

dated

**The Mayor and Burgesses of the London Borough of Enfield**

and

[XXXXXXXXXX]

and

[Guarantor]

## **Framework Agreement**

in relation to [XXXXXXXXXXXXXXXXXXXXX]

# Framework Agreement

dated

## Parties

- (1) **The Mayor and Burgesses of the London Borough of Enfield** of Civic Centre Silver Street Enfield EN1 3XA (the **Council**); and
- (2) [ ] (the **Provider**).
- (3) [ ] (the **Guarantor**).

## Introduction

- (A) The Council is setting up a framework of affordable housing providers to provide a range of works and services (divided into Framework Lots) which the Council and Authorised Users can call upon on an ad hoc basis as required.
- (B) Following the issue of Contract Notice [ ] and following a due tender process (the **Tender Process**) carried out in accordance with the Public Contract Regulations 2015, the Provider has been selected by the Council to be appointed to the Framework and is hereby appointed to one or more of the Framework Lots as set out in Schedule 1 (Framework Lots and Providers) of this Framework Agreement.
- (C) The Provider acknowledges that the Framework Providers have, at the above date entered into framework agreements with the Council on similar terms to this Framework Agreement.
- (D) This Framework Agreement is intended to govern the on-going relationship between the Provider, the Council and the Authorised Users in connection with any request made by the Council or an Authorised User to the Provider to carry out any Project(s).
- (E) This Framework Agreement is designed to encourage the Council, the Authorised Users and the Framework Providers to work with each other in an open, co-operative and collaborative manner in a spirit of mutual trust, respect and co-operation with the joint intention of achieving the Framework Objectives.
- (F) The Provider represents that it has the necessary capabilities, resources, competent personnel and experience to carry out the Projects and is willing to do so on the terms and conditions set out in this Framework Agreement.
- (G) It is the Parties' intention that neither the Council nor any Authorised User has any obligation to instruct the Provider to carry out any Project under this Framework Agreement or at all.

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Framework Agreement words and expressions shall have the following meanings:

**Access Agreement** means an agreement between the Council and an Authorised User substantially in the form of Schedule 6;

**Anti-corruption Policy** means the Council's ethics, anti-bribery and anti-corruption policy or policies as the same may be amended from time to time and notified to the Provider in writing;

**Associated Person** means a person (including an employee, agent or subsidiary) who performs services for or on behalf of the Provider;

**Authorised Users** means any contracting authority (as defined in regulation 2 of the PCR 2015) other than the Council as described in the Contract Notice;

**Bribery Act** means the Bribery Act 2010 and any re-enactments, amendments and relevant regulations;

**Call-Off Contract** means any agreement referred to in Schedule 4 which may be entered into in writing between the Council or an Authorised User and the Provider in relation to a Project;

**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 any Authorised User in relation to the Provider's performance under this Framework Agreement or any Call-Off Contract.

**Confidential Information** means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data within the meaning of the Data Protection Legislation;

**Conflict of Interest** means any actual or potential conflict of interests between the personal or pecuniary interests of the Parties to this Framework Agreement;

**Corrupt Activity** means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity bribery and/or corruption including, without limitation, any activity, practice or conduct which would or could constitute an offence under Sections 1, 2 or 6 Bribery Act whether in connection with any Project or otherwise;

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) each as amended and any other applicable legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or Supervisory Authority and applicable to a Party;



solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the Provider or the Council); or

- ii a receiver (including any administrative receiver) or similar person is appointed in respect of the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest of any kind over any of its undertaking, property or assets;
  - iii an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator;
  - iv any distress, execution or other process is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within 14 days;
  - v any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangements between it and its creditors and/or members or any class of its creditors and/or members is proposed, sanctioned or approved;
  - vi it is unable to pay its debts for the purposes of the Insolvency Act or it becomes insolvent under any applicable legislation; in relation to a Provider which is an individual, he is adjudged bankrupt or enters into any composition or arrangement with his creditors generally; or
- (b) any event analogous to any of the above occurs in any jurisdiction in which the Provider or Client is incorporated, carries on business or has any assets;

**Intellectual Property Rights** means all intellectual property rights (including patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same;

**KPIs** means the key performance indicators included at Schedule 7 or included in any relevant Call Off Contract.

**Legislation** means:

- (c) any Act of Parliament; and/or
- (d) any subordinate legislation within the meaning of Section 12(1) of the Interpretation Act 1978; and/or
- (e) any exercise of the Royal Prerogative

in each case within the United Kingdom;

**Mini-Competition Evaluation Criteria** means the evaluation criteria set out in Schedule 2 (Mini-Competition Evaluation Criteria);

**Mini-Competition Procedure** means the procedure described in clause 4.3 to 4.8;

**Modern Slavery Legislation** means the legislation referred to in Section 54 of the Modern Slavery Act 2015 and any re-enactments, amendments and relevant regulations;

**Parties** means the signatories to this Framework Agreement;

**PCR 2015** means the Public Contracts Regulations 2015 (SI No. 2015/102) (as amended) and any re-enactments, amendments and relevant regulations;

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

**Project** shall mean any works or services instructed by the Council or an Authorised User pursuant to this Framework Agreement and to be carried out by the Provider or any Framework Provider pursuant to a Call-Off Contract;

**Provider Disqualification Event** means any of the following events:

- (a) the Provider has breached any of its obligations under a Call-Off Contract (including fundamental breach or breach of a fundamental term) and the Council (acting reasonably) has confirmed to the Provider that the appropriate remedy or measure is to exclude the Provider from the Selection Procedure for the award of future Call-Off Contracts under this Framework Agreement until the performance failures have been remedied to the Council's reasonable satisfaction; or
- (b) the Council or an Authorised User and the Provider have a dispute or difference under this Framework Agreement and/or a Call-Off Contract that has been referred for formal determination to adjudication or court proceedings; or
- (c) the Provider or the Guarantor becomes Insolvent and/or suffers an Insolvency Event; or
- (d) the Provider's or the Guarantor's financial circumstances have changed to the extent that, in the reasonable opinion of the Council, shall materially adversely affect the ability of the Provider to carry out the relevant Project in accordance with this Framework Agreement or any Call-Off Contract; or
- (e) The Provider's or the Guarantor's financial circumstances have changed since the selection questionnaire stage of the procurement and the Provider has not notified the Council of such change; or
- (f) The Provider has been judged as less than G2 or V2 by the Regulator of Social Housing; or
- (g) The Provider has participated in and been successful in a previous Call-Off process and the Council has been unable to enter into the Call-Off Contract with the Provider as the Provider proposed unacceptable changes to the Call-Off Contract;

- (h) the Provider has failed to maintain the professional skills, expertise and knowledge of its staff and personnel as required by the Framework Programme provided that such failure has been notified by the Council to the Provider and not addressed and rectified to the Council's reasonable satisfaction within (10) Working Days of said notification; and/or
- (i) the Provider has failed to satisfy the Council's pre-construction health and safety competency check and is guilty of a material breach of any health and safety regulation or is subject to prosecution by the Health and Safety Executive; and/or
- (j) the Provider has failed to maintain to the requisite level of cover all or any of its insurances required under any Call-Off Contract; and/or
- (k) the Guarantor and/or the Provider is under investigation for or subject to prosecution for or is guilty of a breach of any law or regulation; and/or
- (l) the Provider has failed to conduct itself in all respects in a manner consistent with its appointment as a Framework Provider; or
- (m) the Council or an Authorised User has terminated the appointment of the Provider pursuant to the terms of a Call-Off Contract solely due to the default of the Provider; or
- (n) the Provider has failed one or more of the KPIs; or
- (o) a right to terminate this Framework Agreement arises in accordance with clause 24.

