



**West
Northamptonshire
Council**

DATED:

WEST NORTHAMPTONSHIRE COUNCIL

and

[SERVICE PROVIDER]

OPEN FRAMEWORK AGREEMENT

FOR THE PROVISION OF

CLIENT ASSISTED PASSENGER TRANSPORT SERVICES

DRAFT TERMS AND CONDITIONS. THE COUNCIL RESERVES THE RIGHT TO FINE TUNE THIS AGREEMENT AND THE ATTACHED SCHEDULES (TO REFLECT ALL CLARIFICATIONS AGREED DURING THE TENDER PROCESS) BEFORE CONTRACT AWARD PROVIDING THAT SUCH FINE TUNING DOES NOT AMOUNT TO A MATERIAL CHANGE AND DOES NOT BREACH THE PROCUREMENT ACT 2023

IKEN Reference: 34248
West Northamptonshire Council
One Angel Square
Angel Street
Northampton
NN1 1ED

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This **Framework Agreement** is made the _____ day of _____ 2026

BETWEEN:

- (1) **WEST NORTHAMPTONSHIRE COUNCIL** of One Angel Square, Angel Street, Northampton NN1 1ED (the “**Council**”); and
- (2) **[NAME OF SERVICE PROVIDER]** Company No. **[INSERT]**) whose registered office is at **[ADDRESS OF SERVICE PROVIDER]** (the “**Service Provider**”)

each being referred to as a “**party**” and together “the parties”.

BACKGROUND

The Council is a local authority as defined by section 270 of the Local Government Act 1972 and has a duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

- (A) The Council sought proposals for the provision of **CLIENT ASSISTED PASSENGER TRANSPORT SERVICES** (the “**Services**”) by a tender notice dated **[insert date]** on the UK e-notification **CENTRAL DIGITAL PLATFORM (CDP)**.
- (B) On the basis of the Service Provider’s Tender, the Council selected the Service Provider (amongst others) to enter into a Framework Agreement to provide Services under one of the Service Provider Lots on a call-off tender basis, in accordance with this Framework Agreement.
- (C) This Framework Agreement sets out the procedure that will be followed for any Services which may be required by the Council during the Framework Term and the main terms and conditions for any Call-Off Contract which the Council may conclude and the obligations of the Service Provider under this Framework Agreement.
- (D) It is the parties’ intention that there will be no obligation for the Council to award any Call-Off Contract under this Framework Agreement during the Framework Term.

IT IS AGREED as follows:

1) PART 1: GENERAL

INTRODUCTION

This Agreement:

- 0.1 governs the management of the Framework Agreement;
- 0.2 governs the relationship between the Council, other Contracting Bodies and the Service Provider in respect of the commissioning and award of Call-off Contracts by the Council and other Contracting Bodies;
- 0.3 governs the provision of the Services by the Service Provider to the Council and other Contracting Bodies under the Call-Off Contracts awarded by the Council and other Contracting Bodies under the Framework Agreement;
- 0.4 sets out the standard terms and conditions under which specific Call-off Contracts can be made by the Council and other Contracting Bodies during the Framework Term. There will not be a separate set of terms and conditions for the Call-off Contracts awarded under the Framework Agreement. The relevant and applicable terms and conditions of the Framework Agreement (other than those terms which are expressly or specifically limited or applicable to the establishment or operation of the Framework Agreement), shall be incorporated into the Call-off Contract by reference and shall apply in addition to any specific requirements of the Council and other Contracting Bodies;

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause 1 apply in this Framework Agreement, unless the context otherwise requires:

“ADR Notice”	as defined in clause 34.1.3;
“ADR Period”	as defined in clause 34.3;
“Audit”	means an audit carried out pursuant to clause 18 (Records and Audit Access);
“Auditor”	means the National Audit Office or an auditor appointed by the Council as the context requires;
“Authorised Officer”	means the representative(s) of the Council appointed to manage the Framework Agreement (as the same may be replaced or delegate his functions from time to time);
“Call-off Contract”	means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of the Services made between the Council and other Contracting Bodies and the Service Provider following the procedure set out in the Platform which includes the Call-Off Terms and such Schedules as are referred to in the Call-off Terms and / or are expressly or impliedly incorporated in them.

Call-off Contract Price	means price of the Call-off Contract, which is set through the Call-off Competition;
“Call-off Competition”	means a tendering process carried out in relation to the award of a Call-off Contract pursuant to this Framework Agreement and “ Call-off Competitions ” shall be interpreted accordingly;
“Call-off Competition Award Criteria”	means the award criteria to be applied for Call-off Competitions determined in accordance with Schedule 4) (Call-off Competition Award Criteria) and to be set out in the ITCCC;
“Call-off Competition Tender”	means a tender submission submitted by the Service Provider in response to an ITCCC;
“Call-off Specification”	means the Council’s detailed description of its Services Requirements for the relevant Call-off Contract, as published with the ITCCC;
“Call-off Terms”	means the terms on which the Service Provider shall provide the ordered Services to the Council and other Contracting Bodies which, for the avoidance of doubt, shall automatically be bound into the Call-off Contract upon acceptance by the Service Provider of same on the Platform;
“CDP Notice”	means the tender notice [Insert reference and date] published on the Central Digital Platform;
“CEDR”	means the Centre for Effective Dispute Resolution;
“Change Authorisation Form”	as defined in paragraph 2.5 of Schedule 6) (Framework Variation Procedure);
“Change of Control”	means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
“Complaint”	means any formal complaint raised by the Council or other Contracting Bodies in relation to the performance under this Framework Agreement or any Call-off Contract in accordance with clause 32 (Complaints Handling and Resolution);

“Confidential Information”	means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this Framework Agreement and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“Contracting Authority”	means any contracting authority as defined in the PA 23 including the Council;
“Contract Management Process”	means the contract management process set out in the Portal;
“Council Data”	means: <ul style="list-style-type: none"> a) the data, case management information, text, drawings, diagrams, documents, records, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are: <ul style="list-style-type: none"> i. supplied or communicated to the Service Provider by or on behalf of the Council; ii. inputted into the Council IT systems or the Service Providers IT system by the Council or the Council’s Representatives; or iii. which the Service Provider is required to access, generate, process, store or transmit pursuant to this Framework Agreement, whether on the Council IT systems or the Service Providers IT system; or b) any Personal Data for which the Council is the Data Controller;
“Council’s e-Invoicing System”	means the invoicing system as may be notified by the Council to the Service Provider from time to time in writing;

“Customer(s)”	means the Council and any other contracting authority (as defined in regulation 3 of the Regulations) and as described in the Invitation to Tender on the UK e-notification CENTRAL DIGITAL PLATFORM (CDP);
“Data Controller”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“Data Processor”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“Data Protection Legislation”	means the Privacy and Electronic Communications (EC Directive) 2003, the Investigatory Powers Act 2016, the Investigatory Powers (Interception of Businesses etc for Monitoring and Record-keeping Purposes) Regulations 2018, the Data Protection Act 2018 and the UK GDPR and any legislation implemented in connection with the UK GDPR and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including as where applicable the guidance and codes of practice issued by the Information Commissioner;
“Data Subject”	shall have the meaning as set out in the Data Protection Legislation;
“Default”	means any breach of the obligations of the relevant Party under this Framework Agreement (and/or, where applicable, a Call-off Contract) (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject matter of this Framework Agreement (and/or, where applicable, the Call-off Contract) and in respect of which such Party is liable to the other;
“Direct Award”	as defined in clause 5.2
“Dispute”	as defined in clause 34.1;

“Dispute Notice”	as defined in clause 34.1.1;
“EIR”	means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and / or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such legislation;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such legislation;
“Force Majeure Event”	<p>means any circumstance not within a party’s reasonable control and wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided, including without limitation:</p> <ul style="list-style-type: none"> (a) acts of God, natural flood, drought, exceptionally adverse weather conditions, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of all diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
“Framework”	<p>(f) collapse of buildings, fire, explosion or accident.</p> <p>means a contract between a Contracting Authority and one or more service providers that provides for the future award of Call-off contracts.</p>

“Framework Agreement”	means the overarching arrangement whereby the Council has appointed Framework Service Providers to provide the Framework Services to the Council. This Framework Agreement includes all the schedules thereto;
“Framework Change”	as defined in clause 45.1;
“Framework Commencement Date”	means [INSERT DATE];
“Framework Service Provider”	means the Service Provider and any other service providers appointed by the Council as a framework provider for the relevant Lot under this Framework Agreement;
“Framework Services”	means any and all of the services to be provided under this Framework Agreement as more particularly described in the Specification;
“Framework Term”	as defined in clause 2.1;
“Framework Variation Procedure”	means the procedure set out in Schedule 6) (Framework Variation Procedure);
“Framework Year”	means each consecutive period of twelve (12) Months during the Framework Term commencing on the Framework Commencement Date;
“GDPR”	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulations), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (see section 205(4));

“Good Industry Practice”	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Service Provider under the same or similar circumstances at the relevant time for such exercise;
“Guidance”	means any guidance issued or updated by the UK government from time to time in relation to the PA 23;
“Holding Company”	shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;
“Information”	has the meaning given under section 84 of the FOIA;
“Information Commissioner’s Office”	means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority or any successor or replacement body from time to time;

“Insolvency Event”

in relation to the Service Provider, means:

- (a) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);
- (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged with seven (7) days) upon the whole or any material part of the Service Provider’s assets;
- (c) where a court makes an order that the Service Provider be wound up or a resolution for a voluntary winding up of the Service Provider is passed;
- (d) the Service Provider ceasing or threatening to cease carrying on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 of the Insolvency Act 1986;
- (e) the Service Provider, being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors;

“Intellectual Property Rights”

means any and all patents, trade marks, service marks copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any good will and accrued rights of action;

“ITCCC”	means an invitation to Call-off Competition issued by the Council via the Sproc.net Portal pursuant to this Framework Agreement;
“ITT”	means the invitation to tender relating to the establishment of the Framework;
“Law”	means any applicable statute or any delegated or subordinate legislation, any duly applicable guidance, code of practice, direction, judgment or determination with which the Customer is bound to comply including the Customer’s rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time;
“Lots”	means the Framework Services divided into lots as referred to in the CDP Notice;
“Management Information”	means the Management Information set out on the Platform;
“Mandatory Policies”	Means policies required by the Customer by Law;
“Month”	means a calendar month and the term “Monthly” shall be interpreted accordingly;
“Necessary Consents”	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including without limitation all planning permissions and waste management licences;
“Notice of Variation”	as defined in paragraph 2.2 of Schedule 6) (Framework Variation Procedure);
“Order”	means an order for Services sent by the Council to the Service Provider in accordance with the Call-off Order Procedure;
"Other Contracting Body" and "Other Contracting Bodies"	means any other contracting authority or authorities where plural, which exist or are established or otherwise exercise some or all of their functions as

permitted, to access the contract as listed in the Invitation to Tender;

“Parent Company” means an ultimate “holding company” as defined in section 1159 and Schedule 6 of the Companies Act 2006;

“Party” means the Customer and / or the Service Provider;

“Performance Improvement Plan” as defined in clause 30.2;

“Personal Data” shall have the same meaning as set out in the Data Protection Legislation in force from time to time;

“Platform” means the proprietary web-based end-to-end procurement, transaction and management platform, via www.sproc.net, or any other similar website notified to the Service Provider by the Council to manage the Call-off Contract Award process under the Framework;

“PA 23” means Procurement Act 2023;

“Prohibited Act”

the following shall constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under the Modern Slavery Act;
 - (iii) under legislation or common law concerning fraudulent acts;
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council;
- (d) any activity, practice or conduct which would constitute one of the offences listed under subclause (c) above, if such activity, practice or conduct had been carried out in the UK; and/or
- (e) as defined in clause 14.1;

“Regulatory Bodies”

means government Departments and agencies or any other regulatory Council or body (other than the Council including any health and safety enforcement agency), with power to regulate the Services and their respective successors and substitutes and "Regulatory Body" shall be construed accordingly;

“Relevant Employees”	means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider by virtue of the application of TUPE;
“Requests for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government Information, the FOIA or the EIR relating to this Framework Agreement and “Requests for Information” shall be construed accordingly;
“Required Insurances”	as defined in clause 33.1;
“Replacement Services”	means services that are identical or substantially similar to any of the Services to be provided by the Service Provider, which the Customer receives from a Replacement Service Provider who has already been admitted to the Framework, following the termination or expiry of any Call-off Contract Service Agreement with the Service Provider;
“Replacement Service Provider”	means the Service Provider of Replacement Services appointed by the Council from time to time on expiry or termination of any and all Call-off Contracts;
“Route Schedule”	means the route schedule detailed in the Call-off Contract;
“Service Provider’s Tender”	means the tender submitted by the Service Provider on the Platform;
“Services Requirements”	means the elements of the Framework Services required by the Council for the particular Call-off, as described in the Call-off Specification;
“Service Transfer Date”	means the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-Contractor to the Council or any Replacement Service Provider;
“Specification”	means the specification as set out in Schedule 1), and “Specification” shall be interpreted accordingly;

“Staff” means all persons employed by the Service Provider together with the Service Provider’s servants, agents, suppliers and Sub-Contractors in the performance of its obligations under this Framework Agreement or any Call-off Contract;

“Sub-Contract” means any sub-contract entered into by the Service Provider or by any Sub-Contractor for the purpose of the performance of any obligation on the part of the Service Provider under this Framework Agreement or any Call-Off Contract;

“Sub-Contractor” means the contractors or service providers engaged by the Service Provider to provide goods, services or works to, for or on behalf of the Service Provider for the purposes of providing the services to the Customer under this Framework Agreement or any Call-Off Contract;

“Suspension Notice” as defined in clause 30.1;

“TUPE” means the Transfer or Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended;

“Working Day(s)” means Monday to Friday inclusive of each week, excluding Christmas Day, Good Friday and Bank Holidays in England;

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

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

1.2.2 words importing the masculine include the feminine and the neuter and vice versa;

1.2.3 the words ‘include’, ‘includes’ ‘including’ ‘for example’ and ‘in particular’ and words of similar effect shall be construed as if they were immediately followed by the words ‘without limitation’;

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

- 1.2.5 reference to any statutory provision, enactment, order, regulation of other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time and shall (unless the reference expressly states otherwise) include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- 1.2.8 references in this Framework Agreement to any clause, sub-clause or Schedule without further designation shall be construed as a reference to the clause, sub-clause or Schedule (as applicable) to this Framework Agreement so numbered;
- 1.2.9 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;
- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.11 time shall, during the summertime be British summer time but otherwise Greenwich mean time;
- 1.2.12 a reference to writing or written includes emails; and
- 1.2.13 in the event and to the extent only of any conflict between the clauses of this Framework Agreement and any of the Schedules, the clauses shall prevail over the Schedules.
- 1.3 Any decision, act or thing which the Council is required or authorised to take or do under this Framework Agreement may be taken or done by the Authorised Officer or any person authorised, either generally or specially, by the Council to take or do that decision, act or thing, provided that upon receipt of a written request the Council shall inform the Service Provider of the name of any person so authorised.

