

In accordance with section 94(3) of the Procurement Act 2023, certain information has been withheld from publication under section 94(1)(b) of that Act.



**DATED: 11 November 2025**

**WEST NORTHAMPTONSHIRE COUNCIL**

and

**BAUER MEDIA OUTDOOR UK LIMITED**

**AGREEMENT FOR THE PROVISION OF BUS SHELTER ADVERTISING CONCESSION AND  
MAINTENANCE SERVICES**

IKEN Reference: [REDACTED]  
One Angel Square  
Angel Street  
Northampton  
NN1 1ED

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**THIS AGREEMENT** is dated 11 November 2025

**PARTIES**

- (1) **WEST NORTHAMPTONSHIRE COUNCIL** of One Angel Square, Angel Street, Northampton NN1 1ED (**Authority**).
- (2) **BAUER MEDIA OUTDOOR UK LIMITED** incorporated and registered in England and Wales with company number 00950526 whose registered office is at 33 Golden Square, London W1F 9JT (**Operator**).

**BACKGROUND**

- (A) On 23 April 2025, the Authority advertised on the Find a Tender under reference 2025/S 000-016454, inviting prospective operators to submit proposals for the provision of a bus shelter advertising concession opportunity and bus shelter maintenance service.
- (B) On the basis of the Operator’s response to the advertisement and subsequent tender process, the Authority selected the Operator to provide the advertising concession and maintenance service and the Operator is willing and able to provide such services in accordance with the terms of this agreement.
- (C) Accordingly, the parties have agreed to enter into a contract for the provision of the Services (as defined below) on the terms and conditions of this agreement.

**TERMS**

**1. INTERPRETATION**

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

<b>Advertised Documents:</b>	the invitation to tender published by the Authority including all associated documents as set out in Schedule 7.
<b>Advertising Guidance:</b>	the Authority’s advertising guidance as set out in Appendix to Schedule 1.
<b>Advertising Regulations:</b>	The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
<b>Applicable Laws:</b>	means the laws of England and Wales and the European Union and any other laws or regulations, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body which apply to the provision of the Services and are legally binding on the Operator’s business.

<b>Associated Company:</b>	any holding company from time to time of the Operator and any subsidiary from time to time of the Operator, or any subsidiary of any such holding company.
<b>Authorised Representatives:</b>	the persons respectively designated as such by the Authority and the Operator, the first such persons being set out in schedule 4 (Contract Management).
<b>Authority Advertising</b>	Advertising by the Authority in accordance with Section 5 of Part 2 of Schedule 1.
<b>Authority's Premises:</b>	the premises of the Authority where the Services shall be delivered, being highways for which the Authority is the highway authority and any other highways or other land the subject of a Third Party Agreement.
<b>Best Industry Practice:</b>	the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.
<b>Business Rates</b>	Non-domestic rates in accordance with Part III of the Local Government Finance Act 1988 or any supplementary or replacement tax on property which relate to the Shelters or advertising upon them.
<b>CAFM System:</b>	A computer aided facilities management and property records system operated by the Authority.
<b>Catastrophic Failure:</b>	any action by the Operator, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority.
<b>Charges:</b>	the difference between the Maintenance Charges and the Fee due and payable by one party to the other in respect the Services in accordance with the provisions of this agreement as set out on clause 12 and Schedule 3 (Charges and Payment).
<b>Commencement Date:</b>	3 November 2025.



<b>Concession</b>	The right to advertise on the Shelters owned or treated as owned (see clause 2.3) using advertising panels of the Relevant Type, subject to the terms of this agreement.
<b>Concession Services:</b>	means the Concession to be delivered by or on behalf of the Operator under this agreement as more described in Part 2 of Schedule 1.
<b>Confidential Information:</b>	<p>means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party or that party's Representatives in connection with this agreement, including but not limited to:</p> <ul style="list-style-type: none"> <li>a) any information that would be regarded as confidential by a reasonable business person relating to: <ul style="list-style-type: none"> <li>i. the business, affairs, customers, suppliers or plans of the disclosing party, and</li> <li>ii. the operations, processes, product information, know-how, design, trade secrets or software of the disclosing party,</li> </ul> </li> <li>b) Personal Data.</li> </ul>
<b>Contract Year:</b>	a period of 12 months, commencing on the Commencement Date or an anniversary of the Commencement Date.
<b>Controller:</b>	shall take the meaning given in the UK GDPR.
<b>Crown:</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.
<b>Data Loss Event:</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Operator under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>Data Protection Impact Assessment:</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Protection Legislation:</b>	(i) the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent

that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

<b>Data Protection Officer:</b>	shall take the meaning given in the UK GDPR.
<b>Data Subject Access Request:</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>Data Subject:</b>	shall take the meaning given in the UK GDPR.
<b>DDC:</b>	Daventry District Council (former).
<b>Default Notice:</b>	is defined in clause 5.3.
<b>Dispute Resolution Procedure:</b>	the procedure set out in clause 39.
<b>DPA 2018:</b>	Data Protection Act 2018.
<b>DTC:</b>	Daventry Town Council (a parish council).
<b>Environmental Information Regulations:</b>	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>Exclusion Zone:</b>	Any location in the open air within a circle of 25m radius (measured from the centroid of the Shelter) around each Shelter provided as part of the Services. For the avoidance of doubt, a location within a building is not in the open air even if the building is not fully enclosed (for example, a multi-storey car park).
<b>Expert:</b>	A member of at least ten years' standing of the IPA, appointed as per paragraph 3 of Part 2 of Schedule 1.
<b>Fault:</b>	A fault, damage, or other failure in condition of a Shelter or any part of it or any item required to be provided or maintained by the Operator under this agreement.
<b>Fee:</b>	the advertisement fee as set out in the Pricing Schedule payable by the Operator to the Authority.
<b>FOIA:</b>	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information

Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm, earthquake, pandemic or epidemic and any disaster, but excluding any industrial dispute relating to the Operator, the Operator's Personnel or any other failure in the Operator's supply chain. Provided that in relation to payment of the Charge, such event must have been one which prevents payment systems operating such that it is impossible to transfer money.

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

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

**Initial Term:** the duration of the agreement starting on the Commencement Date and ending on the day before the tenth anniversary of the Commencement Date.

**Intellectual Property:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**Interest:** A rate of 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

**IPA:** Institute of Professionals in Advertising.

**IWP:** The initial works programme as set out in paragraph 11 of Schedule 2 and the Operator's Proposals.

**LED:** Law Enforcement Directive (Directive (EU) 2016/680).

<b>List:</b>	A list of all Shelters maintained under this agreement, containing (insofar as relevant) the same categories of information in relation to each as in the Shelter Schedule. The first version of the List will be a copy of the Shelter Schedule with any information now irrelevant removed
<b>Maintenance Charges:</b>	the charges as set out in the Pricing Schedule to provide the Maintenance Services.
<b>Maintenance Services:</b>	the services to be delivered by or on behalf of the Operator under this agreement as described in Part 1 of Schedule 1.
<b>NBC:</b>	Northampton Borough Council (former).
<b>NCC:</b>	Northamptonshire County Council (former).
<b>Necessary Consents:</b>	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.
<b>Non-urgent Fault:</b>	A Fault which is not an Urgent Fault.
<b>OMS:</b>	The Operator's management system, a system used by the Operator to provide similar functions to the CAFM System relating to assets the Operator is responsible for (whether or not it also provides other functions).
<b>Operator's Proposals:</b>	The proposals for delivery and maintenance of Shelters as set out in the Tender.
<b>Operator's Personnel:</b>	all employees, staff, other workers, agents and consultants of the Operator and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
<b>Payment Plan:</b>	the plan for payment of the Charges as set out in Schedule 3 (Charges and Payment).
<b>Personal Data Breach:</b>	shall take the meaning given in the UK GDPR.
<b>Personal Data:</b>	shall take the meaning given in the UK GDPR.
<b>Pre-Existing IPR:</b>	shall mean any Intellectual Property independently developed without using any information disclosed by the other Party during the term of this agreement.

<b>Pricing Schedule:</b>	the schedule of values and fees for advertising and maintenance provided in the Tender (this is within the Excel workbook named ‘Shelter requirements and pricing’) set out in Schedule 8.
<b>Processor:</b>	shall take the meaning given in the UK GDPR.
<b>Protective Measures:</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
<b>Public Body:</b>	any local authority or department, office or agency of the Crown.
<b>Regulations:</b>	the Procurement Act 2023 and any supporting legislation.
<b>Relevant Transfer:</b>	a relevant transfer for the purposes of TUPE.
<b>Relevant Type:</b>	a panel for advertising with an area between 1000 and 1500mm wide and also between 1500 and 2000mm high.
<b>Request for Information:</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
<b>Requirements:</b>	compliance with the Advertising Guidance as set out in the Appendix to Schedule 1 and with the code applicable to advertising on Shelters published by the Advertising Standards Authority at the time the advertisement is displayed. (Currently the applicable code is the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing.)
<b>RTPI:</b>	Real time passenger information.
<b>Services:</b>	together the Maintenance Services and Concession Services.
<b>Shelter</b>	A bus shelter, tram shelter, or similar item normally situated on-street to provide shelter for people waiting to access a transport service provided by road vehicles.
<b>Shelter Schedule:</b>	the list of existing and proposed Shelters with their locations and initial requirements forming part of this agreement.
<b>Sub-Contract:</b>	any contract between the Operator and a third party pursuant to which the Operator agrees to source the provision of any of the Services from that third party.

<b>Sub-Contractor:</b>	the contractors or Operators that enter into a Sub-Contract with the Operator.
<b>Sub-processor:</b>	any third Party appointed to process Personal Data on behalf of the Operator related to this agreement.
<b>Tender:</b>	the tender submitted by the Operator in response to the Advertised Documents dated 14 August 2025.
<b>Term:</b>	the period of the Initial Term as may be varied by: <ul style="list-style-type: none"> <li>a) any extension pursuant to clause 3; or</li> <li>b) the earlier termination of this agreement in accordance with its terms.</li> </ul>
<b>Termination Date:</b>	the date of expiry or termination of this agreement.
<b>Third Party Agreement:</b>	an agreement between the Authority and a highway authority or land owner under which their roads or land (or any part of them) are brought into the scope of this agreement.
<b>Type 1 Refurbishment Specification:</b>	The document of that name appended.
<b>TUPE:</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
<b>UK GDPR:</b>	means the GDPR to the extent that it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018.
<b>Urgent Fault:</b>	a Fault which has the potential to cause danger to any person, to vehicles (including cycles), or property.
<b>Voluntary Proposal:</b>	the meaning as defined in paragraph 7 of Schedule 2.
<b>Working Day:</b>	Monday to Friday, excluding any public or bank holidays in England and Wales.
<b>Working Hours:</b>	8:00 am to 6:00 pm on any Working Day.
<b>Year:</b>	A period of 12 months commencing on day this agreement commences.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 The expression 'including' shall not limit the scope of the provision it relates to.
- 1.9 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.10 A reference to writing or written includes email.
- 1.11 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs and annexes are to paragraphs and annexes of the relevant schedule.
- 1.14 Where there is any conflict or inconsistency between the provisions of this agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.14.1 the clauses of this agreement;
  - 1.14.2 Schedule 1 (Specification) to this agreement;
  - 1.14.3 Schedule 2 (Shelters);
  - 1.14.4 Schedule 7 (Advertised Documents);
  - 1.14.5 the remaining schedules to this agreement excluding Schedule 8 (Tender); and
  - 1.14.6 the Operators Proposals and Schedule 8 (Tender).

## **2. GENERAL PROVISIONS**

- 2.1 Expect where otherwise expressly stated, all actions required or permitted to be taken by either party under this agreement shall be at that party's own cost.
- 2.2 The Operator shall be responsible for meeting the cost of Business Rates and shall seek to be identified as the person liable to make payment of Business Rates. In the event that the Operator is not identified as the person liable to make payment of any Business Rates, the Operator shall pay to the Authority the value of those Business Rates as part of (but in addition to the sum as otherwise calculated) the Fee. Such payment shall be made with the first payment of the Fee after the Business Rates become due.

- 2.3 For the avoidance of doubt, the Authority may enter into agreements with third parties under which Shelters owned or to be owned or are otherwise the responsibility of that third party are to be subject to the provisions of this agreement as if they were owned or to be owned by the Authority. Such Shelters shall be treated by the Operator in that same way as Shelters actually owned or to be owned by the Authority. References to Authority ownership shall be read accordingly.

## **COMMENCEMENT AND DURATION**

### **3. TERM**

This agreement commences on the Commencement Date and continues for the Term.

### **4. EXTENSION**

The Authority may, by giving the Supplier not less than 12 months' written notice prior to expiry of the Initial Term, request the extension of this agreement in respect of the whole (or part) of the Services and if the Supplier agrees this agreement will be extended on the same terms mutatis mutandis, for a period of up to five years from the day following expiry of the Initial Term.

### **5. SUPPLY OF SERVICES**

- 5.1 The Operator shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including Schedule 1 (Specification).
- 5.2 In supplying the Services, the Operator shall:
- 5.2.1 perform the Services with reasonable care and skill;
  - 5.2.2 perform the Services in accordance with the service description set out in Schedule 1 (Specification);
  - 5.2.3 ensure that the deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
  - 5.2.4 comply with the Applicable Laws provided that the Operator shall not be liable under the agreement if, as a result of such compliance, it is in breach of any of its obligations under the agreement; and
  - 5.2.5 observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Authority's Premises and have been communicated to the Operator, provided that the Operator shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.
- 5.3 In the event that the Operator does not comply with the provisions of clauses 5.1 and 5.2 in any way, the Authority may serve the Operator with a notice in writing setting out the details of the Operator's default (**Default Notice**).



## **6. AUTHORITY'S OBLIGATIONS**

The Authority shall:

- 6.1 co-operate with the Operator in all matters relating to the Services; and
- 6.2 provide, in a timely manner, such information as the Operator may reasonably require, and ensure that it is accurate and complete in all material respects.

## **7. CONSENTS, OPERATOR'S WARRANTY AND DUE DILIGENCE**

- 7.1 The Operator will be responsible for obtaining all Necessary Consents and planning permissions and any other consent or agreement required for erection or modification of the Shelters or otherwise to provide the Services.
- 7.2 Subject to clause 7.4, the Operator will be responsible for obtaining all Necessary Consents and planning permissions and any other consent or agreement required to display advertisements. The Operator will take the risk on securing planning permission (where required) for advertising or forms of advertising on Shelters
- 7.3 The Operator shall not carry advertising, or forms of advertising, on Shelters without the benefit of planning permission authorising that particular use.
- 7.4 The Authority's position is that:
  - 7.4.1 the Shelters are authorised as permitted development under Part 12 Class A of the General Permitted Development Order 2015;
  - 7.4.2 existing advertising on Shelters is permitted either by express advertisement consent by deemed advertisement consent under class 13 or 14 of the Advertising Regulations; and
  - 7.4.3 under the Advertising Regulations, carrying advertising on Shelters which did not previously carry advertising, adding illumination to existing advertising locations, or installing digital advertising panels in place of static advertising panels requires (as of the date of this agreement) express planning permission.
- 7.5 Where there is any conflict or inconsistency between the provisions of Schedule 1 and Schedule 2 and the requirements of a Necessary Consent, then the Authority shall determine at its sole discretion if the Shelter is to be provided despite the inconsistency and will issue the instruction in writing to the Operator, provided always that the Operator may refuse works if in its reasonable opinion delivery or installation would be in breach of any Applicable Law.
- 7.6 The Operator acknowledges and confirms that:
  - 7.6.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;

- 7.6.2 it has received all information requested by it from the Authority pursuant to clause 7.6.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
  - 7.6.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 7.6.2;
  - 7.6.4 it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
  - 7.6.5 it has entered into this agreement in reliance on its own due diligence, including responses provided by the Authority as part of the diligence process.
- 7.7 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Operator by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 7.8 The Operator:
  - 7.8.1 as at the Commencement Date, warrants and represents that all information it has provided to the Authority in writing concerning the provision of the Services, including but limited to the Tender, remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of this agreement; and
  - 7.8.2 shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services including to meet any required service levels.
- 7.9 The Operator shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Operator in accordance with clause 7.8.2 save where such additional costs or adverse effect on performance have been caused by the Operator having been provided with materially misleading or incorrect information by or on behalf of the Authority and the Operator could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Operator shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined between the Parties.
- 7.10 Nothing in this clause 7 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **8. SHELTERS**

- 8.1 The Authority shall own and retain ownership of all Shelters which the Authority funds. Any new Shelters funded by the Authority shall be owned by the Authority save for any advertisement panels and advertisement equipment attached.
- 8.2 The Operator shall own and retain ownership of all Shelters which the Operator funds. Any new Shelters funded by the Operator shall be owned by the Operator and irrevocably licenced: the Operator hereby grants a non-exclusive, non-transferable, revocable licence to the Authority to use such Shelters solely for the purpose of providing public bus shelter services while the Operator remains the operator of this concession during the Term. For the avoidance of doubt, the licence granted to the Authority under clause 8.2 is a licence to use the physical Shelters for the purposes of this agreement only. It does not include any licence or right to use, reproduce, adapt, modify or exploit any Intellectual Property, software, designs, technology, or proprietary systems owned or developed by the Operator (or its licensors) in connection with or embedded within the Shelters

## **9. ADVERTISING CONCESSION**

- 9.1 The Operator shall be entitled to advertise on Shelters as set out in Part 2 of Schedule 1.
- 9.2 The Fee shall be paid as set out in Schedule 3.
- 9.3 The Concession Services will apply on Shelters on the Authority's Premises throughout West Northamptonshire but, for the avoidance of doubt, does not apply to any Shelters on roads or land not controlled by the Authority save where the relevant highway authority or owner has entered into a Third Party Agreement.
- 9.4 The Authority will notify the Operator if any shelters are brought into under the Services as a result of a new Third Party Agreement or if Shelters are removed from under the Services as a result of a Third Party Agreement ending, and the List will be amended by the Authority accordingly. The Fee will be amended as required.
- 9.5 The Authority will not as a commercial counterparty enter into any agreement (of whatever type) to permit advertising of a Relevant Type within an Exclusion Zone. Where existing contracts exist allowing such advertising the Authority will not renew or extend such contracts when they would otherwise end.
- 9.6 For the avoidance of doubt, clause 9.5 does not affect the Authority's statutory responsibilities as a local authority, which it will remain free to exercise taking into account only considerations relevant to the exercise of those responsibilities.
- 9.7 The Operator will undertake the Concession Services at its own cost and risk in accordance with the provisions of this agreement. Neither the Authority nor any Public Body shall provide any guarantee or support to the Operator except as otherwise specifically provided in the agreement or as provided in law. This agreement shall not be deemed to grant the Operator, any right or impose any obligations on the Authority or any Public Body except as specifically stated in this agreement.

## **10. CONTINUOUS IMPROVEMENT**

- 10.1 The Operator shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services that come to its attention in the ordinary course of providing the Services, managing its operations, or engaging with industry developments. This obligation shall not require the Operator to undertake proactive research or investigation beyond its usual business practices. As part of this obligation the Operator shall identify and report to the Authority's Authorised Representative annually in each Contract Year on:
- 10.1.1 the emergence of new and evolving relevant technologies which could improve the Services;
  - 10.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;
  - 10.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of risk; and
  - 10.1.4 changes in ways of working that would enable the Services to be delivered at lower costs, higher income, and/or at greater benefits to the Authority.
- 10.2 Any potential changes highlighted as a result of the Operator's reporting in accordance with this clause 10 shall be addressed by discussion between the Parties. Implementation of any improvement shall be subject to mutual agreement, including agreement on costs, timelines, commercial impact, and any required contractual variations.

## **11. HEALTH AND SAFETY**

- 11.1 The Operator shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of this agreement and which would not normally be expected from the nature of the Services and the places they are provided. The Authority shall promptly notify the Operator of any health and safety hazards that may exist or arise at the Authority's Premises and that may affect the Operator in the performance of this agreement and which would not normally be expected from the nature of the Services and the places they are provided.
- 11.2 While on the Authority's Premises, the Operator shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 11.3 The Operator shall notify the Authority immediately in the event of any incident occurring in the performance of this agreement on the Authority's Premises where that incident causes any personal injury or damage to property that is significant or which could give rise to personal injury.
- 11.4 The Operator shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the provision of the Services.

- 11.5 The Operator shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

**12. CHARGES AND PAYMENT**

The Charges shall be paid as set out in Schedule 3.

**13. PERSONNEL USED TO PROVIDE THE SERVICES**

- 13.1 At all times, the Operator shall ensure that:

13.1.1 each of the Operator's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

13.1.2 there is an adequate number of Operator's Personnel to provide the Services properly; and

13.1.3 all of the Operator's Personnel comply with the requirements of this Agreement.

- 13.2 The Authority may refuse to grant access to, and remove, any of the Operator's Personnel where it has demonstrable evidence that such personnel have materially breached the Authority's requirements previously made known to the Operator, or where there is a substantiated and material security risk. The Authority shall provide the Operator with details of the grounds for any such decision and afford the Operator a reasonable opportunity to address the issue before removal is effected, unless the circumstances reasonably require immediate action.

- 13.3 The Operator shall replace any of the Operator's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Operator's Personnel for any reason, any replacement shall be provided within a reasonable timeframe, taking into account availability and operational requirements, and shall possess the necessary training and skills to perform the relevant Services. The Operator shall not be obliged to remove or replace personnel unless the concerns are substantiated, material, and have not been resolved through reasonable remedial steps.

- 13.4 The Operator shall maintain up-to-date personnel records on the Operator's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Operator's Personnel. The Operator shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

- 13.5 The Operator shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

- 13.6 The Parties agree that the provisions of Schedule 6 (TUPE) shall apply to any Relevant Transfer of staff under this agreement.