**Request for Information** has the meaning set out in the FOIA or any apparent request for information under the FOIA, the EIR, the FOIA Code or the EIR Code;

**Second Placed Framework Contractor** means, in respect of each Framework Lot, the provider identified as such in Schedule 1

**Selection Procedure** means the procedure described in Schedule 1, Part 1;

**Supervisory Authority** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation, including the UK Information Commissioner's Office, or any successor or replacement bodies from time to time;

**Supply Chain** means any and all persons engaged by the Council, an Authorised User or the Provider (as appropriate) in connection with a Project with which the Provider is involved;

**Tender Process** has the meaning given to that term in Recital B;

**Third Placed Framework Contractor** means, in respect of each Framework Lot, the provider identified as such in Schedule 1

**UK Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection

Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the Legislation Enforcement Directive (Directive (EU) 2016/680);

**Working Day** means Monday to Friday inclusive but not including Saturday, Sunday or any declared public holiday in England;

## 1.2 Interpretation

- 1.2.1 The clause and schedule headings in this Framework Agreement are for convenience only and do not affect its interpretation.
- 1.2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.3 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. Any reference to this Framework Agreement includes the schedules.
- 1.2.4 A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.
- 1.2.5 Words importing the singular meaning shall include where the context so allows the plural meaning and vice versa.
- 1.2.6 Words of one (1) gender include the masculine, feminine and neuter genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.2.7 Where the context so admits references in this Framework Agreement to a clause or schedule are to a clause or schedule of this Framework Agreement.
- 1.2.8 A reference to any statute or statutory instrument shall include a reference to any consolidation, extension, amendment or replacement of it for the time being in force.
- 1.2.9 A reference to any statute or statutory instrument shall include all subordinate legislation made under that statute or statutory instrument.
- 1.2.10 A reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.2.11 An obligation on a party not to do something includes an obligation not to agree that thing to be done.
- 1.2.12 A reference to writing or written does not include email.
- 1.2.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.



## 2 **Term of this Framework Agreement**

- 2.1 This Framework Agreement shall commence on the date hereof and shall continue for a total duration of four (4) calendar years or until it is otherwise terminated or extended in accordance with the provisions of this Framework Agreement (the **Initial Term**).
- 2.2 Prior to the expiry of the Initial Term, the Council may, at its absolute discretion, serve notice on the Provider in writing extending the term of this Framework Agreement for a further period or further periods of up to two (2) calendar years (the **Extension Period**), to a maximum Framework Term period of six (6) calendar years. In the event that the Council serves notice under this clause 2.2 the term of this Framework Agreement will be extended in accordance with the notice.
- 2.3 If the Framework Agreement is further extended under clause 2.2, the Framework Agreement shall terminate automatically at the end of the Extension Period without further notice unless terminated earlier in accordance with the provisions of this Framework Agreement.
- 2.4 The Parties acknowledge that the Council may issue one or more Call-Off Contracts to the Provider that extends beyond the Framework Term.
- 2.5 Notwithstanding any other provision of this Framework Agreement to the contrary, neither the Council nor any Authorised User is obliged to enter into any Call-Off Contracts with the Provider during the Framework Term and nothing in this Framework Agreement shall operate to:
- 2.5.1 prevent the Council or an Authorised User from dealing with any third party (including without limitation the other Framework Providers and/or any competitors); or
  - 2.5.2 require the Council or any Authorised User to award a committed or guaranteed number of Call-Off Contracts to any of the Framework Providers; or
  - 2.5.3 oblige the Council or any Authorised User to award a Call-Off Contract following a Mini-Competition.

For the avoidance of doubt, neither the Council nor any Authorised User shall be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by the Provider as a result of the Provider not being awarded one or more Call-Off Contracts during the Framework Term.

## 3 **Framework Objectives**

- 3.1 The Framework Objectives are as follows:

[TO INCLUDE – from ITT]

## 4 **Selection and appointment of Framework Providers**

- 4.1 Following the Tender Process the Framework Providers listed in Schedule 1 in order of ranking in the Tender Process have been appointed.

4.2 Where the Council or an Authorised User wishes to award a Call-Off Contract under this Framework Agreement the selection of a Framework Provider from a Framework Lot shall be made by the Council or the Authorised User either by Direct Selection in accordance with the provisions of clause 4.2, or by way of Mini-Competition in accordance with the provisions of clauses 4.3 to 4.8. For the avoidance of doubt, the decision as to whether to select a Framework Provider by Direct Selection or by way of a Mini-Competition shall be entirely at the Council's or the Authorised User's discretion.

### **Direct Selection**

4.3 The Council or an Authorised User may invite, in writing, a Framework Provider to enter into a Call-Off Contract without any further competition between the Framework Providers ("**Direct Selection**") where:

4.3.1 In relation to Lot 1:

- (a) the Framework Provider owns a site either currently being developed or proposed for development which is located adjacent to a site owned by the Council/Authorised User in respect of which the Council/Authorised User intends to award a Call-Off Contract under Lot 1; OR
- (b) in accordance with the selection procedure set out in Schedule 2;

4.3.2 In relation to Lot 2:

- (a) the Framework Provider owns a site:
  - i which is located adjacent to a site owned by the Council/Authorised User in respect of which the Council/Authorised User requires Lot 2 Services; and
  - ii in respect of which that Framework Provider is or will be undertaking services substantially similar in nature to the Lot 2 services required by the Council/Authorised User: OR
- (b) the Council or the Authorised User is able to determine which Framework Provider will provide it with the most economically advantageous offer for the proposed Call-Off Contract by reference to the Framework Providers' tender submissions for the Framework Agreement and having regard to the particular requirements of the Call-Off Contract in question;

4.3.3 In relation to Lot 3, in accordance with the selection procedure set out in Schedule 2.

### **Mini Competition**

4.4 If the Council or an Authorised User wishes to award a Call-Off Contract by way of a Mini-Competition, the Council or the Authorised User shall identify the Framework Providers appointed to the relevant Framework Lot who are capable of carrying out the particular Call-Off Contract, and shall send those Framework Providers an invitation in writing (the "**Call-Off Invitation**") setting out:

4.4.1 the scope, location and details of the relevant Project;

- 4.4.2 the scope of works or services to be provided;
- 4.4.3 the programme, key milestones and dates to be achieved;
- 4.4.4 the template Call-Off Contract with any project specific amendments required by the Council;
- 4.4.5 any constraints relating to the scope of services to be provided;
- 4.4.6 supporting documents and drawings, and
- 4.4.7 the applicable evaluation criteria which shall be based on the Mini-Competition Evaluation Criteria with such amendments as the Council or the Authorised User may stipulate to reflect the requirements of the Call-Off Contract in question

and invite such Framework Providers to submit a written response to the specific issues covered in the Call-off Invitation (the “**Call-off Tender**”) within a defined timescale, such timescale being of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the works or services in question, the nature of the Council’s or the Authorised User’s requirements and the time needed to compile and submit proposals.