2) PART 2: FRAMEWORK ARRANGEMENTS AND CALL-OFF AWARD PROCEDURE

2. COMMENCEMENT AND DURATION

- 2.1 This Framework Agreement shall commence on the Framework Commencement Date and shall remain in force for a period of 4 years from the Framework Commencement Date (expiring on [insert date]) (the “Initial Term”) with an option to extend for any period or periods of time, up to 4 years (the “Framework Term”), unless terminated earlier in accordance with its terms.

- 2.2 The successive Frameworks shall each be on substantially the same terms and conditions as this Framework Agreement (including the Call-off Contract Prices).
- 2.3 For the avoidance of doubt, the Council may at its absolute discretion choose to issue invitations to tender on more than one occasion during the first three years following the award date of the first Framework and on more than one occasion during each successive period of five years following the award date of the second Framework.
- 2.4 Where the Council chooses to issue invitations to tender in accordance with clause 2.3, the Council may introduce additional Lots or additional Supply Categories, where there is a genuine need for materially different selection criteria, service requirements, or award methodology (for example, enhanced/complex needs transport). Any such changes will be advertised and included in the updated tender documentation at that time. Any such changes will be relevant and aligned with the Framework Services to be provided by the Service Provider to Customers.
- 2.5 The Service Provider shall not be entitled to increase the Call-off Contract Prices without the prior written agreement of the Council in accordance with the Framework Variation Procedure.
- 2.6 This clause 2 is with reference to s49 PA 23.

3. SCOPE OF THIS FRAMEWORK AGREEMENT

- 3.1 The parties agree and acknowledge that that the Council enters into this Framework for itself and for the benefit of Other Contracting Bodies.
- 3.2 This Framework Agreement governs the relationship between the Council and the Service Provider in respect of the provision of the Framework Services by the Service Provider to Customers.
- 3.3 The Council appoints the Service Provider as a Framework Service Provider and the Service Provider shall be eligible to receive Orders for such Services from Customers during the Framework Term.
- 3.4 Customers may at their absolute discretion and from time to time order Services from the Service Provider in accordance with the ordering procedure set out in clause 5 during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with PA 23 and the ordering procedure in clause 5. If there is a conflict between clause 3 and PA 23, PA 23 shall take precedence.
- 3.5 In addition to the specific Services expressly required to be provided to the Council pursuant to this Framework Agreement, any of the Other Contracting Bodies, with the prior written consent of the Council (which consent the Council may in its absolute discretion refuse), may require the provision by the Service Provider of any of the Services under this Framework Agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in clause 3.6.
- 3.6 If and to the extent that any such additional Services under this Framework Agreement are required to be provided by the Service Provider to any Other Contracting Body:

- 3.6.1 each and every such Other Contracting Body shall enter into a specific contract with the Service Provider for such additional Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this Framework Agreement;
- 3.6.2 any non-substantial amendments to the terms and conditions in this Framework Agreement agreed between the Service Provider and the Other Contracting Body shall be clearly set out in such specific contract;
- 3.6.3 in order to enter into a specific contract with the Service Provider any of the Other Contracting Bodies may, in accordance with relevant procurement rules under PA 23, consult the Service Provider in writing requesting the Service Provider to supplement its Tender as may be necessary.
- 3.7 If and to the extent that any Services under this Framework Agreement are required, each and every Customer shall:
 - 3.7.1 enter into a Call-off Contract with the Service Provider for these Services materially in accordance with the terms of this Framework Agreement; and
 - 3.7.2 comply with the ordering procedure in clause 5.
- 3.8 Call-off Contracts can extend beyond the Framework Term provided that it is a 'typical call off' and the purpose is not to distort competition. Call-off contracts can therefore continue after the relevant framework agreement has expired.
- 3.9 The Service Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council and that Customers at all times are entitled to enter into other contracts and arrangements with other service providers for the provision of any or all services which are the same as or similar to the Framework Services.
- 3.10 The Council does not guarantee that any Other Contracting Bodies will require the Service Provider to provide any additional Services under this Framework Agreement or otherwise and nothing in this Framework Agreement shall give the Service Provider right to receive such requirement for additional Services.
- 3.11 The Council shall not in any circumstances be liable to the Service Provider or any Other Contracting Bodies for payment or otherwise in respect of any Services provided by the Service Provider to any Other Contracting Bodies.
- 3.12 It shall be the responsibility of any Other Contracting Bodies to satisfy themselves that entering into any Call-off Contract with the Service Provider under this Framework Agreement does not breach the PA 23 or any other relevant public procurement legislation and/or Guidance.
- 3.13 All such payments shall be made within 30 days of the end of each month or quarter (as applicable) in accordance with such payments arrangements as the Council may specify from time to time.

4. EXTENSION OF AGREEMENT TO OTHER CONTRACTING BODIES

- 4.1 The parties agree and acknowledge that the Council enters into this Framework Agreement for itself and for the benefit of the Other Contracting Bodies. Accordingly, in addition to the specific Services expressly required to be provided to the Council under this Framework Agreement, the Council may require the provision by the Service Provider of any of the Services to any Other Contracting Bodies under the terms of this Framework Agreement and subject to the additional conditions set out below.
- 4.2 If and to the extent that any Services must be provided by the Service Provider to any Other Contracting Bodies, each and every Other Contracting Body may, with the prior written consent of the Council (which the Council may refuse in its absolute discretion) and in accordance with relevant public procurement regulations, consult the Service Provider in writing, requesting the Service Provider to supplement its Tender as may be necessary regarding the specific requirements of that particular Other Contracting Body.
- 4.3 If the parties and the Other Contracting Bodies agree to proceed with a request for provision of Services under clauses 4.1 and 4.2, the Service Provider shall provide an analysis of the impact that the agreed supplement will have on the existing provision of the Services to the Council within ten Working Days of the request (or another period as the parties may agree).
- 4.4 If, following receipt of the Service Provider's impact analysis under clause 4.3, the Council confirms in writing that it wants to proceed with its requirement for the provision of the Services to the Other Contracting Body, the parties shall implement any requested Services in accordance with the Framework Agreement Variation Procedure. The Service Provider shall not be required to enter into a separate contract with the Other Contracting Body.
- 4.5 As part of and consequent on successful implementation of the requested Services:
- 4.5.1 any additional charges for the requested Services shall be incorporated in the Pricing Matrices as specified in Schedule 1).
- 4.5.2 any Service Levels concerning the requested Services shall be incorporated in the service levels appended to the specification at Schedule 1);
- 4.5.3 all details of the requested Services as agreed and implemented together with any non-substantial amendments to the terms and conditions in this Framework Agreement agreed for the requested Services shall be clearly set out in a specific additional schedule. The schedule shall be deemed to have been duly incorporated into and as forming part of this Framework Agreement; and
- 4.5.4 the relevant requested Services implemented in accordance with clause 4.1 and 4.2, shall become part of the Services for the purpose of all other sections, clauses, obligations and rights contained within this Framework Agreement.
- 4.6 The Council does not guarantee that any Services will, under the aforementioned clauses, or otherwise, be required to be provided by the Service Provider to any of the Other Contracting Bodies under this Framework Agreement and nothing in this Framework Agreement shall give the Service Provider a right to receive this requirement for providing Services.

4.7 It shall be the responsibility of any Other Contracting Body that requires the provision of any Services to satisfy itself that it would not, in doing so, be in breach the PA 23 or any other relevant public procurement legislation and/or Guidance.

5. CALL-OFF ORDER PROCEDURE

5.1 If the Customer decides to source Framework Services through this Framework Agreement then, it may:

5.1.1 award a Call-off Contract to a Framework Provider who has been admitted to the Framework (Stage 1) in accordance with the terms laid down in this Framework Agreement without re-opening competition (“**Direct Award**”); or

5.1.2 award a Call-Off Contract to a Framework Provider who has been admitted the Framework (Stage 1), following a Call-off Competition conducted in accordance with the requirements of clause 5.3 (Award of Services Following Call-off Competition);

5.2 Award of Standard Services by Direct Award

5.2.1 The Customer reserves the right to contact a single Framework Provider, or a specified selection of Framework Providers and to make a Direct Award in the following circumstances:

5.2.1.1 Where there has been no appropriate offer received;

5.2.1.2 Where the Services are needed urgently/immediately;

5.2.1.3 When the Services are needed in out of core office hours (5pm-9am overnight, Weekends or Bank Holidays);

5.2.1.4 Where the Services are needed when a Tribunal or appeal process is in progress.

5.2.1.5 Where the Services required are out of the county;

5.2.1.6 When the Customer wants to add a service user to an existing route;

5.3 Award of Services following Call-off Competition / Specific ‘Requirements’ Process via Sproc.net

5.3.1 When a requirement has been identified by the Customer, all Framework Providers on the Open Framework (in the relevant Lot(s) and service category) will see a published opportunity which can be viewed via Sproc.net. This will contain all the requirements and specific details for the Framework Providers to respond to within the specified time frame.

5.3.2 All responses from the Framework Providers will be shared with the West Northamptonshire School Travel and Assessment Team and evaluated against the published criteria. Full details of the process is set out in the Specification and in the Platform.

5.3.3 Once a suitable Framework Provider has been identified as a result of a 'Requirements' Process, a Service Agreement will be sent via Sproc.net to the Framework Provider. The Call-Off Contract shall be formed upon electronic acceptance of the Service Agreement via the Platform and shall be binding on both parties from that point.

5.4 Responsibility for awards

5.4.1 The Service Provider acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:

5.4.1.1 the conduct of Other Contracting Bodies in relation to the Framework Agreement; or

5.4.1.2 the performance or non-performance of any Contracts between the Service Provider and Other Contracting Bodies entered into pursuant to the Framework Agreement.

5.5 Form of Order

5.5.1 Subject to clauses 5.1 to 5.3 above, the Customer may place an Order with the Service Provider by following the process set out on the Platform.

5.6 Formation of the Call-off Contract

5.6.1 For the avoidance of doubt, a Call Off Contract shall be formed following the process outlined in clauses 5.1 to 5.3 above and as contained in the Platform.

5.6.2 The Service Provider warrants that all Call-off Competition Tenders submitted by the Service Provider shall be made in good faith and that the Service Provider shall not fix or adjust the amount of its Call-off Competition Tender by or in accordance with any agreement or arrangement with any other person. The Service Provider certifies that it will not enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from making a Call-off Competition Tender or as to the amount of any Call-off Competition Tender to be submitted.

6. CONTRACT PERFORMANCE PRECEDENCE OF DOCUMENTS

6.1 The Service Provider shall perform all its obligations under this Framework Agreement and all Call-off Contracts entered into with the Customer:

6.1.1 in accordance with:

6.1.1.1 the requirements of this Framework Agreement;

6.1.1.2 Passenger Transport Services Open Framework – Service Specification;

6.1.1.3 Good Industry Practice; and

6.1.1.4 all applicable Laws;

6.1.2 with appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

6.1.3 in the case of Call-off Contracts, in accordance with the terms and conditions of the respective Call-off Contract.

6.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and any Call-off Contract (including any documents thereof), such conflict or inconsistency shall be resolved according to the following order of priority:

6.2.1 the terms of this Framework Agreement;

6.2.2 the Call-Off Terms;

6.2.3 any other document referred to in the Call-off Terms;

6.2.4 the Schedules to this Framework Agreement (excluding the (Service Provider's Tender);

6.2.5 Service Provider's Tender and the Service Provider's Call-off Competition Tender,

save to the extent that the standards or levels of service set out in the Service Provider's Tender and / or the Service Provider's Call-off Competition Tender exceed those set out in Schedule 1), (Specification) and / or the Call-off Specification; in which case, such higher standards or levels of performance set out in the Service Provider's Tender and / or the Service Provider's Call-off Competition Tender (as applicable) shall prevail (to the extent necessary to achieve the performance of such higher standards or levels of performance only).

3) PART 3: THE SERVICE PROVIDER'S GENERAL FRAMEWORK OBLIGATIONS

7. INDEMNITIES

7.1 The Service Provider shall indemnify and hold harmless the Customer and keep the Customer indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:

7.1.1 any claim by a third party for damage occurring as a result of the Service Provider's performance of the Services;

7.1.2 any breach of its obligations as set out in Part 5 (Staff) of the Framework Agreement; or

7.1.3 any breach of Law or Necessary Consents, to the extent that any such loss, claim or liability is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or Law by the Customer.

8. WARRANTIES AND REPRESENTATIONS

- 8.1 The Service Provider warrants, represents and undertakes to the Council and to each of the Other Contracting Bodies that:
- 8.1.1 it has full capacity and authority, and all necessary consents (including, where its procedures so require, the consent of its Parent Company), to enter into and to perform its obligations under this Framework Agreement;
 - 8.1.2 this Framework Agreement is executed by a duly authorised representative of the Service Provider;
 - 8.1.3 in entering into this Framework Agreement and any Call-off Contract it has not committed any Prohibited Act;
 - 8.1.4 as at the Framework Commencement Date, all information, statements, warranties and representations contained in any other document which resulted in the appointment of the Service Provider onto the Framework are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 8.1.5 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 / or any Call-off Contract thereunder;
 - 8.1.6 it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this Framework Agreement and / or any Call-off Contract thereunder;
 - 8.1.7 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the Service 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 Service Provider's assets or revenue; and
 - 8.1.8 it has not in any other way breached the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972;
 - 8.1.9 it is not an excluded or an excludable supplier under the grounds specified section 57 PA 23.
- 8.2 Each time a Call-off Contract is entered into, the warranties, representations and undertakings in this clause 8 (Warranties, Representations and Guarantees) shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time that they are deemed to be repeated.

- 8.3 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Service Provider.
- 8.4 The Service Provider acknowledges and agrees that:
- 8.4.1 the warranties, representations and undertakings contained in this Framework Agreement are material and are designed to induce the Council into appointing the Service Provider to the Framework and to induce the Customer to enter into any and all Call-off Contracts thereunder;
- 8.4.2 the Council has been induced into appointing the Service Provider to the Framework and in doing so has relied upon the warranties, representations and undertakings contained in this Framework Agreement;
- 8.5 The Service Provider warrants, represents and undertakes for the duration of the Framework Term that:
- 8.5.1 all Staff used to provide the Framework Services will be vetted in accordance with Good Industry Practice and, where applicable, the Council's DBS Checks for Contractors policy (as the same may be updated from time to time);
- 8.5.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Service Provider's obligations under this Framework Agreement; and
- 8.5.3 it shall at all times comply with Law in carrying out its obligations under this Framework Agreement.

