
   2. The Customer does not warrant the accuracy of any representation or statement of fact or law given to the Provider by the Customer, their servants or agents at any time before the execution of this Call-Off Contract and except to the extent that there is specific provision within this Call-Off Contract to the contrary, the Customer will not be liable to the Provider for any loss or damage which the Provider may sustain as a result of relying on any such representation, statement, information or advice whether in contract, tort under the Misrepresentation Act 1967 or otherwise except in so far as the relevant representation, statement or advice was made or given fraudulently.
4. **CONTRACT MANAGER**
   1. The Provider shall ensure that at all times during the Contract Period a Contract Manager is appointed and empowered to act on behalf of the Provider and available to be contacted by an Authorised Officer at all times during which the Services are to be provided.
   2. The Provider shall within 3 days after acceptance by the Customer of its Tender given written notice to an Authorised Officer of the identity of the person proposed to be appointed as the Contract Manager and shall forthwith give notice of any subsequent proposed appointments.
   3. Any person proposed to be appointed as Contract Manager must first be approved in writing by the Customer, and the Provider shall continue to propose different persons to be appointed as Contract Manager until such approval has been given.
   4. The Provider shall inform an Authorised Officer of the identity of any person proposed to be authorised to act for any period as deputy for the Contract Manager before the start of that period. Any person proposed to be authorised to act as deputy for the Contract Manager must first be approved in writing by the Customer.
   5. The Contract Manager or his duly authorised deputy shall be the authorised representative of the Provider for all purposes connected with this Call-Off Contract. Any notice, information, instruction or other communication given or made to the Contract Manager or his deputy shall be deemed to have been given or made to the Provider.
   6. The Contract Manager or his duly authorised deputy shall:-
      1. consult with an Authorised Officer and with such other of the Customer’s supervisory staff as may from time to time be specified by an Authorised Officer or as often as may reasonably be necessary to ensure a continuous and efficient provision of the Services in accordance with the Call-Off Contract; and
      2. follow and comply with any instructions or directions given or issued by any Authorised Officer in connection with performance of the Services.
   7. The Contract Manager shall inform an Authorised Officer promptly and in writing of any instances of activity or omission on the part of the Customer which prevent or hinder or may prevent or hinder the Provider from meeting its contractual obligations.
5. **BEST VALUE**
   1. The Provider acknowledges that the Customer is required by the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness (“Best Value”). The Provider agrees to take all reasonable steps to co-operate with and assist the Customer in fulfilling this duty. In particular the Provider must participate in any relevant Best Value reviews and benchmarking exercises (including providing information) conducted by the Authorised Officer and must assist in the preparation of any Best Value performance plans.
6. **STAFF**
   1. The Provider shall employ in and about the provision of the Services only such persons as are careful, skilled and honest in the work that they are to perform.
   2. The Provider shall employ sufficient Staff to ensure that the Services are provided at all times and in all respects in accordance with the Specification and the Conditions. Accordingly it shall be the duty of the Provider to ensure in particular that a sufficient reserve of staff is available to provide the Services during staff holidays or absence through sickness or otherwise.
   3. The Provider shall ensure that every person employed by the Provider in an about the provision of the Services is at all times properly and sufficiently trained and instructed with regard to:
      1. the task or tasks that that person has to perform;
      2. any relevant provisions of the Call-Off Contract;
      3. relevant rules, procedures and standards of the Customer (as may be notified to the Provider by the Customer in accordance with Condition 7.5 ;
      4. all relevant rules, procedures and statutory requirements concerning health and safety at work; and
      5. the necessity to observe the highest standards of courtesy and consideration to the public.
   4. The Provider shall be entirely responsible for the employment and conditions of services of its own employees including, without limitation, the payment of salaries and wages.
   5. The Provider shall and shall procure that its Staff shall comply with all relevant rules, codes, policies, procedures and standards of the Customer that may be notified to the Provider by the Customer from time to time and with all relevant statutes, statutory orders and regulations.
   6. The Provider shall ensure that its Staff carry out their duties and behave in a respectful and orderly manner and in as quiet a manner as may be practical, having regard to the nature of the duties being performed by them.
   7. The Provider shall ensure that its Staff, while at any premises, maintain a high standard of personal hygiene, demeanour and cleanliness.
   8. The Provider shall prohibit its staff from smoking while attending the removal of a body.
   9. The Provider shall require its Staff at all times while at any premises to be properly and presentably dressed in appropriate uniforms or workwear to the satisfaction of the Customer. Where the nature of any task in the provision of the Services makes the wearing of protective clothing or footwear necessary or appropriate the Provider shall provide, and shall ensure that its Staff wear, such clothing and footwear.
   10. The Provider shall ensure that no staff engaged in the performance of Services or any equipment, machinery or materials used in connection with the performance of the Services shall bear any advertising material (other than the discreet display of the Provider’s name as agreed with an Authorised Officer)