4.5 The Council or an Authorised User, at its absolute discretion, may choose not to invite a Framework Provider to participate in a Mini-Competition Procedure if the Framework Provider:

- 4.5.1 confirms in writing that it does not want to or cannot provide the Project anticipated in the Call-off Invitation; and/or
- 4.5.2 suffers a Provider Disqualification Event; and/or
- 4.5.3 is unlikely to be able to conclude a Call-Off Contract on acceptable terms (including terms which include a substantial variation) with the Council or an Authorised User; and/or
- 4.5.4 is demonstrating issues with capacity and has been unable to satisfy the Council or Authorised User that it will be able to deliver the Project in addition to other projects that it is already committed to deliver.

4.6 The Council or the Authorised User shall evaluate the Call-off Tenders received from the Framework Providers in accordance with the Mini-Competition Evaluation Criteria set out in Schedule 2 as clarified or supplemented in each Call-off Invitation and all Framework Providers invited to take part in the Mini-Competition will be informed of the outcome of that evaluation.

4.7 The Provider shall be responsible for its own costs in relation to any Mini-Competition Procedure and acknowledges and agrees that neither the Council nor any Authorised User shall have any liability for such costs under any circumstances.

4.8 If the Framework Provider who is ranked first in a mini-competition:

- 4.8.1 declines a Call-Off Contract which it is to be awarded in accordance with the Mini-Competition Procedure; or
- 4.8.2 suffers a Provider Disqualification Event; or
- 4.8.3 is not able to conclude a Call-Off Contract on acceptable terms (including terms which include a substantial variation) with the Council or an Authorised User,

the Council or the Authorised User may, at its sole discretion, award the Call-Off Contract to the Framework Provider who is ranked second in the mini-competition.

4.9 If, having been offered a Call-Off Contract in accordance with clause 4.8, the Framework Provider who is ranked second in the mini-competition:

- 4.9.1 declines a Call-Off Contract which it is to be awarded in accordance with the Mini-Competition Procedure; or
- 4.9.2 suffers a Provider Disqualification Event; or
- 4.9.3 is not able to conclude a Call-Off Contract on acceptable terms (including terms which include a substantial variation) with the Council or an Authorised User,

the Council or the Authorised User may, at its sole discretion, award the Call-Off Contract to the Framework Provider who is ranked third in the mini-competition.

4.10 The Council's or Authorised User's discretion to award Call-Off Contracts in accordance with the provisions in clauses 4.8 and 4.9 is subject always to the Framework Providers:

- 4.10.1 complying with the Requirements of the selection questionnaire used in the original Tender Process and/or any further financial tests that the Council or the Authorised User decides is prudent to undertake; and
- 4.10.2 being in all other respects of good standing.

### **Appointment**

4.11 If the Provider is selected to carry out a Call-Off Contract (whether following a Mini-Competition or by Direct Selection), the Council or the Authorised User may issue a Call-Off Contract to the Provider for execution.

4.12 The Provider shall execute and return the Call-Off Contract to the Council or the Authorised User within ten (10) Working Days of receipt of the same or such longer period as the Council or the Authorised User may in their absolute discretion agree.

4.13 If the Provider fails to comply with its obligation in clause 4.11 above, the Provider shall be deemed to have declined the offer to enter into the Call-Off Contract and the Council or the Authorised User may appoint the next placed Framework Provider in the Mini-Competition Procedure or recommence the selection process as it shall in its absolute discretion determine.

4.14 The terms of this Framework Agreement will supplement and complement the terms of any Call-Off Contract. In the event of any conflict or discrepancy between the terms of a Call-

Off Contract and the terms of this Framework Agreement the terms of the relevant Call-Off Contract will prevail.

## **5 Payment**

5.1 The fee payable to the Provider for the carrying out of services pursuant to any Lot 2 or Lot 3 Call-Off Contract awarded to it will be calculated by reference to the rates and prices set out in the Provider's Fee Schedule subject to:

5.1.1 any refinements that are necessary to reflect the particular requirements of the Call-Off Contract in question; and/or

5.1.2 any reduction that may be offered and agreed pursuant to a Mini-Competition.

## **6 Framework Management**

6.1 This Framework Agreement will be managed by the Council or by an entity appointed by the Council to manage this Framework Agreement on the Council's behalf. Individual Projects and Call-Off Contracts will be the responsibility of the Council or Authorised Users (as applicable).

6.2 An Authorised User wishing to enter into a Call-Off Contract with a Framework Provider in respect of a Project must first enter into an Access Agreement with the Council.

6.3 The Provider shall only enter into Call-Off Contracts with an Authorised User where:

6.3.1 The Provider has been notified in writing by the Council (including without limitation by email from an authorised representative of the Council provided to an Authorised User which the Authorised User then shares with the Provider) that the Authorised User has entered into an Access Agreement in relation to the Project; and

6.3.2 The Provider has not been notified that the relevant Access Agreement has been terminated or the relevant Authorised User has been suspended from entering into Mini-Competitions and or Call-Off Contracts has been suspended in accordance with clause 6.4;

6.4 The Council may at any time suspend any Authorised User from entering into Mini-Competitions and/or Call-Off Contracts under this Framework Agreement. The Council will notify the Provider of any such suspension. Any Mini-Competition and/or Call-Off Contract entered into with that Authorised User after the date of notification will not be made pursuant to this Framework Agreement. In such circumstances it will be the exclusive responsibility of the Authorised User and the Provider to ensure full compliance with any applicable procurement Legislation:

6.5 In relation to a Project which is the subject of an Access Agreement, the Authorised User will be exclusively responsible for the selection of a Framework Provider in accordance with Clause 4 and for the managing a Call-Off Contract between it and the selected Framework Provider. The Council will not be party to any selection procedure carried out by an Authorised User and will have no responsibility or liability for any work or services procured by an Authorised User under this Framework Agreement.

## **7 Performance Review**

- 7.1 The Council and the Provider shall work together and individually, in accordance with this Framework Agreement and each Call-Off Contract (as relevant), to achieve a transparent and co-operative exchange of information in all matters relating to this Framework Agreement and each Call-Off Contract
- 7.2 Throughout the Framework Term, the performance of the Provider in relation to any Call-Off Contracts it is awarded and the contribution of the Provider to the achievement of the Framework Objectives shall be monitored and assessed by reference to the KPIs incorporated into the relevant Call-Off Contracts and the KPIs at Schedule 7.
- 7.3 The Provider shall provide the Council and the Authorised Users with such information as may be reasonably requested by the Council to demonstrate progress against KPIs and the Framework Objectives.
- 7.4 Periodically during the Framework Term the Council may carry out an assessment and make a written report of the Provider's performance against each of the relevant KPIs incorporated in a Call-Off Contract and the KPIs at Schedule 7. Once any such report has been compiled, the Council and the Provider will review the report with a view to:
- 7.4.1 identifying any aspects of the Council's or the Authorised User's performance or that of any other adviser that may have had an adverse effect upon the performance of the Provider;
  - 7.4.2 identifying any aspects of the Provider's, the Council's, the Authorised User's or any other relevant adviser's performance that could be improved upon; and
  - 7.4.3 assessing whether the existing KPIs have proved to be and are likely to remain until the next assessment, fair, reasonable and appropriate indicators of the performance of the Provider in the achievement of the Framework Objectives.
- 7.5 The Council shall be entitled to disclose the reports referred to in clause 7.4 to the other Framework Providers and Authorised Users and to discuss the performance of the Provider with the other Framework Providers and Authorised Users as it deems necessary or appropriate.