9. DUE DILIGENCE AND RELIANCE ON REPRESENTATIONS

- 9.1 The Service Provider shall be deemed to have satisfied itself before submitting its tender for the Services, as to the accuracy and sufficiency of any information provided by the Customer. The Service Provider agrees that it has ascertained for itself the accuracy of the information and shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Service Provider's Tender. The Service Provider shall be deemed to have satisfied itself as to the nature and extent of the risks assumed by it under the Framework Agreement including the accuracy of the rates and prices stated in the Call-off Contract(s).
- 9.2 Each of the parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the Framework Agreement save for any such representation, warranty or undertaking expressly set out in this Framework Agreement. This clause 9 shall not apply so as to restrict the liability of any party hereunder in respect of any fraud or fraudulent misrepresentation.
- 9.3 Subject to clause 9.4, the Service Provider acknowledges that the Customer and its Representatives shall not be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in

any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to this Framework Agreement or not).

- 9.4 Clause 9.3 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Framework Agreement which was induced by fraud, for which the remedies available shall be all those available under Law.

10. LIMITATION OF LIABILITY

- 10.1 Subject to clauses 10.3.1 and 10.4, neither party shall be liable to the other party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with this Framework Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.

- 10.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Framework Agreement.

- 10.3 Subject to clause 10.4, the Service Provider's total aggregate liability:

- 10.3.1 is unlimited in respect of:

- 10.3.1.1 the indemnities in clause 20 (Data Protection), clause 21 (Data Processor Obligations; clause 22 (Intellectual Property); and Schedule 8) (Staff Transfer and Pensions);
- 10.3.1.2 any breach of as a result of a Prohibited Act;
- 10.3.1.3 the Service Provider's wilful default.

- 10.4 Notwithstanding any other provision of this Framework Agreement neither party limits or excludes its liability for:

- 10.4.1 fraud or fraudulent misrepresentation;

- 10.4.2 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;

- 10.4.3 breach of any obligation as to title implied by statute; or

- 10.4.4 any other act or omission, liability for which may not be limited under any applicable Law.

- 10.5 Nothing in this Framework Agreement shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of Framework Agreement or by negligence on the part of the Customer or the Customer's employees, servants or agents.

11. SERVICE PRE-REQUISITES

11.1 The Service Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-off Contract.

12. REPORTING AND MEETINGS

12.1 The Council shall require the Service Provider to attend performance monitoring meetings, to assess the quality and progress of the Framework Services being provided as per the Contract Management Process set out on the Platform.

12.2 The Service Provider shall provide such information and reports to the Council in connection with its provision of Services under the Framework Agreement and any Call-off Contracts as the Council may reasonably request from time to time to enable the Council to monitor the Framework Agreement and any Contracts entered into with any Customer. Such information and reports shall be presented in such format as may be reasonably requested by the Council and shall be provided to the Council's Representative within 10 Working Days of any request made in accordance with this clause 12.2.

12.3 The Authorised Representatives shall meet in accordance with the details set out in Schedule 6) and the Service Provider shall, at each meeting, present its previously circulated Management Information.

12.4 The Council may share any information or reports supplied by the Service Provider with any of the Other Contracting Bodies.

12.5 The Authority may make changes to the nature of the Management Information that the Service Provider is required to supply and shall give the Service Provider ten (10) days written notice of any changes.

13. HEALTH AND SAFETY

13.1 The Service Provider shall comply and ensure its Staff comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 and all other health, safety and welfare requirements applicable to the Framework Services including those detailed in the relevant Specification.

14. CORRUPT GIFTS, FRAUD AND PROHIBITED ACTS

14.1 The Service Provider shall not (and shall procure that anyone acting on its behalf or to its knowledge shall not):

14.1.1 offer, give or agree to give to any employee, agent or representative of the Customer or any other person any gift or consideration at any time which could act as an as an inducement or reward:-

14.1.1.1 for doing or not doing any act in relation to the obtaining or performance of this Framework Agreement, any Call-off Contract or any other contract with the Customer; or

14.1.1.2 for showing or not showing favour or disfavour to any person in relation to this Framework Agreement, any Call-off Contract or any other contract with the Customer;

- 14.1.2 enter into this Framework Agreement, any Call-off Contract or any other contract with the Customer in connection with which commission has been paid or has been agreed to be paid by the Service Provider (or anyone acting on its behalf or to its knowledge) unless (before such contract is made) particulars of any such commission have been disclosed in writing to the Customer;
- 14.1.3 fix or adjust the amount of the Call-off Prices and / or any Call-off Competition Tender by or in accordance with any agreement or arrangement with any other person;
- 14.1.4 communicate to any person other than the Customer the amount or approximate amount of the proposed Call-off Prices and / or Call-off Competition Tender prices (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or for insurance purposes);
- 14.1.5 enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender submitted for this Framework Agreement or a Call-off Competition;
- 14.1.6 commit any offence under:
 - 14.1.6.1 the Bribery Act 2010;
 - 14.1.6.2 section 117(2) of the Local Government Act 1972;
 - 14.1.6.3 legislation creating offences in respect of fraudulent acts;
 - 14.1.6.4 common law in respect of fraudulent acts;

in relation to this Framework Agreement, any Call-off Contract or any other contract with the Customer;

- 14.1.7 defraud or attempt to defraud or conspire to defraud the Customer, each of which shall be a **“Prohibited Act”**
- 14.2 The Service Provider shall promptly inform the Council of the occurrence of any such Prohibited Act or offence of which it becomes aware.
- 14.3 If the Service Provider or anyone acting on its behalf or to its knowledge (whether such person is a Service Provider Representative or a Council Representative) commits any Prohibited Act in relation to this Framework Agreement or any other agreement with the Council or in relation to any matter or activity pertaining to any public body in the United Kingdom, the Service Provider shall promptly inform the Council of the occurrence of such Prohibited Act and render all such assistance to the Council as the Council may reasonably require in investigating such acts.
- 14.4 The Service Provider agrees and confirms that the Council’s Chief Executive and Monitoring Officer Chief Internal Auditor and Director of Finance are authorised as persons to whom the Service Provider’s Representatives may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its Representatives making a protected disclosure (as defined by that Act) shall not for that reason be subjected to any detriment or disadvantage. The Service Provider further declares that any provision in an agreement purporting to preclude a member of its Staff from making a protected disclosure is void.

14.5 To the extent necessary, the Service Provider shall itself and shall procure that its Staff familiarise themselves with the Council's Counter Fraud Strategy and Framework, all of which are available and accessible from the Council's website or otherwise available from the Authorised Officer.

15. E-INVOICING

15.1 Service Providers must invoice (receipt for work done) in a timely manner. The Customer will treat any excessive delay (6 weeks or more) as a contract default which will incur administrative charges, and the Customer will withhold payments to Service Providers. The Customer will require evidence that all journeys claimed, that are older than six (6) weeks, have been undertaken and if satisfactory evidence cannot be provided, the Service Provider will not be permitted to claim for these journeys.

15.2 SProc act as the Council's payment agent for making payments to the Service Provider in respect of Charges that become payable. Self-Billing Invoices shall be payable in accordance with the terms of the Self Billing Agreement, by Adam Sproc.

16. FINANCIAL INFORMATION AND COMPLIANCE WITH SELECTION CRITERIA

16.1 The Service Provider shall, whenever so required by the Council, provide the Council with such financial information and data reasonably requested by the Council to enable the Council (for example but not limited to: proportionate Economic and Financial Standing checks at onboarding and/or Call-off stage):

16.1.1 to comply with the Code of Practice on Local Council Accounting in the United Kingdom 2018/19 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time);

16.1.2 examine, evaluate and be satisfied as to the Council's minimum standards of economic and financial standing, technical and professional ability and general standing required of the Service Provider with regard to the provision of the Framework Services;

16.1.3 to ensure the Service Provider's compliance with prevailing employment and minimum wage legislation.

17. SOCIAL VALUE

17.1 The Service Provider shall perform the Services in accordance with its Social Value commitments detailed in the Service Provider's Tender Response.

4) PART 4 – SERVICE PROVIDER'S INFORMATION OBLIGATIONS

18. RECORDS AND AUDIT ACCESS

18.1 The Service Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or any longer period as may be agreed

between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Framework Services provided under it, the Call-off Contracts entered into and the amounts paid to the Service Provider by each Participating Authority thereunder.

- 18.2 The Service Provider shall keep the records referred to in clause 18.1 in accordance with Good Industry Practice.
- 18.3 The Service Provider shall afford the Council and / or the Auditor such access to such records and accounts as may be required from time to time.
- 18.4 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) on request during the Framework Term and for a period of six (6) years after expiry of the Framework Term to the Council (or relevant Participating Authority) and their internal and external Auditors.
- 18.5 The Council shall use reasonable endeavours to ensure that the conduct of any Audit does not unreasonably disrupt the Service Provider or delay the provision of the Framework Services pursuant to a Call-off Contract, save insofar as the Service Provider accepts and acknowledges that the conduct of an Audit carried out by the National Audit Office is outside of the control of the Council.
- 18.6 Subject to the Council's rights of confidentiality, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
 - 18.6.1 all information requested by the Auditor within the scope of the Audit;
 - 18.6.2 reasonable access to sites controlled by the Service Provider and to equipment used in the provision of the Framework Services; and
 - 18.6.3 access to the Service Provider's Staff.
- 18.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 18 (Records and Audit Access), unless the Audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Council's reasonable costs incurred in relation to the Audit.

19. CONFIDENTIALITY

- 19.1 Subject to clause 19.2 (Confidentiality), each Party shall:
 - 19.1.1 keep confidential the Confidential Information of the Parties and safeguard it accordingly;
 - 19.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent; and
 - 19.1.3 use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

- 19.2 Clause 19.1 shall not apply to any disclosure of information:
- 19.2.1 required by any applicable Law or to any disclosures required under the FOIA, the EIR or the Data Protection Legislation;
 - 19.2.2 where such disclosure is expressly permitted by the terms of this Framework Agreement;
 - 19.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 19.1;
 - 19.2.4 by the Council of any document to which it is a party and which the Parties have agreed contains no Confidential Information;
 - 19.2.5 to enable a determination to be made under clause 34 (Dispute Resolution);
 - 19.2.6 which is independently developed without access to the other party's Confidential Information; or
 - 19.2.7 by the Customer:
 - 19.2.7.1 to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the information;
 - 19.2.7.2 relating to this Framework Agreement and in respect of which the Service Provider has given its prior written consent to the disclosure;
 - 19.2.7.3 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce Gateway Review;
 - 19.2.7.4 for the purpose of the examination and certification of the Customer's accounts or any other examination pursuant to the Audit Commission Act 1998; or
 - 19.2.7.5 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 19.3 The Service Provider shall notify the Customer if it becomes aware of a breach of this clause 19 (Confidentiality).

20. DATA PROTECTION

- 20.1 Both parties shall, and the Service Provider shall procure that its Staff shall, comply with all applicable requirements of the Data Protection Legislation. This clause 20 (Data Protection) is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 20.2 The Service Provider shall perform its obligations under this Framework Agreement in such a way as to ensure that it does not cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 20.3 The Service Provider shall be liable for and shall indemnify (and keep indemnified) the Customer against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Customer which arise directly from a breach by the Service Provider of its obligations under the Data Protection

Legislation , including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Service Provider or its employees, servants, agents or Sub-Contractors.

20.4 The provisions of this clause shall apply during the Framework Term and indefinitely after its expiry or termination

21. DATA PROCESSOR OBLIGATIONS

21.1 With respect to the parties' rights and obligations under this Framework Agreement, the parties agree that the Customer is the Data Controller and that the Service Provider is the Data Processor. A description of the Personal Data processed by the Service Provider and the processing activities undertaken by the Service Provider is set out in Schedule 7) (Data Processing Activities).

21.2 In respect of Personal Data that the Service Provider processes on behalf of the Customer in connection with this Framework Agreement, the Service Provider shall and shall procure that its Representatives shall:

21.2.1 solely process the Personal Data for the purposes of fulfilling its obligations under this Framework Agreement and in compliance with the Customer's written instructions as set out in this Framework Agreement and as may be specified from time to time in writing by the Customer;

21.2.2 notify the Customer immediately if any instructions of the Customer relating to the processing of Personal Data are unlawful;

21.2.3 not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Customer;

21.2.4 comply with the Customer's instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Service Provider is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Service Provider shall inform the Customer in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;

21.2.5 undergo adequate training in the use, care, protection, and handling of Personal Data;

21.2.6 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data and ensure that all Staff used by the Service Provider to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;

21.2.7 ensure that none of the Service Provider's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;

21.2.8 not engage any Sub-Contractor to carry out any processing of Personal Data without the prior written consent of the Customer provided that notwithstanding any such consent the Service Provider shall

remain liable for compliance with all the requirements of this Framework Agreement including in relation to the processing of Personal Data;

- 21.2.9 ensure that obligations equivalent to the obligations set out in this clause 21 are included in all contracts between the Service Provider and permitted Sub-Contractors who will be processing Personal Data and who have been approved in accordance with clause 21.2.8;
- 21.2.10 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;
- 21.2.11 upon request provide a written description of the technical and organisational measures employed by the Service Provider pursuant to clause 21.2.10 (within the timescales required by the Customer) and if the Customer does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Customer (acting reasonably) to ensure compliance;
- 21.2.12 taking into account the nature of the data processing activities undertaken by the Service Provider, provide, at no cost to the Customer, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Customer to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):
 - 21.2.12.1 notifying the Customer within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;
 - 21.2.12.2 complying with the Customer's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Customer, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Customer;
- 21.2.13 maintain a record of the Service Provider's processing activities in accordance with the requirements of the Data Protection Legislation;
- 21.2.14 assist the Customer, at no cost to the Customer, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Service Provider and the information available to the Service Provider, including (without limitation):
 - 21.2.14.1 providing information and assistance upon request to enable the Customer to notify Data Security Breaches to the Information Commissioner's and/or to affected individuals and/or to any other regulators to whom the Customer is required to notify any Data Security Breaches; and

21.2.14.2 providing input into and carrying out Data Protection Impact Assessments in relation to the Service Provider's data processing activities;

21.2.15 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Service Provider in connection with this Framework Agreement meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;

21.2.16 notify the Customer immediately and in any event within twenty four (24) hours in writing if:

21.2.16.1 the Service Provider or any Sub-Contractor engaged by or on behalf of the Service Provider suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or

21.2.16.2 the Service Provider or any Sub-Contractor engaged by or on behalf of the Service Provider receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation,

and in each case the Service Provider shall provide full co-operation, information and assistance to the Customer in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Customer;

21.2.17 upon termination of this Framework Agreement, at the discretion of and at no cost to the Customer, delete securely or return all Personal Data to the Customer and delete all existing copies of the Personal Data unless and to the extent that the Service Provider is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Service Provider shall notify the Customer in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Service Provider, the Service Provider shall provide the Customer with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.

