

**DATED**

**2013**

**HARLOW DISTRICT COUNCIL**

**AND**

**CONSULTANTS**

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**FRAMEWORK AGREEMENT**

**FOR THE PROVISION OF ASSET MANAGEMENT SERVICES TO INCLUDE  
PROGRAMME AND PROJECT MANAGEMENT FOR THE PROVISION OF INVESTMENT  
APPRAISAL, STRATEGIC SUPPORT AND CONSTRUCTION-RELATED SERVICES**

**PROJECT NO. 13/003**

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is made **BETWEEN:**

- (1) **HARLOW DISTRICT COUNCIL** whose principal place of business is at Civic Centre, Water Gardens, Harlow, Essex CM20 1WG (the “**Authority**”); and
- (2) The **CONSULTANTS** named in Schedule 1 (Consultants) of this Framework Agreement.

## **1. BACKGROUND**

### **Framework Agreement**

- 1.1 The Authority is setting up a framework of consultants for the carrying out of various asset management services to include programme and project management for the provision of investment appraisal, strategic support and construction-related services which the Authority and Authorised Users can call upon on an ad hoc basis as required.
- 1.2 Each Consultant is hereby appointed to this Framework Agreement.
- 1.3 Each Consultant has represented that it has the necessary skills, experience and resources to provide the Services required of it under and pursuant to this Framework Agreement and that it is willing to do so.

### **Role of this Agreement**

- 1.4 This Framework Agreement is intended to govern the on-going relationship between the Consultants, the Authority and the Authorised Users in connection with any request made by the Authority or an Authorised User to a Consultant to carry out Services.
- 1.5 This Framework Agreement is designed to encourage the Authority, Authorised Users and the Consultants 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.

## **2. DEFINITIONS AND INTERPRETATION**

### **Definitions**

- 2.1 In this Framework Agreement, the following expressions shall have the following meanings:

“**Authorised User**” means any Local Authority or Registered Provider in the United Kingdom whose identity has been approved by the Authority (in its absolute discretion) and notified in writing by the Authority to the Consultants;

“**Call Off Contract**” means one of the following contracts as selected by the Authority or the Authorised User making the call off at their absolute discretion:

- (a) a contract in the form annexed at Part 1 of Schedule 2 of this Framework Agreement (Deed of Appointment); or
- (b) a contract in the form annexed at Part 2

of Schedule 2 of this Framework Agreement (Letter of Appointment);

<b>“Commencement Date”</b>	means the date of this Framework Agreement;
<b>“Confidential Information”</b>	all information (written or oral) concerning the business and affairs of the Authority, an Authorised User or a Consultant which is obtained or received as a result of the discussions leading up to, the entering into or the performance of Call Off Contracts;
<b>“Consultant”</b>	means any one of those organisations listed in Schedule 1 (Consultants) of this Framework Agreement;
<b>“Direct Selection”</b>	has the meaning given to that term in clause 5.2;
<b>“Expiry Date”</b>	means the fourth (4 <sup>th</sup> ) anniversary of the Commencement Date;
<b>“EIR”</b>	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;
<b>“FOIA”</b>	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 in relation to such legislation;
<b>“Framework Agreement”</b>	means this framework agreement and its schedules;
<b>“Framework Objectives”</b>	has the meaning given in clause 4 (Framework Objectives);
<b>“Framework Term”</b>	means the period commencing on the Commencement Date and, subject to earlier termination in accordance with clause 14 (Termination), ending on the Expiry Date;
<b>“Information”</b>	has the meaning given under section 84 of the FOIA;
<b>“KPIs”</b>	means the key performance indicators included in any Call Off Contract as more particularly described in the relevant Call Off Contract;
<b>“LA/RP”</b>	means a Local Authority or Registered Provider (both those that are in existence now and those that may come into existence during the term of the Framework Agreement)