   11. The Provider will comply with any request by the Customer to provide to it information regarding those persons employed by it in connection with the provision of the service including, but not limited to, the names of such employees, their ages, salaries and other terms and lengths of employment. The Customer shall not disclose any such information to any person other than to any persons who have indicated a firm intention to submit a tender to the Customer to carry out the service or services similar to the service in the period after expiry or termination of this agreement (howsoever it may come to an end).
   12. The Provider shall satisfy the Customer that it has adequate disciplinary and grievance procedures for the Staff to be employed in the provision of the Services and shall have submitted details of such procedures to the Customer with its Tender. An Authorised Officer may for any reason instruct the Provider to take disciplinary action or other action in relation to or remove from the provision of the Services any person employed in or about the provision of the Services by the Provider (which for the avoidance of doubt shall include the Contract Manager or his deputy) and the Provider shall forthwith comply with such instructions. In giving such instructions the Authorised Officer shall discuss with and explain the reasons which shall relate to the behaviour or performance of the services by the person concerned and which the Authorised Officer acting reasonably considers will have or could have a detrimental effect upon the provision of the services or the image of the Customer. The Customer shall not in any circumstances be liable to the Provider or any of its employees in relation to any such action or removal and the Provider shall fully and promptly indemnify the Customer in respect of any claims brought by any such employee arising therefrom.
7. **HEALTH AND SAFETY**
   1. The Provider must take all necessary steps for the protection of the Provider’s Staff, Customer employees and members of the public during the performance of the Services.
   2. Policy: The Provider must have a written health and safety policy in place, such policy to be approved by the Authorised Officer.
   3. Staff: The Provider shall ensure that all staff or persons engaged in the provision of the Service are adequately trained and are familiar with their legal responsibilities concerning health and safety.
   4. Review: The Provider must review its health and safety policy from time to time to make sure that it complies with relevant legislation, guidance and professional and industry led practice for similar operations and must submit the reviewed policy to the Authorised Officer for approval (such approval not to be unreasonably withheld or delayed) before making any changes.
8. **AUTHORISED OFFICER**
   1. The Provider must comply with written instructions given by the Authorised Officer unless the instruction would amount to a variation to this Contract, in which case it will be dealt within accordance with procedure set out in this Contract.
   2. The decision of the Authorised Officer made in accordance with this Call-Off Contract is binding except where this Call-Off Contract specifically provides otherwise.
9. **INDEMNITY**
   1. In addition to and without prejudice to other indemnities given by the Provider under this Call-Off Contract and the Framework Agreement:
   2. the Provider is liable for, and shall indemnify the Customer against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or common law (including negligence) in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the provision of the Services;
   3. the Provider is liable for, and must indemnify the Customer against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal arising out of the provision of the Services to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Provider, its servants or agents or of any person employed or engaged upon or in connection with the Services or any part thereof, his or her servants or agents or of any other person who may properly be involved in the provision of the Service (or any part thereof), or their servants or agents (other than the Customer or any employee of the Customer );
   4. the Provider must indemnify the Customer against all liabilities incurred, damage and loss suffered, claims, demands, actions and proceedings made or brought and costs, disbursements and expenses incurred by the Customer which arise directly or indirectly out of any breach or non-observance by the Provider (or any of its servants, agents or any person employed or engaged by it or any person under its control) of any of the Provider’s obligations under this Call-Off Contract.
   5. The Provider must pay to the Customer (as appropriate) on demand any liability under these indemnities.
10. **PAYMENT**
    1. The Provider shall submit an invoice at the end of each quarter or such other frequency agreed by the parties of the Contract Period to the Customer.
    2. The Provider’s invoice shall specify the following information:
       1. name of deceased;
       2. date of collection;
       3. time call-out instruction received;
       4. address of collection point;
       5. time of arrival to collect the body;
       6. length of journey to public mortuary;
       7. time of delivery to public mortuary;
       8. detail of the amount claimed per body collected and delivered to the mortuary.
    3. The Customer shall pay such amount as may properly be due to the Provider under the terms of the Call-Off Contract within 28 days of the receipt by the relevant Authorised Officer of a valid and undisputed invoice.
    4. The Customer shall notify the Provider as soon as possible if it considers any invoice submitted by the Provider to be incorrect in any way.
    5. Where the Customer fails to comply with clause 11.3, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Customer.
    6. Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
       1. provisions having the same effect as clause 11.3 to clause 11.5 of this agreement; and
       2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 11.3 to clause 11.5 of this agreement.