21.2.18 make available to the Customer at no cost to the Customer all information necessary to demonstrate compliance with the obligations set out in this clause 21 and, upon request, allow the Customer, the Information Commissioner's Office and its representatives access to the Service Provider's Premises, records and Staff for the purposes of assessing the Service Provider's compliance with its obligations under this clause 21; and

21.2.19 indemnify the Customer from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities of whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Customer and arising out of or in connection with any breach by the Service Provider or any Sub-Contractors of this clause 21.

21.3 The provisions of this clause 21 shall apply during the continuance of this Framework Agreement and indefinitely after its expiry or termination.

CUSTOMER DATA ON SERVICE PROVIDER'S IT SYSTEM(S)

21.4 The Service Provider shall:

- 21.4.1 take all reasonable precautions and use all reasonable endeavours to preserve the integrity of any Customer Data or other data which it stores and/or processes on behalf of the Customer and to prevent any corruption or loss of such data and to have in place an appropriate archiving and back-up policy;
- 21.4.2 follow its detailed archiving procedures for Customer Data as set out in its archiving and back-up policy, a copy of which is to be provided to the Customer and as such policy may be updated by the Service Provider from time to time, which shall include as a minimum, the Service Provider making a back-up copy of Customer Data at the intervals and following the process detailed in its archiving and back-up policy and recording the copy on media form which the Customer Data can be reloaded if there is any corruption or loss of the Customer Data;
- 21.4.3 in the event of any corruption of or loss or damage to the Customer Data, use all reasonable endeavours to restore the lost or damaged Customer Data, at its own expense, from the latest backup of such Customer Data maintained by the Service Provider in accordance with the archiving procedure described in its archiving and back-up policy or, where the Customer Data has not been restored by the Service Provider within [ten (10)] Working Days, at the Customer's option, promptly reimburse the Customer for any reasonable expenses it incurs in having the Customer Data restored by a third party;
- 21.4.4 be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by itself and any of its Sub-Contractors, including (but not limited to) any third parties sub-contracted by the Service Provider to perform services related to Customer Data maintenance and back-up; and
- 21.4.5 in providing the Services, have in place and comply with its privacy and security policy relating to the privacy and security of the Customer Data ,such policy to include measures equal to or broadly comparable with the relevant provisions of the Customer's Data Protection and Information Security Policy. The Service Provider shall provide a copy of its privacy and security policy to the Customer upon request and wherever such policy is updated by the Service Provider from time to time and shall take into account any comments the Customer has on such policy.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 Save as expressly granted under this Framework Agreement, neither the Customer nor the Service Provider shall acquire any right title or interest in any Intellectual Property Rights vested in or licensed to the other party prior to or independently of the performance by the relevant party of its obligations under this Framework Agreement.
- 22.2 In the absence of prior written agreement by the Customer to the contrary, all Intellectual Property Rights created by the Service Provider or any employee, agent or Sub-Contractor of the Service Provider:
 - 22.2.1 in the course of performing the Services; or

22.2.2 exclusively for the purpose of performing the Services, shall by virtue of this Framework Agreement be vested in the Customer on creation.

22.3 The Service Provider shall indemnify (and keep indemnified) the Customer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that such liabilities have resulted directly from the Customer's failure properly to observe its obligations under this clause 22.

23. FREEDOM OF INFORMATION AND TRANSPARENCY

23.1 The Service Provider acknowledges that the Council and Other Contracting Bodies where applicable are subject to the requirements of the FOIA and the EIR.

23.2 The Service Provider shall and shall procure that its Sub-contractors shall:

23.2.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its disclosure obligations under the FOIA and EIR (including responding to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable));

23.2.2 transfer to the Customer all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

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

23.2.4 not respond directly to a Request for Information unless expressly authorised to do so by the Customer.

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

23.4 The Service Provider acknowledges that, except for any information which is exempt from disclosure in accordance with the FOIA or the EIR, the text of this Framework Agreement (including the Schedules) is not Confidential Information.

23.5 Subject to the clause 23.3, the Service Provider hereby gives its consent for the Customer to publish this Framework Agreement (including the Schedules) in its entirety, including, from time to time, agreed changes to this Framework Agreement, to the general public in whatever form the Customer decides.

23.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

24. PUBLICITY AND BRANDING

24.1 Unless otherwise directed by the Customer, the Service Provider shall not:

24.1.1 make any press announcements or advertise this Framework Agreement in anyway; or

24.1.2 use the name or brand of the Customer in any promotion or marketing or announcement of Orders; without the prior written consent of the Customer.

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

24.3 The Service Provider shall not do anything or cause anything to be done which may damage the reputation of the Customer and / or bring the Customer into disrepute.

5) PART 5 – STAFF

25. STAFF

25.1 The Service Provider shall ensure that key Staff involved in the recruitment of Staff delivering contracts attend accredited Safer Recruitment training and that they are of suitable character and are appropriately qualified, trained and experienced in the area of work which they are to perform.

25.2 The Service Provider shall not employ, engage or use the service of any person who:

25.2.1 is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or Vulnerable Adults or any other person, in the provision of any part of the Services involving a Regulated Activity or access to or unsupervised contact with children or Vulnerable Adults; or

25.2.2 discloses that he or she has a Relevant Conviction, or who is found by the Service Provider to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (or any successor body) procedures or otherwise), in the provision of any part of the Services involving access to or processing of financial data, or access to or processing of sensitive personal data.

25.3 The Service Provider shall (and shall procure that the relevant Sub-Contractor shall) ensure that all Staff who, in providing the Services, will be engaged in the provision of Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any

successor body) including a check against the adults' barred list or the children's barred list, as appropriate. Service Providers must ensure that all Staff are registered on the Disclosure and Barring Service (DBS) Update Service.

25.4 The Service Provider warrants that at all times for the purposes of this Framework Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services:

25.4.1 has a Relevant Conviction; or

25.4.2 is barred from carrying out Regulated Activity.

25.5 The Service Provider shall immediately notify the Customer of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 25.5 have been met.

25.6 The Service Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service (or any successor body) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or Vulnerable Adults.

25.7 The Service Provider shall ensure that its Representatives:

25.7.1 are adequately supervised and informed of the aspects of this Framework Agreement applicable to them so that they can comply with this Framework Agreement;

25.7.2 where specifically identified to the Customer, will be assigned to provide the Services;

25.7.3 are appropriately attired for the duties they are undertaking including, (where necessary) wearing protective clothing and footwear;

25.7.4 on request, disclose their identity to the Customer or any third party;

25.7.5 other than as permitted by this Framework Agreement, do not solicit or act in such a manner as to induce payment for performance of the Services;

25.7.6 act in a courteous considerate manner and do not use foul or offensive language, bring offensive materials onto or consume intoxicating liquor or illegal drugs whilst on Customer Premises or providing the Services; and

25.7.7 do not bring animals or unauthorised persons onto Customer Premises except as expressly authorised by the Authorised Officer.

25.8 The Service Provider shall provide, maintain and permit access to records of its Representatives in accordance with this Framework Agreement.

- 25.9 The Authorised Officer may require the Service Provider, by notice in writing, to reprimand or remove from the provision of the Services any Representatives specified by such notice (including without limitation the Service Provider's Manager). Where required the Service Provider shall forthwith remove such Representatives from the provision of the Services and provide a replacement as appropriate to ensure that the Services are carried out in accordance with this Framework Agreement. Any Representatives removed from work under the provisions of this clause 25.9 may not be employed subsequently in the provision of the Services without the written consent of the Authorised Officer.
- 25.10 The Customer shall not be liable either to the Service Provider or to any Representatives in respect of any liability loss or damage occasioned by the operation of clause 25.9.

26. COMPLIANCE AND CHANGE IN LAWS

- 26.1 In performing its obligations under this Framework Agreement, the Service Provider shall at all times comply with:
- 26.1.1 all applicable Law;
- 26.1.2 the Customer's Mandatory Policies.

The Service Provider shall maintain such records as are necessary pursuant to the Laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Customer (or its authorised representative).

- 26.2 Without limiting the generality of the obligation under clause 26.1, the Service Provider shall (and shall procure that the Service Provider Staff shall) perform its obligations under this Framework Agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety. The Service Provider shall notify the Customer as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of this Framework Agreement. The Service Provider shall instruct the Service Provider staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 26.3 Without limiting the general obligation set out in clause 27.1, the Service Provider shall (and shall procure that the Service Provider Staff shall):
- 26.3.1 perform its obligations under this Framework Agreement (including those in relation to the Services) in accordance with:
- 26.3.1.1 all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 26.3.1.2 the Customer's equality and diversity policy as provided to the Service Provider from time to time;
 - 26.3.1.3 the Human Rights Act 1998 as if the Service Provider were a public body (as defined in the Human Rights Act 1998);
 - 26.3.1.4 all Laws relating to employment and minimum wage requirements; and

- 26.3.1.5 any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
- 26.3.2 take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 26.4 The Service Provider shall monitor and shall keep the Customer informed in writing of any changes in the Law which may impact the Services and shall provide the Customer with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Service Provider shall only implement such changes in accordance with the Change Control Procedure.
- 26.5 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.
- 26.6 In the event of any finding of unlawful age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation discrimination being made against the Service Provider or its Sub-Contractor(s) during the Framework Term by any court or tribunal, or of an adverse finding in any formal investigation by the Equality and Human Rights Commission (or any successor organisation) over the same period, the Service Provider shall inform the Customer of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Customer to prevent repetition of the unlawful discrimination.

27. TUPE

- 27.1 TUPE provisions required under this Framework are covered in Schedule 8) (Staff Transfer) and will apply during the Framework Term.

6) PART 6 – FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

28. TERMINATION

28.1 Termination on Default

- 28.1.1 The Council may terminate this Framework Agreement and remove the Service Provider from the Framework by serving notice on the Service Provider in writing with effect from the date specified in such notice where:

- 28.1.1.1 the Service Provider commits a material breach and:

- 28.1.1.1.1 the Service Provider has not remedied the material breach 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
 - 28.1.1.1.2 the material breach is not, in the reasonable opinion of the Council, capable of resolution or remedy and warrants an immediate termination; or
 - 28.1.1.2 any warranty given by the Service Provider pursuant to clause 8 (Warranties, Representations and Guarantees) is found to be untrue or misleading;
 - 28.1.1.3 the Service Provider fails to effect or maintain the Required Insurances; or
 - 28.1.1.4 the Service Provider commits a Default (other than as a consequence of a Default by the Council) which results in the criminal investigation, prosecution and conviction of the Service Provider or any Sub-Contractor under the Health and Safety Regime; or
 - 28.1.1.5 the Service Provider materially fails to comply with or materially breaches any Law which imposes a criminal penalty or otherwise and where such failure or breach in the reasonable opinion of the Council adversely affects the reputation of the Council; or
 - 28.1.1.6 the Service Provider is in breach of the provisions of the Specification; or
 - 28.1.1.7 in accordance with the Contract Management Process and associated performance points scheme where the Service Provider has become an excluded or excludable supplier under section 78.2(b) PA 23.
- 28.1.2 For the purposes of clause 28.1.1, a “material breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:
- 28.1.2.1 a substantial portion of this Framework Agreement; or
 - 28.1.2.2 any of the obligations set out in Parts 2,4,5,7, and 8 of this Framework Agreement over the term of this Framework Agreement.

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

- 28.1.3 In determining whether to exercise any right of termination pursuant to clause 28.1 (Termination on Default) the Council shall:
- 28.1.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - 28.1.3.2 give all due consideration, where appropriate, to action other than termination of this Framework Agreement.

28.2 Termination on Insolvency

- 28.2.1 Without affecting any other right or remedy available to it, the Council may terminate this Framework Agreement with immediate effect by notice in writing in the event of an Insolvency Event provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.
- 28.2.2 For the avoidance of doubt, a resolution by the Service Provider or a court order that the Service Provider be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event.

28.3 Termination on Change of Control

- 28.3.1 The Service Provider shall notify the Council immediately in writing if the Service Provider undergoes a Change of Control and provided this does not contravene any Law shall notify the Council immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 28.3.2 The Council may terminate this Framework Agreement by giving written notice to the Service Provider with immediate effect within six (6) Months of:
 - 28.3.2.1 being notified that a Change of Control has occurred; or
 - 28.3.2.2 where no notification has been made, the date that Council becomes aware of the Change of Control,

if the Council considers, acting reasonably, that such change is likely to have an adverse effect on the provision of the Framework Services, but the Council shall not be permitted to terminate this Framework Agreement where the Council has approved the Change of Control in advance.

- 28.3.3 The Council may terminate this Framework Agreement by giving notice in writing to the Service Provider with immediate effect where the Service Provider makes any public announcement or a director of the board of directors of the Service Provider advises an officer of the Council that the Service Provider is no longer going to continue to develop or to offer the provision of services similar to the Framework Services and there is evidence that such announcement will materially adversely impact the ability of the Service Provider to provide the Framework Services.

28.4 Termination on Corruption

- 28.4.1 The Council may terminate this Framework Agreement and remove Service Provider from the Framework by serving notice on the Service Provider with effect from the date specified in such notice where the Service Provider commits a Prohibited Act.

28.5 Termination on Breach of Information Obligations

28.5.1 The Council may terminate this Framework Agreement and remove Service Provider from the Framework by serving notice on the Service Provider in writing with effect from the date specified in such notice where the Service Provider is in material Default of:

28.5.1.1 clause 19 (Confidentiality);

28.5.1.2 clause 20 (Data Protection); and / or

28.5.1.3 clause 23 (Freedom of Information).

28.6 Termination on Financial Standing

28.6.1 The Council may terminate this Framework Agreement by serving notice on the Service Provider in writing with effect from the date specified in such notice where the Service Provider fails to meet the minimum standards of economic and financial standing set out in the SQ following any assessment carried out pursuant to clause 16 (Financial Information, Audits and Compliance with Selection Criteria).

28.7 Termination in compliance with the PA 23

28.7.1 The Council may terminate this Framework Agreement where:

28.7.1.1 this Framework Agreement has been subject to a substantial modification or a modification which is not permitted modification under Schedule 8 PA 23;

28.7.1.2 the Service Provider has, at the time of the award of this Framework Agreement, been in one of the situations referred to in sections 57.1(a) or 2(a) PA 23 (an excluded or and excludable Service Provider), and should therefore have been excluded from the procurement procedure;

28.8 Termination at Will

28.8.1 Council shall have the right to terminate this Framework Agreement with the Service Provider or to terminate the provision of any part of this Framework Agreement at any time by giving three (3) Months' written notice to the Service Provider. The Parties acknowledge that if the Council exercises its rights under this clause 28.8.1 it shall exercise its equivalent rights under all agreements with the Service Provider.

29. TERMINATION ON FORCE MAJEURE

29.1 If a Force Majeure Events prevents, hinders or delays the Affected Party from performing its obligations under this Framework Agreement in any material respect for a period of three (3) consecutive months then, provided the notification requirements set out in clause 38 (Force Majeure) have been met, without prejudice to any accrued rights or remedies under this Framework Agreement, the Council may terminate this Framework Agreement by giving one month's written notice in writing to the Affected Party.