## **14. AUDIT**

- 14.1 During the Term and for a period of seven years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
- 14.1.1 to verify the accuracy of Maintenance Charge, Fee, and/or Charge (and proposed or actual variations to them in accordance with this agreement) and/or the ;
  - 14.1.2 to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
  - 14.1.3 to review the Operator's compliance with the DPA, the FOIA, in accordance with clause 20 (Freedom of Information) and clause 21 (Data Protection) and any other legislation applicable to the Services;
  - 14.1.4 to review any records created;
  - 14.1.5 to review any books of account kept by the Operator in connection with the provision of the Services;
  - 14.1.6 to carry out the audit and certification of the Authority's accounts; or
  - 14.1.7 to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 14.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 14 more than twice in any calendar year.
- 14.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Operator or delay the provision of the Services.
- 14.4 Subject to the Authority's obligations of confidentiality, the Operator shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 14.4.1 all information requested by the above persons within the permitted scope of the audit;
  - 14.4.2 reasonable access to any sites controlled by the Operator and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - 14.4.3 access to the Operator's Personnel.
- 14.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 14.6 The Parties shall (in accordance with clause 2.1) bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Operator in which case the Operator shall reimburse the Authority for all the reasonable costs incurred by the Authority or the regulatory body in the course of the audit.

14.7 If an audit identifies that:

- 14.7.1 the Operator has failed to perform its obligations under this agreement in any material manner, the Parties shall agree and implement a remedial plan. If the Operator's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or any component of them (including the Maintenance Charge and the Fee), then the remedial plan shall include a requirement for the provision of all such information;
- 14.7.2 the Authority has overpaid any Charges or the Operator has underpaid any Charges, the Operator shall pay to the Authority the amount overpaid within 20 Working Days with Interest from the date the payment should have been made. The Authority may deduct the relevant amount from the Charges if the Operator fails to make this payment; and
- 14.7.3 the Authority has underpaid any Charges or the Operator has over-paid any Charges, the Authority shall pay to the Operator the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Operator in relation to calculation or invoicing within 20 Working Days. No Interest shall be applicable.

**15. MONITORING**

- 15.1 The Authority may monitor the performance of the Services by the Operator.
- 15.2 The Operator shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 15.1 at no additional charge to the Authority.

**16. TITLE AND INTELLECTUAL PROPERTY**

- 16.1 All Pre-Existing IPR belonging to any Party created prior to the Commencement Date or created after the Commencement Date without connection to the Parties' obligations under this agreement shall continue to belong to that Party (or where applicable, the third party from whom the right to use such rights has been derived).
- 16.2 Nothing in this agreement shall interfere with the rights and responsibilities of the Operator in any Pre-Existing IPR.
- 16.3 In the absence of prior written agreement by the Parties to the contrary, only Intellectual Property created by the Operator at the request of the Authority specifically and exclusively for the purpose of performing the Services shall vest in the Authority on creation.
- 16.4 All legal and equitable interest in the Premises shall remain with the Authority.
- 16.5 The Operator shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **17. INSURANCE**

17.1 The Operator shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

17.1.1 public liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims;

17.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims;

17.1.3 product liability insurance with a limit of indemnity of not less than £1,000,000 (one million pounds) in relation to any one claim or series of claims; and

17.1.4 professional indemnity insurance with a limit of indemnity of not less than £1,000,000 (one million pounds) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover,

**(Required Insurances)** in respect of all risks which may be incurred by the Operator, arising out of the Operator's performance of this agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Operator.

17.2 The Operator shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

17.3 If, for whatever reason, the Operator fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Operator.

17.4 The terms of any insurance or the amount of cover shall not relieve the Operator of any liabilities under this agreement.

17.5 The Operator shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of this agreement.

## **18. INDEMNITIES**

The Operator shall indemnify and keep indemnified the Authority against any third party claims, proceedings, damages or losses (including reasonable legal costs) arising directly from the Operator's negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its representatives (excluding the Operator or any Sub-Contractor) or arising out of, or in connection with, any advertising placed by the Operator under the Concession which is found to be in breach of Applicable Law.



## **19. LIMITATION OF LIABILITY**

- 19.1 Subject to clause 19.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with this agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 19.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 19.3 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- 19.3.1 fraud or fraudulent misrepresentation;
  - 19.3.2 deliberate default of the Operator;
  - 19.3.3 death or personal injury caused by its negligence;
  - 19.3.4 breach of any obligation as to title implied by statute; or
  - 19.3.5 any other act or omission, liability for which may not be limited under any applicable law.
- 19.4 Subject to clause 19.3, the Operator's total liability in relation to the:
- 19.4.1 Maintenance Services shall not exceed the greater of £5,000,000 (five million pounds) or 125% of the aggregate Maintenance Charges; and
  - 19.4.2 Concession Services shall be unlimited save for if the Operator asks the Authority if the advertisement is consistent with the Requirements in accordance with paragraph 3.4 of Part 2 in Schedule 1 in which case the liability shall be limited to the greater of £5,000,000 (five million pounds) or 125% of the aggregate Fee.
- 19.5 Subject to clause 19.3, the Authority's total liability shall be equal to the aggregate Maintenance Charges.
- 19.6 Each party shall promptly notify the other party in writing upon becoming aware of any claim, demand, or circumstance which may give rise to a claim under this Agreement. Such notice shall:
- 19.6.1 provide reasonable details of the nature and basis of the claim (to the extent known);
  - 19.6.2 include any supporting documentation reasonably available; and
  - 19.6.3 state the amount claimed (if known or estimated).
- 19.7 Failure to notify a claim in accordance with clause 19.6 shall not relieve the other party of its liability, except to the extent that such failure materially prejudices the other party's ability to defend or mitigate the claim.

## **20. FREEDOM OF INFORMATION**

- 20.1 The Operator acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Operator's expense) to enable the Authority to comply with these information disclosure requirements.
- 20.2 The Operator shall and shall procure that its Sub-Contractors shall:
- 20.2.1 transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - 20.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - 20.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 20.3 The Authority shall be responsible for determining at its absolute discretion whether any Information:
- 20.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
  - 20.3.2 is to be disclosed in response to a Request for Information.
- 20.4 In no event shall the Operator respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 20.5 The Operator acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 20.5.1 without consulting with the Operator; or
  - 20.5.2 following consultation with the Operator and having taken its views into account,
- provided always that where clause 20.5.2 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Operator advanced notice, or failing that, to draw the disclosure to the Operator's attention after any such disclosure.
- 20.6 The Operator shall ensure that all Information produced in the course of this agreement or relating to this agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

- 20.7 The Operator acknowledges that any details provided by it outlining information that it considers to be confidential or commercially sensitive are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with clause 20.5.

## **21. DATA PROTECTION**

- 21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Operator is the Processor. The only processing that the Operator is authorised to do is listed in Schedule 5 (Data) by the Authority and may not be determined by the Operator.

- 21.2 The Operator shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

- 21.3 The Operator shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

21.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

21.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

21.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

21.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 21.4 The Operator shall, in relation to any Personal Data processed in connection with its obligations under this agreement:

21.4.1 process that Personal Data only in accordance with Schedule 5 (Data) unless the Operator is required to do otherwise by Law. If it is so required, the Operator shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

21.4.2 ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event having taken account of the:

21.4.2.1 nature of the data to be protected;

21.4.2.2 harm that might result from a Data Loss Event;

21.4.2.3 state of technological development; and

21.4.2.4 cost of implementing any measures;

21.4.3 ensure that:

21.4.3.1 the Operator Personnel do not process Personal Data except in accordance with this agreement (and in particular Schedule 5 (Data));

- 21.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Operator Personnel who have access to the Personal Data and ensure that they:
  - 21.4.3.2.1 are aware of and comply with the Operator's duties under this clause;
  - 21.4.3.2.2 are subject to appropriate confidentiality undertakings with the Operator or any Sub-processor;
  - 21.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this agreement; and
  - 21.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 21.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - 21.4.4.1 the Authority or the Operator has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
  - 21.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
  - 21.4.4.3 the Operator complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
  - 21.4.4.4 the Operator complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data; and
- 21.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the agreement unless the Operator is required by Law to retain the Personal Data.
- 21.5 Subject to clause 21.6, the Operator shall notify the Authority immediately if it:
  - 21.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 21.5.2 receives a request to rectify, block or erase any Personal Data;
  - 21.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 21.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this agreement;

- 21.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 21.5.6 becomes aware of a Data Loss Event.
- 21.6 The Operator's obligation to notify under clause 21.5 shall include the provision of further information to the Authority in phases, as details become available.
- 21.7 Considering the nature of the processing, the Operator shall provide the Authority with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 21.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - 21.7.1 the Authority with full details and copies of the complaint, communication or request;
  - 21.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 21.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 21.7.4 assistance as requested by the Authority following any Data Loss Event;
  - 21.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 21.8 The Operator shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Operator employs fewer than 250 staff, unless:
  - 21.8.1 the Authority determines that the processing is not occasional;
  - 21.8.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 21.8.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.9 The Operator shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor. The Authority is entitled, on giving at least three days' notice to the Operator, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data under this agreement by the Operator. The requirement to give notification in advance will not apply if the Authority believes that the Operator is in breach of any of its obligations under this Agreement.
- 21.10 The Operator shall designate a data protection officer if required by the data protection legislation

- 21.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Operator must:
- 21.11.1 notify the Authority in writing of the intended Sub-processor and processing;
  - 21.11.2 obtain the written consent of the Authority;
  - 21.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 21 such that they apply to the Sub-processor; and
  - 21.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 21.12 The Operator shall remain fully liable for all acts or omissions of any Sub-processor.
- 21.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 21.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Operator amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 21.15 The Operator shall undertake all of the above processing activities at its own expense and at no extra cost to the Authority.
- 21.16 The Authority retention and disposal Schedule 5 (Data) as provided will be followed by the Operator where appropriate and relevant; no decisions on retention or disposal are to be made by the Operator unless it is part of detailed Processing under this Agreement.
- 21.17 The Operator shall without undue delay inform the Authority if any Personal Data is lost or destroyed or becomes damaged, corrupted or unusable. The Operator will make regular backups of the Personal Data and will restore such Personal Data at its own expense.

## **22. CONTACT AND COMPLAINTS**

- 22.1 The Operator shall provide a telephone number, email address, and (unless otherwise agreed by the Authority) a web portal which the Authority and members of the public can use to contact the Operator at all times on all days of the year.
- 22.2 The web portal:
- 22.2.1 shall allow for uploading of photographic or video information;
  - 22.2.2 shall allow (but not require) users to create an account with password; and
  - 22.2.3 must not limit the number of users.
- 22.3 Any Faults reported to the Operator shall (unless it has compelling reasons to believe the report is false and vexatious) be recorded by the Operator on the CAFM System, to the extent

they have not already been recorded by the authority. The Fault recorded must include (insofar as the Operator has or can reasonably obtain the information) the following:

- 22.3.1 The date and time of the Fault report.
- 22.3.2 Whether the Fault is an Urgent Fault or Non-urgent Fault.
- 22.3.3 Full details regarding the Fault reported.
- 22.3.4 Required response times, in line with the Specification, to react to and repair the Fault.
- 22.3.5 Description of the Fault found.
- 22.3.6 Actual response time to resolve the Fault.
- 22.3.7 Description of the works undertaken, including any components or spare parts used and photographic records of Fault and rectification.
- 22.3.8 Reasons, if applicable, for failure to not meet the timing of resolution as required under this Specification.
- 22.3.9 Time taken to repair the Fault.
- 22.3.10 Pass or fail in terms of the timing of resolution as required under this Agreement.
- 22.3.11 Identify of Operator's Personnel involved.

## **23. CONFIDENTIALITY**

- 23.1 Subject to clause 23.2, the Parties shall keep confidential all Confidential Information and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 23.2 Clause 23.1 shall not apply to any disclosure of information:
  - 23.2.1 required by any applicable law, provided that clause 20.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
  - 23.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
  - 23.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 23.1;
  - 23.2.4 by the Authority of any document to which it is a party and which the Parties to this agreement have agreed contains no commercially sensitive information;
  - 23.2.5 to enable a determination to be made under clause 39;
  - 23.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - 23.2.7 by the Authority to any other department, office or agency of the Government; and

23.2.8 by the Authority relating to this agreement and in respect of which the Operator has given its prior written consent to disclosure.

23.3 On or before the Termination Date the Operator shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, residents, Council Tax payers, rate-payers or service users, are delivered up to the Authority or securely destroyed.

## **24. TERMINATION FOR BREACH**

24.1 The Authority may terminate this agreement with immediate effect by the service of written notice on the Operator in the following circumstances:

24.1.1 if the Operator is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 24.1 if the Operator has failed to remedy such breach within 28 days of receipt of notice from the Authority to do so;

24.1.2 if a consistent failure by the Operator has occurred;

24.1.3 if a Catastrophic Failure has occurred;

24.1.4 a Default Notice is provided to the Operator and the Operator fails to remedy the default set out in the Default Notice within a period of 28 days of being served the Default Notice;

24.1.5 if a resolution is passed or an order is made for the winding up of the Operator (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Operator becomes subject to an administration order or a receiver or administrative receiver is appointed over, or an encumbrancer takes possession of any of the Operator's property or equipment;

24.1.6 if the Operator ceases or threatens to cease to carry on business in the United Kingdom;

24.1.7 if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Operator to which the Authority reasonably objects;

24.1.8 if this agreement has been subject to a substantial modification which would have required a new procurement procedure pursuant to Section 74 and Schedule 8 of the Procurement Act 2023;

24.1.9 if the Operator has, at the time of this agreement's award, been in one of the situations referred to in Chapter 6 of the Procurement Act 2023 and should therefore have been excluded from the procurement procedure; or

24.1.10 if a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of an intention to terminate under this clause must:

24.1.10.1 set out which termination ground the Authority considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Authority's reasons for deciding to terminate on this basis;



24.1.10.2 invite the Supplier to make representations to the Authority about the existence of the termination ground and the Authority's decision to terminate;

24.1.10.3 specify the means by which, and the time by which, such representations must be made.

24.1.11 if this agreement should not have been awarded to the Operator in view of a serious infringement of the obligations under the Regulations.

24.2 The Operator may terminate this agreement with immediate effect by the service of written notice on the Authority if the Authority is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Operator may only terminate this agreement under this clause 24.2 if the Authority has failed to remedy such breach within 28 days of receipt of notice from the Operator to do so.

24.3 If this agreement is terminated by the Authority under this clause such termination shall be at no loss or cost to the Authority and the Operator hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.

## **25. CONSEQUENCES OF TERMINATION OR EXPIRY**

25.1 On termination of this agreement (or where reasonably so required by the Authority before such termination) the Operator shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith.

25.2 The provisions of clause 18 (Indemnities), clause 17 (Insurance), clause 20 (Freedom of Information), clause 21 (Data Protection), clause 14 (Audit), clause 24 (Termination for Breach) and this clause 25 (Consequences of termination) shall survive termination or expiry of this agreement.

25.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

## **26. FORCE MAJEURE**

26.1 Subject to the remaining provisions of this clause 25, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

26.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

26.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

- 26.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- 26.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 26.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or negligent failure to take reasonable precautions against the relevant Force Majeure Event.
- 26.4 The Operator cannot claim relief if the Force Majeure Event is one where a reasonable Operator should have foreseen (including its scale and consequences) such event at the time of entry into this agreement and provided for the cause in question.
- 26.5 As soon as practicable following the affected party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Operator is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 26.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 26.7 Either party may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Operator if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than three months. However, prior to issuing such notice, the parties shall engage in good faith discussions with a view to agreeing a mutually acceptable course of action, including any potential variations or mitigations, and shall allow a reasonable period for such discussions to take place. .

## **27. PREVENTION OF CORRUPTION**

- 27.1 Neither Party shall not (directly or indirectly) offer or give, or agree to give, to any employee, agent, servant or representative of the other Party or any other public body or person employed by or on behalf of the Authority, any gift or consideration or financial or other advantage of any kind which could act as an inducement or reward for:
  - 27.1.1 doing, refraining from doing, or for having done or refrained from doing, any act in relation to this agreement or any other contract with the other Party or any other public body or person employed by or on behalf of the other Party (including its award to the Provider, execution or any rights and obligations contained in it);
  - 27.1.2 showing or refraining from showing favour or disfavour to any person in relation to any such contract; or
  - 27.1.3 improperly performing a relevant function or activity.

- 27.2 The Operator warrants that it has not paid commission or agreed to pay 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 or any person employed by or on behalf of the Authority or a public body in connection with this agreement.
- 27.3 The Operator will upon request provide the Authority with all reasonable assistance to enable the Authority to perform any activity required for the purposes of complying with the Bribery Act 2010, as may be required of the Authority by any relevant government or agency in any relevant jurisdiction.
- 27.4 The Operator will have in place an anti-bribery policy for the purpose of preventing any of its Staff from committing any act in contravention of the Bribery Act 2010. Such policy shall be disclosed to the Authority and enforced by the Provider where appropriate.
- 27.5 Should the Operator become aware of or suspect any breach of this Clause it will notify the Authority immediately. Following notification, the Provider will respond promptly and fully to the enquiries of the Authority, cooperate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation. The Provider's obligations under this Clause shall survive the expiry or termination of this agreement for a further period of six (6) years.

## **28. PREVENTION OF FRAUD**

- 28.1 The Operator must put in place and maintain appropriate counter fraud and security management arrangements.
- 28.2 The Operator must take all reasonable steps, in accordance with Best Industry Practice, to prevent fraud by staff and the Provider regarding the receipt of monies from and by the Authority.
- 28.3 The Operator must notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 28.4 The Operator shall have in place appropriate measures to ensure the prevention of the facilitation of tax fraud by them and any associated person providing services for or on their behalf.
- 28.5 If the Operator or its staff commits fraud in relation to this agreement or any other contract with the Authority, the Authority may terminate this agreement by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination, including any loss of Charge income and the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this agreement had it not been terminated. The Authority shall not terminate under this clause without first giving the Operator reasonable opportunity to respond and demonstrate corrective action unless fraud is admitted or proven (providing such time remedy is not contract to any Applicable Law or regulations).

## **29. SUB-CONTRACTING AND ASSIGNMENT**

- 29.1 Subject to clause 29.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Operator sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).
- 29.2 In the event that the Operator enters into any Sub-Contract in connection with this agreement it shall:
- 29.2.1 remain responsible to the Authority for the performance of its obligations under this agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - 29.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms;
  - 29.2.3 provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative; and
  - 29.2.4 cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Operator to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 29.3 The Authority shall be entitled to novate this agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority in relation to highways.

## **30. WAIVER**

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Operator in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Operator of its obligations to deliver the Services in accordance with the provisions of this agreement.

## **31. CUMULATION OF REMEDIES**

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

**32. SEVERABILITY**

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced. If any provision or part-provision of this agreement is deemed deleted under this clause, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**33. PARTNERSHIP OR AGENCY**

33.1 Nothing in this agreement shall be construed as constituting a partnership between the Parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

33.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**34. THIRD PARTY RIGHTS**

Other than where expressly provided in Schedule 6 (TUPE), no term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

**35. PUBLICITY AND ACKNOWLEDGEMENT**

35.1 The Operator shall not:

35.1.1 make any press announcements or publicise this agreement or its contents in any way; or

35.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

35.2 The Operator shall acknowledge the support of the Authority in any materials that refer to the Services and in any written or spoken public presentations about the Services. Such acknowledgements (where appropriate or as requested by the Authority) shall include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time. In using the Authority's name and logo, the Operator shall comply with all reasonable branding guidelines issued by the Authority from time to time.

**36. NOTICES**

36.1 Notices shall be in writing and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or email provided that email transmission is confirmed within 24 hours by first-class mailed confirmation of a copy.

36.2 Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed emails and facsimile transmissions shall be deemed

to have been received instantaneously on transmission provided that they are confirmed as set out above.

- 36.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**37. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

**38. ENTIRE AGREEMENT**

This 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 supersede all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**39. DISPUTE RESOLUTION**

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

39.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

39.1.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the senior representatives of the Authority and Operator who shall attempt in good faith to resolve it.

- 39.2 If the Parties are unable to resolve the Dispute, either party may call an extraordinary meeting of the Parties by service of not less than five Working Days' written notice and each party agrees to procure that its Authorised Representative shall attend all extraordinary meetings called in accordance with this clause.

- 39.3 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the Dispute Resolution Procedure shall be deemed exhausted.

**40. GOVERNING LAW AND JURISDICTION**

40.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

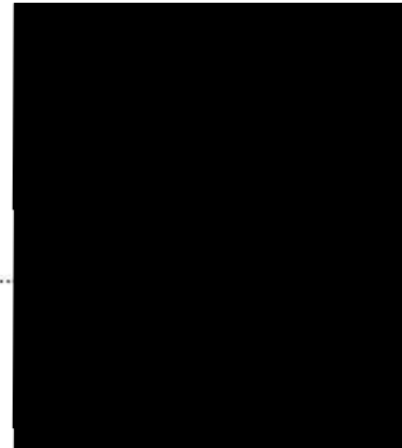
40.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation.