<b>“Mini-competition”</b>	means the procedure outlined in clauses 5.3 to 5.5;
<b>“Mini-Competition Evaluation Criteria”</b>	means the evaluation criteria set out in Schedule 3 (Mini-Competition Evaluation Criteria);
<b>“Parties”</b>	means the Authority and the Consultants or any one of them and <b>“Party”</b> shall be construed accordingly;
<b>“Pricing Submission”</b>	means the relevant Consultant’s pricing submission as contained in their tender submission for the Framework Agreement and attached at Schedule 4 (Pricing Submission);
<b>“Quality Submission”</b>	means the relevant Consultant’s quality submission as contained in their tender submission for the Framework Agreement and attached at Schedule 5 (Quality Submission);
<b>“Relevant Authority”</b>	means any court with competent jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
<b>“Request for Information”</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR;
<b>“Services”</b>	means the Services to be carried out by a Consultant pursuant to a Call Off Contract as more specifically described in the relevant Call Off Contract;
<b>“Supply Chain”</b>	means any and all persons engaged by a Consultant, the Authority or an Authorised User (as appropriate) in connection with a Call Off Contract with which the Consultant, the Authority or Authorised User (as appropriate) is involved;
<b>“Working Days”</b>	means Monday to Friday excluding public holidays.

- 2.2 References to clauses and schedules are references to clauses of and schedules to this Framework Agreement.
- 2.3 The provisions of the schedules are incorporated in this Framework Agreement.
- 2.4 Reference to the singular includes the plural and vice versa and references to any gender includes both genders.

- 2.5 References to a person includes any individual, firm, unincorporated association or body corporate.
- 2.6 The headings in this Framework Agreement are included for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.
- 2.7 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.
- 2.8 A reference to specific standards, codes of practice, guidelines, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes.

### **3. COMMENCEMENT, APPOINTMENT AND DURATION**

- 3.1 Each Consultant's appointment shall be governed by this Framework Agreement and any relevant Call Off Contract. Each Consultant shall when requested by the Authority or an Authorised User following the selection process set out in clause 5 (Selection and Appointment of Consultants to Carry Out Call Off Contracts), enter into a Call Off Contract for the carrying out of the relevant Services.
- 3.2 Subject to earlier termination in accordance with clause 14 (Termination), this Framework Agreement shall commence on the Commencement Date and shall continue until the Expiry Date.
- 3.3 Neither the Authority nor any Authorised User is obliged to enter into any Call Off Contracts with any Consultants during the Framework Term and neither the Authority nor any Authorised User shall be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by a Consultant as a result of that Consultant not being awarded one or more Call Off Contracts during the Framework Term.
- 3.4 Each Consultant acknowledges that, in entering into this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority and/or Authorised Users for Services from the Consultants and that the Authority and/or Authorised Users are at all times entitled to enter into other contracts and arrangements with other consultants for the provision of any or all services which are the same as or similar to the Services.

### **4. FRAMEWORK OBJECTIVES**

- 4.1 The Framework Objectives are as follows:
  - 4.1.1 [collaborative working and consideration for others, including equality and diversity considerations where appropriate;
  - 4.1.2 obtain best value for money and deliver housing of exceptional quality;
  - 4.1.3 improvements in environmental performance, sustainability and reductions in environmental impact;
  - 4.1.4 high levels of resident and purchaser satisfaction;
  - 4.1.5 the development and implementation of training programmes and apprenticeships and the employment of local labour;
  - 4.1.6 supporting local sustainability and community initiatives;

- 4.1.7 the avoidance of disputes and inefficient working methods;
- 4.1.8 the timely and fair payment of all suppliers and sub-contractors by the Consultants;
- 4.1.9 the Authority's and the Authorised Users' satisfaction with the performance of the Consultants;
- 4.1.10 to work in a spirit of continuous improvement and foster innovation;]

## **5. SELECTION AND APPOINTMENT OF CONSULTANTS TO CARRY OUT CALL OFF CONTRACTS**

- 5.1 Where the Authority or an Authorised User considers that it may or will require a Call Off Contract the selection of a Consultant from this Framework Agreement will be made by one of the following two methods set out in this clause 5.

### **Method 1: Direct Selection of a Consultant**

- 5.2 Where the Authority or the Authorised User is able to determine which Consultant will provide it with the most economically advantageous offer for the proposed Call Off Contract solely by reference to the Consultants' Pricing Submissions and Quality Submissions for the Framework Agreement, it may invite, in writing, that Consultant to enter into a Call Off Contract to carry out the Services required, without any further competition between the Consultants ("**Direct Selection**").