30. SUSPENSION OF SERVICE PROVIDER'S APPOINTMENT

- 30.1 Without prejudice to the Council's rights to terminate this Framework Agreement under clause 28 (Termination), if a right to terminate this Framework Agreement arises under clause 28 (Termination), the Council may suspend the Service Provider's right to participate in Call-off Competitions under any or all of the Lots by giving notice in writing to the Service Provider ("**Suspension Notice**"). If the Council serves a Suspension Notice to the Service Provider in accordance with this clause 29, the Service Provider's appointment shall be suspended for the period set out in the Suspension Notice or such other period notified to the Service Provider by the Council in writing from time to time.
- 30.2 A Suspension Notice issued by the Council shall include details of any performance improvements required from the Service Provider including timescales for such improvement ("Performance Improvement Plan"). The Service Provider shall be required to comply with the Performance Improvement Plan within the timescales set out in the Suspension Notice or such other timescale as may be agreed between the Parties.
- 30.3 In the event that the Service Provider fails to comply with the Performance Improvement Plan to the Council's reasonable satisfaction, the Council must issue a Contract Performance Notice under section 71.5 PA 23 and may be entitled to terminate this Framework Agreement for poor performance under the provisions of PA 23 or in accordance with clause 28.1 (Termination on Default or Failure).
- 30.4 The service of a Suspension Notice shall not operate as a notice to terminate or suspend any Call-off Contract already made under this Framework Agreement. Suspension of a Framework Provider pursuant to clause 30.1 shall not cause any Call-Off Contracts to terminate or be suspended 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 the Call-off Terms.

30.5 Use of a Substitute Service Provider

- 30.5.1 The Council may engage a substitute provider in accordance with this provision if:
- 30.5.1.1 the Service Provider fails to undertake any of the Services in accordance with the performance indicators stipulated in the Specification or the tender documents; and / or
 - 30.5.1.2 in the reasonable opinion of the Council the Service Provider has failed to allocate sufficient resources to perform any of the Services.
- 30.5.2 Where the Council pursuant to clause 30.5, decides to engage a substitute provider it shall notify the Service Provider in respect of the Service Provider's failure under clause 30.5.1 above and engage a substitute provider of its choice to carry out the relevant work until the Service Provider is able reasonably to satisfy the Council of its ability to carry out that work in accordance with the Service Specification and Route Schedule.
- 30.5.3 Where the Council has served notice on the Service Provider in accordance with Condition 30.5.1 it may in respect of the relevant Services forthwith recover from the Service Provider any costs, damages or expenses incurred by the Council by reason of the default of the Service Provider to comply with the requirements referred to in this clause together with any costs or expenses incurred by the Council in excess of the sums that would have been paid by the Council to the Service Provider under the terms of the relevant Call Off Contract.

31. CONSEQUENCES OF TERMINATION AND EXPIRY

- 31.1 For the avoidance of doubt, the Council shall be entitled to exercise any of its rights of termination set out in clause 28 (Termination) without incurring any penalty or additional costs to the Service Provider.
- 31.2 Notwithstanding the service of a notice to terminate this Framework Agreement, the Service Provider shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 31.
- 31.3 Unless expressly stated to the contrary, the service of a notice to terminate this Framework Agreement shall not operate as a notice to terminate any Call-off Contract made under this Framework Agreement. Termination or expiry of this 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 the Call-off Terms.
- 31.4 Within thirty (30) Working Days of the date of termination or expiry of this Framework Agreement, the Service Provider shall return or destroy at the request of the Council any data, personal information relating to the Council or its Staff, or Confidential Information belonging to the Council in the Service 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 Service 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 this Framework Agreement or such period as is necessary for such compliance.
- 31.5 The rights of the Council (to terminate or otherwise) under clause 28 (Termination) are in addition (and without prejudice) to any other right or remedy which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the Service Provider (or to take any action other than termination of this Framework Agreement).
- 31.6 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before such termination or expiry.
- 31.7 The provisions of the following clauses shall survive the termination or expiry of this Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination: clause 1 (Definitions and Interpretation); clause 8 (Warranties and Representations); clause 14 (Corrupt Gifts and Fraud); clause 18 (Records and Audit Access); clause 19 (Confidentiality); clause 20 (Data Protection); clause 23 (Freedom of Information); clause 24 (Publicity and Branding); clause 31 (Consequences of Termination); clause 33 (Insurance); clause 34 (Dispute Resolution); clause 44 (Severability); clause 46 (Third Party Rights); clause 48 (Entire Agreement); and clause 53 (Governing Law and Jurisdiction).

32. COMPLAINTS HANDLING AND RESOLUTION

- 32.1 The Service Provider shall notify the Council of any complaint made by Other Contracting Bodies within two Working Days of becoming aware of that complaint and such notice shall contain full details of the Service Provider's plans to resolve such complaint.
- 32.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Framework Agreement or a Call-off Contract, and without prejudice to any obligation of the Service Provider to take remedial action under the provisions of this Framework Agreement or a Call-off Contract, the Service Provider shall use its best endeavours to resolve the complaint within ten (10) Working Days and in doing so, shall deal with the Complaint fully, expeditiously and fairly.

7) PART 7 – INSURANCE

33. INSURANCE

- 33.1 The Service Provider shall, at its own cost, throughout the duration of this Framework Agreement effect and maintain the following insurances with a reputable insurance company in relation to its obligations under this Framework Agreement:
- 33.1.1 Public liability insurance against all loss of and damage to property and injury to persons (including death) under which the cover shall not be less than ten million pounds (£10,000,000) in respect of any one (1) incident;
- 33.1.2 Employers' liability insurance with a minimum limit of indemnity of ten million pounds (10,000,000) in respect of any one (1) incident;
- 33.1.3 The Service Provider shall ensure that at all times during the Term it maintains, or procures the maintenance of, valid and enforceable motor insurance policies in respect of any motor vehicle or other vehicle (including leased, hired, borrowed, or employee-owned vehicles) used in connection with the performance of the Services.
- 33.1.3.1 Such insurance shall:
- 33.1.3.1.1 provide comprehensive cover (including third party, property damage and passenger liability);
 - 33.1.3.1.2 comply in all respects with the requirements of the Road Traffic Act 1988 and any other applicable legislation;
 - 33.1.3.1.3 provide indemnity in respect of death, personal injury and property damage arising out of the use of such vehicles; and
 - 33.1.3.1.4 be effected with an insurer of good repute authorised to conduct insurance business in the United Kingdom.
- 33.1.3.2 The Service Provider shall ensure that:
- 33.1.3.2.1 any person driving or otherwise operating a vehicle in connection with the Services holds a valid and appropriate driving licence for the class of vehicle being driven;

- 33.1.3.2.2 vehicles are maintained in a roadworthy condition and in accordance with all manufacturers' recommendations and applicable law;
 - 33.1.3.2.3 any employee using their own vehicle in connection with the Services maintains appropriate business use motor insurance; and
 - 33.1.3.2.4 evidence of such insurance and driving licences is obtained, verified and retained by the Service Provider.
- 33.1.3.3 The Service Provider shall, upon written request by the Customer produce copies of the relevant insurance certificates, policy schedules and evidence of premium payment and shall notify the Council immediately of:
- 33.1.3.3.1 any cancellation, lapse, material change or reduction in cover;
 - 33.1.3.3.2 any claim or circumstance which may give rise to a claim which could materially affect the insurance; and
 - 33.1.3.3.3 any failure by an insurer to meet a claim in whole or in part.
- 33.1.3.4 The Service Provider shall ensure that any subcontractor engaged in the performance of the Services complies with the provisions of this clause as if it were the Service Provider and shall remain responsible for ensuring such compliance.
- 33.1.3.5 The maintenance of insurance in accordance with this clause shall not relieve the Service Provider of any liability under this Agreement.
- 33.1.4 Medical malpractice insurance under which the cover is not less than five million pounds (£5,000,000) in respect of any one (1) incident and shall maintain such cover for six (6) years after the end of this Framework Agreement or the last Call-off Contract (whichever is the later) for all claims to which this clause 33.1.4 applies;
- 33.1.5 Maintain at the Service Provider 's cost any other insurance policy necessary to comply with current and prevailing legislation.

Together the “**Required Insurances**”.

- 33.2 The Service Provider shall make such additional insurance arrangements as the Client Officer may require ensuring that the Provider can meet its obligations under this Open Framework.
- 33.3 The Service Provider shall upon request made from time to time produce to the Council documentary evidence that the Required Insurances are properly maintained.

8) PART 8 – GENERAL PROVISIONS

34. DISPUTE RESOLUTION

- 34.1 If a dispute arises out of or in connection with this Framework Agreement or the performance, validity or enforceability of it (a “**Dispute**”) then the Parties shall follow the procedure set out in this clause 34:

- 34.1.1 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with the relevant supporting documents. On service of the Dispute Notice, suitably senior officers of the Parties shall attempt in good faith to resolve the Dispute.
- 34.1.2 If the dispute cannot be resolved by the Parties pursuant to clause 34.1 within thirty (30) days of service of the Dispute Notice, the dispute shall be referred to the Director of [insert relevant department] for the Customer and the Managing Director (or equivalent) for the Service Provider who shall attempt in good faith to resolve it; and
- 34.1.3 If the Dispute cannot be resolved by the Parties pursuant to clause 34.1.2 for any reason within thirty (30) days, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must service notice in writing (“**ADR Notice**”) to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR Notice.
- 34.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 53 (Governing Law and Jurisdiction) which shall apply at all times.
- 34.3 If the Parties fail to resolve the dispute by mediation within sixty (60) Working Days after service of the ADR Notice (the “**ADR Period**”), or either Party fails to participate in the mediation before the expiration of the ADR Period, or the mediation terminates before the expiration of the ADR Period, the Dispute shall be finally resolved pursuant to clause 53 (Governing Law and Jurisdiction).
- 34.4 The obligations of the Parties under this Framework Agreement and / or any Call-off Contract shall not be suspended, cease or be delayed by the reference of a Dispute to mediation or the courts pursuant to this clause 34 (Dispute Resolution) and the Service Provider and its Staff shall comply fully with the requirements of this Framework Agreement at all times.

35. SUCCESSORS

- 35.1 The provisions of this Framework Agreement are binding on any successors in title of the parties.

36. RELATIONSHIP OF PARTIES

- 36.1 The Service Provider shall not be deemed to be, an agent of the Customer and the Service Provider shall not hold itself out as having authority or power to bind the Customer in any way, other than expressly conferred by this Framework Agreement.
- 36.2 Nothing in this Framework Agreement shall be construed as creating a partnership within the meaning of the Partnership Act 1890, or as a contract of employment between the Service Provider and the Customer.

37. SUB-CONTRACTING, ASSIGNMENT AND NOVATION

- 37.1 Subject to the remaining provisions of this clause 37, the Service Provider shall not be entitled to assign, novate, or otherwise dispose of any or all of its rights under this Framework Agreement without the prior written consent of the Customer.
- 37.2 The Customer may assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement and any associated third party licences on the same terms and conditions to any Other Contracting Bodies or to any other body/bodies including any private sector body/bodies which substantially performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer and shall give notice of such assignment, novation or disposal to the Service Provider. The Service shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 37.2.
- 37.3 Provided that the Customer has given prior written consent, the Service Provider shall be entitled to novate this Framework Agreement where:
- 37.3.1 the specific change in service provider was provided for in the procurement process for the award of this Framework Agreement; or
 - 37.3.2 there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Framework Agreement.
- 37.4 The Service Provider shall not be entitled to sub-contract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Customer such consent not to be unreasonably withheld. The Customer may withhold its consent to the appointment of a Subcontractor if it considers that:
- 37.4.1 the appointment of a proposed Subcontractor may prejudice the provision of the Services or may be contrary to its interests;
 - 37.4.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;
 - 37.4.3 the proposed Subcontractor employs unfit persons;
 - 37.4.4 whether the Contractor considers that an exclusion ground within the meaning of the PA 23 and any associated regulations does or may apply to the Sub-contractor; and/or
 - 37.4.5 the proposed Subcontractor is an excluded or excludable Contractor within the meaning of the PA23 and any associated regulations.
- 37.5 If given, consent to enter into a Sub-Contract shall not relieve the Service Provider from any liability or obligation under this Framework Agreement and the Service Provider shall be responsible for the acts, defaults or neglect of any Sub-Contractor, its employees or agents in all respects as if they were the acts, defaults or neglect of the Service Provider.
- 37.6 In the event that the Service Provider enters into any Sub-contract in connection with a call-off contract it shall ensure that it does not any time during the Term enter into a Subcontract with:
- 37.6.1 any contractor that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the PA 23 and associated regulations; or

- 37.6.2 any contractor that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the PA 23 and associated regulations, unless the contractor has obtained the Customer's prior written consent to the appointment of the relevant proposed Subcontractor.
- 37.7 If a Subcontractor is to be appointed under this Framework Agreement then the Customer may, in accordance with Section 72 of the PA 23, require that the Contractor enters into a legally binding arrangement with the proposed Subcontractor within such reasonable time period after the Commencement Date as may be specified by the Customer.
- 37.8 If the Service Provider does not enter into a legally binding agreement in accordance with Clause 37.6 then the Customer may, in accordance with Section 72 of the PA 23, require that the Contractor enters into a legally binding arrangement with the proposed Subcontractor within such reasonable time period after the Commencement Date as may be specified by the Customer. The Customer may upon failure to enter into a subcontract:
- 37.8.1 terminate this Framework Agreement and the consequences of termination shall apply; or
- 37.8.2 require the Contractor to enter into a legally binding agreement with an alternate Subcontractor.
- 37.9 For Sub-Contracts in the Service Providers supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:
- 37.9.1 where such Sub-Contracts are entered into after the Commencement Date, the Contractor will ensure that they all contain provisions that; or
- 37.9.2 where such Sub-Contracts are entered into before the Commencement Date, the Contractor will take all reasonable endeavours to ensure that they all contain provisions that:
- 37.9.2.1 allow the Service Provider to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social or employment Law;
- 37.9.2.2 require that all Subcontractors are paid: before the end of the period of thirty (30) days beginning with the day on which a invoice is received by the Contractor or other party in respect of the sum; or if later, the date by which the payment falls due in accordance with the invoice, subject to the invoice being verified by the party making payment as valid and undisputed;
- 37.9.2.3 require the party receiving goods or services under the sub-contract to consider and verify invoices under that contract in a timely fashion and notify the Subcontractor without undue delay if it considers the invoice invalid or it disputes the invoice; and
- 37.9.2.4 allow the Customer to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.

The Contractor must ensure that a term equivalent to Clause 37.6 is included in each Sub-Contract in its supply chain, such that each Subcontractor is obliged to include those terms in any of its own Sub-Contracts in the supply chain for the delivery of this Contract.