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

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



*Authorised Signatory*



Executed as a deed by **BAUER MEDIA OUTDOOR UK LIMITED** acting by two directors or a director and company secretary:



*Director*



*Company Secretary*

## **Schedule 1 – Specification**

### **Part 1 – Maintenance Services**

#### **1. SERVICES**

- 1.1 The following minimum maintenance standards shall apply to all Shelters on the List:
- 1.1.1 All Shelters shall be subject to at least a fortnightly cleaning visit which shall cover:
    - 1.1.1.1 Washing and cleaning of all surfaces.
    - 1.1.1.2 Graffiti removal.
    - 1.1.1.3 Paint touch up.
    - 1.1.1.4 Poster and fly-posting removal.
    - 1.1.1.5 Removal of waste from the ground within the Shelter and if necessary washing of the ground within the Shelter.
    - 1.1.1.6 Check of all equipment and any necessary work to ensure it is functioning, in line with manufacturer's recommendations.
    - 1.1.1.7 Any watering, pruning or other care required of planned vegetation (including green roofs).
    - 1.1.1.8 Removal of any unplanned vegetation and making good.
  - 1.1.2 After the cleaning visit the Shelters, including the ground within the Shelter, shall be in a clean state.
  - 1.1.3 Any offensive graffiti or fly posting must be removed within five hours of notification (at any time) to the Operator.
  - 1.1.4 Subject to paragraph 1.1.3, graffiti and posters and fly posting is to be removed whenever the Shelters are cleaned and also within 24 hours of the Operator being given notice in Working Hours of the presence of any of these.
  - 1.1.5 Electrical safety checks shall be carried out at least every 12 months. This must include a full integrity check of the circuits.
  - 1.1.6 Each Shelter shall be repainted at least every five years, and otherwise as required to maintain an attractive appearance.
  - 1.1.7 Other preventative inspections and maintenance shall be carried out in line with manufacturers' recommendations and, where applicable, relevant British, European, International, or other recognised standards.
  - 1.1.8 At least once every 12 months, each Shelter shall be subject to a deep clean of the whole, including removal of any vegetation which may have developed in or around the Shelter.



- 1.1.9 Any broken glazing, damaged Shelter panels or equipment representing a danger to the public is to be replaced within 24 hours of either a cleaning visit or notification (at any time) to the Operator by the Authority. If the Operator is notified of any Urgent Fault, the Operator must carry out an immediate temporary repair as soon as practicable and in any event within five hours of such notification to make the Shelter safe (this mean leave a Non-urgent Fault in place for the time being).
    - 1.1.10 Any broken glazing, damaged or scratched Shelter panels or equipment or other Non-urgent Faults is to be repaired within five working days of either a cleaning visit or notification in Working Hours to the Operator by the Authority.
  - 1.2 The Operator shall provide a 24-hour emergency call-out service to:
    - 1.2.1 respond to situations considered dangerous and for other reasons of safety; and
    - 1.2.2 remove offensive graffiti in accordance with paragraph 1.1.3.
  - 1.3 In the event that any of the following apply, the Authority shall have the right to carry out the required works itself and charge the costs to the Operator:
    - 1.3.1 The Operator not meeting the graffiti removal deadline in paragraph 1.1.10.
    - 1.3.2 Where the Authority reasonably considers that works are urgently required to eliminate danger to the public or for other reasons of safety and the Operator has failed to respond to a call-out within the prescribed time.
    - 1.3.3 The Operator fails to undertake maintenance (including cleaning) in accordance with this specification.
  - 1.4 The Operator shall be responsible for repairing any damage to the Shelters (including replacement of lighting) including where such damage has been caused by, or adversely affected by, road traffic collisions, vandalism, civil commotion, or the impact of climate or environmental conditions.
  - 1.5 If the Operator concludes it is not practical or cost effective to repair a damaged Shelter except a type 1 Shelter, it may instead replace it. Replacement of existing Shelters will be on a minimum like-for-like basis, e.g., type 3 Shelters will be replaced with type 3 Shelters, but a type 4 Shelter may be replaced by a type 4 or a type 3, and so on (provided this does not leave less than 2000mm of residual footway width)..
  - 1.6 Type 1 Shelters may not be replaced. Instead, any works necessary to restore them, including any ornamentation, with historical integrity shall be undertaken.
  - 1.7 Type 2 Shelters may not be replaced. Instead, any works necessary to restore them to a good condition, including any ornamentation, shall be undertaken.
- 2. PERFORMANCE MEASUREMENT**
- 2.1 The following performance measures are defined:

	Measure	Target
1.	Percentage of Urgent Faults resolved in specified time	95%
2.	Percentage of Non-urgent Faults resolved in specified time	90%
3.	Percentage of offensive graffiti or fly posting removed in specified time	95%
4.	Percentage of statutory / mandatory inspections and required follow-up works completed in required time	98%
5.	Percentage of other planned inspections and maintenance works completed in scheduled time (scheduled time to meet the requirements of this Specification)	90%
6.	Percentage of time the customer response facilities are available and responded to in accordance with clause 22.3	99%

- 2.2 The Operator shall self-monitor and report on performance on a monthly basis to the Authority.
- 2.3 The Operator shall allow the Authority to audit and verify the performance data reported, including accessing systems and taking copies of data, documents, and the like. Such action may be taken by the Authority itself or anyone authorised by it. In the event that the Authority discovers any material errors in the reporting it may require the Operator to pay the reasonable costs of the audit or verification process which uncovered the error.

## Part 2 – Concession Services

### 1. CONCESSION SERVICES

- 1.1 The parties agree that, the Operator shall pay the Fee and provide the Concession Services and have the right to operate the Concession in accordance with the terms of this agreement.
- 1.2 The Authority shall during the Term grant access to the Shelters for the advertisements to be displayed in accordance with the Operator's Proposal and the terms of this agreement.

### 2. ADVERTISEMENTS

- 2.1 The types of advertisements are listed below:
- 2.1.1 Non-illuminated advertisements (which include poster boards and display cases);
- 2.1.2 Illuminated advertisements (which include illuminated poster boards illuminated display cases, and illuminated static displays);

- 2.1.3 Digital (illuminated) advertisements (including electric media or multi-media displays with single or multi-rotational advertising); and
- 2.1.4 Any other type of advertisement suggested by the Operator in the Tender which is accepted by the Authority.

### **3. CONTENT OF ADVERTISING**

- 3.1 The Advertising Guidance shall be read as requirements rather than guidance and subject to the following:
  - 3.1.1 References to desirable outcomes (e.g. 'expect') are to be read as definite requirements.
- 3.2 All advertising shall comply with the Requirements.
- 3.3 The Authority will not decide on the desirability of particular advertisements provided that they comply with the Requirements.
- 3.4 The Operator may ask the Authority whether a particular a proposed advertisement is consistent with the Requirements. If the Operator does so ask, the Authority's decision shall be conclusive subject to the appeal procedure set out in paragraph 4.6.
- 3.5 If having not been asked under paragraph 4.4 the Authority considers an advertisement violates the Requirements, it may notify the Operator that the advertisement in question is to be removed. The Operator shall remove the advertisement as soon as possible and in any event within 48 hours.
- 3.6 If the Operator disagrees with the Authority's view that an advertisement is or would be in breach of the Requirements, it may appeal to the Expert.
- 3.7 The Expert shall be appointed by agreement of the parties unless they are unable to agree on the identity or terms of appointment of the Expert. If the parties are unable to agree on these matters within ten days of a proposed Expert being put forward by one of them, either party may ask the IPA to nominate an Expert and determine the terms of their appointment (which must be consistent with paragraph 4.9).
- 3.8 If the IPA nominates an Expert the parties shall appoint the Expert on the terms determined by the IPA.
- 3.9 The Expert:
  - 3.9.1 Shall allow both parties to present their case, but otherwise shall be free to determine his own approach to determining a disagreement.
  - 3.9.2 Shall give a decision in writing.
  - 3.9.3 Shall determine how his costs are divided between the parties.
  - 3.9.4 May be removed without payment if he does not give a determination within 60 days.
- 3.10 The decision of the Expert shall be final and binding except in the case of obvious error.

- 3.11 The parties may at any time agree to replace the Expert with another identified Expert on terms they agree.
- 3.12 If an Expert currently appointed dies, fails to act, is clearly incapable of acting, or takes more than 60 days to reach a determination either party may apply to the IPA to appoint a replacement expert. If the IPA does so, the parties shall appoint the new Expert on the same terms as the previous Expert (subject to any changes the Parties may agree) and the new Expert shall become responsible for determining the disagreement. The provisions of this paragraph may be applied repeatedly if the conditions are met.

#### **4. VOLUNTARY CHANGES TO LOCATION AND TYPE OF ADVERTISING**

- 4.1 Where the Operator wishes to modify the form of advertising on a Shelter, or to add advertising to a Shelter without advertising, the following provisions shall apply.
- 4.2 The Operator shall notify the Authority of its wish, providing detail of the proposal.
- 4.3 The Authority will consider and approve or reject the proposal within 60 days. The Authority shall only reject a proposal if it reasonably considers that the proposal would do any of the following:
  - 4.3.1 Endanger highway safety or public safety.
  - 4.3.2 Not preserve (or enhance) the setting of a listed building or the character or setting of a conservation area.
  - 4.3.3 Result in a reduction in the Fee.
- 4.4 If the Authority approves a proposal the Operator shall implement the proposal within six months. If the Operator does not implement the proposal within six months the Authority's approval shall lapse.
- 4.5 The Operator shall notify the Authority when the change has been made and the List and the Fee will be adjusted accordingly.

#### **5. AUTHORITY ADVERTISING**

- 5.1 Subject to the following, the Authority may use any equipment provided by the Operator for advertising on Shelters at times when the Operator has not secured advertising of its own to use that item of equipment.
- 5.2 The Operator shall make the Authority aware of times when opportunities for Authority Advertising using such means and at such frequency and times as the Authority, acting reasonably, may specify.
- 5.3 The Authority shall pay any reasonable direct costs actually incurred by the Operator in or as a result of displaying Authority Advertising but shall not otherwise be liable to make any payment to the Operator for displaying Authority Advertising. Payments due to the Operator under this paragraph shall be treated as part of the Maintenance Charges.
- 5.4 Authority Advertising must only be for one or more of the following:

- 5.4.1 Services provided, whether or not for a charge, by the Authority or on its behalf.
- 5.4.2 Messages intended to promote public health, well-being, or safety, including messages aimed at any part or group of the public.
- 5.4.3 Messages relating to the prevention or detection of crime or the capture and conviction of criminals.

## **Appendix to Schedule 1 – WNC Advertising Guidance**

### **1. PROHIBITED PRODUCTS, SERVICES, AND ADVERTISERS**

Our basic approach is to maximise the number of advertisements and advertisers and minimise the number that are prevented from doing so by any controls or restrictions. To this end, most products and services will be permissible, though there are some types of organisation and categories of product or service which are felt inappropriate for promotion on at council-hosted advertising sites, defined in the list below.

- Political publicity and any political or quasi-political organisations, including pressure groups.
- Legal or quasi-legal organisations which limit their services to a specific area of law (for example claims relating to personal injury).
- Credit providers offering short-term, high interest loans. Credit advertisements must comply with all legal and regulatory requirements in force at the time of publication, including the Consumer Credit (Advertisements) Regulations 2010 where applicable.
- Gambling or organisations associated with gambling. The only exceptions to this are:
  - The National Lottery.
  - Any local lotteries which might be set up by charities or the Authority to support initiatives in the area.
- Organisations simply offering entry into a competition following completion of a form containing any personal information or similar are not considered appropriate.
- Promotion of prejudice, and any organisation that promotes prejudice, including but not limited to racism, sexism, homophobia and transphobia, and religious discrimination.
- Tobacco, vaping and other non-medically licensed nicotine containing products, and manufacturers of such products. Promotion of access to stop smoking services as part of the Authority's or the Government's smoking cessation campaigns is permissible. Where smoking cessation campaigns explicitly focus on vaping this will not be carried out within 400 metres of schools and, where possible, will avoid digital advertising at times when children are travelling to and from school (7-9am and 3-5pm).
- Weapons or direct manufacturers of weaponry end products.

- Advertising for alcohol must adhere to the strict guidance set out by the Advertising Standards Authority and must also highlight the Drinkaware campaign. Advertising for alcohol, or manufacturers of alcohol, within 400 metres of schools. Digital advertising of such product and manufactures at times when children are travelling to and from school (7-9am and 3-5pm).
- Pornography or nudity, or organisations associated with or promoting adult industries.
- Organisations in legal or financial conflict with the Authority. The Authority will provide the details of any organisations falling into this category as they arise.
- Advertising for food and drink that is high in sugar, salt and fat (as outlined in the Department of Health guidance), or brands producing such food and drink, within 400 metres of schools. Digital advertising for this type of food and drink, and these brands, at times when children are travelling to and from school (7-9am and 3-5pm).
- Organisations providing residential, nursing or domiciliary care and support services must offer proof of CQC registration.
- Advertising for educational establishments is limited to those within the West Northamptonshire area or those providing further education which can reasonably demonstrate that they serve residents within that catchment.

## **2. STYLE AND CONTENT OF ADVERTISING**

We expect all advertising placed to fall within the guidelines of the Advertising Standards Authority (ASA), specifically the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing – otherwise known as the Committee of Advertising Practice (CAP) Code. It is the advertiser's or operator's responsibility to be aware of the code as well as Consumer Protection from Unfair Trading Regulations and any changes/updates to them.

Advertising content must be legal, decent, honest and truthful, and be prepared with a sense of responsibility to consumers and to society as a whole.

We are open to a variety of styles in advertising, but content that breaches the following is not permitted:

- Violates the topics outlined in section 2 above.
- Uses the Authority's logo without consent in writing from the communications team.
- Does not clearly state who the advertiser is.
- Is not clearly identifiable as an advertisement.
- Infers a connection with an organisation that does not exist.
- Is not suitable for family viewing.
- Presents unsubstantiated statements as fact.

Advertising does not represent endorsement of any organisation, product or offer by the Authority, or imply that the Authority is responsible for the advertiser's quality and reliability.

We accept no liability for any loss or damage arising out of or in connection to any external advertisement placed. As part of the booking agreement, all advertising operators must indemnify the Authority against any claims, damages, losses etc arising out of any advertising placed.

## **Schedule 2 – Shelters**

### **1. TYPES OF SHELTERS**

- 1.1 The types of Shelters are as set out in the Pricing Schedule.
- 1.2 Additionally for Types 3 to 5, if the letter "R" is appended this indicates a requirement for special robustness, as defined in paragraph 2.3.
- 1.3 Operator's Proposals may set out sub-division of the types of Shelter, in which case these sub-divisions shall apply. Such sub-divisions, may (without excluding other possibilities) include:
  - 1.3.1 Different designs or characters;
  - 1.3.2 Provision of features such as roofs designed to support insect life and/or deliver other ecological benefits;
  - 1.3.3 Provision of facilities not otherwise required for passenger use or enjoyment; and
  - 1.3.4 Any other feature detailed in the Tender, an Operator suggested feature or a feature that become subsequently available and which has been accepted by the Authority.

### **2. GENERAL REQUIREMENTS FOR SHELTERS**

- 2.1 The following requirements apply to the Shelters save for they shall only apply to Type 1 and Type 2 Shelters to the extent compatible with preserving their historic character.
- 2.2 Shelters shall comply with the following:
  - 2.2.1 Shelters must provide good protection from the rain, as far as is practicable considering the Type of Shelter.
  - 2.2.2 Shelter roofs must have a minimum 3% gradient and otherwise efficiently drain.
  - 2.2.3 The panels and roof should be manufactured of 10mm or greater toughened glass, or 6mm or greater polycarbonate, or other robust material set out in the Operator's Tender. Where polycarbonate is used, ultraviolet protection must be included.
  - 2.2.4 Subject to paragraph 2.2.10, glazing should be as transparent as possible, in order to reduce any masking effect on any property behind the shelter, whilst remaining visible to the visually impaired. Glazing should minimise reflection and glare.
  - 2.2.5 Any gap between panels and the ground shall not exceed 150mm.
  - 2.2.6 Any advertising display on the shelter must be positioned in order that passengers waiting in the shelter can see an approaching bus (or other vehicle as applicable).
  - 2.2.7 The colour and finish of the shelters must reflect the Operator's Tender, unless otherwise agreed by the Authority. Where polycarbonate powder coating is used it must be suitable for the location and stabilised against ultraviolet damage.
  - 2.2.8 The shelters must be capable of housing a real time (RTPI) information display, as specified by the Authority, as further described in paragraph 2.2.10 .



- 2.2.9 Shelters must be provided with at least one timetable/information display case in which the Authority may display timetables or other information relating to public transport operations. The Authority and those authorised by it may affix timetables or transport notices in the provided timetable display cases and flags to any shelter provided that such flags do not interfere with or obscure any advertising panels on the Shelter.
- 2.2.10 Shelters shall have high visibility markings on every panel where this is reasonably needed to assist partially sighted persons and shall clearly identify doorways and points of access (as the case may be).
- 2.2.11 Shelters must be robustly and durably constructed with a minimum design life of 20 years.
- 2.2.12 Shelters must include a post and mounting on their leading (in terms of the direction of traffic) edge capable of displaying at least two standard sized bus stop flags.
- 2.2.13 Regardless of the specified minimum standards, the shelters must conform with any legal requirements that apply, including those which come into force during the Term.
- 2.2.14 Shelters must otherwise reflect good industry practice and be suitable for their intended use.
- 2.3 Where a Shelter is required to have special robustness (types followed by the letter "R") then:
  - 2.3.1 The glazing shall be 10mm polycarbonate or other specially robust substance set out in the Operator's Tender.
  - 2.3.2 All fittings shall be designed to resist sustained attack by hand and objects likely to be found in the area of the shelter e.g. bricks, stones, and bottles, as set out in the Operator's Tender.
- 2.4 The minimum internal dimensions area of Shelters (except Types 1, 2, 6S, 6L, and 7) shall be:
  - 2.4.1 Overall width: 1,500mm.
  - 2.4.2 Overall height: 2,350mm.
  - 2.4.3 Overall length: 2,500mm.
  - 2.4.4 Free space to allow manoeuvring of wheelchairs and pushchairs of not less than 1,500mm by 1,500mm.
- 2.5 Shelters Type 6S, 6L, and 7 shall have a free space to allow manoeuvring of wheelchairs and pushchairs of not less than 1,500mm by 1,500mm and other minimum dimensions in accordance with the following table:

Type	Minimum dimensions, mm		
	Length	Width	Height
6S (Draperly short)	5300	1500	2350
6L (Draperly long)	9500	1500	2350
7 (Davenport Bus Station)	7200	1500	2350

2.6 Where a location is such that the internal dimensions set out in paragraph 2.4 or 2.5 above are not practicable, the Authority may authorise in writing a reduction in one or more of the dimensions for the relevant Shelter.

2.7 The requirements for seating are as follows:

2.7.1 Shelters are to be provided with perch style seats as a minimum. These must be fixed (not tip up) unless use of tip up seats is needed to retain a residual footway width of 2,000mm.

2.7.2 Seats must be at a level suitable for typical users. Where a number of seats are provided the level of these should be varied if this would better suit the likely range of users of that Shelter.

2.7.3 Seats shall be in colours designed to make them clearly visible and distinguishable from their surroundings.

2.7.4 Seats must be non-slip, quick drying and resist vandalism.

2.7.5 Separate seats with back rests and arms rests are preferred. Where an arm rest is provided this should be 200mm above the seat level and extend to the front edge of the seat.

2.8 The requirements for lighting are as follows:

2.8.1 Internal lighting must be provided within each Shelter. Lighting should effectively illuminate the entire Shelter whilst minimising glare and internal reflections.

2.8.2 Lighting should be provided to all timetable displays, enabling them to be read by someone standing in front of them. This may be achieved through the main Shelter lighting, but specific lighting shall be provided for timetable displays if it is necessary to meet this requirement.

2.8.3 The hours of illumination shall cover the hours of darkness. In any event, if street lighting is lit the internal illumination for the Shelters must be on. Notwithstanding the hours of darkness, presence sensors are acceptable such that lighting is only illuminated when someone is present, provided this system works effectively and reliably and ensures lighting when required in the hours of darkness.

- 2.8.4 Lighting should be highly energy efficient.
- 2.9 The requirements for timetable cases are as follows:
- 2.9.1 Each Shelter shall provide at least one timetable case, or two cases in the case of Shelters longer than 3,000mm.
  - 2.9.2 Case dimensions shall be a minimum 1,100mm wide x 900mm high, with a masked area all round of no more than 35mm and a visual display area of a minimum of 1,065mm x 865mm.
  - 2.9.3 Cases shall also include clips or a facility such as a backboard for holding information in place and pressing posters firmly against the front case glazing when the case is closed.
  - 2.9.4 Each case shall be positioned with the lower edge no more than 1,000mm from the ground and otherwise positioned to assist users read the contents.
  - 2.9.5 Cases shall be side hinged.
  - 2.9.6 Cases shall be secured with a hex or similar lock which are identical in all Shelters. At least 20 copies of the key for such locks shall be provided to the Authority at the commencement of the Contract, and further reasonable supplies if required by the Authority thereafter.
  - 2.9.7 There shall be a uniform design and size across all Shelters.
  - 2.9.8 Cases shall be highly resistant to water and dirt ingress (corresponding broadly to at least IP44).
  - 2.9.9 Glazing shall be shatterproof.
  - 2.9.10 Glazing shall minimise reflection and other obstructions to reading the material within.
  - 2.9.11 Cases shall clean easily and effectively, leaving the material within legible.
- 2.10 Subject to paragraph 2.11, save where it would be impracticable or would not generate a worthwhile amount of electricity (for example, Shelters located in places where there is a very high level of shading) all Shelters (except Type 1 Shelters) installed or upgraded shall include sufficient photovoltaic panels and a battery sufficient to provide power for:
- 2.10.1 Lighting in accordance with paragraph 2.8.
  - 2.10.2 Advertising illumination or digital advertising (if provided).
- 2.11 If more than the available roof of the Shelter would be required to comply with paragraph 2.10, then there is no requirement to install more photovoltaic panels than the available roof. For this purpose, the 'available roof' is:
- 2.11.1 For Shelters provided with roofs designed to support insect life or otherwise deliver ecological benefits as set out in the Operator's Tender or as agreed in relation to a

specific Shelter between the Operator and the Authority, the area of roof not used for those purposes.