## **8 Financial Evaluation**

Up to date financial information including audited accounts will be supplied by the Framework Providers to the Council once per year to verify good standing.

## **9 Review Meetings**

- 9.1 The Provider shall attend all meetings as may be necessary for the proper performance of this Framework Agreement.
- 9.2 Without prejudice to the generality of clause 9.1, twelve (12) months after the Commencement Date and every twelve (12) months thereafter until the end of the Framework Term, the Council may convene a meeting with such Authorised Users and Framework Providers as the Council may specify by giving such persons not less than five (5) Working Days' notice in writing to:

- 9.2.1 share experience and lessons learnt from completed Projects;
  - 9.2.2 review any KPIs collated and analysed;
  - 9.2.3 identify areas of success or areas for improvement in the successful carrying out of Projects and the achievement of the Framework Objectives;
  - 9.2.4 share knowledge and experience in the pursuit of continuous improvement;
  - 9.2.5 provide feedback to the Council on any Mini-Competitions launched and/or Call-Off Contracts awarded by Authorised Users;
  - 9.2.6 discuss comments on the forms of Call-Off Contract to identify any problem areas and, if non substantial, proposals to address such issues;
  - 9.2.7 publish details of the workload of each Framework Provider to ensure transparency of information; and
  - 9.2.8 dealing with any other matter referred to it by any Framework Provider and/or Authorised User.
- 9.3 Each meeting called in accordance with the provisions of clause 9.2 shall be chaired by the Framework Manager (or in their absence a person to be agreed at that meeting).

## 10 **Supply Chain**

- 10.1 The Provider shall use reasonable endeavours to ensure that all members of its Supply Chain are made aware of, understand and are prepared to embrace and adhere to the principles of collaborative working envisaged in this Framework Agreement with a view to achieving the Framework Objectives.
- 10.2 The Provider shall, where appropriate, work with the members of the Council's and the Authorised Users' Supply Chains in an open, co-operative and collaborative manner with a view to achieving the Framework Objectives.

## 11 **Key Personnel and employees**

- 11.1 The Provider shall employ individuals with the necessary skills, qualifications and experience to fulfil its role, expertise and responsibilities under this Framework Agreement.
- 11.2 The Provider shall allocate a sufficiently experienced individual to be the key contact for this Framework Agreement and shall ensure that the Council is provided with full contact details for such individual.

12 **Guarantee**

The Guarantor agrees with the Council that it will enter into any Call-Off Contract as Guarantor to the Provider or otherwise provide a guarantee of the Provider's obligations under any Call-Off Contract when called to do so by the Council or an Authorised User.

13 **Confidentiality**

13.1 Subject to clauses 7.5, 9.2 and 13.2, the Parties shall keep confidential all information of a confidential nature obtained by them by reason of this Framework Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

13.2 Clause 13.1 shall not apply to any disclosure of information:

13.2.1 required by any applicable law or to any disclosures required under the FOIA or the EIR;

13.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;

13.2.3 that is reasonably required by Authorised Users who wish, or may wish to enter into a Call-Off Contract with the Provider;

13.2.4 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 13.1;

13.2.5 to enable a determination to be made under clause 23;

13.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information; and

13.2.7 by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information.

14 **Freedom of Information**

14.1 The Provider acknowledges that the Council and the Authorised Users are subject to the requirements of the FOIA and the EIR. The Provider shall (at the Provider's expense) assist and co-operate with the Council or the relevant Authorised User to enable the Council or the relevant Authorised User to comply with these information disclosure requirements.

14.2 The Provider shall and shall procure that its sub-contractors shall:

14.2.1 transfer to the Council or the Authorised User all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

14.2.2 provide the Council or the Authorised User with a copy of all Information in its possession, or power in the form that the Council or the Authorised User requires



within five (5) Working Days (or such other period as the Council or the Authorised User may specify) of the Council's or the Authorised User's request; and

- 14.2.3 provide all necessary assistance as is reasonably requested by the Council or the Authorised User to enable the Council or the Authorised User to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 14.3 The Council or the Authorised User concerned shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 14.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council or the relevant Authorised User.
- 14.5 The Provider acknowledges that the Council and the Authorised Users may, acting in accordance with the applicable code of practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Provider or despite having taken the Provider's views into account.
- 14.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council and the Authorised Users to inspect such records as requested from time to time.

## 15 **Data Protection**

- 15.1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. In this clause, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) Domestic UK law; and **Domestic UK Law** means the Data Protection Legislation and any other law that applies in the UK.
- 15.2 During the term of this Framework Agreement it is anticipated that each party shall be a separate and individual Data Controller in respect of any Personal Data that is Processed pursuant to this Framework Agreement. Each party acknowledges that it has obligations under the Data Protection Legislation including, without limitation, to:
  - 15.2.1 Make due notification to the Supervisory Authority, including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Legislation including ensuring that it has all necessary appropriate consents and notices in place to enable lawful processing of the Personal Data for the duration and purposes of this Framework Agreement.
  - 15.2.2 Ensure that all Personal Data disclosed or transferred to, or accessed by, the Parties is accurate and up-to-date, as well as adequate, relevant and not excessive to enable them to Process the Personal Data, as envisaged under this Framework Agreement.
  - 15.2.3 Ensure that appropriate operational and technical measures are in place to safeguard against any unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

- 15.2.4 Take reasonable steps to ensure the reliability of any staff who have access to the Personal Data.
- 15.2.5 Hold the information contained in the Personal Data confidentially.
- 15.3 In respect of Personal Data processed by the Provider pursuant to this Framework Agreement the Provider shall:
- 15.3.1 promptly, and in any event within 48 hours of receipt of any Data Subject Request or Authority Correspondence, notify the Council in the event that it receives such a Data Subject Request or Authority Correspondence in relation to the processing of Personal Data under, or in connection with, this Framework Agreement.
- 15.3.2 promptly and in no more than 24 hours notify the Council in writing upon it becoming aware of any actual or suspected breach of clause 15.2.3 in relation to the Personal Data and shall, within such timescale to be agreed by the Parties (acting reasonably and good faith):
- (p) implement any measures necessary to restore the security of compromised Personal Data; and
  - (q) support the Council to make any required notifications to the Supervisory Authority and affected Data Subjects.
- 15.4 The Provider shall assist the Council to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Framework Agreement in such a way as to cause the Council to breach any of their obligations under the Data Protection Legislation to the extent that the Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 15.5 Without prejudice to the generality of clause 15.1 and notwithstanding clause 15.2, to the extent that the Provider is in fact acting as a Processor for and on behalf of the Council as the Controller, in relation to the Processing that it is carrying out arising out of, or in connection with, the performance of its obligations under this Framework Agreement, it shall:
- 15.5.1 process that Personal Data only on the written instructions of the Council (as set out in Schedule 5 or from time to time), unless the Provider is required by the Applicable Laws to otherwise process the Personal Data. Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Council;
- 15.5.2 ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the

cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

15.5.3 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (a) the Council or the Provider has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective remedies;
- (c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