37.10 The Service Provider shall enter into such agreement and / or deed as the Customer shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to this clause 37 (Sub-Contracting, Assignment and Novation).

38. FORCE MAJEURE

38.1 Provided it has complied with clause 38.2, if any party is delayed in or prevented from performing any of its obligations under this Framework Agreement by a Force Majeure Event (“Affected Party”) then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligations to the extent it is so delayed or prevented, and the time for performance of such obligation(s) shall be delayed accordingly.

38.2 On the occurrence of a Force Majeure Event, the Affected Party shall:

38.2.1 notify the other party in writing as soon as practicable after the start of the Force Majeure Event, but in any event not later than two (2) weeks from its start. Such notification shall contain details of the Force Majeure Event, including the date on which it started, its likely or potential duration, the mitigating steps that the Affected Party proposes to take and evidence of its effect on the ability of the Affected Party to perform any of its obligations under this Framework Agreement; and

38.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

38.3 As soon as practicable following such notification, the parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the impact of the Force Majeure Event and facilitate continued performance of this Framework Agreement.

38.4 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected party from complying with its obligations under this Framework Agreement. Following such notification (subject to termination under clause 29 (Termination on Force Majeure), this Framework Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

38.5 For the duration of any suspension of the Service Provider’s obligations under this clause 38, the Customer shall only be liable to pay the Service Provider an amount that reflects the reduced Services (if any) being performed.

39. BUSINESS CONTINUITY PLANNING AND CIVIL CONTINGENCIES¹

39.1 The Service Provider is required to have in place adequate and appropriate measures to ensure, where reasonably practicable, that it is able to continue providing the Services within a predetermined time in the event of service disruption or a state of emergency which partially or completely interrupts the Service Provider’s business critical functions and which would otherwise impact the Service Provider’s provision of the Services, and:

¹ Confirm with instructing client and Procurement Services if this is required.

- 39.1.1 the Service Provider may be required by the Customer to provide satisfactory evidence demonstrating compliance with the key principals of the ISO 22301 – Requirements for Business Continuity Management Systems (BCMS) or its equivalent; however, certification of the Service Provider to this standard, though desirable, is not mandatory.
- 39.1.2 the Customer may from time to time require the Service Provider to demonstrate to the reasonable satisfaction of the Customer the viability and effectiveness of the Service Provider’s business continuity arrangements by providing details of its exercising and maintenance programmes.
- 39.2 Where an Emergency, as defined in Part 1 of the Civil Contingencies Act 2004 (an “Emergency”), occurs or is imminent the Service Provider shall:
- 39.2.1 immediately upon the receipt of instructions from the Authorised Officer, make all its resources, (including Staff, supervisory Staff, plant and equipment, materials and premises) used and organised to execute this Framework Agreement, available to the Customer to assist in dealing with Emergency work; and
- 39.2.2 carry out such Emergency work as is authorised by the Authorised Officer.
- 39.3 During the period in which the Service Provider is engaged in Emergency work as prescribed above, the whole or part of the work required to be carried out under this Framework Agreement may be suspended.
- 39.4 The Service Provider shall be required to negotiate payment from the Customer for any authorised Emergency work done. Such payment shall be based on the actual cost of carrying out the Emergency work and may include a reasonable margin to cover overheads and profits.
- 39.5 From time to time, the Customer may require members of the Service Provider’s Staff to attend and be involved in business continuity exercises and/or Emergency training exercises, and such other relevant training organised by the Customer, a Borough/District Council in the County, or Central Government. Reimbursement, where necessary, for involvement in training activities, pursuant to this section, shall be on the same basis as that outlined in clause 39.4.

40. ASSISTANCE IN LEGAL PROCEEDINGS

- 40.1 Where requested by the Authorised Officer, the Service Provider shall give all reasonable assistance and co-operation and provide to the Customer any relevant information which is not confidential in connection with any legal inquiry, arbitration or court proceedings in which the Customer may become involved, or any relevant disciplinary hearing internal to the Customer, or any inquiry by the Local Government Ombudsman, arising out of the provision of the Services.
- 40.2 Where the Service Provider becomes aware of any incident, accident or other matter which may lead to a complaint to the Local Government Ombudsman or a claim or legal proceedings, in respect of the provision of or failure to provide the Services, it shall notify the Authorised Officer by telephone and in writing as soon as practicable and in any event within forty eight (48) hours of becoming aware of the same. Such written notification shall include all relevant information that is not confidential to enable the Authorised Officer to investigate the matter fully.

40.3 Such information provided or assistance rendered pursuant to the obligations in this clause 40, in whatever form, shall be at no additional cost to the Customer.

41. PREVENT DUTY

41.1 The Service Provider acknowledges that the Customer has a duty under the Counter Terrorism and Security Act 2015 (“**CTSA 2015**”) to have due regard to the requirement to prevent people from being drawn into terrorism (“**Prevent Duty**”). The Service Provider shall, and shall procure that its Representatives shall, give all reasonable assistance and support to the Customer in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Service Provider shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.

42. MODERN SLAVERY & UNETHICAL LABOUR

42.1 In performing its obligations under this Framework Agreement, the Service Provider shall:

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

42.1.2 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 42;

42.1.3 notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement;

42.1.4 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;

42.1.5 implement due diligence procedures for its organisation and participants in the supply chains to ensure that no modern slavery and labour exploitation is taking place;

42.1.6 respond promptly to modern slavery and labour exploitation due diligence questionnaires or assessments issued to it by the Customer from time to time, and shall ensure that its responses are complete and accurate;

42.1.7 take appropriate and timely action to address any risks, issues or areas for improvement identified through the relevant due diligence questionnaires or assessments;

42.1.8 implement systems for reporting and handling of worker concerns and maintain accurate records of incidents and actions taken to address these;

42.1.9 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause;

- 42.1.10 notify the Customer as soon as it becomes aware of any actual or suspected modern slavery and labour exploitation in a supply chain which has a connection with this Framework Agreement, providing a narrative detailing the supplier's response to address such violations; and
- 42.1.11 prepare and deliver to the Customer, each year, an annual updated modern slavery and human trafficking statement/report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business. The statement/report must contain details of:
- 42.1.11.1 the Service Provider's structure, business and supply chains;
 - 42.1.11.2 the Service Provider's policies in relation to slavery and human trafficking;
 - 42.1.11.3 the Service Provider's due diligence processes in relation to slavery and human trafficking in the Service Provider's business and supply chains;
 - 42.1.11.4 the areas of the Service Provider's business and supply chains where there is a risk of slavery and human trafficking occurring and the steps the Service Provider has taken to assess and manage that risk;
 - 42.1.11.5 the Service Provider's effectiveness in ensuring that slavery and human trafficking is not taking place within its business or supply chain, measured against such performance indicators as the Service Provider deems appropriate; and
 - 42.1.11.6 the training and capacity building about slavery and human trafficking available to Staff.
- 42.2 The Service Provider represents and warrants throughout the Framework Term that:
- 42.2.1 it responds promptly to all modern slavery due diligence questionnaires issued to it by the Customer from time to time and shall ensure that its responses to all such slavery and human trafficking due diligence questionnaires are complete and accurate;
- 42.2.2 neither the Service Provider nor any of its officers, employees or Sub-Contractors:
- 42.2.2.1 has been convicted of any offence involving slavery and human trafficking anywhere in the world; or
 - 42.2.2.2 having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; or
 - 42.2.2.3 been listed by any government department or agency as being debarred, suspended, or proposed for suspension or debarment from participation in public procurement programmes or otherwise been excluded from a public procurement procedure on grounds relating to forced labour or modern slavery offences or misconduct.
- 42.3 The Service Provider shall implement due diligence procedures for its Sub-Contractors or any part of its supply chain performing obligations under this agreement to ensure that there is no slavery or human trafficking taking place.
- 42.4 The Service Provider shall:
- 42.4.1 maintain a complete set of records to trace the supply chain of all Services provided to the Customer in connection with this agreement; and

- 42.4.2 without prejudice to clause 42.2.1, if the Customer reasonably suspects the Service Provider of breach of clause 42.2.2 permit the Customer and its third party representatives to have access to and take copies of any records and any other information at the Service Provider's premises and to meet with the Service Provider's Staff to audit the Service Provider's compliance with its obligations under this clause 42; and
- 42.4.3 implement annual audits of its compliance and its Sub-Contractors' compliance with the Anti-slavery Policy, either directly or through a third party auditor.
- 42.5 The Service Provider shall:
- 42.5.1 implement a system of training for its employees, and Sub-Contractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws;
- 42.5.2 keep a record of all training offered and completed by its employees, and subcontractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws and shall make a copy of the record available to the Customer on request.

42.6 Sub-Contractors and Supply Chains

- 42.6.1 The Service Provider must:
- 42.6.1.1 not use or allow its Sub-Contractors or labour providers to use forced labour, child labour, slave labour and/or other exploited forms of labour; and
- 42.6.1.2 implement due diligence procedures for its Sub-Contractors and other participants in its supply chains to ensure that there is no form of modern slavery and related exploitative conduct occurring in any part of its supply chain performing obligations under a contract or any Call Off Contract.

43. RIGHTS AND DUTIES RESERVED

- 43.1 All rights and duties which the Council and / or Other Contracting Bodies where relevant has as a local Council or which the Council's officers have as local authority officers including as a local planning authority and a waste disposal authority are reserved.

44. SEVERABILITY

- 44.1 If any provision, clause or part-provision of this Framework Agreement is or becomes invalid, illegal or unenforceable for any reason, by any court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision, clause or part-provision shall be severed and deemed deleted.
- 44.2 If one Party gives notice the other of the possibility that any provision or part-provision of this Framework Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

44.3 If a provision of this Framework Agreement that is fundamental to the accomplishment of the purpose of this Framework Agreement is held to any extent to be invalid, the Service Provider and the Customer shall immediately commence good faith negotiations to remedy that invalidity.

44.4 Any modification to or deletion of a provision, clause or part-provision under this clause 44 (Severability) shall not affect the validity and enforceability of the rest of this Framework Agreement, which shall continue in full force.

45. VARIATIONS

45.1 Any variations to this Framework Agreement, save for any assignment or novation pursuant to clause 37 (Sub-Contracting, Assignment and Novation) above (“**Framework Change**”) must be made only in accordance with the Framework Variation Procedure set out in Schedule 6) (Framework Variation Procedure).

46. THIRD PARTY RIGHTS

46.1 Except as provided in clauses 3 (Scope of Framework Agreement) and 5 (Call-off Order Procedure), a person who is not a party to this Framework Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

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

47. WAIVER

47.1 No term or provision of this Framework Agreement shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, clauses or provisions of this Framework Agreement unless (and then only to the extent that) it is expressly stated in that waiver.

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

47.3 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in accordance with clause 49 (Notices).

47.4 The Customer reserves all rights and remedies in relation to any past or future default or breach of this Framework Agreement.

48. ENTIRE AGREEMENT

48.1 Without prejudice to clause 8.1.4, this Framework Agreement (including the Schedules) and the documents referred to in it constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 48 (Entire Agreement) shall operate to exclude any liability for fraud or misrepresentation.

48.2 Save as provided for in clause 8 (Warranties, Representations and Guarantees), each Party acknowledges and agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement.

49. NOTICES

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

49.2 Any notice or other communication which is to be given or made under by either Party under this Framework Agreement shall be in writing and in English and signed by or on behalf of the Party giving it and may be given by:

49.2.1 delivering the notice by hand, in which case the notice shall be deemed to have been duly served at the time it is so delivered or left; or

49.2.2 posting the notice in a pre-paid envelope by first class, special delivery or recorded delivery post, in which case the notice shall be deemed to have been duly served at the time it would be delivered in the ordinary course of that method of posting; or

49.2.3 by email transmission, in which case the notice shall be deemed to have been duly served at the time of transmission.

49.3 For the purpose of this clause 49, the address of each Party shall be:

49.3.1 For the Council:

Address: West Northamptonshire Council, One Angel Square, Angel Street,
Northampton NN1 1ED

Email: [INSERT]

For the attention of: the Authorised Officer

49.3.2 For the Service Provider:

Address: [INSERT]

Email: [INSERT]

For the attention of: [INSERT]

49.4 Either Party may change its address for service by serving a notice in accordance with this clause 49 (Notices).

50. CONFLICTS OF INTEREST

50.1 Acting always in the best interest of the Customer, the Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any of the Service Provider's Representatives are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or its Representatives and the duties owed to the Customer under this Framework Agreement.

50.2 The Service Provider shall notify the Customer and (subject to any overriding duty of confidentiality) provide full particulars to the Customer immediately on becoming aware of any possible conflict of interest referred to in clause 50.1 (or any other conflict between the interests of the Customer and the Service Provider or any other person to whom services are provided by the Service Provider) which may arise or potentially arise or which may have reasonably been reasonably foreseen as arising.

50.3 The Service Provider shall immediately take all reasonable action to remove or avoid the cause of any such conflict of interest to the satisfaction of the Customer.

50.4 The provisions of this clause 50 (Conflicts of Interest) shall apply during the Framework Term and for a period of two (2) years after termination or expiry (howsoever caused).

51. COUNTERPARTS

51.1 This Framework Agreement may be executed in one or more counterparts and any party may enter into this Framework Agreement by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the parties shall constitute one and the same agreement and a full original of this Framework Agreement for all purposes.

51.2 Transmission of a signed counterpart of this Framework Agreement **OR** the signed signature page of a counterpart of this Framework Agreement by email (in PDF, JPEG or other agreed format), shall take effect as delivery of a signed counterpart of this Framework Agreement.

52. ACCESSIBILITY

52.1 If applicable to the Services under this Framework Agreement, the Service Provider shall ensure compliance with the Public Sector Bodies (Websites and Mobile Applications) (No.2) Accessibility Regulations 2018, as amended from time to time, throughout the Framework Term. If the Service Provider fails to comply with such Regulations, and this results in loss or liability by the Customer, the Service Provider shall indemnify the Customer for all reasonable losses.