2.11.2 Otherwise, the entire roof.

2.12 The Authority may provide RTPI displays for its own purposes (including public use) in or on the Shelters. The requirements on the Operator for RTPI displays as follows:

2.12.1 Space within the Shelter in a suitable location of a minimum area 600mm (high) by 600mm (wide).

2.12.2 If required in order that installation would not damage the Shelter, provision of a mounting plate or bracket capable of taking at least 20kg load.

2.12.3 Suitable arrangements to allow the Authority to install ariels on the roof or walls of Shelters for the purposes of RTPI where these are present on an existing Shelter and the Shelter is being replaced (but not otherwise).

2.13 When newly installed or relocated, Shelters must be located appropriately to allow passengers to board and alight at the raised kerb where one exists. The Shelter structure should not cause inconvenience to passengers attempting to board or alight from buses and should not interfere with footway desire lines.

2.14 All Shelters shall be provided with 'bus stop clearway' plates except where otherwise advised by the Authority.

### **3. SHELTER PROVISION SPECIFICATION**

3.1 Further to the general requirements of paragraph 2, the Operator shall provide Shelters in accordance with the following.

3.2 The Operator will be responsible for:

3.2.1 The supply and installation of the Shelter itself.

3.2.2 The provision, the cost and maintenance of all services including the supply of electricity (including connection and disconnection charges) to the Shelters.

3.2.3 Obtaining information regarding the location of all utility Operator equipment and agreement to any necessary diversion.

3.2.4 Any necessary works to the surface of the land where the Shelter will be located to provide a suitable environment for people waiting, including a level surface and step-free access.

3.2.5 As applicable, preparing the roof for its intended purpose, including all necessary connections, watering, and planting (as applicable).

3.2.6 Compliance with the New Roads and Street Works Act 1991 and other relevant legislation.

#### **4. SHELTER REMOVAL SPECIFICATION**

##### **4.1 When removing Shelters, the Operator shall:**

###### **4.1.1 Remove the Shelter and on instruction from the Authority either:**

4.1.1.1 Dispose of it, where practical by making fresh use of it in another place.

4.1.1.2 Reinstalling it in another location in West Northamptonshire (in accordance with the other provisions of the Agreement).

###### **4.1.2 Properly disconnect any services and terminate them in a proper manner, leaving nothing above ground.**

###### **4.1.3 Repair any surfacing damaged as a result of the presence or removal of the Shelter, in line with the requirements set out in paragraph 5.**

###### **4.1.4 Leave the site clear and safe.**

#### **5. REINSTATEMENT REQUIREMENTS**

##### **5.1 The following general requirements apply to all works:**

5.1.1 All work must be conducted in a tidy manner, with materials contained.

5.1.2 All spoil and other arisings must be removed from site and properly disposed of.

5.1.3 Sites must be left clean and tidy.

##### **5.2 The following list of requirements is to be used in conjunction with the Authority's standard detail for reinstatement. Where any other surface is not mentioned, the Operator shall consult with the Authority and agree (each party acting reasonably) the specification to be applied.**

##### **5.3 Concrete footpath**

5.3.1 Saw correct sized area to be excavated that will allow 150mm minimum surround to the shelter leg. Excavate to the required depth.

5.3.2 Back fill around leg using 4 coarse aggregate (10mm gravel), 2 fine aggregate, sharp sand, and 1 cement wet mix concrete to half the depth of the excavation and tamp to release air voids. Repeat the same process to footway surface level and float off around each leg. Once the concrete has begun to set apply surface texture to match surrounding footway (e.g., brush strokes dimpled or smoothed).

##### **5.4 Flagged footpath**

5.4.1 Remove the required number of whole flags to allow the necessary excavations to take place. Sawing of in-situ flagging is not permitted. Excavate to the required depth. Back fill around the legs to a depth not less than 150mm with type 4.2 concrete. Tamp to release all air voids.

- 5.4.2 Produce a dry mix of 9 course aggregate, 5 fine aggregate and 1 cement and back fill excavation to a depth of 50mm below the surface. Tamp well to provide bed for the flagging to be laid on.
- 5.4.3 Neatly saw flagging to enable a tight fit around each bus shelter leg and lay, compacting the flagging to the correct joints of flagging to seal surface.
- 5.5 Flexible footpath (asphalt and bitumen)
  - 5.5.1 Square off necessary excavations with the use of mechanical tool and dig down to required level.
  - 5.5.2 Back fill excavations with type 4.2 mix of concrete to a depth of not less than 150mm and tamp to release all air voids. Produce a dry mix of 9.5.1 concrete and back fill excavation to a depth of 40mm below ground level. Tamp to release air voids.
  - 5.5.3 Apply hand painted bitumen to all vertical edges of the excavation and around Bus Shelter legs, which must be below ground level.
  - 5.5.4 Apply cold mix cut back bitumen 6mm nominal size and hand tamp to correct level. No marks or deviations to be visible in the final finish.

## **6. PROVISION, REMOVAL, AND CHANGE OF SHELTERS**

- 6.1 The Operator shall provide Shelters as required in the IWP and as instructed by the Authority in accordance with the following.
- 6.2 The IWP shall be implemented as set out in paragraph 11 and the Tender.
- 6.3 The Operator shall provide Shelters instructed by the Authority within three months of instruction. This period will be extended by the period between the submission of any application for planning permission and receipt or refusal of planning permission.
- 6.4 The Operator shall inform the Authority when provision of the Shelter is complete, and the Authority will amend the List accordingly.
- 6.5 The Authority will meet the cost of provision of new Shelters as set out below:
  - 6.5.1 The cost of the IWP will be as set out in the Operator's tender as incorporated into this agreement.
  - 6.5.2 The cost of provision of new or enhanced shelters required by the Authority under paragraph 6.1 will be paid by the Authority in accordance with the costs set out in the Pricing Schedule.
  - 6.5.3 The Charge will be adjusted in accordance with the Pricing Schedule.
- 6.6 For the avoidance of doubt, the Authority will not pay for:
  - 6.6.1 the cost of installing any advertising panels or equipment;
  - 6.6.2 any materials required for installation; or
  - 6.6.3 any other costs associated with installation.

- 6.7 The Authority may require the removal of any Shelter or of advertising from any Shelter. If the Authority instructs the removal of a Shelter or of advertising from any Shelter:
- 6.7.1 The Operator shall remove the Shelter or the advertising (as applicable) within three months (or such other period as may be agreed between the parties).
  - 6.7.2 The Operator shall inform the Authority when the removal has taken place.
  - 6.7.3 If applicable, the Authority will pay the Operator the cost of removal of the Shelter in accordance with the cost set out in the Operator's Proposal.
  - 6.7.4 The List will be amended accordingly.
  - 6.7.5 The Fee will be adjusted in accordance with paragraph 3 of Part 2 in Schedule 1 (but see paragraph 6.7.6).
  - 6.7.6 In the event that the Operator fails to comply with the time limit in paragraph 6.7.1 then:
    - 6.7.6.1 If the result of the removal would be an increase in the Charge payable to the Authority or a decrease in the Charge payable to the Operator, the Charge will be modified as if the Operator had complied at the end of the time period.
    - 6.7.6.2 If the result of the removal would be a decrease in the Charge payable to the Authority or an increase in the Charge payable to the Operator, the Charge will only be adjusted where the removal has actually taken place.
- 6.8 The provisions of paragraphs 6.1 to 6.7 apply to a change of shelter from one type, and if applicable sub-type, to another as they apply to the provision and removal of Shelters.
- 6.9 The Authority shall own any Shelters for which it has paid the invoices in accordance with Paragraph 5 of Schedule 3 (for those Shelters only).
- 7. VOLUNTARY PROVISION OF SHELTERS**
- 7.1 The Operator may propose to provide Shelters not required by the Authority if it considers this worthwhile. Such proposals (**Voluntary Proposals**) shall identify the proposed:
- 7.1.1 Location.
  - 7.1.2 Type and if applicable sub-type.
  - 7.1.3 Proposed form of advertising.
- 7.2 The Authority will consider such proposals and either approve or reject them.
- 7.3 If the Authority approves a Voluntary Proposal, the Operator shall provide the Shelter in accordance with the Voluntary Proposal within six months (extended by the period between the submission of any application for planning permission and receipt or refusal of planning permission, if required). If the Operator does not do so, the Authority's approval will lapse.
- 7.4 The costs of implementing any Voluntary Proposal will fall solely on the Operator.

7.5 The Operator shall inform the Authority when provision of the Shelter is complete, and the Authority will amend the List accordingly.

7.6 The Charge will be adjusted if the application of the Voluntary Proposal would increase the Charge payable to the Authority or decrease the Charge payable to the Operator, but not otherwise.

## **8. IDENTIFICATION OF EXISTING SHELTERS**

8.1 The Authority has made reasonable efforts to ensure that the Shelter Schedule is accurate. However, it is possible that Shelters may exist which are not shown on the Shelter Schedule.

8.2 If the Operator identifies a Shelter which is not listed in the Shelter Schedule, it shall inform the Authority. The Authority may also identify Shelters not listed in the Shelter Schedule.

8.3 If a Shelter which is not on the Shelter Schedule is identified, the Authority may:

8.3.1 Require the Operator to remove it in accordance with paragraph 6.7 (in which case no adjustment to the List or Fee will arise, but the Authority will be liable to pay the Operator the cost of removal as set out in the Pricing Schedule).

8.3.2 Add it to the List, in which case the Charge will be adjusted in accordance with paragraph 3 of Part 2 in Schedule 1.

8.3.3 Take no action or remove the Shelter itself.

## **9. SAFETY OF WORKS**

9.1 The Operator must at all times ensure its works are conducted safely and in particular protect both members of the public and workers from risks rising in the course of the works. Particular regard shall be had to the needs of those most vulnerable, including those with sight or hearing loss, children, and those with learning disabilities. The following provisions do not detract from this over-riding obligation.

9.2 Before any ground works are commenced the Operator shall ensure that the relevant tests carried out to identify and avoid damage to and harm from electrical cables and other utilities and similar apparatus below the ground surface. The Operator's attention is drawn to the requirements of the New Roads and Street Works Act 1991 and the requirements for liaison with statutory undertakers.

9.3 The Operator shall properly cordon off any work area in the interest of the public safety.

9.4 The Operator shall contain any items or materials required, and any arisings from works, until they are either installed or properly removed from the site.

## **10. PROVISION OF INFORMATION AND CAFM SYSTEM**

10.1 The Operator shall label each Shelter with:

10.1.1 Location name.

10.1.2 Unique identification number.



- 10.1.3 Telephone number and email address at which members of the public can contact the Operator.
  - 10.1.4 Name of the Operator.
- 10.2 The information required in paragraph 10.1 shall be in text which is clearly legible and readable by sighted members of the public likely to use the Shelter.
- 10.3 The Operator shall provide at least the following information to the Authority:
  - 10.3.1 Whenever a Shelter is added or modified, details of the location, location name, identification number, and equipment in or attached to the Shelter. This information shall include a plan of the Shelter and equipment within or attached to it.
  - 10.3.2 Whenever a Shelter is removed, confirmation that it has been removed and the site reinstated, with the location, location name, and identification number.
- 10.4 The Authority operates a CAFM System. This will be used to hold information about each Shelter and the equipment within or connected to it, and notifications, in accordance with the following:
  - 10.4.1 Subject to paragraph 10.4.2, in the period prior to commencement of this agreement, the Authority will provide training for reasonable numbers of the Operator's workers or contractors such that they can operate the CAFM System effectively.
  - 10.4.2 Alternatively to paragraph 10.4.1, the Operator and the Authority may agree to provide a suitable form of connection between the CAFM System and the OMS, such that the Operator can, by using the OMS, receive information from, and add information to, the CAFM System to the same effect as if it was using the CAFM System directly. If this option is implemented, references to the Operator doing things in relation to the CAFM System shall be taken as references to it doing so through the OMS.
  - 10.4.3 The Authority and the Operator shall co-operate to make arrangements for the Operator to have access to the parts of the CAFM System, and only those parts, which relate to the Shelters.
  - 10.4.4 The Operator's use of the CAFM System shall be recorded in such a way that it is clear which additions, removals, or changes to records are made by the Operator.
  - 10.4.5 The Authority will use the CAFM System to notify the Operator of Faults it is aware of, including whether they are an Urgent Fault or Non-urgent Fault and any other relevant details, and any works required (such as a new Shelter or changes to a Shelter) which are not related to Faults.
  - 10.4.6 The Operator will use the CAFM System to schedule all planned tests, inspections, and works to Shelters and equipment within or connected to them.
  - 10.4.7 The Operator will use the CAFM System to record all tests, inspections, and works (whether planned or unplanned) to Shelters and equipment within or connected to

them and the results of these, including copies of test certificates and similar documents and the information required under paragraph 10.3.

10.4.8 The Operator will use the CAFM System to respond to notifications from the Authority under paragraph 10.4.5.

10.5 The Authority's CAFM System is currently Concerto, but (whilst it does not currently expect this) it is possible the Authority may change its CAFM System during the life of this agreement. If the Authority changes its CAFM System then either paragraphs 10.4.1 or 10.4.2 (as applicable) shall apply as if this agreement was commencing. This paragraph shall apply whenever the Authority changes its CAFM System.

10.6 If the Operator changes its OMS and the parties agree it would be desirable for the Operator to apply paragraph 10.4.2 then it shall apply from the date agreed by the parties.

10.7 If for any reason the CAFM System becomes inoperable for these purposes the information specified above shall instead be provided to the Authority by email in the form of a spreadsheet in a format specified by the Authority acting reasonably, or by other means agreed by the parties.

## **11. INITIAL WORKS PROGRAMME**

11.1 The IWP will contain, as a minimum, the following (times being measured from Commencement Date):

11.1.1 A thorough refurbishment of the type 1 Shelters within 12 months, leaving them in a good condition requiring no further major maintenance for at least ten years as set out in the Type 1 Refurbishment Specification.

11.1.2 Replacement of those Shelters identified for replacement within the time specified in the Shelter Schedule.

11.1.3 Removal of any existing Shelters identified for removal in the Shelter Schedule within the time specified in the Shelter Schedule.

11.1.4 Any additional Shelters or other works as proposed in the Operator's Proposals as forming part of this agreement.

11.2 The Shelter Schedule allowed each prospective Operator to specify whether it would retain, whilst replacing or upgrading as required to meet the requirements of this agreement, the Shelters owned by AdShell or whether it expected to fully replace them. In that event that the appointed Operator's tender assumed that the Shelters owned by AdShell were to be removed and that therefore new Shelters were generally required to replace them but the Authority secures an agreement such that all or some of these Shelters are retained the Authority will instruct changes to the List accordingly.

11.3 Shelters listed on the Shelter Schedule as "Replace with same Type" under the Initial Works Programme (IWP) action may (subject to 11.2) be refurbished rather than replaced on the condition that once the refurbishment works are completed the refurbished Shelter meets in full the required standards and specifications as set out in this agreement.

- 11.4 Failure to complete installations in accordance with the timescales required in the IWP will result in paragraph 6.7.6 applying as it applies to an instructed addition, modification, or removal of a Shelter.

### **Schedule 3 – Charges and payment**

#### **1. CONCESSION FEE**

1.1 The Fee shall be amount set out in the Pricing Schedule, based on the total of:

1.1.1 The number of Shelters in each geographic area.

1.1.2 The block income to WNC set out in the Pricing Schedule.

#### **2. MAINTENANCE CHARGES**

2.1 In consideration of the provision of the Maintenance Services by the Operator in accordance with the terms and conditions of this agreement, the Authority shall pay the Maintenance Charges (if any) to the Operator in accordance with this Schedule 3.

2.2 Except as otherwise stated in this Schedule 3, the Maintenance Charge:

2.2.1 shall remain fixed (per Shelter, by type, and if applicable sub-type, and per activity instructed) during the Term; and

2.2.2 is the entire price payable by the Authority to the Operator in respect of the Maintenance Services and includes licence fees, supplies and all consumables used by the Operator, travel costs, accommodation expenses, the cost of Operator's Personnel, and any other costs incurred by the Operator.

#### **3. PAYMENT OF FEES AND CHARGES**

3.1 The Charges shall be an annual amount as calculated in accordance with this paragraph 3 but paid each quarter of the Contract Year. The final quarter payment shall correct for any increase or decrease due to a change in the amount of Maintenance Services provided and/or the Concession Services provided.

3.2 The Charges shall be calculated as follows:

Sum of the Fee less the sum of the Maintenance Charges equals the amount due.

3.3 In the event the Charges as calculated in paragraph 3.2 are:

3.3.1 a positive amount, the Operator will pay such amount to the Authority; or

3.3.2 a negative amount, the Authority will pay such amount (as a positive value) to the Operator.

for example and for illustrative purposes only, if the aggregate Fee is £10,000 and the aggregate Maintenance Charges are £5,000 ( $£10,000 - £5,000 = £5,000$ ), the Service Provide will pay £5,000 to the Authority, or if the Fee is £5,000 and the Maintenance Charges are £10,000 ( $£5,000 - £10,000 = -£5,000$ ), the Authority will pay the Operator £5,000.

3.4 Any amount due shall be paid within thirty days of receipt of an undisputed invoice from the party due funds as calculated in this paragraph 3.

3.5 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined

in accordance with clause 40. Provided that the sum has been disputed in good faith, Interest due on any sums in dispute shall not accrue until the earlier of thirty days after resolution of the dispute between the parties.

- 3.6 Subject to paragraph 3.5, Interest shall be payable on the late payment of any undisputed charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Operator shall not suspend the supply of the Services if any payment is overdue.
- 3.7 The Maintenance Charges are stated exclusive of VAT, which shall be at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Operator shall indemnify the Authority against any liability (including any Interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Operator's failure to account for, or to pay, any VAT relating to payments made to the Operator under this agreement.
- 3.8 For the avoidance of doubt, where VAT applies to this agreement no payments shall be made until a valid VAT invoice is received by the party due to receive payment for each payment that is due.
- 3.9 The Operator shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable and/or paid to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for seven years from the end of the Contract Year to which the records relate.
- 3.10 Where the Operator enters into a Sub-Contract with a supplier or contractor for the purpose of performing this agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Operator to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 3.11 The Authority may retain or set off any sums owed to it by the Operator which have fallen due and payable against any sums due to the Operator under this agreement or any other agreement pursuant to which the Operator or any Associated Company of the Operator provides goods or services to the Authority.
- 3.12 The Operator shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Operator has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Operator.

#### **4. PRICE ADJUSTMENT**

- 4.1 The following values will be indexed each Contract Year as provided below:
  - 4.1.1 cost of providing and of removing each type, if applicable sub-type, of Shelter;
  - 4.1.2 values of income per-Shelter (by geographic area); and
  - 4.1.3 the block annual income to the Authority.

- 4.2 Indexation will be by the Customer Prices Index (**CPI**), using the CPI value from four months prior to the start of the Contract Year in question. In the event that the CPI ceases to be published, the Authority (acting reasonably) will specify a replacement index or method of calculation which provides, as near as practically can be, the same effect as if CPI had continued to be published.
- 4.3 The total Fee and the total Maintenance Charge (and therefore the Charge) will also change each Contract Year due to changes in the number, type, if applicable sub-type, and location (as per the geographical classification) of Shelters.

**5. SHELTER REFURBISHMENT OR REPLACEMENT COSTS**

Notwithstanding any other provision of this agreement and for the avoidance of doubt, if a Shelter does not require significant work as noted in the document '08 Shelter requirements and pricing ISFT - Final\_Bauer amended by WNC 09.09.25 (1)', then the Operator shall be entitled to invoice the Authority on the Commencement Date. The remaining Shelter works shall be invoiced during the Term as the work is completed. Payment of invoices shall be in accordance with this Schedule.

## **Schedule 4 – Contract management**

### **AUTHORISED REPRESENTATIVES**

#### **1. THE AUTHORITY'S INITIAL AUTHORISED REPRESENTATIVE:**

**Name:** [REDACTED]

**Position:** [REDACTED]

**Email:** [REDACTED]

**Address:** [REDACTED]

**Telephone:** [REDACTED]

#### **2. THE OPERATOR'S INITIAL AUTHORISED REPRESENTATIVE:**

**Name:** [REDACTED]

**Position:** [REDACTED]

**Email:** [REDACTED]

**Address:** [REDACTED]

**Telephone:** [REDACTED]

## Schedule 5 – Data

### PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Operator shall comply with any further written instructions with respect to processing by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	N/A
Duration of the processing	N/A
Nature and purposes of the processing	N/A
Type of Personal Data	N/A
Categories of the Data Subject	N/A
Plan for retention and disposal of the data once the processing is complete UNLESS requirement under union or member state law to preserve type of data	N/A



## **Schedule 6 – TUPE**

### **1. INTERPRETATION**

#### **1.1 The definitions and rules of interpretation in this paragraph apply in this schedule:**

Admission Agreement: the agreement to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended, by the administering authority, the Authority and the Operator or Sub-Contractor, as appropriate, in such form as the administering authority and the Authority shall require.

Appropriate Pension Provision: in respect of Eligible Employees, either:

membership, continued membership or continued eligibility for membership of their Legacy Scheme; or

membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.

Bond: the bond to be executed in the Authority's standard form to the value that the administering authority's actuary shall determine under paragraph 5.4.

Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from the Authority or any Third Party Employer to the Operator or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Operator or Sub-Contractor.