### **Method 2: Mini-competition**

- 5.3 Where the Authority or the Authorised User is not able to determine which Consultant will provide it with the most economically advantageous offer for its requirement by reference to the Consultants' Pricing Submissions and Quality Submissions for the Framework Agreement, the Authority or the Authorised User shall identify those Consultants appointed to this Framework Agreement who are capable of carrying out the particular Call Off Contract, and shall invite those Consultants to take part in a Mini-competition. The invitation to take part in a Mini-competition shall:

- 5.3.1 be issued in writing;

- 5.3.2 explain whether the Mini-competition is to comprise of written tender / selection proposals by the Consultants, site visits, interviews or presentations or a combination of any of these things;

- 5.3.3 where the Mini-competition is to involve the submission of written tender proposals by the Consultants, specify a fixed time limit for submission of such proposals, such time limit being of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the Services in question, the nature of the Authority's or the Authorised User's requirements and the time needed to compile and submit proposals;

- 5.3.4 set out the evaluation criteria on which the Mini-competition will be assessed, which shall be based on the Mini-Competition Evaluation Criteria with such amendments as the Authority or the Authorised User may stipulate to reflect the requirements of the Call Off Contract in question; and

- 5.3.5 contain a copy of the form of Call Off Contract that will be entered into with the successful Consultant.

- 5.4 When invited by the Authority or an Authorised User to participate in a Mini-competition, the

Consultant shall provide written confirmation to the party carrying out the tender as to whether or not it wishes to participate. All Consultants who participate in the Mini-competition shall be responsible for their associated costs.

- 5.5 The Mini-competition will be assessed on the basis of the evaluation criteria set out in the invitation and all Consultants invited to take part in the Mini-competition will be informed of the outcome of that evaluation.

#### **Issue of a Call Off Contract**

- 5.6 As soon as possible following any selection of a Consultant whether by Mini-competition or by Direct Selection, the Authority or the Authorised User shall issue a Call Off Contract to the successful Consultant.
- 5.7 Upon the issue of any Call Off Contract, the Consultant shall execute and return the relevant Call Off Contract to the Authority or the Authorised User within ten (10) Working Days of receipt of the same or such longer period as the Authority or the Authorised User may specify.
- 5.8 Should the Consultant fail to comply with its obligation in clause 5.7 above, the Consultant shall be deemed to have declined the offer to enter into the Call Off Contract and the Authority or the Authorised User may recommence the selection process under this clause 5 (Selection and Appointment of Consultants to Carry Out Call Off Contracts).
- 5.9 Once appointed to carry out Services under a Call Off Contract, the Consultant shall carry out those Services in accordance with the terms of the Call Off Contract.

#### **Inconsistency between terms of a Call Off Contract and this Framework Agreement**

- 5.11 The terms of this Framework Agreement will supplement and complement the terms of any Call Off Contract. However, 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.

### **6. FEES**

- 6.1 The fee payable to Consultants for the carrying out of Services pursuant to Call Off Contracts will be calculated by reference to the particular Consultant's Pricing Submission subject to:
- 6.1.1 any refinements that are necessary to reflect the particular requirements of the Call Off Contract in question; and/or
- 6.1.2 any reduction that may be offered and agreed pursuant to a Mini-competition.

### **7. KEY PERFORMANCE INDICATORS AND MONITORING OF PERFORMANCE**

- 7.1 Throughout the Framework Term, the performance of the Consultants in relation to any Call Off Contract shall be monitored and assessed by reference to the KPIs incorporated in the relevant Call Off Contract.
- 7.2 Each Consultant will provide the Authority and the Authorised Users with such assistance and information as they may reasonably require in order to assess its contribution to the achievement of the KPIs and the Framework Objectives
- 7.3 From time to time during the Framework Term the Authority or an Authorised User may

carry out an assessment and make a written report of a Consultant's performance against each of the relevant KPIs incorporated in a Call Off Contract. Once any such report has been compiled, the Authority or the Authorised User and the Consultant will review the report with a view to:

- 7.3.1 identifying any aspects or elements of the Consultant's performance that may have been overlooked in the report;
  - 7.3.2 identifying any aspects of the Authority's or the Authorised User's performance or that of any other Consultant that may have had an adverse effect upon the performance of the particular Consultant;
  - 7.3.3 ratifying the basis of the Authority's or the Authorised User's assessment and any scoring awarded with respect to particular KPIs;
  - 7.3.4 identifying any aspects of the Consultant's, the Authority's, the Authorised User's or any other relevant Consultant's performance that could be improved upon; and
  - 7.3.5 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 Consultant in the achievement of the Framework Objectives.
- 7.4 The Authority and/or the Authorised User shall be entitled to disclose such reports to each Consultant and other Authorised Users and to discuss the performance of a Consultant with other Consultants and Authorised Users as it deems necessary or appropriate.