15.5.4 notify the Council immediately if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data;
- (b) a request to rectify, block or erase any Personal Data;
- (c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

15.5.5 assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

15.5.6 notify the Council immediately on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Framework Agreement;

15.5.7 at the written direction of the Council, delete or return Personal Data and copies thereof to the Council or an Authorised User on termination or expiry of the Framework Agreement unless required by the Applicable Laws to store the Personal Data;

15.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Council or the Council's

designated auditor and immediately inform the Council if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.

15.6 Either party may, at any time on not less than (30) Working Days' written notice to the other party, revise clause 15.5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).

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

15.8 The Provider shall indemnify and keep indemnified the Council in respect of all data protection losses or damages suffered or incurred by, awarded against or agreed to be paid by, the Council arising from or in connection with any breach by the Provider of any of its obligations under this clause 15.

## 16 **Publicity**

16.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Council's prior written consent.

16.2 The Provider shall not do anything that may damage the reputation of the Council or any Authorised User or bring the Council or any Authorised User into disrepute.

## 17 **Equality and diversity**

17.1 The Provider warrants and undertakes that it shall adhere to the Council's equality commitments set out in the Council's Equality and Diversity Policy and Equal Opportunities Code of Practice (as supplied by the Council to the Provider and updated from time to time).

17.2 The Provider acknowledges that the Council has duties under section 149 Equality Act to have due regard to the need to eliminate discrimination, harassment and any other conduct prohibited by the Equality Act and to promote equality of opportunity and foster good relations between persons sharing a protected characteristic and those who do not share it. For the purposes of this duty (the **Equality Duty**) the protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

17.3 The Provider warrants that it will not and shall procure that its sub-contractors and appointees will not through their conduct or practices cause the Council to be in breach of any of the obligations placed upon the Council by section 149 Equality Act having due regard to any statutory code of practice issued in relation to that duty and will indemnify the Council for any loss, expense or damage incurred as a result of any breach of such obligations.

17.4 The Provider acknowledges that the Council by regulation may be subject to duties in accordance with section 153 Equality Act. The Provider warrants that it will not and shall procure that its sub-contractors and appointees will not through their conduct or practices cause the Council to be in breach of any of the obligations placed upon the Council under any duty imposed by any regulation issued under section 153 Equality Act and will indemnify the Council for any loss, expense or damage incurred as a result of any breach of such obligations.

17.5 The Council may having regard to its statutory duties under the Equality Act and/or by any regulation issued under section 153 Equality Act and having due regard to any statutory code of practice issued in relation to those statutory duties make requests or issue instructions to the Provider (relating to the supply of information, monitoring and other matters) for the purposes of ensuring that the conduct or practices of the Provider and/or its sub-contractors will not result in the Council being in breach of its obligations under the Equality Act. The Provider agrees that it will and shall procure that its sub-contractors and appointees will provide the Council with all information reasonably requested by the Council to allow it to monitor compliance with the obligations imposed by this clause 17.

17.6 Without prejudice to the generality of this clause 17, the Council may require the Provider to comply at no cost to the Council with the Council's policies relating to the Equality Duty (which shall be made available on request) or to have policies which have been approved by the Council and the Provider will and agrees that it shall procure that its sub-contractors and appointees comply with such requirements.

## 18 **Immigration**

18.1 The Provider warrants that it will take all appropriate measures to prevent illegal working and will procure that its subcontractors and suppliers will each take all appropriate measures to prevent illegal working, including but not limited to the obligations under the Immigration, Asylum & Nationality Act 2006, as extended by the Immigration Act 2014 and Immigration Act 2016.

18.2 The Provider warrants that it will, and shall procure that its subcontractors and suppliers shall carry out right to work checks on all prospective employees before employment starts, conduct follow-up checks, keep appropriate records and comply with the Asylum Act 2006 where relevant.

18.3 The Provider agrees that it will, and will procure that its subcontractors and suppliers will, fully cooperate with any visiting immigration officer in relation to providing access to documents or as otherwise reasonably required.

## 19 **Conflicts of interest**

19.1 The Provider acknowledges and agrees that no Conflict of Interest exists between the Provider and the Council at the date of this Framework Agreement. In the event that the Provider becomes aware of a Conflict of Interest between its own interests and the Council, it shall notify the Council of the full details of any such Conflict of Interest immediately.

19.2 The Council reserves the right to terminate this Framework Agreement immediately by notice in writing and/or take such steps as it shall deem necessary should it become aware of a Conflict of Interest between itself and the Provider.

## 20 **Modern Slavery legislation**

20.1 The Provider warrants to the Council that it:

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

- 20.1.2 has and shall maintain throughout the term of this Framework Agreement and any Call-Off Contract its own policies and procedures to ensure compliance with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Legislation;
  - 20.1.3 has not and shall not engage in any activity, practice or conduct that constitute an offence under sections 1, 2 or 4 of the Modern Slavery Legislation if such activity, practice or conduct were carried out in the United Kingdom;
  - 20.1.4 shall include in its contracts with all sub-contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause.
- 20.2 The Provider represents and warrants that neither it nor any of its officers, employees or other persons associated with it:
- 20.2.1 has been convicted of any offence involving slavery and human trafficking; and
  - 20.2.2 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.
- 20.3 The Provider shall implement due diligence procedures for its sub-contractors and suppliers aimed at ensuring that there is no slavery or human trafficking in its supply chains.

## 21 **Bribery and fraud**

- 21.1 The Provider warrants to the Council that it:
- 21.1.1 has not, and its current and former directors, officers and employees have not, and shall not engage in any Corrupt Activity (for the avoidance of doubt, the actions of the Provider's former directors shall only be applicable in respect of this sub-clause, for the time period during which they were directors of the Provider);
  - 21.1.2 has not, and its current and former directors, officers and employees have not, and shall not engage in any activity, practice or conduct which could or would place the Council in breach of section 7(1) Bribery Act (for the avoidance of doubt, the actions of the Provider's former directors shall only be applicable in respect of this sub-clause, for the time period during which they were directors of the Provider);
  - 21.1.3 shall comply with the Anti-corruption Policy;
  - 21.1.4 shall maintain and implement procedures to ensure compliance with clauses 21.1.1 and 21.1.2 and adequate procedures designed to prevent any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act;

- 21.1.5 shall include undertakings similar to those contained in this clause in any contract it may enter into with sub-contractors and third parties;
- 21.1.6 shall confirm in writing (from time to time at the reasonable request of the Council) that it has complied with its undertakings under clauses 21.1.1 to 21.1.5 inclusive and will provide any information reasonably requested by the Council in support of such compliance;
- 21.1.7 shall maintain adequate records to assist in verifying its compliance with the provisions of this clause (including without limitation books of account showing all payments made by the Provider in connection with this contract) and shall permit the Council and its third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses 21.1.1 to 21.1.3 inclusive, to access and take copies of such records and to meet with the Provider's personnel to audit the Provider's compliance with its obligations under this clause. The Provider shall give all necessary assistance to the conduct of such audits.
- 21.2 The Provider shall indemnify the Council and any Authorised User against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Council or any Authorised User as a result of any breach of this clause by the Provider or any breach of provisions equivalent to this clause in any contract with a sub-contractor or third party.