Eligible Employees:

- a) the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or
- b) the Third Party Employees who are former employees of the Authority and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- a) the identity and age of the employee;
- b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);

- c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Operator arising out of the employee's employment with the transferor; and
- e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Legacy Scheme: the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.

LGPS: Local Government Pension Scheme.

LGPS Regulations: includes:

- a) the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239); and
- b) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) (as amended);
- c) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (SI 2008/238); and
- d) the Local Government Pension Scheme Regulations 1997 (SI 1997/1612),
- e) as amended and replaced from time to time.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Operator by virtue of the application of TUPE.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Operator.

Replacement Operator: any third party supplier of Replacement Services appointed by the Authority from time to time.

Operator's Final staff List: the list of all the Operator's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Operator's Provisional staff List: the list prepared and updated by the Operator of all the Operator's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Operator or Sub-Contractor to the Authority or any Replacement Operator.

Staffing Information: in relation to all persons detailed on the Operator's Provisional staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Sub-Contractor: the contractors or Operators engaged by the Operator to provide goods, services or works to, for or on behalf of the Operator for the purposes of providing the Services to the Authority.

Third Party Employees: employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Operator or Sub-Contractor by virtue of the application of TUPE.

Third Party Employer: a Operator engaged by the Authority to provide some of the Services to the Authority before the Effective Date and whose employees will transfer to the Operator on the Effective Date.

Transferring Employees: employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Operator by virtue of the application of TUPE.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

## **2. TRANSFER OF EMPLOYEES TO THE OPERATOR ON THE EFFECTIVE DATE**

- 2.1 The Authority and the Operator agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Operator or Sub-Contractor. The Operator shall comply and shall procure that each Sub-Contractor shall

comply with their obligations under TUPE. The Relevant Transfer shall occur on the Effective Date.

- 2.2 The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Operator, as required by TUPE. The Authority shall warrant that such information is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.
- 2.3 Subject to paragraph 2.4, the Authority shall indemnify and keep indemnified the Operator against any losses, except indirect losses, incurred by the Operator or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Operator or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.
- 2.4 The Operator shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:
  - 2.4.1 any proposed changes to terms and conditions of employment the Operator or Sub-Contractor may consider making on or after the Effective Date;
  - 2.4.2 any of the employees informing the Authority and any Third Party Employer they object to being employed by the Operator or Sub-Contractor; and
  - 2.4.3 any change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Operator or Sub-Contractor may consider taking on or after the Effective Date.
- 2.5 The Operator shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Operator or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.
- 2.6 The Operator shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Operator or any Sub-Contractor of the Operator envisages it will take in relation to any Transferring Employees and any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Operator will give confirmation of that fact, and shall indemnify the Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

### 3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer, then the Authority or Replacement Operator will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Operator shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Operator or any Sub-Contractor in the provision of the Services, the Operator's Provisional staff List and the staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Operator shall notify the Authority of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Operator shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Operator, the Operator's Final staff List, which shall be complete and accurate in all material respects. The Operator's Final staff List shall identify which of the Operator's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Authority shall be permitted to use and disclose the Operator's Provisional staff List, the Operator's Final staff List and the staffing Information for informing any tenderer or other prospective Replacement Operator for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Operator warrants to the Authority and any Replacement Operator that the Operator's Provisional staff List, the Operator's Final staff List and the staffing Information (together, **TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Operator's Final staff List.
- 3.6 The Operator shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 The Authority regards compliance with this paragraph 3 as fundamental to this agreement. In particular, failure to comply with paragraph 3.2 and paragraph 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 3.7 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Operator's failure to comply with paragraph 3.2 or paragraph 3.3, as the case may be.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent unless such changes are required by law. The Operator shall and shall procure that any Sub-contractor shall supply to

the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

- 3.9 In the six months prior to termination of this agreement, the Operator shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Operator's Provisional staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.
- 3.10 The Operator shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Operator against all Employment Liabilities relating to:
- 3.10.1 any person who is or has been employed or engaged by the Operator or any Sub-Contractor in connection with the provision of any of the Services; or
- 3.10.2 any trade union or staff association or employee representative,
- arising from or connected with any failure by the Operator and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.11 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.11, to the extent necessary to ensure that any Replacement Operator shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Operator by the Operator or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 Despite paragraph 3.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this schedule 8 without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#### **4. PENSIONS**

- 4.1 The Operator shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this agreement.
- 4.2 The provisions of paragraph 4, paragraph 5 and paragraph 6 shall be directly enforceable by an affected employee against the Operator or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Operator or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

## **5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME**

- 5.1 Where the Operator or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Operator shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Operator or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate and Bond value in respect of any Eligible Employee who elects to join the LGPS on or after the Effective Date.
- 5.2 The Operator shall indemnify and keep indemnified the Authority and/or any Replacement Operator and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Operator or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this agreement.
- 5.3 The Operator shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement. The Operator or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the value of the Bond or guarantee.
- 5.4 The Operator shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Operator shall be responsible for meeting all costs associated with the award of such benefits.

## **6. OPERATOR PENSION SCHEME**

- 6.1 Where the Operator or Sub-Contractor does not wish to or is otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, the Operator shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:
- 6.1.1 established no later than three months prior to the date of the Relevant Transfer; and
  - 6.1.2 certified by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme,
- and the Operator shall produce evidence of compliance with this paragraph 6 to the Authority prior to the date of the Relevant Transfer.
- 6.2 The administering authority's actuary shall determine the terms for bulk transfers from the LGPS to the Operator's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this agreement.
- 6.3 The Operator shall and shall procure that each relevant Sub-Contractor shall:

- 6.3.1 maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator or any Sub-Contractor in the provision of the Services on the expiry or termination of this agreement (including without limitation identification of the Eligible Employees);
- 6.3.2 promptly provide to the Authority such documents and information mentioned in paragraph 6.3(a) which the Authority may reasonably request in advance of the expiry or termination of this agreement; and
- 6.3.3 fully cooperate (and procure that the trustees of the Operator's scheme shall fully cooperate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator or any Sub-Contractor in the provision of the Services on expiry or termination of this agreement.



#### **Schedule 7 – Advertised Documents**

- 01 Appendix A Descriptive Doc Bus Shelters
- 02 Redline Appendix A Descriptive Document Bus Shelters
- 05 Invitation to Submit Final Tender\_v2 10.07.25
- 06 Redline Invitation to Submit Final Tender
- 07 Redline Appendix B Part 2 ISFT QQ
- 08 Shelter requirements and pricing ISFT
- 09 Clarification Log Bus Shelters ISFT Stage
- 09 Legal Clarification\_ref 15
- 10 ISFT document list\_20.06.25
- Clarification Log Bus Shelters ISFT Stage 130825
- [REDACTED]

## Schedule 8 – Tender

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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- [REDACTED]

## **Schedule 7 – Advertised Documents**

**BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE  
DOCUMENT**

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**WEST NORTHAMPTONSHIRE COUNCIL**

**DESCRIPTIVE DOCUMENT**

**BUS SHELTER ADVERTISING CONCESSION AND MAINTENANCE SERVICES  
REF: WNC 00000512**

**Issue V2 – June 2025**

# **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

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# **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

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## **1. Purpose of this Document**

- 1.1 This document describes the requirements of West Northamptonshire Council (the “Authority”) related to this procurement exercise. The first sections describe the context for the procurement, with the rest of the document describing the scope of the services, outcomes, and requirements. The final section sets out the parameters of the topics for dialogue.
- 1.2 It is provided to enable Qualified Bidders to:
- Appraise the scale and opportunity that this procurement represents.
  - Understand the outcomes that the Authority is seeking from this procurement.
  - Understand how the solutions will be evaluated through the procurement phase.
  - Enable them to resource adequately for the procurement phase.
  - Ultimately understand what they need to do for a successful tender outcome.

## **2. About West Northamptonshire Council**

- 2.1 West Northamptonshire Council is the single principal council responsible for providing a range of public services to residents and businesses in West Northamptonshire.
- 2.2 The Council was formed in 2021. The services provided by it include:
- Education
  - Highways
  - Adult social care
  - Waste collection, treatment and disposal
  - Maintenance of parks and open spaces
  - Street cleaning
  - Environmental health
  - Planning services
- 2.3 More detailed information about the West Northamptonshire area, the Authority and its objectives, services and budgets is available in the West Northamptonshire Council Corporate Plan:

<https://www.westnorthants.gov.uk/corporate-plan>

## **3. Background to the Procurement Process**

### ***Context***

- 3.1 On its creation, WNC inherited various sets of bus shelters:

## **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

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- 3.1.2 Those previously provided by NCC. These were typically not well-maintained and were not under a maintenance or advertising contract.
- 3.1.3 Those previously provided by NBC under a contract with AdShell. This agreement has reached its end date but continues until WNC makes other arrangements. These shelters have generally been maintained. The cost of the service was met from advertising revenue. AdShell owns these shelters and absent another agreement being reached must remove them and make sites good once that relationship ends.
- 3.1.4 Those previously provided by NBC which it owned, also maintained under the contract with AdShell.
- 3.1.5 Those previously provided by DDC, at Daventry Bus Station. These have had some maintenance.
- 3.2 In addition, WNC has agreed with DTC to include the shelters in Daventry owned by DTC in this contract.
- 3.3 The intention of the Authority is that the Contract as a whole clearly sets out the obligations of each party, clearly and rationally allocate risk, allow for flexibility (recognising WNC may need to require the addition or removal of Shelters), and treat costs and income in a clear and consistent fashion, allowing prospective Operators to make optimal bids.
- 3.4 Generally, the intention is that cost or income associated with changes (such as the addition or removal of a Shelter) is based on figures provided in the chosen Operator in its tender (indexed as appropriate).
- 3.5 WNC's aims are to:
  - 3.5.2 Provide and maintain good quality bus shelters in the locations where they are most needed.
  - 3.5.3 Optimise income from advertising opportunities.
  - 3.5.4 Support design quality in the urban environment, including preserving and restoring any existing shelters (such as former tram shelters) of quality or local importance.
  - 3.5.5 Incorporate design approaches which support the character and distinctiveness of West Northamptonshire.
  - 3.5.6 Support biodiversity, including the provision of features such as roofs which aid suitable insect life.
  - 3.5.7 Support net zero carbon in manufacture, construction, installation, maintenance, use, and removal/repurposing of structures.
  - 3.5.8 Receive a cash income.
- 3.6 The weighting attached to each element by the Authority is reflected in the Quality Questions to be used to score each tender.

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### ***Scope of this procurement***

- 3.7 The Authority wishes to invite tenders for a concession contract for bus shelter advertising, from which the maintenance of bus shelters is to be funded, with the aim of the Authority also receiving an income. The contract will provide for the operator to provide and install new shelters, the cost of this being met by the Authority.
- 3.8 The Authority intends to award one agreement to one operator.
- 3.9 The Authority's detailed requirements are defined in the Form of Agreement.

### ***Use of a Competitive Flexible Procedure***

- 3.10 The Authority has adopted the Competitive Flexible Procedure under the PA23 and included a dialogue phase during June 2025 with all Qualified Bidders to identify and define the solutions which are best suited to meeting the needs of the Authority as set out in the procurement documents.
- 3.11 The Competitive Dialogue topics that were discussed are set out under Section 4.3.
- 3.12 The Competitive Dialogue was "light" because the dialogue sessions were targeted and focussed on the topics set out below, rather than being an opportunity to build entire service solutions.
- 3.13 The Competitive Flexible Procedure consists of two stages:
- Stage one: Procurement Specific Questionnaire (PSQ) – Conditions of Participation (Completed)
  - Stage two: Invitation to Submit Final Tender (ISFT) – to include dialogue.(dialogue completed)
- 3.14 Bidders who do not meet the minimum requirements set out within the PSQ will be disqualified from the Tender process. The details are set out within the PSQ Guidance issued at the PSQ stage. Apart from this, the Authority did not use the PSQ to reduce the number of Qualified Bidders for the next stage of the Competitive Dialogue process.
- 3.15 Given the nature of the market, the Authority did not reduce the number of Qualified Bidders down during the dialogue stages by applying the award criteria.
- 3.16 A timetable for the procurement is detailed in the ISFT document..



## **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

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### ***Soft Market Testing***

3.17 The Council conducted a soft market engagement exercise during 2023 and 2024, where it sought input from the market as to the appetite for undertaking the services and to allow an opportunity to discuss options for the delivery of the future provision.

3.18 The market testing comprised of:

- An advert on Contracts Finder inviting expressions of interest from organisations.
- An online open information session outlining the Authority's intentions and anticipated timescales for procurement.
- Input on contract length, options to improve infrastructure and options to improve service.
- Opportunity for organisations to ask questions.
- One to one' online meetings between interested organisations and representatives of the Authority.

3.19 This process gave the industry an early understanding of the forthcoming opportunity to tender for the Services, and the Authority an opportunity to hear views from the industry about key parameters for the contracts, including scope, contract length, performance targets, payment mechanisms, etc. The information gathered from this process has been taken into account in designing the form of contract for the Services.

### ***Current Bus Shelter Advertising and Maintenance Services***

#### ***General***

3.20 The Authority has around 294 bus shelters, some previously managed by the former Northampton County Council (NCC) and Northamptonshire Borough Council (NBC). The former NBC shelters were maintained under an advertising franchise. The former NBC service is in operation. The companies which offer self-funded bus shelter maintenance do so through advertising on those shelters suitable for it. Detailed information is provided in the

## **4. Scope of the Services to be Procured and Dialogue Topics**

4.1 The Services to be procured are being procured as one agreement set out in section 5 and further details within the Agreement provided separately within the procurement documentation.

4.2 Final award will be made in accordance with the award criteria and evaluation approach set out in the ISFT Document.

4.3 The dialogue topics were as follows:

## **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

<b>Issues/Topic</b>	<b>Parameters for Dialogue</b>	<b>Authority's Initial Position</b>
Content and quality of services required	Any areas where it would be impractical or unduly costly to meet the requirements set out.	The provisions as drafted take into account existing market practice and are intended to be practical and deliverable. However, if there are specific comments, particularly where evidenced, they will be considered.
Sustainability, including carbon reduction	If there are any aspects of the agreement as drafted which would inhibit achievement of sustainability goals.	The agreement as drafted is intended to support good sustainability performance. However, and specific comments or suggestions to further improve this would be considered.
Performance Management	Discussion on performance management and how to drive the right behaviours and desired performance.	The agreement as drafted is intended to support the desired outcomes and behaviours. However, and specific comments or suggestions to further improve this would be considered.
Pricing structure	If there are any refinements to the proposed pricing structure which would be likely to optimise outcomes for the Authority.	The proposes structure was designed following discussions with the industry and is intended to place risk in the most appropriate places. However, any well-considered suggestions will be considered.
Legal	Any minor refinements to the draft agreement not covered above.	The Authority considers the draft agreement strikes a suitable balance between the interests of the parties

### **5. Agreement Length**

- 5.1 The Authority proposes to enter into one (1) contract for an initial period of 120 months (10 years) with the preferred Potential Supplier, with an option to extend for up to a further 60 months (5 years) making 180 months in total (10 years + maximum 5 years extension).

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### **6. Agreement Value**

- 6.1 Considering the existing service scope of the procurement, the options to expand service scope and the maximum term, the Authority has estimated the total procurement valuation to be £15,000,000 (fifteen million)
- 6.2 These values exclude VAT and indexation.

### **7. Inflation and/or Indexation**

- 7.1 The measures of inflation (indexation method) to be used for the Agreement will be the Consumer Price Index (CPI).

### **8. Objectives of the Procurement**

- 8.1 Provide a consistent approach to providing and maintaining bus shelters.
- 8.2 To maximise the potential for advertising revenue whilst respecting the Authority's advertising policy, which seeks to balance commercial and policy (particularly public health) objectives.
- 8.3 To comply with public procurement law.
- 8.4 To enable the Authority to add or remove bus shelters when it considers it would benefit from doing so, but fairly treating the Operator when it does this, so the Operator is not exposed to undue risk.
- 8.5 Securing an agreement capable of delivering the service with the greatest efficiency.
- 8.6 The primary focus will be to ensure that the Authority achieves value for money and meets the specific objectives set out in the contract.
- 8.7 The procured solutions must ensure that the Authority is provided with a safe and legally compliant service from day one and throughout the duration of the contract. In addition, the Authority is seeking efficient delivery of services that provides innovation, improvement, and social value over the life of the Agreement.

### **9. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**

- 9.1 It is expected that TUPE will not apply at commencement of the contract, as the existing operator has indicated it has no staff liable for transfer. Provision is made for the application of TUPE at the end of the term of this Agreement, if this turns out to be applicable.

## **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

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### **10. Performance Management**

- 10.1 The required performance standards and measures are set out in the Agreement.

### **11. General Information**

- 11.1 Any queries relating to this document should be provided to the Authority in accordance with the clarification arrangements set out in the ISFT Document.
- 11.2 While the information contained in this document is believed to be correct at the time of issue, neither the Authority nor its advisors will accept any liability for its accuracy, adequacy or completeness. No express or implied warranty is given relating to the information contained in this document.
- 11.3 This document contains confidential information and has been provided on the basis that the information will only be used in connection with the preparation and submission of responses/tenders to this procurement.

## **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

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Appendices to this Descriptive Document issued at ISFT Stage:

ISFT Document and Redline PSQ to ISFT  
ISFT Quality Questions Redline PSQ to ISFT  
ISFT Pricing Matrix and Redline PSQ to ISFT  
Form of Agreement and Redline PSQ to ISFT  
ISFT Document list

**BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE  
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**WEST NORTHAMPTONSHIRE COUNCIL**

**DESCRIPTIVE DOCUMENT**

**BUS SHELTER ADVERTISING CONCESSION AND MAINTENANCE SERVICES  
REF: WNC 00000512**

**Issue ~~V1~~ V2 – April ~~June~~ 2025**

# **BUS SHELTER MAINTENANCE AND ADVERTISING - DESCRIPTIVE DOCUMENT**

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## **1. Purpose of this Document**

- 1.1 This document describes the requirements of West Northamptonshire Council (the “Authority”) related to this procurement exercise. The first sections describe the context for the procurement, with the rest of the document describing the scope of the services, outcomes, and requirements. The final section sets out the parameters of the topics for dialogue.
- 1.2 It is provided to enable Qualified Bidders to:
- Appraise the scale and opportunity that this procurement represents.
  - Understand the outcomes that the Authority is seeking from this procurement.
  - Understand how the solutions will be evaluated through the procurement phase.
  - Enable them to resource adequately for the procurement phase.
  - Ultimately understand what they need to do for a successful tender outcome.

## **2. About West Northamptonshire Council**

- 2.1 West Northamptonshire Council is the single principal council responsible for providing a range of public services to residents and businesses in West Northamptonshire.
- 2.2 The Council was formed in 2021. The services provided by it include:
- Education
  - Highways
  - Adult social care
  - Waste collection, treatment and disposal
  - Maintenance of parks and open spaces
  - Street cleaning
  - Environmental health
  - Planning services
- 2.3 More detailed information about the West Northamptonshire area, the Authority and its objectives, services and budgets is available in the West Northamptonshire Council Corporate Plan:

<https://www.westnorthants.gov.uk/corporate-plan>

## **3. Background to the Procurement Process**

### ***Context***

- 3.1 On its creation, WNC inherited various sets of bus shelters:



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- 3.1.2 Those previously provided by NCC. These were typically not well-maintained and were not under a maintenance or advertising contract.
- 3.1.3 Those previously provided by NBC under a contract with AdShell. This agreement has reached its end date but continues until WNC makes other arrangements. These shelters have generally been maintained. The cost of the service was met from advertising revenue. AdShell owns these shelters and absent another agreement being reached must remove them and make sites good once that relationship ends.
- 3.1.4 Those previously provided by NBC which it owned, also maintained under the contract with AdShell.
- 3.1.5 Those previously provided by DDC, at Daventry Bus Station. These have had some maintenance.
- 3.2 In addition, WNC has agreed with DTC to include the shelters in Daventry owned by DTC in this contract.
- 3.3 The intention of the Authority is that the Contract as a whole clearly sets out the obligations of each party, clearly and rationally allocate risk, allow for flexibility (recognising WNC may need to require the addition or removal of Shelters), and treat costs and income in a clear and consistent fashion, allowing prospective Operators to make optimal bids.
- 3.4 Generally, the intention is that cost or income associated with changes (such as the addition or removal of a Shelter) is based on figures provided in the chosen Operator in its tender (indexed as appropriate).
- 3.5 WNC's aims are to:
  - 3.5.2 Provide and maintain good quality bus shelters in the locations where they are most needed.
  - 3.5.3 Optimise income from advertising opportunities.
  - 3.5.4 Support design quality in the urban environment, including preserving and restoring any existing shelters (such as former tram shelters) of quality or local importance.
  - 3.5.5 Incorporate design approaches which support the character and distinctiveness of West Northamptonshire.
  - 3.5.6 Support biodiversity, including the provision of features such as roofs which aid suitable insect life.
  - 3.5.7 Support net zero carbon in manufacture, construction, installation, maintenance, use, and removal/repurposing of structures.
  - 3.5.8 Receive a cash income.
- 3.6 The weighting attached to each element by the Authority is reflected in the Quality Questions to be used to score each tender.

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### ***Scope of this procurement***

- 3.7 The Authority wishes to invite tenders for a concession contract for bus shelter advertising, from which the maintenance of bus shelters is to be funded, with the aim of the Authority also receiving an income. The contract will provide for the operator to provide and install new shelters, the cost of this being met by the Authority.
- 3.8 The Authority intends to award one agreement to one operator.
- 3.9 The Authority's detailed requirements are defined in the Form of Agreement.