## **8. CONTINUOUS IMPROVEMENT, MEETINGS & REVIEW FORUM**

- 8.1 The Consultants shall, throughout the Framework Term, look for and seek to achieve continuous improvement in the quality and carrying out of the Services.
- 8.2 The Consultants shall attend all meetings as may be necessary for the proper carrying out of the Call Off Contracts.
- 8.3 Without prejudice to the generality of clause 8.2, six (6) months after the Commencement Date and every six (6) months thereafter until the end of the Framework Term if deemed necessary by the Authority, the Authority may convene a meeting with such other Authorised Users and such Consultants as the Authority may specify by giving such persons not less than five (5) Working Days notice in writing to:
- 8.3.1 share experience and lessons learnt from completed Call Off Contracts; and
  - 8.3.2 identify areas of success or areas for improvement in the successful carrying out of the Services and the achievement of the Framework Objectives;
  - 8.3.3 share knowledge and experience in the pursuit of continuous improvement of the Services.
- 8.4 In all matters relating to the Services, including without limitation any required notice, request, submission, decision, consent, approval, comment, valuation, agreement, opinion, instruction and other communication and activity the Consultants shall act reasonably and without delay.

## **9. CONFIDENTIALITY**

- 9.1 Each Consultant shall not by itself, its employees or agents communicate with representatives of the press, television, radio or other communication media on any matter



concerning this Framework Agreement without the prior written approval of the Authority.

- 9.2 During the Framework Term and after its expiry or termination for any reason, the Authority, the Authorised Users and the Consultants each undertake to keep the Confidential Information confidential and not to disclose to any third party, except to the extent that:
- 9.2.1 the Confidential Information was already lawfully known, or became lawfully known to the relevant party independently;
  - 9.2.2 the Confidential Information is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party;
  - 9.2.3 disclosure or use is necessary by the relevant party in connection with entry into this Framework Agreement or for the proper and effective performance of its obligations under this Framework Agreement (including disclosure by either party to its insurers and professional advisers); or
  - 9.2.4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).
- 9.3 Each Consultant undertakes to keep confidential and not disclose to any third party any information supplied by the Authority or an Authorised User under this Framework Agreement including, without limitation, any reference to the terms and conditions in any advertising or publicity material without the prior written approval of the Authority or the Authorised User concerned.
- 9.4 Each Consultant shall not disclose to any person whatsoever any information relating to the Authority, the Authorised Users or their business or trade secrets of which it has or shall acquire pursuant to this Framework Agreement.
- 9.5 Each Consultant may from time to time wish to make it known within the market place that it has acted for the Authority or an Authorised User, but it shall not do so without obtaining the consent of the Authority or the Authorised User concerned.

## **10. SUPPLY CHAIN MANAGEMENT**

- 10.1 The Consultants shall in carrying out their obligations under this Framework Agreement and any Call Off Contract:
- 10.1.1 adhere to and co operate in achieving the Framework Objectives;
  - 10.1.2 use their reasonable endeavours to ensure that all members of their respective Supply Chains adhere to and co operate in achieving the Framework Objectives; and
  - 10.1.3 work co operatively with the members of the Authority's and the Authorised Users' Supply Chains with a view to achieving the Framework Objectives.

## **11. HEALTH AND SAFETY**

The Authority, the Authorised Users and the Consultants shall work together and individually within their agreed roles, responsibilities and expertise and in accordance with this Framework Agreement to achieve the highest possible standards of health and safety in all activities forming part of the Services.

## **12. GENERAL OBLIGATIONS & WARRANTIES**

12.1 The Authority warrants to the Consultants that it has full power and authority to enter into this Framework Agreement.