53. GOVERNING LAW AND JURISDICTION

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

54. EXCLUSIONS

- 54.1 During the Term the Service Provider shall notify the Customer as soon as reasonably practicable if:
- 54.1.1 the Service Provider considers that an exclusion ground within the PA 23 and any associated regulations applies to the Service Provider, including where the Service Provider is put on the debarment list or becomes an excluded or excludable contractor by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the PA 23; and/or
- 54.1.2 there are any changes to the Service Provider's associated persons within the meaning of the Procurement Act 2023.
- 54.2 If the Service Provider notifies the Customer in accordance with Clause 54.1 that the Service Provider considers that an exclusion ground within the PA 23 and any associated regulations applies to the Service Provider, including where the Service Provider is put on the debarment list or becomes an excluded or excludable contractor by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the PA 23; and/or then the Service Provider must promptly provide any information the Customer reasonably requests in relation to such notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.
- 54.3 If the Service Provider notifies the Customer in accordance with Clause 54.1.2 that there are any changes to the Service associated persons within the meaning of the PA 23. above then the Service Provider must promptly provide any information reasonably requested by the Customer in relation to the change to the Service Provider's associated persons, including any information set out in the PA 23.
- 54.4 The Customer may terminate this Contract if:
- 54.4.1 the Contractor has failed to provide notification under Clause 54.1.1 the Service Provider considers that an exclusion ground within the PA 23 and any associated regulations applies to the Service Provider, including where the Service Provider is put on the debarment list or becomes an excluded or excludable contractor by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the PA 23; and/or as soon as reasonably practicable after the Service Provider becomes aware that an exclusion ground within the PA 23 and any associated regulations does or may apply to the Contractor;

54.4.2 the Contractor has failed to provide notification under Clause 54.1.2 there are any changes to the Services associated persons within the meaning of the PA 23. as soon as reasonably practicable after the Service Provider becoming aware of any changes to the Service Provider’s associated persons within the meaning of the PA 23; and/or

54.5 Any notification or information provided by the Service Provider under Clause 54.1.1, 54.1.2 and/or 54.3 is incomplete, inaccurate or misleading and the consequences of termination set out in Clause 31 shall apply. Clause 54.5 is without prejudice to the Customer’s rights to terminate the Contract in accordance with Clause 28 (Termination).

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

Executed as a deed by affixing the common seal of **WEST NORTHAMPTONSHIRE COUNCIL** in the presence of:

.....

Authorised Signatory

Executed as a deed by **[THE SERVICE PROVIDER]** acting by two directors:

.....

[DIRECTOR]

.....

[DIRECTOR]

OR

Executed as a deed by **[THE SERVICE PROVIDER]** acting by a director and company secretary:

.....
[DIRECTOR]

.....
[SECRETARY]

OR

Executed as a deed by **[THE SERVICE PROVIDER]** acting by a director in the presence of:

.....
[DIRECTOR]

Signature of witness:

.....

Name of witness:

Address of witness:

Occupation of witness:

1) SCHEDULE 1 – SPECIFICATION [TO BE INSERTED]

2) SCHEDULE 2 – THE SERVICE PROVIDER’S TENDER - DETAILS IN PLATFORM

3) SCHEDULE 3 – TENDER CLARIFICATIONS – TBC

[INSERT ACCURATE DETAILS OF ANY CLARIFICATIONS ISSUED BY THE COUNCIL/SERVICE PROVIDER, CORRESPONDENCE, MINUTES OF MEETINGS BETWEEN THE PARTIES AGREEING CHANGES TO BE INSERTED TO THE FRAMEWORK AGREEMENT AND INCLUDE COPIES OF SUCH DOCUMENTS HERE

4) SCHEDULE 4 – CALL-OFF COMPETITION AWARD CRITERIA

DETAILS SET OUT IN ITT AND IN THE PLATFORM

5) SCHEDULE 5 – SUPPLEMENTARY CALL-OFF TERMS

The Call-off Terms and Conditions of contract (“Call-off Contract”) shall include the Framework Terms and Conditions and the following specific terms and conditions of contract:

1. SERVICE PROVIDER’S OBLIGATIONS

- 1.1 The Service Provider shall ensure that files, books and records are kept for a period of six (6) years after expiry of the Call-off Contract Period in respect of the provision of the Services to the extent:
- a) required by the Conditions and the Services Specification and/or law;
 - b) required to record details of any and all monies collected on behalf of the Customer; and
 - c) otherwise reasonably required ensuring the Services is provided in a proper and timely fashion.
- 1.2 The Service Provider shall at all times during the provision of the Services allow the Customer and such persons as may from time to time be nominated by the Customer access to:
- a) all workplaces used by the Service Provider for the purposes of inspecting works being performed for the provision of the Services;
 - b) all workplaces used by the Service Provider for the purposes of inspecting records and documents in the possession, custody or control of the Service Provider in connection with the provision of the Services;
 - c) any Staff or agent of the Service Provider for the purposes of interviewing such persons in connection with the provision of the Services; and
 - d) technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services.
- 1.3 If requested to do so by the Customer, the Service Provider shall provide to the Customer at no additional charge any and all relevant information in its possession to permit the Customer to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Customer to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.
- 1.4 Service Provider shall by a term in any authorised sub-contract secure a similar right of access for the Customer and its auditors for the purpose of conducting any audit investigation of the Call-off Contract.
- 1.5 The Service Provider shall at all times comply with the Constitution of the Customer, where the Customer maintains a Constitution and any relevant financial regulations.
- 1.6 If the Service Provider or its Staff default in complying or fail to comply with these terms and conditions, and/or the Passenger Transport Services Open Framework – Service Specification, any costs, expenses, liabilities or damages incurred by the Customer as a consequence thereof, including the reasonable cost to the Customer of the time spent by its officers (and any third parties employed by the Customer) as a

result of the default or failure, may be deducted from any sums due or to become due to the Service Provider under this Call-off Contract or shall be recoverable by the Customer from the Service Provider as a debt.

- 1.7 The Service Provider shall provide each year to the Customer a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.
- 1.8 The Service Provider shall not advertise the fact that it is providing Services to the Customer under this Call-off Contract other than with the written permission of the Customer.
- 1.9 The Service Provider shall not in any way whatsoever be, act or hold itself out as an agent of the Customer nor make representations or warranties on behalf of the Customer and the Service Provider undertakes to contract with the Customer as principal and not as agent.

2. PERFORMANCE OF THE SERVICES AND THE SERVICES SPECIFICATION

- 2.1 The Service Provider shall at all times during the Call-off Contract Period perform the Services comprehensively with due skill, care and diligence and in utmost good faith strictly in accordance and in compliance with the Call-off Contract, including but not limited to:
 - a) the Services Specification, any Letter of Acceptance and Route Schedule and implementation and maintenance of the Quality and Environmental Management Systems;
 - b) the Customer's Guidelines in particular (but without limitation) those relating to customer care and any other guidelines as may have been approved by the Customer and supplied to the Service Provider;
 - c) the instructions issued to the Service Provider by the Customer under or in connection with the Call-off Contract;
 - d) all relevant Legislation;
 - e) in an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the Customers and other occupiers of the Locations and in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Customer.
- 2.2 The Service Provider shall be responsible for managing the performance of all Staff engaged in the delivery of Services defined in this Agreement

3. THE SERVICE PROVIDER'S STAFF

- 3.1 The Service Provider shall employ sufficient suitably qualified Staff to ensure that the Services are provided in all respects to the Services Specification and Route Schedule throughout the Call-off Contract Period, including (without limitation) during periods of absence of some members of its Staff due to sickness, maternity leave, Staff holidays, Staff training or otherwise.
- 3.2 The Service Provider shall perform the Services in accordance with the arrangements relating to Staff stated in the Services Specification.

- 3.3 The Service Provider shall notify the Customer of any material amendments to the Staff arrangements during the Call-off Contract Period whether or not they fall within the provisions of Condition 10.2 above.
- 3.4 The Service Provider shall employ or engage in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.
- 3.5 The Service Provider shall at all times in carrying out the Services do so in a skilful manner and knowledge expected of an experienced Service Provider of such Services and any approvals given by the Customer shall in no way relieve the Service Provider of its responsibilities or obligations under this Call-off Contract and the Service Provider shall employ enough persons of sufficient ability and status to supervise the performance of the Services so that they are carried out in a proper skilful manner and to the satisfaction of the Customer.
- 3.6 The Service Provider shall ensure that all of its Staff are aware of and complies with the requirements of the Code of Conduct for Drivers and Passenger Assistants and any revisions or amendments thereto or any replacement documents that may be issued by the Customer and is supplied with his/her own personal copy. These copies are to be carried on every journey performed under the Agreement by every member of Staff.
- 3.7 The Staff shall at all times maintain the highest standards of courtesy and consideration and in all aspects of the performance of the Call-off Contract and in particular in their dealings with the public.
- 3.8 The Service Provider shall ensure all Staff carry the Customer's identification badges at all times where required by the Customer.
- 3.9 The Service Provider shall, for the purposes of enabling the Customer and the Customer to satisfy themselves as to the Service Provider's compliance with this Condition 3 maintain at all times accurate and up-to-date records of all Staff in the Service Provider's employ who are and who are likely to have any connection with the performance of the Services including employee attendance records and shall afford the Customer and the Customer full access to these records upon reasonable notice in writing by the Customer.
- 3.10 The Service Provider shall immediately remove any Staff notified to the Customer from carrying out the Services as being either under investigation or unacceptable to the Customer.
- 3.11 The Customer shall under no circumstances be liable either to the Service Provider or to its Staff for any cost, expense, liability, loss or damage occasioned by removal under this Condition 3 and subject as aforesaid the Service Provider shall fully indemnify the Customer in respect of any claim made by Staff.
- 3.12 For the avoidance of doubt, the Service Provider shall at all times be fully and solely responsible under this Call-off Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the commencement of the Call-off Contract and fully indemnifies the Customer against any liability arising as a consequence thereof.
- 3.13 The Service Provider will provide details of employee disciplinary and grievance procedures and other policies, which the Customer may request from time to time.
- 3.14 The Service Provider shall have and shall operate an agreed safeguarding policy and procedure and undertake checks on its Staff and Services to ensure compliance with that policy and procedure.

3.15 With regard to the Service Provider's Staff, including but not limited to full time, part time, temporary, permanent and voluntary Staff and sub-contractors and agents the Service Provider undertakes as follows:

- a) The Service Provider shall ensure that all Staff undergo appropriate Disclosure and Barring Service (DBS) checks in accordance with current Legislation, including but not limited to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012), Part V of the Police Act 1997, and the Secretary of State's Code of Practice issued under section 122 of the Police Act 1997. Staff engaged in regulated activity must be checked against the relevant barred lists and must be registered with the DBS Update Service.
- b) Where Staff are engaged in regulated activity with children or vulnerable adults, the Service Provider shall ensure that they hold a current Enhanced DBS Certificate, including a check of the Children's and/or Adults' Barred List as applicable, in accordance with the Police Act 1997 (Criminal Records) Regulations 2002 (as amended) and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. These Staff must be registered with the DBS Update Service. DBS checks carried out for the Service Provider will be accompanied by written confirmation from the DBS that the Service Provider is either registered for the purposes of initiating DBS checks or confirmation that the Service Provider has used an umbrella body which is registered to undertake DBS checks:
 - i. to comply with all the requirements and checks operated by the DBS and ensure that all of the Service Provider's Staff with unsupervised access to children and/or vulnerable adults are registered and checked as required before commencing work;
 - ii. to ensure that all of the Service Provider's Staff who have lived or worked abroad for more than three (3) months since reaching the age of 16 obtain a Certificate of Good Conduct acceptable to the Customer, or similar appropriate document, showing that the individual has not been convicted of any act which would render them inappropriate to work with children and/or vulnerable adults;
 - iii. to undertake that the Service Provider complies with the Customer's Recruitment and Selection and Safer Recruitment policies which as updated from time to time; and
 - iv. to undertake that the Service Provider keeps clear records of every member of the Service Provider's Staff, including their employment histories, medical clearances, proof of enhanced DBS checks disclosures, notes of face-to-face meetings, records of checked references and identity in accordance with the Customer's Recruitment and Selection and Safer Recruitment policies.

3.17 In relation to previous and spent convictions if the Service Provider's Staff are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions in the Rehabilitation of Offenders Act 1974 Exception Order 1975, the Service Provider undertakes it will ensure that all the Service Provider's Staff shall provide information in accordance with the said Act and Order in relation to convictions which would otherwise be spent under the provisions of the said Act.

- 3.18 The Service Provider warrants that at all times for the purpose of this Call-off Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereafter, as amended from time to time
- 3.19 The Service Provider shall immediately notify the Customer of any information that is reasonably requests to enable it to be satisfied that the obligations of this Clause 3 have been met.
- 3.20 The Service Provider shall not employ anyone who is barred from, or previous conduct or records indicate that he/she would not be suitable to carry out a Regulated Activity or may otherwise pose a risk to Users.
- 3.21 The Customer (at its own discretion) may refer any information about any individual to the DBS if the conditions of section 77 of the Safeguarding Vulnerable Groups Act 2006 are met.
- 3.22 The Service Provider acknowledges that the Customer is under a duty to assist and provide such information it holds to the DBS where the DBS considers the Customer holds relevant information.
- 3.23 The Service Provider shall indemnify the Customer against all claims, proceedings, liabilities, losses, costs, damages and expenses howsoever incurred by the Customer as a result of any breach of this Condition 10 by the Service Provider and the Service Provider's Staff.
- 3.24 Throughout the Term the Service Provider undertakes it will:
- a) comply with the NSAB and NSCP (the Northamptonshire Safeguarding Adults Board and the Northamptonshire Safeguarding Children Partnership) Procedures and the Council's Safeguarding Children Board Multi Agency Procedures or equivalent from time to time in place;
 - b) have in place its own safeguarding procedures acceptable to the Council which will be made available to the Council and Services Users on demand; and
 - c) ensure the Service Provider's Staff are trained and work in accordance with the Service Provider's safeguarding procedures at all times including, where required, attendance at NSAB and NSCP training sessions.
- 3.25 The Service Provider shall adhere to and comply with any guidelines and/or codes of practice issued by the Council (including but not limited to the Council's Recruitment and Selection and Safer Recruitment policies) when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children and adults at risk.
- 3.26 The Service Provider shall take all reasonable steps to ensure that:
- a) All persons involved in providing the Services on behalf of the Service Provider understand and follow Northamptonshire Safeguarding Children Partnership's guidance and protocols for safeguarding children and young people: and
 - b) All persons involved in providing the Services on behalf of the Service Provider understand and follow Northamptonshire Safeguarding Adults Board's guidance and protocols
- 3.27 All persons involved in providing the Services on behalf of the Service Provider shall co-operate fully with any investigation by the Council or with any person authorised by the Council to conduct an investigation into any allegations of abuse against the Service Provider's Staff.

- 3.28 All allegations, suspicions and incidents of abuse by the Service Provider's Staff must be followed up promptly. In the event that immediate danger is reasonably likely, urgent action must be taken and emergency Services contacted. Details of concerns and actions taken must be recorded and reported to the Council, and if appropriate, the Police and any regulatory body.
- 3.29 The Service Provider shall ensure that there are robust procedures for responding to and reporting such concerns and that all Staff receive appropriate awareness training regarding Safeguarding Children and Safeguarding Adults which comply the Council's Safeguarding Children and Child Protection Policy and Adults' Protection Policy as appropriate. The Service Provider shall also ensure that they follow the Council's Whistle Blowing Policy to protect Staff who wish to raise such concerns.
- 3.30 The Council reserves the right to require the Service Provider at no cost to the Council to remove from performing the Services any Service Provider Staff allocated to the performance of the Services by the Service Provider who in the reasonable opinion of the Council is detrimental to the provision of the Services.