### ***Use of a Competitive Flexible Procedure***

- 3.10 The Authority has adopted the Competitive Flexible Procedure under the PA23 ~~to- and~~ included a dialogue phase during June 2025 with all Qualified Bidders to identify and define the solutions which are best suited to meeting the needs of the Authority as set out in the procurement documents.
- 3.11 ~~Proposed-The~~ Competitive Dialogue topics that were discussed are set out under Section 4.3.
- 3.12 ~~It is intended that the~~ Competitive Dialogue ~~will be was~~ "light" because the dialogue sessions ~~will be were~~ targeted and focussed on the topics set out below, rather than being an opportunity to build entire service solutions.
- 3.13 The Competitive Flexible Procedure consists of two stages:
- Stage one: Procurement Specific Questionnaire (PSQ) – Conditions of Participation (Completed)
  - Stage two: Invitation to Submit Final Tender (ISFT) – to include dialogue. (dialogue completed)
- 3.14 Bidders who do not meet the minimum requirements set out within the PSQ will be disqualified from the Tender process. The details are set out within the PSQ Guidance issued at the PSQ stage. Apart from this, the Authority ~~does-did~~ not ~~intend to~~ use the PSQ to reduce the number of Qualified Bidders for the next stage of the Competitive Dialogue process.
- 3.15 Given the nature of the market, the Authority ~~does-did~~ not ~~intend to~~ reduce the number of Qualified Bidders down during the dialogue stages by applying the award criteria.
- 3.16 ~~An indicative~~ timetable for the procurement is detailed in the ISFT document. ~~together with the proposed approach to the dialogue process.~~

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### ***Soft Market Testing***

3.17 The Council conducted a soft market engagement exercise during 2023 and 2024, where it sought input from the market as to the appetite for undertaking the services and to allow an opportunity to discuss options for the delivery of the future provision.

3.18 The market testing comprised of:

- An advert on Contracts Finder inviting expressions of interest from organisations.
- An online open information session outlining the Authority's intentions and anticipated timescales for procurement.
- Input on contract length, options to improve infrastructure and options to improve service.
- Opportunity for organisations to ask questions.
- One to one' online meetings between interested organisations and representatives of the Authority.

3.19 This process gave the industry an early understanding of the forthcoming opportunity to tender for the Services, and the Authority an opportunity to hear views from the industry about key parameters for the contracts, including scope, contract length, performance targets, payment mechanisms, etc. The information gathered from this process has been taken into account in designing the form of contract for the Services.

### ***Current Bus Shelter Advertising and Maintenance Services***

#### ***General***

3.20 The Authority has around 294 bus shelters, some previously managed by the former Northampton County Council (NCC) and Northamptonshire Borough Council (NBC). The former NBC shelters were maintained under an advertising franchise. The former NBC service is in operation. The companies which offer self-funded bus shelter maintenance do so through advertising on those shelters suitable for it. Detailed information is provided in the

## **4. Scope of the Services to be Procured and Dialogue Topics**

4.1 The Services to be procured are being procured as one agreement set out in section 5 and further details within the Agreement provided separately within the procurement documentation.

4.2 Final award will be made in accordance with the award criteria and evaluation approach set out in the ISFT Document.

4.3 The dialogue topics ~~are~~were as follows:

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DOCUMENT**

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<b>Issues/Topic</b>	<b>Parameters for Dialogue</b>	<b>Authority's Initial Position</b>
Content and quality of services required	Any areas where it would be impractical or unduly costly to meet the requirements set out.	The provisions as drafted take into account existing market practice and are intended to be practical and deliverable. However, if there are specific comments, particularly where evidenced, they will be considered.
Sustainability, including carbon reduction	If there are any aspects of the agreement as drafted which would inhibit achievement of sustainability goals.	The agreement as drafted is intended to support good sustainability performance. However, and specific comments or suggestions to further improve this would be considered.
Performance Management	Discussion on performance management and how to drive the right behaviours and desired performance.	The agreement as drafted is intended to support the desired outcomes and behaviours. However, and specific comments or suggestions to further improve this would be considered.
Pricing structure	If there are any refinements to the proposed pricing structure which would be likely to optimise outcomes for the Authority.	The proposes structure was designed following discussions with the industry and is intended to place risk in the most appropriate places. However, any well-considered suggestions will be considered.
Legal	Any minor refinements to the draft agreement not covered above.	The Authority considers the draft agreement strikes a suitable balance between the interests of the parties

## **5. Agreement Length**

- 5.1 The Authority proposes to enter into one (1) contract for an initial period of 120 months (10 years) with the preferred Potential Supplier, with an option to extend for up to a further 60 months (5 years) making 180 months in total (10 years + maximum 5 years extension).

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### **6. Agreement Value**

- 6.1 Considering the existing service scope of the procurement, the options to expand service scope and the maximum term, the Authority has estimated the total procurement valuation to be £15,000,000 (fifteen million)
- 6.2 These values exclude VAT and indexation.

### **7. Inflation and/or Indexation**

- 7.1 The measures of inflation (indexation method) to be used for the Agreement will be the Consumer Price Index (CPI).

### **8. Objectives of the Procurement**

- 8.1 Provide a consistent approach to providing and maintaining bus shelters.
- 8.2 To maximise the potential for advertising revenue whilst respecting the Authority's advertising policy, which seeks to balance commercial and policy (particularly public health) objectives.
- 8.3 To comply with public procurement law.
- 8.4 To enable the Authority to add or remove bus shelters when it considers it would benefit from doing so, but fairly treating the Operator when it does this, so the Operator is not exposed to undue risk.
- 8.5 Securing an agreement capable of delivering the service with the greatest efficiency.
- 8.6 The primary focus will be to ensure that the Authority achieves value for money and meets the specific objectives set out in the contract.
- 8.7 The procured solutions must ensure that the Authority is provided with a safe and legally compliant service from day one and throughout the duration of the contract. In addition, the Authority is seeking efficient delivery of services that provides innovation, improvement, and social value over the life of the Agreement.

### **9. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**

- 9.1 It is expected that TUPE will not apply at commencement of the contract, as the existing operator has indicated it has no staff liable for transfer. Provision is made for the application of TUPE at the end of the term of this Agreement, if this turns out to be applicable.

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### **10. Performance Management**

- 10.1 The required performance standards and measures are set out in the Agreement.

### **11. General Information**

- 11.1 Any queries relating to this document should be provided to the Authority in accordance with the clarification arrangements set out in the ISFT Document.
- 11.2 While the information contained in this document is believed to be correct at the time of issue, neither the Authority nor its advisors will accept any liability for its accuracy, adequacy or completeness. No express or implied warranty is given relating to the information contained in this document.
- 11.3 This document contains confidential information and has been provided on the basis that the information will only be used in connection with the preparation and submission of responses/tenders to this procurement.

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Appendices to this Descriptive Document issued at ~~PSQ-ISFT~~ Stage:

~~PSQ Guidance~~

ISFT ~~Draft~~ Document and Redline PSQ to ISFT

ISFT ~~Draft~~ Quality Questions Redline PSQ to ISFT

ISFT ~~Draft~~ Pricing Matrix and Redline PSQ to ISFT

~~Draft~~ Form of Agreement and Redline PSQ to ISFT

ISFT Document list

~~Financial Standing Evaluation Form~~



# West Northamptonshire Council

## Invitation To Submit Final Tenders

<b>Title:</b>	Bus Shelter Advertising Concession and Maintenance Services
<b>Our Ref:</b>	WNC00000512
<b>Procurement Procedure:</b>	Competitive Flexible
<b>Date of Issue</b>	<b>3<sup>rd</sup> July 2025</b>
<b>Deadline for Response</b>	<b>12:00 noon on Friday, 1<sup>st</sup> August 2025</b>



## INTERPRETATION

The definitions in this section apply in this Invitation to Submit Final Tender.

<b>Agreement</b>	means an agreement to be entered into by the Authority with a Qualified Bidder for the provision of the relevant Services. The draft form of Agreement for the services proposed is as referred to at Appendix B.
<b>Authority</b>	means West Northamptonshire Council ( <b>WNC</b> ).
<b>Award Criteria</b>	means the evaluation criteria to be applied by the Authority as set out in this document and Appendix B
<b>Tender Notice (UK4)</b>	means the notice published on the Central Digital Platform on 16 April 2025. Notice identifier ref: 2025/S 000-015519.
<b>Deadline</b>	means <b>01 August 2025</b> .
<b>Descriptive Document</b>	means the document at Appendix A.
<b>Final Tender</b>	means a Response to this ISFT submitted by a Qualified Bidder.
<b>Information Legislation</b>	means the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any successor or replacement legislation and any codes or guidance issued under such legislation and/or by the Information Commissioner.
<b>Invitation to Submit a Final Tender (ISFT)</b>	means this document.
<b>Price Response Document</b>	means the price response document detailed in the Appendices to this ISFT. This is included in the Excel workbook 'Shelter requirements and pricing'.
<b>Procurement Specific Questionnaire (PSQ)</b>	means the questionnaire issued to potential providers interested in taking part in the procurement.
<b>Qualified Bidders</b>	means those organisations who have qualified from the PSQ stage of this process

ISFT (Invitation to Submit Final Tender - DRAFT)

<b>Quality Questions</b>	means the quality questions as detailed in Appendix B
<b>Response</b>	means a Qualified Bidder's proposals submitted in response to and in accordance with the requirements (as appropriate) of the ISFT.
<b>Services</b>	means the Bus Shelter Advertising Concession and Maintenance Services to be delivered to the Authorities in reliance on this procurement as further set out in the Tender Notice, the Descriptive Document and the draft form of Agreement.

## INTRODUCTION

### 1. GENERAL INFORMATION

- 1.1 This Invitation to Submit Final Tender (hereafter referred to as “**ISFT**”) contains instructions and key information about the procurement process. Qualified Bidders must comply with the ISFT for their Final Tender to be considered. This ISFT constitutes the conditions of the procurement process and by participating, you are agreeing to these conditions.
- 1.2 West Northamptonshire Council (the “**Authority**”) wishes to invite ISFT Responses for the supply of the Services in respect of this requirement.
- 1.3 This procurement process is being managed by the Authority in accordance with the Procurement Act 2023.
- 1.4 The Authority has elected to use the Competitive Flexible Procedure under the Procurement Act 2023 to include one dialogue phase on the basis that the Agreement for the services cannot be awarded without prior negotiation because of the specific circumstances related to the nature and the complexity of the Services and the legal and financial makeup of the Services and risks attaching to the Services.
- 1.5 This procurement is being conducted in accordance with the Authority’s objectives and drivers as outlined in the Descriptive Document.
- 1.6 At the end of this procurement process, the Authority may choose to award the Agreement. Any Agreement which the Authority awards, will be to the Qualified Bidder who submitted the most advantageous tender.
- 1.7 Submission of a Response to this ISFT implies acceptance of its provisions by the Qualified Bidders.

### 2. PSQ CONDITIONS OF PARTICIPATION (COP) ASSESSMENT

- 2.1 With the publication of the Tender Notice, interested parties were provided with the PSQ and a draft ISFT document including the draft Award Criteria. The PSQ sought responses from interested parties and were assessed on their online questionnaires as part of the Conditions of Participation Assessment (“CoP”) and were assessed on their legal and financial capacity and technical ability to perform the contract. In addition, the Authority considered if any suppliers or related persons within its corporation group, associated persons relied on to meet the conditions of participation, or proposed sub-contractors were excluded or excludable.
- 2.2 The PSQ provided that the Authority would take forward all suppliers who met the requirements of the PSQ and Conditions of Participation and were not excluded or excludable and is issuing this ISFT to the Qualified Bidders.
- 2.3 The Authority will indicate where the result of the PSQ assessment means that a Qualified Bidder will be required to provide a parent company guarantee. The form of parent company guarantee is included with the Agreement. Even if the Authority has

## ISFT (Invitation to Submit Final Tender - DRAFT)

not indicated that a parent company guarantee is required, it reserves the right to require one prior to entering into the Agreement with a successful Qualified Bidder as a result of any change to financial standing since the PSQ and/or any other reason.

### **3. COMPETITIVE FLEXIBLE PROCEDURE**

- 3.1 As outlined in the Descriptive Document, the Authority has elected to follow the Competitive Flexible Procedure under the PA23 to include a dialogue phase. There are several areas of the required solution for the Services that can be clearly defined and there are other areas that require engagement with the market to determine the content of the solution.
- 3.2 The dialogue phase that the Authority conducted was targeted at specific areas of discussion and this is dealt with in further detail in the Descriptive Document together with the minimum requirements.

### **4. CONTRACT TERM AND VALUE**

- 4.1 The Agreement duration, anticipated commencement date and valuation for the services are set out in the Descriptive Document at Appendix A and in the Agreement.
- 4.2 Following award of contract should the successful Qualified Bidder subsequently find that their proposed solution and/or price offer is not accurate and sustainable then the successful Qualified Bidders will not be permitted to amend their pricing bid to request any further monies associated with the full provision of the Services.

## **PURPOSE OF ISFT**

### **5. INVITATION TO SUBMIT FINAL TENDERS**

- 5.1 This ISFT:
  - 5.1.1 asks Qualified Bidders to submit their Final Tenders in accordance with the instructions set out in the remainder of this ISFT;
  - 5.1.2 sets out the overall timetable and process for the procurement to Qualified Bidders;
  - 5.1.3 marks the start of the period of detailed commercial and technical dialogue with the Qualified Bidders and provides information about this period;
  - 5.1.4 provides Qualified Bidders with sufficient information to enable them to provide a compliant Response to this ISFT;
  - 5.1.5 sets out the Award Criteria that will be used both to evaluate the Responses and to evaluate Final Tenders; and
  - 5.1.6 explains the administrative arrangements for the receipt of Responses.
- 5.2 This ISFT comprises:

## ISFT (Invitation to Submit Final Tender - DRAFT)

- 5.2.1 this ISFT document (including Appendices C (Response requirements), D (Consortia and subcontracts);
  - 5.2.2 Appendix A – Descriptive Document;
  - 5.2.3 Appendix B – Award Criteria, Quality Questions, Price Response, Form of Agreement and Performance Measures (located in the Agreement).
- 5.3 No information in this document is, or should be relied upon as, an undertaking or representation as to the Authority's ultimate decision in relation to the requirement. The Authority reserves the right, without notice, to change the procurement process detailed in this ISFT, or to amend the information provided, including, but not limited to, changing the timetable, the scope and nature of the procurement and the procurement process. In particular, the Authority reserves the right to issue details to Qualified Bidders providing further information or supplementing and/or amending the procurement process for this ISFT. This will be subject to the normal rules of public law and procurement principles and rules.
- 5.4 The Authority, at its sole, explicit, and absolute discretion, reserves the right to amend or provide updated information on the procurement process (including, without limitation, the structure and number of stages of the procurement process and dialogue) by providing the appropriate notification to all Qualified Bidders still engaged in the process.
- 5.5 Qualified Bidders participate in this procurement process at their own risk. The Authority shall not accept liability nor reimburse Qualified Bidders for any costs or losses incurred by Qualified Bidders in relation to participation in this procurement process under any circumstances, whether the Authority has made changes to the procurement process or not.
- 5.6 The Authority also reserves the right, at any point and without notice, to discontinue the procurement process without awarding an Agreement in respect of the services, whether such discontinuance is related to the content of ISFT Responses or otherwise. In such circumstances, the Authority will not reimburse any expenses incurred by any person in the consideration of and/or response to this document. Qualified Bidders make all tenders, proposals and submissions relating to this ISFT entirely at their own risk.

## 6. STRUCTURE OF THE PROCUREMENT

- 6.1 This procurement will follow a clear, structured, and transparent procurement process to ensure a fair and level playing field is maintained at all times and all Qualified Bidders are treated equally.
- 6.2 The Authority is following the Competitive Flexible Procedure to include a dialogue phase detailed in this ISFT. The current design of the procedure allows for one (1) stage of the process following completion of the PSQ stage. This is :
  - 6.2.1 Invitation to Submit a Final Tender (hereafter referred to as “**ISFT**”).
- 6.3 The Authority will not be applying the Award Criteria to reduce the number of Qualified Bidders in the process to Final Tender submission. Instead, the Authority will be

applying the Award Criteria to decide on awarding a contract for the Services concerned in this procurement. A Qualified Bidder may be removed from the process should any ground for disqualification arise as detailed in this ISFT.

## INSTRUCTIONS AND GUIDANCE

### 7. ELECTRONIC TENDERING (IN-TEND)

- 7.1 The Authority is utilising an electronic tendering tool to manage this procurement process. All documents and communications issued by the Authority's Procurement Team will be sent via the Authority's e-Procurement portal provided by In-Tend.
- 7.2 In-Tend is located at <https://in-tendhost.co.uk/wnc>.
- 7.3 Qualified Bidders who experience technical difficulties when using In-Tend should contact the support desk Mon-Fri, 08:30 – 17:00 via Telephone: 0845 557 8079 or Email: [support@in-tend.co.uk](mailto:support@in-tend.co.uk)
- 7.4 Completed Responses and communications can only be submitted electronically, using the Authority's e-procurement portal. Fax, post and/or e-mail submissions will not be considered even if received before the relevant response deadline.
- 7.5 Where Qualified Bidders encounter any difficulties whilst using the In-Tend system, please refer to the user guide at [in-tendhost.co.uk/wnc/BuyerProfiles](https://in-tendhost.co.uk/wnc/BuyerProfiles) or contact the In-Tend support desk.
- 7.6 File size limit of 200MB apply when uploading files on the In-Tend system. Further information can be obtained from In-Tend by contacting the support desk.
- 7.7 Qualified Bidders are responsible for the successful submission of their Response. Responses will automatically be receipted upon a successful submission to the In-Tend system. If a Qualified Bidder does not receive an acknowledgement from In-Tend, it is unlikely that the submission has been received. In this instance it is advised that the Qualified Bidder contacts In-Tend support desk and the Authority prior to the Deadline.
- 7.8 Qualified Bidders are strongly advised to complete and submit their Responses, allowing an adequate amount of time before the Deadline to ensure that there is sufficient time to overcome any IT problems, which may accompany the submission of the tender. Qualified Bidders are strongly recommended not to leave uploading of all data to the last day. Neither the Authority nor its e-tendering system provider will be responsible for any failure to upload data due to insufficient time being allowed by Qualified Bidders. If you encounter a problem with using the e-Procurement portal that will prevent you from submitting your response before the Deadline you must log the problem with the In-Tend support desk taking note of the time and contact details of the advisor, you speak to. Please also notify the Authority prior to the Deadline of the advisor, you speak to. Please also contact the Authority prior to the Deadline.

## **8. CLARIFICATIONS**

- 8.1 Any clarification questions relating to the ISFT must be submitted through the 'Correspondence' function of In-Tend before the deadline set out below. No approach of any kind in connection with this ISFT should be made to any other person within, or associated with, the Authority. Such communication could be construed as canvassing in order to gain an unfair advantage.
- 8.2 If the Authority considers any question or request for clarification to be of material significance, both the question and the response will be communicated, in a suitably anonymous form, via the clarification function on the Authority's e-Procurement portal to all Qualified Bidders. Therefore, Qualified Bidders should check the clarification function on the Authority's e-Procurement portal regularly. Qualified Bidders are wholly responsible for reading messages issued by the Authority in a timely manner.
- 8.3 If a Qualified Bidder wishes the Authority to treat a clarification as confidential and not issue the response to all Qualified Bidders, it must state this when submitting the clarification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Qualified Bidder, who will have an opportunity to withdraw it. If the clarification is not withdrawn, the response will be published to all Qualified Bidders in an anonymous form.
- 8.4 The Authority reserves the right not to answer clarification questions, which it receives after the deadline below.
- 8.5 **Clarifications must be submitted by 16:00, 18th July 2025.** The Authority will respond to all reasonable clarifications as soon as possible. All clarifications and responses will be dealt with through the In-Tend portal.
- 8.6 Qualified Bidders must keep their contact details on the e-Procurement portal up to date or they will be unable to receive communications from the Authority.

## **9. ACCEPTANCE OF TERMS OF ISFT**

- 9.1 Submission of a Final Tender implies acceptance of the provisions of this ISFT by the Qualified Bidder.

## **10. SOCIAL VALUE**

- 10.1 The Public Services (Social Value) Act 2012 requires public authorities to have regard to economic, social and environmental wellbeing in connection with public service contracts, and for connected purposes.
- 10.2 Qualified Bidders are required to complete their social value response to this ISFT in accordance with the instructions set out in this document. In particular Qualified Bidders should have regard to the Quality Question on social value together with the requirements in the and Agreements.

## **11. WARNING OR DISCLAIMERS**

- 11.1 While the information contained in this ISFT and/or released by the Authority at any time during the process is believed to be correct at the time of issue, neither the Authority, its advisors nor any other awarding authorities will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability for any statement, opinion or conclusion contained in or any omission from this ISFT (including the Appendices) and for any other written or oral communication transmitted (or otherwise made available) to any Qualified Bidder. No representations or warranties are made for these statements, opinions or conclusions. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Authority. Any liability is hereby expressly excluded to the extent permitted by law, and no costs or expenses incurred for preparing or producing of the Final Tender (or any previous Response) will be accepted by the Authority.
- 11.2 Neither the issue of this ISFT nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Authority (or any other person including the Authorities) to enter into a contractual arrangement.
- 11.3 This ISFT should not be regarded as an investment recommendation made by the Authority or its appointed advisors. Neither the receipt of this document by any person, nor the supply of any information is to be taken as constituting the giving of investment advice by the Authority or any of its advisers to any Qualified Bidder.
- 11.4 The Authority relies on Qualified Bidders' own analysis and review of information provided. Consequently, Qualified Bidders are solely responsible for obtaining the information which they consider necessary to make decisions regarding the content of their Final Tender and to undertake any investigations they consider necessary to verify any information provided to them during the procurement process.
- 11.5 Qualified Bidders must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the ISFT and their Final Tender, without reliance upon any opinion or other information provided by the Authority or their advisers and representatives.