12.2 Each Consultant warrants (and where relevant undertakes) to the Authority that:

12.2.1 it has full power and authority and all necessary consents to enter into and to perform its obligations under this Framework Agreement and any other agreements to which it is a party and which are to be entered into under or in connection with this Framework Agreement;

12.2.2 no litigation, arbitration, adjudication, dispute or administrative proceeding has been commenced, is pending or to its knowledge is threatened against the Consultant, and no judgment or award has been given or made or is pending against it, which:

(i) in any way questions its power or authority to enter into or perform its obligations under this Framework Agreement or any other agreements to which it is a party and which are to be entered into under or in connection with this Framework Agreement; or

(ii) may have a material adverse effect on its ability to perform its obligations under this Framework Agreement or any other agreements to which it is a party and which are to be entered into under or in connection with this Framework Agreement;

12.2.3 all information, representations and other matters of fact communicated in writing to the Authority or to its agents, advisers or employees, by or on behalf of the Consultant, in its pre qualification questionnaire or tender submission, or otherwise in respect of this Framework Agreement, were when given and remain, as at the date of this Framework Agreement, true, complete and accurate in all material respects (save to the extent that they have been superseded by subsequent communications in writing to the Authority or the relevant agents, advisers or employees); and

12.2.4 every consent, authorisation, certificate, licence, or approval of, or registration with, or declaration to, any Relevant Authority required to authorise, or required in connection with the execution, delivery, validity, enforceability or admissibility in evidence of, this Framework Agreement or the performance by the Consultant of its obligations under this Framework Agreement has been or will within any applicable period be obtained or made and is, or will when obtained be, in full force and effect, and there has been no material default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of them.

12.3 The rights and remedies of the Authority in relation to any misrepresentation or breach of warranty (or other provision of this Framework Agreement) on the part of the Consultant shall not be prejudiced by any investigation by or on behalf of the Authority into the affairs of the Consultant, by the performance of this Framework Agreement or by any other act or thing which may be done or omitted to be done by the Authority under this Framework Agreement and which would or might, but for this clause 12.3, prejudice such rights and remedies.

## **13. ASSIGNMENT AND SUBCONTRACTING**

13.1 The rights of the Consultants under this Framework Agreement are personal and the Consultants shall not, without the prior written consent of the Authority, assign, transfer or subcontract any rights and/or obligations under this Framework Agreement to any party.

- 13.2 The Authority and Authorised Users may at any time assign, novate, charge or transfer their interest in this Framework Agreement and/or any rights arising under it to any party on written notice to the Consultants without the consent of the Consultants being required. The Consultants shall enter into all necessary documentation to give effect to such assignment, novation, charge or transfer.

## **14. TERMINATION**

### **The Authority's Right to Terminate**

- 14.1 If a Consultant:

14.1.1 commits a material breach of the terms of this Framework Agreement or any Call Off Contract; or

14.1.2 ceases to carry on its business, becomes insolvent, or has a liquidator, trustee in bankruptcy, receiver, manager, administrator or administrative receiver appointed in respect of its assets or (where the Consultant is a partnership) those of any partner of the firm, or suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident,

the Authority may terminate the appointment of the Consultant under this Framework Agreement by notice in writing having immediate effect.

### **Consultant's Right to Terminate**

- 14.2 A Consultant may terminate its appointment under this Framework Agreement following any breach of this Framework Agreement by the Authority (other than a breach which is notified to, and remedied by the Authority within fifteen (15) Working Days of the notice), or in the event of the Authority ceasing to carry on its business.

### **General**

- 14.3 The termination of a Consultant's appointment under this Framework Agreement shall not automatically terminate any Call Off Contract entered into at or before the date of termination unless the reason for termination is also a ground for the termination of any such Call Off Contract.
- 14.5 Termination of the appointment of a Consultant under this Framework Agreement shall not affect the mutual rights and obligations of the relevant parties accrued at the date of termination and the ongoing rights and obligations of the such parties as stated in this Framework Agreement.
- 14.6 Any Call Off Contract entered into during the Framework Term shall continue in full force and effect until its respective termination date, notwithstanding the termination or expiry of this Framework Agreement.

### **Obligations on Termination or Expiry**

- 14.7 On termination or expiry of this Framework Agreement for any reason, the Authority, the Authorised Users and the relevant Consultant(s) shall promptly:
- 14.7.1 return to the other relevant parties all documents and materials (and any copies) containing such parties' Confidential Information;
- 14.7.2 erase all the other relevant parties' Confidential Information from its computer systems (to the extent possible); and

14.7.3 on request, certify in writing to the other relevant parties that it has complied with the requirements of this clause 14.7.