In this clause 11.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

1. **RECOVERY OF SUMS DUE TO THE CUSTOMER**
   1. The Customer is entitled at common law and in equity to set off against its indebtedness to the Provider any debt owed to it by the Provider under this Call-Off Contract; or any debt owed under any other Call-Off Contract the Provider may have with the Customer; or any liability, damage, loss, costs, charges and expenses which the Customer has incurred because of any breach by the Provider of this Call-Off Contract or of any other Call-Off Contract with the Customer.
2. **SERVICE FAILURE AND PERFORMANCE DEFAULT**
   1. Indemnity: The Provider shall indemnify and keep indemnified the Customer against all actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis and the Customer’s administrative costs) which arise out of or in consequence of performance or non-performance by the Provider of its obligations under this Call-Off Contract. Amounts due to the Customer are payable by the Provider on demand (as applicable) or may be deducted by way of set off from any payment by the Customer under the terms of this Call-Off Contract.
   2. Information: The Provider must tell the Authorised Officer of anything (including an act or omission by the Customer) which might prevent the Provider from performing the Services either in part or at all and of any risk of such an event. The Provider must inform the Customer as soon as possible and provide the Customer with full details and must as soon as reasonably practicable in the circumstances write to the Authorised Officer suggesting ways to provide the affected Service or avoid the risk. The Provider shall do everything approved by the Authorised Officer so that the Service is provided and any loss or damage to the Customer, The Coroners Officer or anyone else is mitigated.
   3. Default Notice: If the Authorised Officer is of the opinion that the Provider is not satisfactorily performing the Services, the Authorised Officer must give the Provider a notice of unsatisfactory performance informing the Provider of the details of the unsatisfactory performance and giving the Provider a period of 30 days to rectify the unsatisfactory performance (if capable of rectification). If the Provider does not rectify the unsatisfactory performance within 30 days the Customer may terminate the Call-Off Contract.
   4. Suspension: In addition to its other rights under this Agreement, if the Provider fails to act as required by a default notice to the Authorised Officer’s satisfaction, the Authorised Officer may at his discretion serve a notice on the Provider suspending this Call-Off Contract or any part thereof and/or the provision of the Service or any part of it by the Provider. If this happens, the Authorised Officer may appoint a Successor Provider to provide the suspended Service or part(s) thereof or may itself provide it. The full and entire costs of that provision will be wholly and exclusively borne by the Provider on a full indemnity basis and will be payable on demand to the Customer. If the period of suspension lasts for longer than one month, the Authorised Officer may terminate the Call-Off Contract by notice in writing to the Provider as from the date of such notice.
   5. Other remedies: For the avoidance of doubt the Customer’s powers pursuant to this Call-Off Contract are in addition to the Customer’s ability to obtain any other remedy for any breach or non-observance of the Call-Off Contract by the Provider, and in addition to the Customer’s powers to terminate the Call-Off Contract, including under Condition 24. The Customer is entitled to recover from the Provider the full and entire costs and expenses incurred (on a full indemnity basis) by the Customer because of the Provider’s breach or other non-observance of the Call-Off Contract.
3. **VARIATION NOTICES**
   1. The Authorised Officer may, subject to Condition 4.1, serve on the Provider a variation notice requiring the Provider to give a written quotation of the variation to the Contract Price that the Provider would make for doing all or any of the following:
      1. to omit or cease to provide any of the Service or any part of the Service for such period or periods as the Authorised Officer determines; and/or
      2. to make any substantial amendment to the Service or the Specification.

(“a Variation”)

save that (for the avoidance of doubt) no notice or requirement of the Customer will be deemed to require the service of a variation notice where such variation is already an obligation of the Provider and/or such variation is required as a direct or indirect consequence of any breach of the Provider’s obligations under this Call-Off Contract and/or where this Call-Off Contract requires the Provider to bear the full costs of the notice or requirement including (without limitation) any legislative change.

* 1. Upon the Provider quoting a price or reduction in price or agrees that a Variation has no price consequence, the Authorised Officer may either:
     1. instruct the Provider to implement the Variation at the price quoted or as otherwise agreed. The Provider will then be bound by the Variation and must implement it within such reasonable time as the Authorised Officer instructs and the Contract Price must be decreased or increased by the agreed price (if any); or
     2. decide not to proceed with the Variation.
  2. The Provider is not obliged to implement any variation that would require the Provider to do anything not in the nature of the Service.