## **12. CHANGES TO THE ISFT AND PROCUREMENT PROCESS**

- 12.1 The information contained in this ISFT may be changed by the Authority from time to time without prior (or any) notice being given by the Authority.
- 12.2 In this document, words such as "anticipates", "expects", "projects", "intends", "plans", "believes" and "will" (and words and terms of similar substance) indicate the Authority's present expectation of future events, which are subject to a number of factors and uncertainties that could cause actual requirements to differ materially from those described.



- 12.3 Although it is intended that the remainder of this procurement will take place in accordance with this ISFT, the Authority reserves the right to terminate, amend or vary the procurement process by notice in writing.

### **13. CONFIDENTIALITY**

- 13.1 This ISFT and any other documents subsequently issued by the Authority as part of this procurement are issued to Qualified Bidders on a confidential basis and should not be disclosed. All such documents should not be copied, reproduced, distributed or passed to any other person at any time, except for the purpose of enabled the Qualified Bidder to respond to the procurement process.
- 13.2 Copyright and all intellectual property rights in this ISFT, all documents referred to in it and any other document created by the Authority as part of this procurement process vests in the Authority.
- 13.3 This ISFT may only be used in connection with the preparation and submission of Responses by Qualified Bidders and for the dialogue concerning this procurement.
- 13.4 No publicity regarding this procurement process or the award of any contract will be permitted unless and until the Authority has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Response, its contents, any ongoing dialogue between the Authority and a Qualified Bidder or any proposals relating to it, without the Authority's prior written consent.

### **14. FAIR COMPETITION AND CONFIDENTIALITY**

- 14.1 In accordance with the Procurement Act 2023 the Authority will conduct this procurement process in a way which is fair, transparent and does not distort competition nor unfairly discriminate for or against a Qualified Bidder. As indicated elsewhere in this document the answers to questions asked by Qualified Bidders (whether as clarifications or during a dialogue meeting) shall be disclosed to all other Qualified Bidders unless both the question and answer are confidential to the solution proposed by the Qualified Bidder asking the question and the Authority considers that disclosure to other Qualified Bidders would be in breach of public procurement law.
- 14.2 Proposals put forward by one Qualified Bidder will not be disclosed to others and all submissions will be treated confidentially during the procurement process (subject to any disclosure required by law and disclosure to officers, elected members, auditors and advisers to the Authority). However, Qualified Bidders should recognise that ideas they have are not necessarily unique to them and may have been considered by the Authority or other Qualified Bidders. Accordingly, while treating all Qualified Bidders equally and fairly, the Authority reserves the right to explore with all Qualified Bidders ideas and proposals which are topics in the public domain (in the specialist media, for example) notwithstanding that the idea already appears in the proposals of one Qualified Bidder.

- 14.3 Qualified Bidders should also note that the dialogue process outlined in this ISFT assisted in refining the Authority's approach and set out its final position on matters discussed during dialogue and have been published in the ISFT documents and on the clarification log

## **15. ELIGIBILITY REQUIREMENTS AND CHANGES AFFECTING A QUALIFIED BIDDER**

- 15.1 Qualified Bidders must inform the Authority in writing of any change in control, composition or membership of that Qualified Bidder or its consortium members and of any other material change to the Qualified Bidder's response to the PSQ. The Authority reserves the right to disqualify any Qualified Bidder from any further participation in the procurement process in these circumstances.
- 15.2 Qualified Bidders are reminded of the eligibility requirements applying to the procurement process at all times. In particular, these include the provisions set out in the PSQ and section 27 of the PA 2023. Any change in the eligibility of a Qualified Bidder, including but not limited to failing to continue to meet the Authority's minimum selection requirements, must be notified immediately to the Authority in writing and may result in the Qualified Bidder being disqualified from any further participation in the procurement.

## **16. QUALIFIED BIDDER CONDUCT AND CONFLICTS OF INTEREST**

- 16.1 Any attempt by Qualified Bidders or their advisors to influence the contract award process in any way may result in the Qualified Bidder being disqualified. Specifically, Qualified Bidders shall not directly or indirectly, at any time:
- 16.1.1 devise or amend the content of any Response in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance; or
  - 16.1.2 enter into any agreement or arrangement with any other person on the form or content of any other Response, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Response; or
  - 16.1.3 enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Response or includes an undertaking to unduly influence the decision-making process of the Authority; or
  - 16.1.4 canvass the Authority or any employees or agents of the Authority concerning this procurement; or attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Qualified Bidder or Response or undertake to obtain confidential information that may confer upon them undue advantages in the procurement procedure; or

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- 16.1.5 negligently provide misleading information that may have a material influence on decisions concerning the process and/or contract award.
- 16.2 Qualified Bidders are responsible for ensuring no conflicts of interest exist between the Qualified Bidder, their advisors and their respective staff, and the Authority, its advisors and their respective staff. Any Qualified Bidder who fails to comply with this requirement may be disqualified from the procurement at the discretion of the Authority. If any conflict of interest or potential conflict of interest between the Qualified Bidder, their advisers, the Authority's advisers, or any combination thereof becomes apparent to the Qualified Bidder, they shall inform the Authority immediately. In such circumstances, the Authority shall, at its sole, explicit, and absolute discretion, decide on the appropriate course of action. If the Authority becomes aware of any conflict of interest that a Qualified Bidder has not declared to the Authority, they may be disqualified from the procurement process.

## 17. AUTHORITY'S RIGHTS

### 17.1 The Authority reserves the right to:

- 17.1.1 waive and/or otherwise alter the requirements of this ISFT;
- 17.1.2 seek clarification or additional documents in respect of a submission made by a Qualified Bidder at any stage of the procurement process (provided always that the Authority is not obliged to so seek and will only seek where it considers this is compliant with applicable public procurement law);
- 17.1.3 disqualify any Qualified Bidder that does not submit a compliant Response in accordance with the instructions in this ISFT;
- 17.1.4 disqualify any Qualified Bidder that is guilty of serious misrepresentation in relation to its Response at any stage of this procurement process (including the PSQ) and/or its Final Tender;
- 17.1.5 disqualify any Qualified Bidder that is successful after Final Tender where the Qualified Bidder fails to supply supporting evidence following award or supplies supporting evidence that does not corroborate the representations of the Qualified Bidder in the PSQ and/or any Response or in circumstances where the Qualified Bidder no longer meets the PSQ requirements;
- 17.1.6 withdraw this ISFT at any time, or to re-invite Responses on the same or any alternative basis;
- 17.1.7 retain copies of all documents submitted by Qualified Bidders at any stage to satisfy its audit obligations and for other purposes;
- 17.1.8 choose not to award any contract as a result of the current procurement process;
- 17.1.9 reduce or increase the number of stages during the competitive dialogue process to ensure the best overall outcome; and

17.1.10 make whatever changes it sees fit to the timetable, structure or content of the procurement process, depending on approvals processes or for any other reason.

## 18. COST

The Authority will not be liable for any bid costs, expenditure, work or effort incurred by a Qualified Bidder in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Authority.

## 19. LAW

This ISFT and any disputes concerning it (including non-contractual disputes or claims) shall be governed by English law and subject to the jurisdiction of the English courts.

## 20. TIMETABLE AND PROCUREMENT PROCESS

- 20.1 This procurement will follow a clear, structured and transparent procurement process to ensure a fair and level playing field is maintained at all times and all Qualified Bidders are treated equally.
- 20.2 The Authority is following the Competitive Flexible Procedure to include a dialogue phase as detailed in this ISFT. The current design of the procedure allows for one stage of the process following completion of the PSQ stage.
- 20.3 The Authority will **not** be applying the Award Criteria to reduce the number of Qualified Bidders in the process. A Qualified Bidder may still be removed from the process should any ground for disqualification arise as detailed in this ISFT.
- 20.4 The Authority, at its sole discretion, reserves the right to amend or provide updated information on the procurement process (including, without limitation, the timing, structure and number of stages of the procurement process and dialogue) by providing the appropriate notification to all Qualified Bidders still engaged in the process.
- 20.5 The procurement process is intended to follow the timetable set out in Table 3, below which is intended as a guide. Whilst the Authority does not intend to depart from the timetable, it reserves the right to do so at any time.

**Table 3 – Timetable**

Activity	Time and Date (as applicable)
1. PSQ Phase	Completed
2. Issue ISFT	July 2025

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Activity	Time and Date (as applicable)
3. Dialogue Phase	Completed June 2025
4. Deadline for ISFT Clarifications	16:00, 18 <sup>th</sup> July 2025
5. Deadline for ISFT Response	12noon, 1 <sup>st</sup> August 2025
6. Evaluation	August – September 2025
7. Issue of Assessment Summaries	End of September 2025
8. Publication of Contract Award Notice and start of Standstill period	End of September 2025
9. Mobilisation	September/October 2025
10. Agreement Commencement	3 <sup>rd</sup> November 2025
11. Publication of Contract Details Notice	November 2025

20.6 Qualified Bidders must submit their ISFT Responses, including all documents comprising the tender, via the Authority's e-Procurement portal by no later than the Deadline for Submission of Final Tenders identified in Table 3.

20.7 Any Final Tender received after the Deadline for Submission of Final Tenders identified in Table 3, may be rejected. Therefore, it is the Qualified Bidder's responsibility to ensure that the deadline is not breached.

## 21. DIALOGUE RULES – COMPLETED (JUNE 2025)

21.1 The dialogue session will be in a structured format. Dialogue topics are further detailed in the Descriptive Document

21.2 The dialogue meeting will be face to face. Arrangements will be confirmed with Qualified Bidders through In-Tend. The Authority does not intend to use hybrid means for dialogue sessions. Further detail on the intended dates of dialogue meetings for ISFT are set out further below in this document.

21.3 No recording of virtual or face to face dialogue sessions will be permitted. Where the Authority becomes aware that a Qualified Bidder or any person acting on its behalf (whether with the knowledge of the Qualified Bidder or not) has recorded a virtual or face to face dialogue then the Authority reserves the right to disqualify the Qualified Bidder.

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- 21.4 The Authority will ensure that each Qualified Bidder is treated equally and has the same opportunity to interact with the Authority through the meetings.
- 21.5 When submitting Responses Qualified Bidders should have regard to the information supplied in writing only.
- 21.6 The Authority reserve the right to include additional dialogue sessions if required.

## PROCUREMENT PROCESS

### 22. EVALUATION TEAM AND APPROACH TO EVALUATION PROCESS

- 22.1 Each Final Tender will be evaluated by an evaluation panel, which may include, but not be limited to, council officers, elected members, technical advisors and/or stakeholders (such as members of user groups, focus groups and/or tenant/resident panels). Members of the evaluation panel may evaluate all aspects of the ISFT Response or only certain aspects.
- 22.2 The Authority intends that the evaluation panel will be consistent throughout the procurement process but reserves the right to alter the composition of the evaluation panel at its absolute discretion.
- 22.3 The relevant members of the evaluation panel will evaluate responses to the Quality Questions separately in accordance with the guidance set out in this ISFT.
- 22.4 Evaluation of the Price Response Document will be undertaken by members of the evaluation panel appointed by the Authority who will carry out the evaluation in accordance with the guidance set out in this ISFT.
- 22.5 Once the initial evaluation has been undertaken, the evaluation panel will meet (either in person or virtually) on one or more occasions, such meetings will be facilitated by a member of the Authority's procurement/advisory team (the Moderator). The purpose of these meetings will be to consider each aspect of the evaluation to ensure that it has been undertaken in accordance with the rules of competition, and to enable the Moderator to facilitate a discussion between the relevant members of the evaluation panel, so that a consensus score and rationale can be agreed and recorded for each response.
- 22.6 As the result of any moderation, the evaluation panel may choose to revise a Qualified Bidder's score for each response to a Quality Question, either up or down to reach a final score.

### 23. DIALOGUE TEAMS COMPLETED (JUNE 2025)

- 23.1 The Authority's dialogue team will comprise a mix of officers as required during the process.
- 23.2 Qualified Bidder dialogue teams will be limited to a maximum of **six (6)** attendees at any one time.

## 24. ISFT

- 24.1 The ISFT is issued on the date of this ISFT document and commences the ISFT stage of the procurement process. This ISFT contains full details of what Qualified Bidders need to submit in their Final Tenders.
- 24.2 The objective of the ISFT stage is to enable Qualified Bidders to submit their Final Tenders for meeting the requirements of the Authority as it seeks to decide on the award. Qualified Bidders should only submit those elements that are requested at this stage.

## 25. DIALOGUE COMPLETED (JUNE 2025)

The Authority held one dialogue session per bidder at ISFT stage and lasted no more than two hours.

The dialogue topics were detailed in the Descriptive Document, and the agenda issued stated the final topics discussed. Qualified Bidders were also invited to suggest agenda items that it would like included.

- 25.1 The Authority does not intend to issue a full minute of dialogue sessions to Qualified Bidders. However, it will issue a summary of key points discussed through In-Tend detailed in the redline documents. Where points are specific or confidential to a Qualified Bidder then the Authority will adopt the same approach as for clarifications in determining whether the information is made available to all Qualified Bidders having regard to the need to maintain the confidentiality of the detail of individual bids. For the avoidance of doubt where issues are discussed that are relevant to how the Authority approaches its requirements – and these are not confidential – then all Qualified Bidders will be made aware of any change in approach by the Authority.

## 26. ISFT RESPONSES

- 26.1 Qualified Bidders must submit their Final Tenders by the Deadline by completing the Tender documents and the In-Tend online questions/declaration set out below and submitting through the In-Tend portal in accordance with the instructions set out in this ISFT. Any Response submitted after the Deadline or that is not compliant with the requirements of the ISFT will be disqualified and not considered further.
- 26.2 Qualified Bidders **must submit**:
- 26.2.1 a completed response to the Quality Questions (in electronic format via the In-Tend portal);
  - 26.2.2 a completed Price Response Document (in MS Excel) (*'Shelter Requirements and Pricing'* Document)
- 26.3 The Qualified Bidder must also complete the declarations questionnaire on In-Tend in order to submit a compliant response.

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- 26.4 The Quality Questions and Price Response Document have been designed to allow Qualified Bidders to explain how they will deliver the Service in terms of quality, social value, and price.
- 26.5 Qualified Bidder's Final Tender must demonstrate their ability to meet the requirements set out in the Authority's published requirements and their proposals for doing so.
- 26.6 Final Tenders are binding on Qualified Bidders. Qualified Bidders must provide full and complete Responses. **The Authority will make an award based on the Responses given to this ISFT.** Responses are to remain open for acceptance for a period of one hundred and eighty (180) days months from the Deadline for Final Tenders.

## 27. EVALUATION

- 27.1 An initial examination may be made to establish the completeness of the Final Tenders.
- 27.2 The Authority will check that the Final Tenders are compliant with the ISFT. Non-compliant Final Tenders may be disqualified (subject to any clarification which may be appropriate at the Authority's absolute discretion including concerning the correction of errors which the Authority considers can be made in compliance with public procurement law).
- 27.3 The Authority will be formally evaluating the Final Tenders, in line with the process set out below and applying the Award Criteria to identify the preferred Qualified Bidder.
- 27.4 The Authority reserves the right to clarify any Final Tender before determining whether it is compliant and/or finalising the scoring but are not obliged to do so.

## 28. CLOSE OF DIALOGUE – COMPLETED (JUNE 2025)

## 29. EVALUATION AND AWARD

- 29.1 After the Authority has checked that the submissions are compliant with the ISFT and made any necessary disqualifications, all compliant submissions will be evaluated by the Evaluation Panel, using the Award Criteria. The Authority reserves the right to clarify any submissions before finalising the scoring but is not obliged to do so.
- 29.2 The preferred Qualified Bidder shall be determined on the based on the Final Tender that is the most advantageous tender on the highest price/quality score, as determined using the Award Criteria scheme set out in this ISFT.
- 29.3 Subject to the preferred Qualified Bidder being able to provide the necessary supporting evidence required under the PSQ, then the Agreement shall be awarded to the preferred Qualified Bidder. Should the preferred Qualified Bidder be unable to provide the supporting evidence required under the PSQ (and/or provide any required supporting information to any representations in the Final Tender) then the Agreement shall not be awarded and the Authority reserves the right to subsequently provisionally award the Agreement to the next highest scoring Qualified Bidder (assessed in line with the evaluation approach in this ISFT) (which would then become the preferred Qualified



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Bidder and be required to provide the necessary supporting evidence required under the PSQ and/or any Final Tender).

### NOTIFICATION, FEEDBACK TO BIDDERS AND CONTRACT

29.4 Following the identification of the preferred Qualified Bidder, the Authority will issue an assessment summary to all Qualified Bidders which have submitted a Final Tender. The assessment summary will contain the Qualified Bidder's:

29.4.1 Results of their tender assessment in accordance with the assessment methodology.

29.4.2 Their scores awarded to the tender of each award criteria (including any sub-criteria) and an explanation as to why the score was awarded.

29.4.3 Where the tender was unsuccessful, an explanation of why the tender was unsuccessful including whether it was because;

It was disqualified for any other reason, and;

Provide the scores and detailed reasons in respect of the successful (MAT tender.

29.5 The publication of the **Contract Award notice** (under section 50 of the Procurement Act 2023) commences the start of the eight (8) working day standstill period.

29.6 Where the standstill period has expired, the successful Qualified Bidder shall receive a post-standstill outcome letter confirming whether their Final Tender has been formally accepted.

### 30. AWARD CRITERIA

30.1 The Award Criteria for Quality is detailed in Table 4 below.

30.2 The sub-weighting of Price/Quality/SV is further detailed in Appendix B – Part 1'

Total Score	Price	Quality including Social Value
100%	50%	50%

#### Quality (including Social Value)

30.3 Quality/Social Value will be evaluated by reference to the questions set out at Part 1 of Appendix B.

30.4 An initial examination will be made to establish the completeness of the Responses. The Authority reserves the right to reject any Response which is incomplete.

- 30.5 The Authority reserves the right (but is not obliged) to seek clarification of any aspect of a Qualified Bidder's Response during the evaluation stage. Qualified Bidders will only be permitted to correct or supplement their Response at the discretion of the Authority and only where that would be compliant (in the view of the Authority) with the Procurement Act 2023. Qualified Bidders shall respond to such requests promptly and within any given deadline. Qualified Bidders may be rejected if they do not satisfactorily respond within the given deadline.
- 30.6 All responses to the Quality Questions will be evaluated and scored a maximum of 4 marks independently by the Evaluation Panel against the Criteria set out in 'Award Criteria' Table 4 below.
- 30.7 The Authority requires a minimum quality threshold to ensure a high income does not skew a Response where the quality is fundamentally unacceptable.
- 30.8 Therefore, a Response may be rejected, where the response to any Quality Question fails to achieve a score of 2, even if it scores relatively well against all other criteria.

**Table 4 – Quality Scoring Criteria**

Score	Criteria for Awarding Score
0	<ul style="list-style-type: none"><li>Considered to be a <b>POOR response</b> on the basis that:</li><li>No response is provided; or</li><li>It does not answer the question or is completely irrelevant.</li></ul>
1	<p>Considered to be a <b>LIMITED response</b> on the basis that:</p> <ul style="list-style-type: none"><li>Overall, it lacks sufficient detail or is perceived to be unclear, meaning that evaluators are not confident that the requirements will be delivered to an acceptable level.</li></ul>
2	<p>Considered to be an <b>ACCEPTABLE response</b> on the basis that:</p> <ul style="list-style-type: none"><li>It addresses most of the requirements; and/or</li><li>The supporting detail is clear for the most part and provides evaluators with an understanding that the requirements it does address will be met to an acceptable level.</li></ul>
3	<p>Considered to be a <b>GOOD response</b> on the basis that:</p> <ul style="list-style-type: none"><li>It addresses all relevant requirements; and/or</li><li>The supporting detail is clear and provides evaluators with confidence that the requirements will be delivered to a good standard.</li></ul>
4	<p>Considered to be an <b>OUTSTANDING response</b> on the basis that:</p>

Score	Criteria for Awarding Score
	<ul style="list-style-type: none"><li>It addresses all relevant requirements; and/or</li><li>The supporting detail is clear and robust and provides evaluators with the utmost confidence that all requirements will be delivered to the highest standard.</li></ul>

30.9 The moderated scores will be divided by 4 and multiplied by the sub weighting (%) of the relevant Quality Question, to give a final score (%) for each Quality Question.

30.10 For example, if the sub weighting for the question is 20% and the Potential Provider is marked a '2', their final score (%) for that question will be:

$$2/4 \times 20 = 10\%$$

30.11 The total moderated score (%) for the Quality Questions will be out of 100 and multiplied by the weighting allocated to the quality evaluation. For example, if the total moderated score was 65% and the weighting for the quality section was 40% the potential providers overall quality score would be calculated as follows:

$$65/100 \times 40 = 26\%$$

### **Price**

30.12 Qualified Bidders should satisfy themselves of the accuracy of all fees, rates and prices quoted, since they will be required to hold these or withdraw their Tender Response in the event of errors being identified after the Deadline.

30.13 Qualified Bidders are to refer to the guidance set out within the price response document (Excel workbook) 'Shelter Requirements and Pricing ISFT'. The price response document includes two pricing tables for completion – 'Table 4A' based on the Authority funds and owns the new Shelters and 'Table B' based on the Operator owns the Shelters'. Both prices will be evaluated. An internal decision will be made by the Council, taking into account the offers made, on providing capital for new bus shelters, which will then determine which option is selected and the overall winning tender.