4. RIGHT OF SET OFF AND RECOVERY OF SUMS DUE

- 4.1 Whenever under the Call-off Contract any sum of money shall be recoverable from or payable by the Service Provider to the Customer the same may be deducted from any sum then due or which at any time thereafter may become due to the Service Provider under this Call Off Call-off Contract or any other contract with the Customer.
- 4.2 If the Service Provider is unable or fails to provide the Services or any part thereof in accordance with the requirements of this Condition, the Customer may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred as a consequence thereof may be deducted from any sums due or to become due to the Service Provider under the Call-off Contract or shall be recoverable from the Service Provider by the Customer as a debt.
- 4.3 Where the Customer considers that an overpayment has been made to the Service Provider or that any other sum is due to the Customer from the Service Provider under the terms of this Call-off Contract due to:
- a) an error in any account which has been subject to certification for payment;
 - b) an error in any invoice; or
 - c) arising from any other cause,

It shall serve a notice on the Service Provider indicating the amount or amounts it considers to have been overpaid or to be due to the Customer and the grounds upon which it relies upon for considering that the relevant amount or amounts should be recovered from the Service Provider.

- 4.4 If the Service Provider fails to perform its duties in accordance with these Terms and Conditions and the Service Specification, this will constitute a Contract Default. In such circumstances, the Customer may apply a charge to the Service Provider.
- 4.5 These charges reflect the staff time and resources reasonably incurred by the Customer in monitoring, managing and resolving the Contract Default, and in ensuring that the Services are delivered in accordance with this Call-off Contract, including the Service Specification.

4.6 If the Service Provider believes that the Customer has either failed to make a payment that is due under this Contract or has made a payment in error, the Service Provider must notify the Customer in writing within 28 days of the payment becoming due or being made in error. The notice must:

- a) explain the payment error or the missed payment;
- b) state the amount that should be paid (or repaid); and
- c) provide details of the Services that were delivered but not correctly paid for.

If, following this notice, the amount claimed is properly due to the Service Provider, the Customer shall pay that amount within 14 days of receiving the notice.

5. USE OF A SUBSTITUTE PROVIDER

5.1 The Customer may engage a substitute provider in accordance with this Condition if:

- a) the Service Provider fails to undertake any of the Services in accordance with the performance indicators stipulated in the Specification or the Tender Documents;
- b) in the reasonable opinion of the Customer the Service Provider has failed to allocate sufficient resources to perform any of the Services.

5.2 Where the Customer pursuant to Condition 4.2 decides to engage a substitute provider they shall notify the Service Provider in respect of the Service Provider's failure under Condition 5.1. above and raise a Purchase Order/Letter of Acceptance to a substitute provider of his choice to carry out the relevant work until the Service Provider is able reasonably to satisfy the Customer of its ability to carry out that work in accordance with the Service Specification and Route Schedule.

5.3 Where the Customer has served notice on the Service Provider in accordance with Condition 5.2 he may in respect of the relevant Services forthwith recover from the Service Provider any costs, damages or expenses incurred by the Customer by reason of the default of the Service Provider to comply with the requirements referred to in this Condition 5 together with any costs or expenses incurred by the Customer in excess of the sums that would have been paid by the Customer to the Service Provider under the terms of this Call-off Contract.

6. INFLATIONARY UPLIFT

6.1 The Service Provider may request to increase or decrease the price of the Call-off Contract ("Call-off Contract Price") no more than once annually from the first anniversary of the commencement of this Call-off Contract provided:

- a) the Service Provider notifies the Customer in writing of its request to increase the Call-off Contract Price during the month of February preceding the new financial year starting in April ("Inflationary Request");
- b) the Service Provider clearly identifies each individual Call-off Contract or Service Agreement for which an increase is requested. Failure to provide this information could result in the uplift request being declined;

- c) the Service Provider provides any required evidence and/or documentation that the Customer requires in order to assist in its determination of whether an increase in the Call-off Contract Price should be made.
- 6.2 No request for an increase shall be considered valid if received outside of the month of February and no request may be submitted prior to the start of February.
- 6.3 No price increase shall be applied to any Call-off Contract that:
- a) has been in place for less than twelve (12) months; or
 - b) has, within the preceding twelve (12) months, been subject to an amendment or variation resulting in an increase to the Call-off Contract Price.
 - c) the Service Provider is deemed to have fallen below a satisfactory performance on all or some of the Service Provider contracts. The method of measurement used assess Service Provider performance will be communicated to all Service Providers at least 30 days prior to its implementation.
- 6.4 Only one price increase may be applied per annum in respect of each Call-off Contract.
- 6.5 Where it is determined that an increase in Call-off Contract Price is to be made the percentage increase shall be set by the Customer in March of each year, having regard to relevant indices and affordability considerations, and the Customer shall notify the Service Provider in writing by the end of the financial year or by the end of April.
- 6.6 Any price increase (or decrease) will take effect from 1 April of the relevant financial year and shall be applied to all valid contracts..
- 6.7 Any agreed increase in the Call-off Contract Price will take effect from 1 April of the relevant financial year of the Inflationary Request and will be in line with any Customer inflationary uplift policy in force at that time or an inflation cap, based on budget, market conditions or the financial constraints of the Customer.

There shall be no individual negotiation or right of appeal in respect of the percentage set by the Customer. The Customer reserves the right not to award an annual increase where the Service Provider has failed to meet required performance standards.

6) SCHEDULE 6 – FRAMEWORK VARIATION PROCEDURE

PART 1: FRAMEWORK VARIATION PROCEDURE

1. INTRODUCTION

- 1.1 This Schedule 6 (Framework Variation Procedure) details the scope of the variations permitted and the process to be followed where the Customer proposes a Framework Change.
- 1.2 The Customer may propose a Framework Change under this Schedule 6 (Framework Variation Procedure) only where the Framework Change does not amount to a material change to this Framework Agreement or the Framework Services.
- 1.3 For the avoidance of doubt this Schedule 6 (Framework Variation Procedure), applies to both the Framework Agreement and any Call-off Contracts.
- 1.4 The procedure for implementing variations to individual Call-Off Contracts shall be as set out in the Service Specification.

2. PROCEDURE FOR PROPOSING A FRAMEWORK CHANGE

- 2.1 Except where paragraph 5 (Variations that are not permitted) applies, the Customer may propose a Framework Change using the procedure contained in this paragraph 2 (Procedure for Proposing a Framework Change).
- 2.2 In order to propose a Framework Change, the Customer shall serve each Service Provider with written notice of the proposal to vary this Framework Agreement and / or the Framework (“**Notice of Variation**”).
- 2.3 The Notice of Variation shall:
 - 2.3.1 contain details of the proposed Framework Change providing sufficient information to allow each Service Provider to assess the Framework Change and consider whether any changes to the Call-off Contract Prices are necessary; and
 - 2.3.2 require each Service Provider to notify the Customer within twenty one (21) days of any proposed changes to any or all of their Call-off Contract Prices.
- 2.4 On receipt of the Notice of Variation, each Service Provider has twenty one (21) days to respond in writing with any objections to the Framework Change.
- 2.5 Where the Customer does not receive any written objections to the Framework Change within the timescales detailed in paragraph 2.4, the Customer may then serve each Service Provider with a written agreement (“**Authorisation Form**”) to be signed and returned by each Service Provider within ten (10) Working Days of receipt.

- 2.6 On receipt of the signed Change Authorisation Form from each Service Provider, the Customer shall notify all Service Providers in writing of the commencement date of the Framework Change.
- 2.7 The timescales referenced in paragraphs 2.3.2, 2.4 and 2.5, may be reduced by the Customer in appropriate cases (ie in a matter of extreme urgency or emergency).
- 2.8 For the avoidance of doubt, any variation made pursuant to this paragraph 2 (Procedure for Proposing a Variation) signed by the Customer and by the Service Provider shall constitute a Framework Change.

3. OBJECTIONS TO A VARIATION

- 3.1 In the event that the Customer receives one (1) or more written objections to a Framework Change, the Customer may:
 - 3.1.1 withdraw the proposed Framework Change; or
 - 3.1.2 propose an amendment to the Framework Change; or
 - 3.1.3 Implement the Framework Change without amendment, provided that Service Providers are given no less than three (3) months' notice of the change, during which they shall have the right to serve notice and withdraw from the Framework Agreement without penalty.

4. VARIATIONS THAT ARE NOT PERMITTED

- 4.1 In addition to the provisions contained in paragraph 1.2, the Customer will have due consideration of the impact of any variation that:
 - 4.1.1 may prevent one or more of Service Providers under the Framework from performing its obligations under this Framework Agreement or any Call-off Contract; or
 - 4.1.2 is in contravention of any Law.
- 4.2 Where a proposed variation would prevent one or more Service Providers under the Framework from performing their obligations under this Framework Agreement or any Call-Off Contract, the affected Service Providers shall be given not less than three (3) months' notice of termination of their participation in the Framework Agreement and any associated Call-Off Contracts in accordance with clause 28 (Termination).

PART 2: CHANGE AUTHORISATION FORM

TITLE OF FRAMEWORK:	DATED: [to be completed after signed by both]
REF:	IMPLEMENTATION DATE:
[LOTS IMPACTED BY THE FRAMEWORK CHANGE:]	
KEY MILESTONE DATE(S) (if any):	
DETAILED DESCRIPTION OF FRAMEWORK CHANGE:	
AMENDMENTS TO THE TERMS OF THE FRAMEWORK AGREEMENT:	
PROPOSED ADJUSTMENT TO THE CALL-OFF CONTRACT PRICES RESULTING FROM THE FRAMEWORK CHANGE:	
<p>Signed for and on behalf of the Customer:</p> <p>_____</p> <p>Authorised Signatory</p> <p>_____</p> <p>Authorised Signatory</p>	<p>Signed for and on behalf of the Service Provider:</p> <p>_____</p> <p>[INSERT APPROPRIATE EXECUTION CLAUSE]</p>

7) SCHEDULE 7 – CONTRACT MANAGEMENT - DETAILS IN PORTAL

8) SCHEDULE 8 – DATA PROCESSING

Categories of Data Please tick all relevant boxes and add more detail if required:

Personal Data

- Name
- identification number
- location data
- online identifier (email/IP address)

Other (please insert details):

Special Categories of Personal Data

- race
- ethnic origin
- political opinions
- religion
- trade union membership
- genetics
- biometrics (where used for ID purposes)
- health sex life
- sexual orientation **Criminal Offence Data**

- allegations
- proceedings
- convictions

**Categories of Data
Subjects**

Please tick all relevant boxes:

Customer service users/customers

Customer service user/customer next of kin

Customer employees

Customer employees next of kin

Other (please insert details):

Processing Operations

Please tick all relevant boxes:

Using data provided by the Customer(s)

Collecting new data from Data Subjects

Transforming data by adding new data collected from service users/customers to data provided by the Customer

Sharing data with anyone other than the Customer

Erasure or destruction of personal data

Other (please insert details):

Location of Processing Operations

Please tick one box only:

UK

EEA² (European Economic Area)

² Details of countries in the EEA are available at the following website: www.gov.uk/eu-eea

Outside EEA (European Economic Area)

If outside the EEA please provide details:

Identity of sub-contractors

Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each subcontractor. Please note that you are not permitted to engage any subcontractors to process this data without prior written Customer approval.

Purposes

For the purpose of performing the Framework Agreement.

If you're using the data for a reason other than the purpose of delivering the Framework Agreement, please amend this section accordingly and provide details here.

Duration

Until the expiry or termination date of the Framework Agreement.

If the length of time for which data processing activities will be carried out will go beyond the expiry date of the Framework Agreement, please amend this section accordingly and detail how long these activities will go on for.

9) SCHEDULE 9 – STAFF TRANSFER

1. TUPE REGULATIONS

- 1.1 The Parties agree that the provisions set out in this paragraph 1 and paragraph 2 shall apply in the event that the TUPE Regulations apply to Staff employed in the delivery of the Services.
- 1.2 The Service Provider shall indemnify and keep the Customer fully indemnified, and where requested by the Customer, any future Service Provider, against all losses arising from or connected with any actual or alleged transfer of staff to the Customer or to any future provider of services equivalent to the Services under the TUPE Regulations or otherwise at the expiry or earlier termination of this Framework Agreement. This indemnity applies whether such losses arise due to a breach by the Supplier of this clause or for any other reason.
- 1.3 If applicable and when reasonably requested to do so, both Parties shall provide all relevant and up to date information in connection with the TUPE Regulations as the requesting Party may require.

2. FUTURE RE-TENDERING AND HANDOVER

- 2.1 Within thirty (30) Working Days of being so requested by the Customer, the Service Provider shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Customer to issue invitations to tender for the future provision of the Services and it shall be the Service Provider's responsibility to get all consents or permits necessary to pass that information to the Customer.
- 2.2 Where, in the reasonable opinion of the Customer, the TUPE Regulations are likely to apply on the termination or expiration of this Framework Agreement or any Call-off Contract, the information to be provided by the Service Provider under clause 2.1 shall include, as applicable, accurate information relating to the employees or Staff under the control of the Service Provider or any subcontractor of the Service Provider who would or could be transferred under the TUPE Regulations (the "Employees") and such other relevant information as may be reasonably required for disclosure to third parties intending to submit tenders for any subsequent agreement for the provision of the Services ("the Workforce Information").
- 2.3 Where, in the reasonable opinion of the Customer, the TUPE Regulations are likely to apply the Service Provider shall not for a period of 6 months prior to termination or expiry of the Framework Agreement or any Call-off Contract make any material changes in the numbers of Employees to be transferred under the TUPE Regulations, their remuneration or other terms and conditions of employment.
- 2.4 Where, in the reasonable opinion of the Customer, the TUPE Regulations are likely to apply, the Service Provider shall advise the Customer immediately of any changes to the Workforce Information between the date on which it is provided and the expiry of this Framework Agreement or any Call-off Contract and shall ensure that the information disclosed is accurate and up to date and that all known existing liabilities relating to the Employees have been discharged.
- 2.5 The Service Provider shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of the liability incurred by the Customer arising from any deficiency or inaccuracy in information, which the Service Provider is required to provide under clause 2.1.
- 2.6 The Service Provider shall, if required by the Customer, provide an undertaking and warranty to any person to whom the Service Provider's Employees may transfer pursuant to the TUPE Regulations to the effect the Service Provider has discharged all its obligations as employer in relation to the Employees.
- 2.7 Where, in the reasonable opinion of the Customer, the TUPE Regulations are likely to apply the Service Provider shall co-operate fully with the Customer during the handover arising from the completion or earlier termination of this Framework Agreement or any Call-off Contract. This

co-operation, during the setting up of operations period of the new Service Provider, shall extend to consultation with the Employees allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.

- 2.8 Within twenty (20) Working Days of being so requested by the Customer, the Service Provider shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Customer.