1. **PRICE VARIATION**
   1. The rates and prices contained in the Provider’s Pricing Matrices shall be reviewed on each anniversary of the Commencement Date (“the Review Date”) and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown in the RPIX index (“the Index”) published in the month prior to the Review Date.
   2. Any increase or reduction calculated in accordance with Condition 15.1 shall take effect in respect of the twelve month period commencing on the Review Date.
   3. Any adjustments required to the Contract Price for the period between the Review Date and the date on which the review actually takes place shall be included in the invoice next submitted after the date of the review.
   4. If the basis of computation of the Index shall change, any official reconciliation between the two bases of computation published by the Office of National Statistics (or any Government department or office upon which duties in connection with the compilation and maintenance of the Index have devolved) shall be binding upon the parties and shall be applied in adjusting the application of the Index hereto.
   5. In the absence of such official reconciliation such adjustments shall be made to the figures of the Index as to make it correspond as nearly as possible to the previous method of computation and such figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments the decision of the Authorised Officer shall be final.
2. **TAXES**
   1. The Customer must pay to the Provider all VAT properly payable. The Provider must issue to the Customer a tax invoice in respect of VAT.
   2. The Provider and the Customer must co-operate with each other in their dealings with HM Customs & Excise in relation to VAT. The Provider and the Customer must give each other access to all relevant documents and accounting records as are necessary for each to be able to meet their legal obligations in respect of accounting for VAT.
3. **ADDITIONAL TERMINATION RIGHTS** 
   1. In addition to its rights to terminate the Call-Off Contract as set out in the Framework Agreement the Customer may terminate the Call-Off Contract by giving written notice to the Provider with immediate effect if the Framework Agreement is terminated for any reason whatsoever.
4. **EFFECT OF TERMINATION AND EXPIRY** 
   1. Upon termination or expiry of the Call-Off Contract (whether of the whole Call-Off Contract or part), the Customer (without prejudice to any other rights it has under this Call-Off Contract):
      1. is no longer under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Call-Off Contract have been calculated;
      2. (only upon the happening of a Material Default) is entitled to employ and pay other persons (including the Customer) to provide and complete the provision of the Service or any part thereof and to use all the Provider’s physical resources or other things and all such drawings, details, descriptive schedules or other documents for the purpose thereof;
      3. (only upon the happening of a Material Default) is entitled to recover the costs and expenses of the Customer on a full indemnity basis in terminating the Provider’s engagement and in making alternative arrangements for the provision of the Service or any part thereof including all costs of a tender process including fees and any loss or damage resulting from or arising out of the termination of the Provider’s engagement. All such costs and expenses may be deducted from any sum which would otherwise have been due from the Customer to the Provider under the Call-Off Contract or any other contract and the Customer may recover the same from the Provider as a debt.
5. **SECURITY**
   1. The Provider shall at all times during the Contract Period comply with all of the Customer’s requirements relating to security as may be in force from time to time or as may otherwise be directed by the Authorised Officer including (but not limited to):
      1. the Provider may be required to hold access keys and locks in respect of Customer premises and the Mortuaries. In such circumstances the Provider will be responsible for the security of the premises (and the access keys and locks) and shall ensure in particular that the premises are at all times properly locked (where appropriate) or otherwise secured;
      2. the Provider shall comply with all access policies particularly in relation to leaving bodies in the designated areas of the Mortuaries;
      3. the Provider shall only permit such items to be given to those Staff whose names and addresses have been supplied in writing to the Customer; and
      4. if the Provider wishes not to use any keys or locks provided by the Customer the Provider shall first obtain the consent of the Authorised Officer.
   2. The Provider shall be responsible for the safekeeping of any keys and locks and any identity passes provided to it by the Customer. The Provider shall ensure that the Authorised Officer is informed immediately of the loss of any such keys, padlocks and identity passes and shall bear the cost of any replacements and any reasonable security measure implemented as a result of such loss.
   3. The Provider shall ensure that the identity pass carried by a member of Staff shall be returned to the Authorised Officer by the Provider forthwith upon such member of Staff ceasing to be engaged by the Provider in connection with the provision of the Services.
6. **CUSTOMER POLICIES**
   1. The Provider is required to comply with all relevant policies of the Customer as may be notified to it from time to time as part of the Call-Off Contract.
   2. The Provider shall take such steps as are necessary to implement any changes in any of the relevant Customer policies as may be notified to it during the Contract Period.
7. **OMBUDSMAN COMPLAINTS**
   1. The Provider shall take such action as the Authorised Officer may from time to time require to assist the Customer to respond to any complaint referred to it by the Commissioner for Local Administration in England (“the Ombudsman”).
   2. The Provider shall indemnify the Customer in respect of any sums it is required to pay as a result of a finding of maladministration or where the Customer reaches a local settlement in relation to any complaint referred to it by the Ombudsman.
   3. The Provider shall take such action as the Authorised Officer may from time to time specify to remedy a finding of maladministration or to implement a local settlement.
8. **ASSISTANCE IN LEGAL PROCEEDINGS**
   1. The Provider must co-operate fully with the Customer in connection with any legal proceedings, Ombudsman inquiries, public inquiry, tribunal or arbitration in which the Customer may become involved or any relevant disciplinary hearing internal to the Customer arising out of the provision of the Service (together called “Proceedings”). This includes providing documentation and statements from Staff and giving evidence in Proceedings.
   2. Where the Provider or any of the Provider’s Staff become aware of anything which might cause an Ombudsman’s enquiry, claim or legal proceedings in connection with the Service or the Call-Off Contract it must notify the Authorised Officer immediately in writing. Such notification must include all relevant information to enable the Authorised Officer to investigate the matter fully.
   3. Any costs which the Customer incur as a result of failure by the Provider to comply with the obligations in this Condition 22 are recoverable by the Customer (as appropriate) from the Provider.
9. **JOINT AND SEVERAL LIABILITY**
   1. Where the Provider is more than one person, those persons shall be jointly and severally liable under the provisions of this Call-Off Contract.
10. **FORCE MAJEURE** 
    1. In the event of a Force Majeure (which shall include acts of God, acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Provider and are such that the Provider with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Services, the duty of the Provider to perform the Services shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Provider in respect of such suspension and any such sum already paid in respect of any part of the Services not yet performed shall be held to the credit of the Council and returned to the Council.
    2. For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises equipment, materials, consumables and/or staff or similar matters, which a prudent and diligent Provider could have avoided with the application of foresight, are not to be considered as events of Force Majeure.
    3. If the period of suspension under sub Condition 24.1 above lasts for longer than one month either party may serve upon the other one month’s written notice of termination of the Call-Off Contract. Unless the Services have been resumed before the expiration of such notice, the Call-Off Contract shall terminate in accordance with such notice.
11. **INTELLECTUAL PROPERTY RIGHTS**
    1. The Provider warrants that in the performance of this Call-Off Contract it will not infringe any copyright, patent, registered design, design rights or trade mark or other intellectual property rights of any third party.
    2. The Provider must fully indemnify the Customer on demand against all losses, action, claims, proceedings, expenses, costs and damages of whatsoever nature arising out of the breach of the warranty in this Condition 24.
    3. The Provider must defend, at its expense, any claim or action brought against the Customer alleging that there has been, in connection with the delivery of the Service, any infringement of any copyright, patent, registered design, design right or trademark or other intellectual property right and must pay all costs and damages.
    4. Copyright in the Contract Documents vests so far as it lawfully can in the Customer but the Provider may obtain or make at its own expense any further copies required for use by the Provider in the provision of the Service.
    5. Where copyright in any document related to the provision of the Service is vested in the Provider or any agent or sub-contractor, the Customer have the unrestricted right to use such documents.