## 22 **Complaints**

- 22.1 The Provider shall notify the Council of any Complaint made by any Authorised User within (5) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.
- 22.2 Without prejudice to any legal rights and remedies that a complainant may have, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Provider shall use its best endeavours to resolve the Complaint within (15) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

## 23 **Problem solving and dispute avoidance and resolution**

- 23.1 As soon as the Provider or the Council is aware of any difference or dispute arising out of, or in connection with, this Framework Agreement which does not fall to be dealt with under a Call-Off Contract, they shall give notice to the other Party.
- 23.2 The Parties will endeavour to resolve any difference or dispute by direct negotiation in good faith.
- 23.3 If any difference or dispute is not resolved in accordance with clause 23.2 and provided that neither party has by reason of that difference or dispute exercised a right of termination

under clause 24 then such dispute may be referred to conciliation or to mediation or to any other form of alternative dispute resolution as the parties may agree.

23.4 The procedures under clause 23.1, 23.2 and 23.3 are without prejudice to a Party's right to refer any difference or dispute to adjudication.

23.5 Any difference or dispute may be referred by a Party to the courts of England and Wales.

## 24 Termination

24.1 Where at any time during the Framework Term the Provider:

24.1.1 suffers an Insolvency Event; or

24.1.2 this Framework Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of PCR 2015; or

24.1.3 the Provider (either as a corporate body or any member of the Provider's administrative or management or supervisory body) has, at any point of the tender procedure or at any time during the Framework Term, been in one of the situations referred to in Regulations 57(1) or 57(8) PCR 2015, in circumstances which would have resulted in the Provider being excluded from the procurement procedure and not being awarded this Framework Agreement; or

24.1.4 this Framework Agreement should not have been awarded to the Provider in view of a serious infringement of the obligations under the PCR 2015; or

24.1.5 in the event of breach of clauses 21.1.1 to 21.1.5 inclusive; and/or

24.1.6 if an Associated Person (or anyone employed by or acting on behalf of them) engages or has engaged in Corrupt Activity or any activity, practice or conduct which could or would place the Council in breach of section 7(1) Bribery Act; and/or

24.1.7 where the Provider gives or has given any fee or reward the receipt of which is an offence under section 117(2) Local Government Act 1972,

the appointment of the Provider under this Framework Agreement shall automatically terminate with immediate effect.

24.2 The Council may terminate this Framework Agreement by serving written notice on the Provider with immediate effect:

24.2.1 where the Provider commits a material breach of this Framework Agreement or any Call-Off Contract and the Provider has not remedied the material breach to the satisfaction of the Council within (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the material breach and requesting it to be remedied;

24.2.2 where the Council or any Authorised User terminates a Call-Off Contract awarded to the Provider under this Framework Agreement as a consequence of a material breach by the Provider;



24.3 The Provider shall notify the Council immediately if the Provider undergoes a Change of Control. The Council may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six months of:

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

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

but the Council shall not be permitted to terminate this Framework Agreement where the Council has given approval in writing before the Change of Control.

24.4 The Council shall have the right to terminate this Framework Agreement or to terminate the provision of any part of the Framework Agreement, at any time by giving [6] months' written notice to the Authorised Users, the Provider and all other Framework Providers. The Parties acknowledge that if the Council exercises its rights under this clause it shall exercise its equivalent rights under all agreements with the Framework Providers. In such circumstances all or any Call-Off Contracts will remain in effect, unless terminated in accordance with its terms.

24.5 Notwithstanding the remainder of this clause 24 or any provision in any Call-Off Contract, if at any time the Council considers that the Provider's failure to meet the agreed KPIs in Schedule 7, the agreed KPIs in a Call-Off Contract or a breakdown in its working relationship with the Council or a problem in its working practices that could have a serious adverse effect on any Project, then:

24.5.1 the Framework Manager or the Council shall serve notice on the Provider specifying their concerns; and

24.5.2 the Provider shall submit its proposals in response to the notice referred to in clause 24.5.1 no later than five (5) Working Days from the date of such notice; and

24.5.3 the Parties shall meet within ten (10) Working Days from the date of the notice under clause 24.5.1 to consider the content of such notice and the Provider's response; and

if the Council is not satisfied with the Provider's response and if the Parties cannot agree an alternative course of action, then the Council may terminate the appointment of the Provider under this Agreement by notice to the Provider with immediate effect.

24.6 Termination of this Framework Agreement shall be without prejudice to any accrued rights and obligations of the Parties under this Framework Agreement and any Call-Off Contract as at the date of termination.

## 25 **Consequences of termination and expiry**

25.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry

or termination of the Framework Agreement or such other date as required under this clause.

25.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Call-Off Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Call-Off Contract to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

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

25.4 The provisions of this clause and clause 13, clause 14, clause 15, clause 16, clause 19 and clause 28.9 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## 26 **Notices**

26.1 Any notice given under this Framework Agreement shall be in writing and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the address (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:

26.1.1 if delivered personally, at the time of delivery;

26.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

provided that if deemed receipt occurs before 9 am on a Working Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9am on the next Working Day.

26.2 The addresses of the Parties for the purposes of this clause are as set out in the Parties section above or such other address as may be notified in writing from time to time by the relevant party to the other party.

26.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in this clause (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter.

26.4 For the avoidance of doubt, notice given under this Framework Agreement shall not be validly served if sent by e-mail.

27 **Assignment**

Neither Party may assign, charge or transfer or purport to assign, charge or transfer its interest in this Framework Agreement or any part of this Framework Agreement nor any right arising under it without the prior written consent of other Party.

28 **General provisions**

28.1 Nothing in this Framework Agreement or any Call-Off Contract shall create, or be construed as creating, a partnership between the Council and the Provider, and neither Party shall conduct themselves in such a way as to create an impression that such a partnership exists.

28.2 The Provider shall not, without the prior written consent of the Council sub-contract to any person the performance of any or all of its obligations under this Framework Agreement. Notwithstanding any such sub-contracting the Provider shall remain solely liable to the Council in respect of its obligations and liabilities under this Framework Agreement.

28.3 Except as otherwise stated in this Framework Agreement, nothing in this Framework Agreement confers or purports to confer any benefit or right to enforce any of its terms on any person who is not a party to it.

28.4 If any provision or part-provision of this Framework Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Framework Agreement.

28.5 If 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.

28.6 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.