## **15. PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION**

- 15.1 As soon as a Consultant, the Authority or an Authorised User is aware of any difference or dispute with another arising out of, or in connection with, this Framework Agreement which cannot be dealt with under a Call Off Contract, they shall give notice to the other relevant party.
- 15.2 The relevant parties will endeavour to resolve any difference or dispute by direct negotiation in good faith and each such party will give serious consideration to a request by the other to refer a difference or dispute to mediation.
- 15.3 If any difference or dispute is not resolved in accordance with clause 15.2 and provided that neither party has by reason of that difference or dispute exercised a right of termination under clause 14 (Termination), 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.
- 15.4 The procedures under clause 15.1, 15.2 and 15.3 are without prejudice to a party's right to refer any difference or dispute to adjudication.
- 15.5 Any difference or dispute may be referred by a party to the courts of England and Wales.

## **16. NOTICES**

### **Forms of Service**

- 16.1 Any notice may be served by leaving it with, or sending it by pre-paid first class post to the parties at their addresses set out in this Framework Agreement (or to such addresses as shall have been duly notified in accordance with this clause).

### **Times of Service**

- 16.2 Notices delivered by hand shall be deemed to have been delivered when handed over. Notices sent by post shall be deemed to have been delivered on the first Working Day after posting and notices given by facsimile shall be deemed to have been served upon successful transmission between the hours of 9am and 5pm on any Working Day, subject to a confirmatory copy being sent by pre-paid first class post or by hand by the end of the next Working Day.

### **Notices in Writing**

- 16.3 All notices must be in writing.

## **17. FREEDOM OF INFORMATION**

- 17.1 The Consultants acknowledge that the Authority and the Authorised Users may be subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority or the Authorised User concerned to enable it to comply with its information disclosure obligations.
- 17.2 Each Consultant shall and shall procure that its sub-contractors shall:

17.2.1 transfer to the Authority 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;

- 17.2.2 provide the Authority or the Authorised User with a copy of all Information in its possession, or power in the form that the Authority or the Authorised User requires within five (5) Working Days (or such other period as the Authority or the Authorised User may specify) of the Authority's or the Authorised User's request; and
- 17.2.3 provide all necessary assistance as is reasonably requested by the Authority or the Authorised User to enable the Authority 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.
- 17.3 The Authority 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.
- 17.4 In no event shall a Consultant respond directly to a Request for Information unless expressly authorised to do so by the Authority or the relevant Authorised User.
- 17.5 Each Consultant acknowledges that the Authority and the Authorised Users may, acting in accordance with the Department of Constitutional Affairs' 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 Consultant or despite having taken the Consultant's views into account.
- 17.6 Each Consultant shall ensure that all Information is retained for disclosure and shall permit the Authority and the Authorised Users to inspect such records as requested from time to time.

## **18. NO AGENCY, PARTNERSHIP OR JOINT VENTURE**

Nothing contained in this Framework Agreement shall be construed as creating an agency, partnership or joint venture relationship between the Consultants, the Authority and the Authorised Users.

## **19. APPLICABLE LAW**

This Framework Agreement shall be governed by the laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.

## **20. SEVERANCE**

- 20.1 Any clause or provision of this Framework Agreement which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of this Framework Agreement.
- 20.2 In the event that a clause or provision (or part of a clause or part of a provision) is excluded under clause 20.1 above the validity and enforceability of the remainder of this Framework Agreement shall not be affected.

## **21. SURVIVAL OF CERTAIN CLAUSES**

The provisions of clauses 2, 9, 17, 19, 20 and 23 (and without limitation to the foregoing, any other provision of this Framework Agreement which by its terms is to be performed or observed notwithstanding termination or expiry, or which is either expressed to, or by implication is intended to survive termination or expiry) shall survive the termination or expiry of this Framework Agreement.

## **22. COUNTERPARTS**

This Framework Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

## **23. DATA PROTECTION**

23.1 Each Consultant shall ensure that it shall at all times during the Framework Term comply with the provisions and obligations imposed by the Data Protection Act 1998 and shall indemnify and keep the Authority and the Authorised Users indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this clause.

23.2 The Consultants shall also comply fully with all applicable Guidelines and Codes of Practice issued from time to time by the Information Commissioner in the UK.

23.3 The Authority and the Authorised Users shall on giving reasonable notice to a Consultant be entitled to audit the procedures of that Consultant (which shall include the right to enter the Consultant's premises and/or view the Consultant's systems) for the purposes of ensuring compliance with this clause 23 and to take all reasonable steps to satisfy itself that the Consultant is fully complying with all requirements of this Framework Agreement.