**EXECUTED AS A DEED** by or on behalf of the Parties on the date which first appears in the Call-Off Contract

|  |  |  |
| --- | --- | --- |
| **THE COMMON SEAL of** [INSERT] was hereunto affixed in  the presence of:-  By Order  **[ of ]** | )  )  )  ) |  |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by  for and on behalf of the Provider  (Director/Company Secretary) | )  )  ) |  |
| **EXECUTED** by  for and on behalf of the Provider  (Director) | )  )  ) |  |

SCHEDULE 3 – COMMERCIALLY SENSITIVE INFORMATION

SCHEDULE 4 – TENDER DOCUMENTS

SCHEDULE 5 – lots

(Information to be provided on the 2 lots based on geographical boundaries from ITT)

* 1. The Framework will consist of two Lots, based on geographical boundaries:

• Lot 1 – The Western boundary, namely Sutton and Croydon. The Lot would be awarded to a single Service Provider

• Lot 2 – The Eastern boundary, namely Bromley and Bexley. The Lot would be awarded to a single Service Provider

SCHEDULE 6 – processing, personal data and data subjects

1. The Provider shall comply with any further written instructions with respect to processing by the Council.

2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| Description | Details |
| Subject matter of the processing | [This should be a high level, short description of what the processing is about i.e. its subject matter] |
| Duration of the processing | [Clearly set out the duration of the processing including dates] |
| Nature and purposes of the processing | [Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc] |
| Type of Personal Data | [Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc] |
| Categories of Data Subject | [Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc] |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | [Describe how long the data will be retained for, how it be returned or destroyed] |