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

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

28.9 This Framework Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## Schedule 1

### Framework Lots and Providers

Framework Lot	Framework Lot Description	Providers and their ranking
<b>Lot 1 Development</b>	<ul style="list-style-type: none"> <li>• Disposal of completed units</li> <li>• Development agreement</li> <li>• Forward funded sale agreement</li> </ul>	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> <li>6.</li> <li>7.</li> <li>8.</li> </ol>
<b>Lot 2 Services</b>	<ul style="list-style-type: none"> <li>• Development management: RIBA stages 1- 4 (design and planning)</li> <li>• Project management</li> <li>• Sales and marketing</li> </ul>	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> <li>6.</li> </ol>
<b>Lot 3 Services</b>	<ul style="list-style-type: none"> <li>• Out of borough</li> <li>• Estate management</li> </ul>	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> <li>6.</li> </ol>

## Schedule 2

### Awards

#### Direct Award Criteria

- 2 Subject to clause 4.2 of the Frameworks Agreement and paragraphs 3 and 4 of this Schedule, the Council or an Authorised User shall award Call Off Contracts to the First Placed Framework Provider.
- 3 **Selection procedure**
- 3.1 The Council or the Authorised User shall send the First Placed Framework Contractor a written summary of the proposed Project setting out:
- 3.1.1 the scope, location and details of the relevant Project;
  - 3.1.2 the scope and specification of services or works to be provided;
  - 3.1.3 the programme, key milestones and dates to be achieved;
  - 3.1.4 the Council's/Authorised User's assessment of fee/cost and anticipated fee/cost profile;
  - 3.1.5 the template Call-Off Contract;
  - 3.1.6 the Council's/Authorised User's requirements and any constraints relating to the scope of services or works to be provided; and
  - 3.1.7 supporting documents and drawings;
- (together, the **Project Summary**).
- 3.2 As part of the selection procedure the Council/Authorised User and Framework Provider shall negotiate in good faith to agree:
- 3.2.1 the specific project details of the Council/Framework Provider;
  - 3.2.2 the scope and specification of services or works to be provided;
  - 3.2.3 the payment terms;
  - 3.2.4 a programme for the delivery of the services or works to be undertaken;;
  - 3.2.5 the key performance indicators applicable to the Call-off Contract;
  - 3.2.6 the performance milestones applicable to the Call-Off Contract;
  - 3.2.7 anticipated risks to be managed and opportunities to be realised; and.
- 3.3 Subject to agreement being reached on the information in paragraph 2.2 of this Schedule, the Council/Authorised User shall issue the Call-Off Contract setting out the information agreed in accordance with paragraph 2.2 of this Schedule and any other agreed information relevant to the Call-Off Contract. The Council/Authorised User shall also notify, in writing,

all other Framework Providers of the award of the Call-Off Contract to the First Placed Framework Provider.

#### 4 **Cascade provisions**

4.1 Subject to paragraphs 3.3 and 4 of this Schedule 1, if the First Placed Framework Provider:

4.1.1 declines a Project which it is to be awarded in accordance with the procedure set out on paragraph 2 above; or

4.1.2 suffers a Provider Disqualification Event; or

4.1.3 is not able to conclude a Call-Off Contract within 10 Working Days (or such longer period as the Council/Authorised User may in its absolute discretion agree having regard to the complexity of the Project) on acceptable terms with the Council/Authorised User,

the Council/Authorised User may, at its sole discretion, award the Call-Off Contract to the Second Placed Framework Provider.

4.2 Subject to paragraphs 3.3 and 4 of this Schedule, if, having been offered a Call-Off Contract in accordance with paragraph 3.1, the Second Placed Framework Provider:

4.2.1 declines a Call-Off Contract which it is to be awarded in accordance with the Selection Procedure; or

4.2.2 suffers a Provider Disqualification Event; or

4.2.3 is not able to conclude a Call-Off Contract within 10 Working Days (or such longer period as the Council/Authorised User may in its absolute discretion agree having regard to the complexity of the Project) on acceptable terms with the Council/Authorised User,

the Council/Authorised User may, at its sole discretion, award the Call-Off Contract to the Third Placed Framework Provider.

4.3 The Council's discretion to award Call-Off Contracts in accordance with the cascade provisions in paragraph 3.1 and 3.2 is subject always to the Second Placed Framework Provider and the Third Placed Framework Provider:

4.3.1 complying with any further financial tests that the Council decides is prudent to undertake; and

4.3.2 being in all other respects of good standing.

#### 5 **Provisos**

5.1 The Council/Authorised User may select the Second Placed Framework Provider without first referring to the First Placed Framework Provider, the Third Placed Framework Provider without first referring to the Second Placed Framework Provider, or seek to select an alternative provider being either a Framework Provider or otherwise (an **Alternative Contractor**), if:

- 5.1.1 the Council/Authorised User and the First Placed Framework Provider or the Council/Authorised User and the Second Placed Framework Provider or the Council/Authorised User and the Third Placed Framework Provider have a dispute or difference notified and not yet resolved under clause 23 of this Framework Agreement or under a Call-Off Contract; and/or
- 5.1.2 the First Placed Framework Provider's or the Second Placed Framework Provider's or the Third Placed Framework Provider's financial circumstances and/or or any circumstances as set out in the selection questionnaire provided by the First Placed Framework Provider, the Second Placed Framework Provider or the Third Placed Provider in respect of the Tender Process, have changed to the extent that, in the reasonable opinion of the Council/Authorised User, it may materially adversely affect the ability of the First Placed Framework Provider, the Second Placed Framework Contractor or the Third Placed Contractor (as appropriate) to deliver the Project in accordance with the Framework Agreement or a Call-Off Contract; and/or
- 5.1.3 the First Placed Framework Provider, the Second Placed Framework Provider or the Third Placed Provider (as appropriate) has failed to conduct itself in all respects in a manner consistent with its appointment to this Framework Agreement; and/or
- 5.1.4 the First Placed Framework Provider, the Second Placed Framework Provider or the Third Placed Contractor (as appropriate) has failed to maintain to the requisite level of cover all or any of its insurances required under the Framework Agreement or any Call-Off Contract; and/or
- 5.1.5 the Council/Authorised User has terminated the appointment of the First Placed Framework Provider, the Second Placed Framework Provider or the Third Placed Provider (as appropriate) pursuant to the terms of a Call-Off Contract in respect of a Project or Projects for default by the First Placed Framework Provider, the Second Placed Framework Provider or the Third Placed Provider (as appropriate).

### **Mini-Competition Evaluation Criteria**



**Schedule 3**  
**Fee Schedule**

## **Schedule 4**

### **Call-Off Contracts**

The form of Call-Off Contract for each Project shall be one of the following forms with such adaptations and variations as are considered necessary by the Council or an Authorised User to reflect the nature of the relevant Project:

#### **Lot 1**

- (a) The Development Agreement, as amended from time to time by the Council, which at the date of this Framework Agreement is in the form attached at Annexure 1 and which includes template annexures of the Building Lease and Headlease;

OR

- (b) The Affordable Housing Sale and Development Agreement, as amended from time to time by the Council, which at the date of this Framework Agreement is in the form attached at Annexure 2;

OR

- (c) JCT Design and Build Contract, 2016 edition (DB 2016)

OR

- (d) JCT Standard Building Contract Without Quantities, 2016 edition (SB/XQ 2016)

#### **Lot 2**

In respect of design, planning and project management services:

- (a) JCT Consultancy Agreement (Public Sector) 2016;
- (b) NEC4 Professional Services Contract;
- (c) RIBA Standard Professional Services Contract 2020 (Architecture Services)
- (d) RIBA Standard Principal Designer Professional Services Contract 2020

In respect of all Lot 2A services, the Services Agreement as amended from time to time by the Council, which at the date of this Framework Agreement is in the form attached at Annexure 3.