## **24. TRAINING**

24.1 The Consultants shall implement such employment and training initiatives as are described in this Framework Agreement or otherwise agreed with the Authority and shall take into account the recommendations of relevant current best practice guidance in developing appropriate action plans for the benefit of the Authority's staff as a means to achieve transfer of skills.

24.2 The Consultants shall participate fully with the Authority and the Authorised Users in developing training programmes, packages and other associated employment related projects and, where applicable, in securing grants to support these initiatives.

## **25. CORRUPT GIFTS AND PAYMENT OF COMMISSION**

25.1 The Consultants shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body (including its award to the Consultant, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Consultants is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

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

25.3 If a Consultant, its employees, agents, servants or any person acting on the Consultant's behalf, engages in conduct prohibited by clauses 25.1 or 25.2 above or commits any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 the Authority may:

25.3.1 terminate the Consultant's appointment to the Framework Agreement with immediate effect by giving notice in writing to the Consultant and recover from the Consultant the amount of any loss suffered by the Authority resulting from the termination; or

25.3.2 recover in full from the Consultant and the Consultant shall indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Consultant's appointment to the Framework Agreement has been terminated.

## **26. CONFLICTS OF INTEREST**

26.1 Each Consultant shall take appropriate steps to ensure that neither it nor any of its employees, agents, servants or any person acting on its behalf are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or person concerned and the duties owed to the Authority and Authorised Users under the provisions of this Framework Agreement or any Call-Off Contract.

26.2 The relevant Consultant shall promptly notify and provide full particulars to the Authority or the relevant Authorised User if such conflict referred to in clause 26.1 above arises or is reasonably foreseeable to arise.

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

## **27. ENTIRE AGREEMENT**

27.1 The Framework Agreement (together with its Schedules) constitutes the entire agreement of the Parties as to the subject matter hereof and supersedes all previous agreements and understandings (if any) between the Parties.

27.2 Each Party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Framework Agreement.

## **28. CONTRACTS RIGHTS OF THIRD PARTIES**

Save for any right conferred by this Framework Agreement on an Authorised User, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Framework Agreement and accordingly the Parties do not intend any third party (other than

an Employer Member) to have any right in respect of this Framework Agreement by virtue of that Act.

**IN WITNESS** whereof the Consultants and the Authority have entered into this Framework Agreement as a deed on the day in the year first before written

Executed and Delivered as Deed by )  
**HARLOW DISTRICT COUNCIL** )  
acting by: )

Duly Authorised Officer .....

Executed and Delivered as a Deed by )  
*[Name of Consultant]* )  
acting by: )

Director.....

Director/Secretary.....



**SCHEDULE 1**  
**CONSULTANTS**

*Note to bidders: This Schedule will be populated with the details of the successful Consultants*

<b>FULL NAME OF CONSULTANT</b>	<b>REGISTERED ADDRESS &amp; COMPANY REGISTRATION NUMBER</b>	<b>CONTACT DETAILS</b>

**SCHEDULE 2**

**PART 1**

**FORM OF CALL OFF CONTRACT – DEED OF APPOINTMENT**

*Please refer to separate document*

**PART 2**

**FORM OF CALL OFF CONTRACT – LETTER OF APPOINTMENT**

*Please refer to separate document*

### **SCHEDULE 3**

#### **MINI-COMPETITION EVALUATION CRITERIA**

The Mini-Competition Evaluation Criteria includes the following:

- (i) The capacity and availability of the team / individuals suggested by the Consultants;
- (ii) The Consultants' fee proposals for the carrying out of the Services under the Call Off Contract;
- (iii) Ability to meet the timescales required by the Authority or Authorised User; and
- (iv) Any other quality criteria stipulated by the Authority or Authorised User which shall be proportionate to the complexity and value of the proposed Call Off (as determined by the Authority or Authorised User).

## **SCHEDULE 4**

### **PRICING SUBMISSION**

*Note to bidders: A copy of the particular Consultant's Pricing Submission will be appended here in the copy that they sign*

**SCHEDULE 5**

**QUALITY SUBMISSION**

*Note to bidders: A copy of the particular Consultant's Quality Submission will be appended here in the copy that they sign*