#### **Lot 3**

The Services Agreement as amended from time to time by the Council, which at the date of this Framework Agreement is in the form attached at Annexure 3.

- (e)

## **Schedule 5**

### **Data Processing**

**Schedule 6**

**Access Agreement**

dated

20[ ]

**The Mayor and Burgesses of the London Borough of Enfield**

and

**[Authorised User]**

**Access Agreement**

# Deed

dated

## Parties

- (1) **The Mayor and Burgesses of the London Borough of Enfield** of Civic Centre Silver Street Enfield EN1 3XA (the **Council**); and
- (2) **[Authorised User]** of [ ] (the **Client**)

## Introduction

- (A) The Council has established a framework agreement in accordance with the Public Contracts Regulations 2015 (the **Framework Agreement**) which is split into three (3) Lots. This Access Agreement is in respect of Lot [ ] which the Council has entered into with the following Providers:
  - a. [ ]
  - b. [ ]
- (B) The Framework Agreement is established to provide a range of works and services by affordable housing providers and has been set up so as to allow access by third party Authorised Users.
- (C) The Client is an Authorised User.
- (D) The Client wishes to enter into a Call-Off Contract pursuant to the Framework Agreement with a Provider in order to commission [works/services] in respect of the Project.
- (E) This Access Agreement sets out the terms on which the Council consents to the Client accessing the Framework Agreement in order to commission such [works/services].

## Agreed terms

### 6 Definitions

In this Deed words and expressions shall have the meaning given in the Framework Agreement, unless expressly stated otherwise.

**Actual Call-Off Charges** means the actual charges paid by the Client to the chosen Provider throughout the term of any Call-Off Contract;

**Estimated Call-Off Charges** means the estimated charges to be paid by the Client to the chosen Provider throughout the term of any Call-Off Contract.

**Project** means the project/development intended to be undertaken by the Client and described in Annexure 1 of this Deed.

## 7 **Consideration**

In consideration of the payment of £10.00 (ten pounds) by the Council to the Client (receipt of which the Client hereby acknowledges) the Client covenants to the Council as set out in this Deed.

## 8 **Access to the Framework Agreement**

- 8.1 The Client is an "Authorised User" for the purposes of the Framework Agreement (a copy of which has been provided to the Client) and will comply with the obligations of an "Authorised User" as set out in the Framework Agreement.
- 8.2 Subject to the terms of this Deed the Council agrees to grant the Client access to the Framework Agreement and to make available a list of Framework Providers, copies of the Framework Agreement and relevant template Call-Off Contracts for the purposes of procuring a Framework Provider in respect of the Project only.
- 8.3 The Client agrees that it will enter into additional Access Agreements in the event it wishes to use the Framework Agreement for additional projects and accepts that failure to do so will result in any Mini-Competition and/or Call-Off Contract being void and a potential breach of procurement Legislation.
- 8.4 Within ten (10) days of entering into a Call-Off Contract with the chosen Provider, the Client shall provide the Council with a certified copy of that Call-Off Contract.
- 8.5 [Within thirty (30) days of entering into a Call-Off Contract with the chosen Provider, the Client shall pay to the Council an access fee equivalent to 1% (one percent) of the Estimated Call-Off Charges.
- 8.6 The Client shall inform the Council in writing, on a six monthly basis of the value of [works/services] performed by the chosen Provider in that period. Within thirty (30) days of the expiry of the Call-Off Contract, the Client shall notify the Council in writing of the Actual Call-Off Charges.
- 8.7 Where the Actual Call-Off Charges exceed the Estimated Call-Off Charges, within thirty (30) days of the notification in clause 3.4 above the Client shall pay to the Council the difference between the Estimated Call-Off Charges and the Actual Call-Off Charges.
- 8.8 Where the Actual Call-Off Charges are lower than the Estimated Call-Off Charges, within thirty (30) days of the notification in clause 3.4 above the Council shall pay to the Client the difference between the Estimated Call-Off Charges and the Actual Call-Off Charges.]
- 8.9 The Client shall indemnify and keep indemnified the Council against any loss, damage, claim, expense, cost or liability which the Council suffers or is liable to suffer arising out of a breach by the Client of this Deed, or by the Client of the Framework Agreement, or by the Client of any Call-Off Contract entered into pursuant to this Agreement.
- 8.10 The Council shall have no liability to the Client in relation to the Project and/or the Client's use of the Framework Agreement. The Council does not warrant or guarantee the availability or the ability of the Providers to carry out the [works/services] in relation to the Project. The Council makes no representation, warranty or guarantee in relation to the performance of

the Framework Providers of their obligations under the Framework Agreement or any Call-Off Contract

9 **Term**

This Deed will expire on the later of the date that the Framework Agreement expires or the date that any Call-Off Contract expires.

10 **General**

10.1 The Client shall not novate, assign, transfer or otherwise deal with its interest in this Deed.

10.2 Nothing in this Deed is intended to or shall operate to create a partnership or joint venture of any kind between the Client and the Council or to authorise the Client to act as the Council's agent, delegate or representative (whether for the purposes of the framework Agreement, and Call-Off Contract or otherwise).

10.3 Nothing in this Deed confers or purports to confer on any person any rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

10.4 This Deed is governed by English law and subject to the jurisdiction of the Courts of England and Wales.

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

The Common Seal of )  
**The Mayor and Burgesses of** )  
**the London Borough of Enfield** )  
was hereunto affixed in the presence of: )

Authorised signatory

Authorised signatory

Executed as a deed by )  
acting by )  
a director, in the presence of: ) Director

Witness Signature: .....

Name of witness (BLOCK CAPITALS): .....

Address of witness: .....

Occupation of witness: .....



**Annex 1 (of the Access Agreement)**

**Description of the Project**

**Description of the Project:**

**Anticipated start date:**

**Anticipated completion date:**

**Estimated Call-Off Charges:**

[TO BE INSERTED]



## Schedule 7

### KPIs

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

The Common Seal of )  
**The Mayor and Burgesses of** )  
**the London Borough of Enfield** )  
was hereunto affixed in the presence of: )

Authorised signatory

Authorised signatory

Executed as a deed by )  
acting by )  
a director, in the presence of: ) Director

Witness Signature: .....

Name of witness (BLOCK CAPITALS): .....

Address of witness: .....

Occupation of witness: .....

**Annexure 1**

**Form of Development Agreement**

## Annexure 2

### Form of Sale and Development Agreement

**Annexure 3**  
**Form of Services Agreement**