30.14 If a Qualified Bidder fails to provide fully for the requirements of the Final Tender it must either:

30.14.1 absorb the costs of meeting the Authority's full requirements within its tendered price or withdraw its tender;

30.14.2 Withdraw from the procurement process.

30.14.3 The following criteria will be applied to evaluate price:

The Potential Supplier with the highest overall compliant income price will be awarded the full Price score. All other Tender Responses will be scored in accordance with the following calculation:

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Score = Price Weighting – ((max price – bidder price) / (max price – min price)) x price weighting.

30.14.4 An example is provided in Example 1, below. This example is based on a 60% price weighting where the highest compliant income price is £5,000,000.

### Example

Potential Supplier	Bid Income Price	Price Calculation	Price Score
1	£5,000,000	=60% (highest compliant income price)	60
2	£3,100,000	=60-((5,000,000 -3,100,000)/5,900,000)*60	40.68
3	£2,000,000	=60-((5,000,000-2,000,000)/5,900,000)*60	29.49
4	-£900,000	=60-((5,000,000+900,000)/5,900,000)*60	0.00

30.15 Qualified Bidders who receive a minus score will receive a zero (0) score for price for the purposes of evaluation.

30.16 In the event where the highest scoring Tender Responses are tied in total score to two (2) decimal points following the completion of the moderation, the Authority will award the Contract to the Bidder who scores highest on Quality. In the event the Bidders are still tied the Authority will award the Contract to the Bidder with the highest overall financial return to the Authority.

## 31. RESPONSE REQUIREMENTS

### A Compliant Response

31.1 The Authority requires the Qualified Bidder to submit a compliant Final Tender comprising those documents outlined at paragraph 26 above. The Response must comply with the requirements of this ISFT including those as set out at Appendix C.

31.2 All proposals contained in a Final Tender must be capable of delivery and the Final Tender must have commitment from within the Qualified Bidder's organisation.

### Duplication

31.3 A Response may not refer to any information contained in the PSQ submitted by the Qualified Bidder.

### Compliance Check

31.4 All Final Tender received by the Deadline will be checked for compliance with the submission requirements set out in the ISFT. If a Final Tender is not considered compliant, the Authority will not be obliged to carry out any further evaluation and the Qualified Bidder may be eliminated from the procurement. During this period, clarification on any aspect of the bid may be sought – Qualified Bidders will only be

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permitted to correct or supplement their Final Tender at the discretion of the Authority and only where (in the Authority's view) this is compliant with public procurement law.

31.5 A compliant Final Tender is defined as one that meets the following criteria (as defined in this ISFT):

31.5.1 it is delivered before the Deadline;

31.5.2 it is uploaded to In-Tend;

31.5.3 it meets the Response requirements set out in this ISFT; and

31.5.4 is otherwise compliant with the terms of this ISFT and any other requirements notified to the Qualified Bidders prior to the Deadline

## 32. CONTRACTUAL AND LEGAL REQUIREMENTS

### **Agreement**

32.1 Details of the Agreement the Authority proposes to use is set out in Appendix B.

32.2 The Authority recognises that the competitive dialogue process may involve dialogue on minor aspects of the Agreement.

32.3 Qualified Bidders are to submit any concerns about the contractual documents via the 'Correspondence' section of the In-Tend portal before the ISFT Clarification deadline closes.

32.4 The Authority anticipates that:

32.4.1 following the ISFT Clarification deadline the Agreement terms will have been fully considered by Qualified Bidders and that the Authority will have made such amendments to the forms of Agreement as it considers necessary;

32.4.2 Final Tender Responses will then be on the basis that the Qualified Bidder accepts the form of the Agreement as drafted and will not raise any further amendments. For the avoidance of doubt, no further comments, or mark-up from Qualified Bidders related to the terms of the Agreement (and any document referred to therein) should be submitted with Final Tenders.

32.5 A Qualified Bidder seeking to introduce new (or previously rejected) amendments in their Final Tender will be submitting a qualified Final Tender and be liable to disqualification.

### **TUPE**

32.6 It is expected that TUPE will not apply at commencement of the contract, as the existing operator has indicated it has no staff liable for transfer. Provision is made for the application of TUPE at the end of the term of this Agreement, if this turns out to be applicable.

### **33. CONSORTIA**

For bids submitted by consortia, further guidance on the Authority's requirements is set out in Appendix D.

### **34. FREEDOM OF INFORMATION**

34.1 As a public body, the Authority is subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and all related or subordinate legislation, in respect of information it holds (including third-party information). Any member of the public or other interested party may make a request for information.

34.2 Potential Suppliers should be aware that, in compliance with its transparency obligations, the Authority routinely publishes details of its contract(s) and spend, including the contract values and the identities of its provider(s) on the Authority's website without consulting the provider(s) on that information.

34.3 The Authority shall be responsible for determining whether information is exempt under the FOIA and/or EIR and for determining what information will be disclosed in accordance with the legislation.

34.4 The Authority shall treat all Potential Supplier's responses as confidential during the procurement process. Requests for information received following the procurement process shall be considered on a case-by-case basis, applying the principles of the FOIA, which permits certain information to be withheld, for example where disclosure would be prejudicial to a party's commercial interests, and in accordance with the Authority's transparency obligations.

34.5 Therefore, potential suppliers are responsible for ensuring that any information that it considers confidential or commercially sensitive, has been clearly identified to the Authority.

### **35. DATA TRANSPARENCY**

35.1 The UK government has announced its commitment to greater data transparency. Accordingly, the Authority reserves the right to publish its procurement documents, contracts and data from invoices received. In so doing, the Authority may at its sole, explicit, and absolute discretion take account of the exemptions that would be available under the Information Legislation. The Authority will comply with its transparency obligations under local government access to information legislation and the Local Government Transparency Code 2015.

- 35.2 Notwithstanding paragraph 35.1, Qualified Bidders should be aware that, in compliance with its transparency obligations, the Authority routinely publishes details of its contract(s), including the contract values and the identities of its suppliers on its website without consulting the provider of that information. Further information on the Authority's transparency obligations can be located at: <https://www.gov.uk/government/publications/local-government-transparency-code-2015>.

## **36. ACCURACY OF INFORMATION**

- 36.1 In submitting a Final Tender in response to this ISFT, Qualified Bidders undertake that:
- 36.1.1 All information contained in any Final Tender at any time provided to the Authority in relation to the opportunity is true, accurate, and not misleading and that all opinions stated in any part of the Qualified Bidder's Final Tender are honestly held and that there are reasonable grounds for holding such opinions; and
  - 36.1.2 Any matter that arises that renders any of such information untrue, inaccurate, and/or misleading will be brought to the attention of the Authority immediately.

## **37. CHANGES IN CIRCUMSTANCES**

- 37.1 Qualified Bidders (including, for this purpose, each participant in any joint venture, consortium arrangement) are required to inform the Authority promptly and in any case no later than fourteen (14) days, after the occurrence of:
- 37.1.1 Any change to their corporate structure from that set out in their response to the PSQ. This includes the grant of any options to acquire shares, any agreement relating to the exercise of rights attaching to such shares, and any material amendments to a shareholders' agreement, articles of association or similar constitutional documents;
  - 37.1.2 Any changes to any other information provided to the Authority as part of this procurement process; and/or
  - 37.1.3 any other change of circumstances, or the basis of Qualified Bidder's response to the PSQ and/or any part of this procurement process, which may be expected to influence the Authority's decision on their suitability for qualification for receipt of details related to the subsequent stages of this procurement process, or to be selected as the successful Qualified Bidder(s).
- 37.2 The Authority reserves the right to approve (subject to conditions) or reject the changes referred to above (including any changes to the basis on which Qualified Bidders pre-qualified to receive this ISFT and to any subsequent stages of this procurement process). A rejection of the changes may result in the Qualified Bidder being excluded from further participation in the procurement process or disqualification of their Final Tender.

- 37.3 The Authority reserves the right and may, in certain cases, be required under the procurement rules, to disqualify any Qualified Bidder that has been selected to receive this ISFT and/or details related to any subsequent stages of this procurement process where the composition of the Qualified Bidder's bid vehicle, joint venture, or consortium has changed after the announcement of those Qualified Bidders who qualified to receive this ISFT and/or any details related to any subsequent stages of this procurement process. Qualified Bidders are therefore advised to discuss any proposed changes of this nature with the Authority before they are put into effect.
- 37.4 Where, following notification to the Authority by the Qualified Bidder, at any stage, of a material change in any of the information provided in a Qualified Bidder's response to the PSQ or any subsequent stage of this procurement process (or failure to give such notification), the Authority is of the opinion that the Qualified Bidder does not have, or is unlikely, by the date of commencement of the contract, to have an appropriate financial position, technical capacity and/or managerial competence, or are otherwise an unsuitable person, to be the successful Supplier(s), the Authority reserves the right to disqualify the Qualified Bidder from the procurement process.

### **38. ABNORMALLY LOW TENDER RESPONSES**

- 38.1 Responses will be reviewed to consider if they appear to be abnormally low in cost. An initial assessment will be undertaken using a comparative analysis of the price proposal received from all Qualified Bidders.
- 38.2 If the assessment shows that a Qualified Bidder's price offer may be abnormally low, the Authority will request from a written explanation and/or evidence of the Qualified Bidder's price offer and/or Response, or of those parts of a Qualified Bidder's price offer and/or Response, which the Authority considers contribute to the Response being abnormally low, to justify the Response and its price and/or value(s) offered.
- 38.3 The Qualified Bidder will also be asked to evidence that they are not practicing modern slavery (via a declaration).
- 38.4 On receipt of a Qualified Bidder's written explanation, the Authority will verify the price offer, Response or parts of the Response.
- 38.5 If the Authority is still of the opinion that the Qualified Bidder has submitted an abnormally low offer, the Authority will confirm this to the Qualified Bidder and will advise either:
- 38.5.1 that the Qualified Bidder's Response has been rejected;
  - 38.5.2 or that, for tender evaluation purposes, the Authority will make an adjustment to the price proposal to take account of any consequences of accepting an abnormally low tender Response.
- 38.6 Where the Qualified Bidder is unable to prove, within a sufficient time limit, such justification for the low price and/or value, the Authority reserves the right to reject the Response.



### **39. DUE DILIGENCE**

- 39.1 The Authority will undertake its due diligence in advance of any contract award.
- 39.2 The preferred Qualified Bidder(s) will not be awarded the Agreement until the Authority is satisfied with any further checks and due diligence it has carried out and these will need to be acceptable to the Authority before a contract can be awarded.
- 39.3 The Authority reserves the right to disqualify any Final Tender which is incomplete.
- 39.4 Due diligence may include credit checks in relation to the preferred Qualified Bidder(s) (including each member of any consortium and of any key subcontractor). This is important to the Authority to ensure that any organisation who wishes to enter into a contract with the Authority will be able to provide the goods, services, and/or works on an ongoing basis as agreed within any contract. The Authority works with external credit agencies to provide these financial checks.
- 39.5 The Authority reserves the right to reject a Qualified Bidder from the procurement process, where any findings from the Authority's due diligence reveal a serious concern or risk for the Authority (as determined by the Authority, acting reasonably) that cannot be remedied in a reasonable (as determined by the Authority, acting reasonably) amount of time before award. Qualified Bidders are strongly encouraged to check and manage their financial score within the industry.
- 39.6 The Authority reserves the right to revisit any selection criteria questions at any time before award stage, where the Authority believes there is a risk that selection responses might have changed. The Authority reserves the right to disqualify any Qualified Bidder who no longer meets the selection criteria if it originally led to them continuing in the procurement process.

### **40. REJECTION AND DISQUALIFICATION OF ISFT RESPONSES**

- 40.1 The Authority reserves the right to reject or disqualify any Final Tender and or a Qualified Bidder, where the Qualified Bidder:
  - 40.1.1 Fails to submit their Final Tender by the Deadline for Submission of Final Tender, set out in the procurement timetable outlined in the ISFT;
  - 40.1.2 Submits a Final Tender which contains gaps, omissions, misrepresentations, errors, uncompleted sections, and/or changes to the format of the ISFT provided;
  - 40.1.3 Submits a Final Tender which contains handwritten amendments which have not been initialled by the authorised signatory;
  - 40.1.4 Submits a Final Tender which does not reflect and confirm full and unconditional compliance with all the documents issued by the Authority forming part of this ISFT;
  - 40.1.5 Submits a Final Tender which contains any caveats or any other statements or assumptions qualifying the Final Tender that are not capable of evaluation in

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accordance with the Authority's published evaluation model or requiring changes to any documents issued by the Authority in any way;

- 40.1.6 Submits a Final Tender which contains any alterations or additions to any documents issued by the Authority forming part of this ISFT;
- 40.1.7 Cannot commit to providing a PCG where required as a part of providing the requirement to the Authority;
- 40.1.8 Cannot commit to achieve any Key Dates for elements and/or milestones etc. as set out in the Agreement;
- 40.1.9 Submits a Final Tender which is not submitted in a manner consistent with the provisions set out in this ISFT;
- 40.1.10 Fixes or adjusts the amount of its Final Tender by or in accordance with contract or arrangement with any other party;
- 40.1.11 Communicates to any party other than the Authority or as applicable, relevant participating body, the amount or approximate amount of its proposed Final Tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence, to obtain quotations necessary for the preparation of a complete and accurate Final Tender or insurance or any necessary security);
- 40.1.12 Enters into any contract or arrangement with any other party that such other party shall refrain from submitting a Final Tender or shall limit or restrict the prices to be shown by any other Qualified Bidder in its Final Tender;
- 40.1.13 Offers or agrees to pay or gives or does pay or gives any sum or sums of money, inducement, and/or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to its Final Tender or any other proposed Final Tender;
- 40.1.14 Commits an offence under the Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
- 40.1.15 Directly or indirectly canvasses any officer, elected member, employee, or agent of the Authority or its members or any relevant participating body or any of its officers or members concerning the establishment of the contractual relationship and/or who directly and/or indirectly obtains and/or attempts to obtain information from any such officer, elected member, employee, and/or agent and/or concerning any other Qualified Bidder, Final Tender or proposed Final Tender;
- 40.1.16 Fails to declare any conflict of interest or any circumstances that could give rise to a conflict of interest (Qualified Bidders must notify the Authority via the messaging function of the Authority's e-Procurement portal);

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- 40.1.17 Fails to comply fully with the requirements of this ISFT or makes a misrepresentation in any information supplied in their Final Tender;
  - 40.1.18 Submits a Final Tender where thereafter there is a change in identity, control, financial standing, and/or other factor impacting on the selection and or evaluation process affecting the Final Tender;
  - 40.1.19 Submits a Final Tender which does not comply with any mandatory requirement (where the word “shall” or “must” is used); or fails to comply with the Revised Prevent Duty Guidance: for England and Wales; para. 45 “publicly-owned venues and resources do not provide a platform for extremists to disseminate extremist views”; para 46 “organisations who work with the local authority on Prevent are not engaged in any extremist activity or espouse extremist views”; or contradict para 47 “new contracts for the delivery of their services are being made to ensure that the principles of the duty are written into those contracts in a suitable form”;
  - 40.1.20 Submits a Final Tender which is submitted by any Qualified Bidder (for the purposes of this paragraph, this also includes any company who has control of the legal entity submitting the Final Tender or a member of the group, if submitting as a group of economic operators) who has longstanding unpaid debts of any value with the Authority, which have not been disputed by the Qualified Bidder and/or where no payment plan has been agreed with the Authority within one-hundred and twenty (120) days of the date the invoice was due to be paid. For the avoidance of doubt, longstanding in this instance, is defined as equal to or greater than one-hundred and twenty (120) days;
  - 40.1.21 Submits a Final Tender that is in any other way deemed non-compliant by the Authority.
- 40.2 By participating in this procurement process, Qualified Bidders accept that the Authority shall have no liability to a rejected or disqualified Final Tender and/or Qualified Bidder in these circumstances.

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## **APPENDIX A DESCRIPTIVE DOCUMENT**

***[See separate document uploaded to In-Tend]***

## APPENDIX B

### Part 1 – Award Criteria

QUALITY (50%)	
<p>The quality Award Criteria are sub-divided below with weightings out of a total of 100%.</p> <p>The total Quality weighting of 50% will be allocated to the highest scoring quality response.</p> <p>Qualified Bidders should have regard to Part 2 – Quality Questions. Note that the Authority reserves the right to amend Part 2 – Quality Questions during the process.</p>	
Sub-Award Criteria	Proportion of Total Quality Score
Q.1 Service Delivery	20%
Q.2 Delivery of Initial Works Programme	20%
Q.3 Design of Shelters	20%
Q.4 Commercial Approach	10%
<u>Social Value:</u> Q.5 Low Carbon Q.6 Ecological Q.7 Local Labour	10% 10% 5%
Q.8 Health & Safety	5%
Q. 9 Geographical Classification	Pass/fail
Total Quality	100%
PRICE (50%)	

The Price evaluation will be carried out as detailed in the main body of the ISFT having regard to the inputs required from Qualified Bidders as detailed in the '*Shelter Requirements and Pricing*' response document. The Authority reserves the right to amend the Price Response Document during the process.

Part 2 – Quality Questions *See online questionnaire within the ISFT stage of the In-Tend portal, located on the project under ~~'My Tender Return--Main'~~ section.*

Part 3 – Shelter Requirements and Pricing *See separate document (Excel workbook) uploaded to In-Tend.*

Part 4 – Agreement – Bus Shelter Advertising Concessions and Maintenance *See separate document uploaded to In-Tend*

Performance Measures – located in the 'Agreement' document under '*section 2*' of '*Part 1 Maintenance Services*'

## **APPENDIX C RESPONSE REQUIREMENTS**

### **PART 1**

Qualified Bidders must:

- Only submit one (1) Final Tender.
- Submit all documents and materials, which comprise the Final Tender, written in English only.
- Answer all relevant questions in the online questionnaire(s), complete all documents required by this ISFT and respond in accordance with any specific requests as detailed in the question e.g. maximum word/page limits, etc. All words in any format (including but not limited to words in diagrams, pictures, maps, tables, and charts) will count towards the word count, except where indicated otherwise by the Authority. Qualified Bidders must state the number of words in any diagram, picture, map, table, or chart directly underneath it. This includes any other method of presentation which is not just text. Qualified Bidders must not attempt to circumnavigate the word limit e.g., by joining up words or using special characters to join words. Words/pages submitted over this limit will not be evaluated.
- Ensure all additional information, which is outside the scope of the information specifically requested, is include in clearly referenced annexes However, the Authority reserves the right not to take the additional information into account, when it evaluates the Final Tender;
- Ensure that if uploading attachments to place holders, the document title must be used as the file name;
- Clearly identify any information contained in or submitted at any stage (such as information in their PSQ) which is no longer accurate or has been subject to change since the date of its submission. By submitting a Final Tender, Qualified Bidders confirm that, except where identified, the information contained in and previously submitted at all previous stages is accurate;
- Submit any attachments requested in an acceptable format to the Authority, which includes MS Word, MS Excel, MS PowerPoint, JPEGs and PDF files or any file format as specified in the question or elsewhere in this ISFT. Qualified Bidders who wish to submit an attachment in an alternative format must first check with the Authority that it will be accepted;
- Submit only information requested by the Authority. Additional information which has not been requested will not be considered as part of the tender.
- Meet the Authority's minimum requirements, operate as a standalone bid and not be dependent on any other bid or any other factors external to the Final Tender itself;
- Submit any zipped files in WinZip format only.

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- Take sole responsibility for any costs and expenses incurred in connection with the participation in this procurement, including but not limited to the preparation and submission of their Response.
- Notify the Authority promptly of any perceived ambiguity, inconsistency or omission in the ISFT, any of its associated documents and/or any other information issued to them during the procurement process.
- Accept that all Final Tender become the property of the Authority upon submission and will be subject to the Freedom of Information Act 2000; and
- Identify any information contained within the Qualified ISFT Response that may be considered exempt under Section 43 of the Freedom of Information Act 2000, and the Qualified Bidder's view on which of the exemptions contained within the Section apply to information contained within their ISFT Response.



## **APPENDIX D CONSORTIA AND SUBCONTRACTORS**

The Authority requires all Qualified Bidders to identify whether and which sub-contracting or consortium arrangements apply in the case of their Final Tender, and, specify the share of the contract it intends to sub-contract, any proposed sub-contractors, and who the Qualified Bidder intends the Authority to contract with. For the purposes of the ISFT, the following terms apply:

- Consortium arrangement – Groups of companies come together specifically for the purpose of bidding for appointment as the provider(s) and envisage that they will establish a special purpose vehicle as the prime contracting party with the Authority.
- Sub-contracting arrangement – Groups of companies come together specifically for the purpose of bidding for appointment as the provider(s) but envisage that one of their number will be the provider(s), the remaining members of that group will be sub-contractors to the provider(s).
- Potential Suppliers submitting a Tender Response as a consortium arrangement and/or are reliant on essential subcontractors, parent companies, affiliates to meet tender requirements must also complete CDP/Debarment & Conditions of Participations.

If tendering as a Consortium, the Authority may require members of the Consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.



# West Northamptonshire Council

## Invitation To Submit Final Tenders

Title:	Bus Shelter Advertising Concession and Maintenance Services
Our Ref:	WNC00000512
Procurement Procedure:	Competitive Flexible
Date of Issue	<del>16 April June 2025 (Draft)</del>
Deadline for Response	12:00 noon on <del>[Day Month]</del> 1 <sup>st</sup> August 2025 <del>(date to follow at ISFT Stage)</del>

~~ISFT FOR ISSUE AT PSQ STAGE – THIS IS A DRAFT ISSUED FOR INFORMATION PURPOSES AND THE AUTHORITY RESERVES THE RIGHT TO AMEND THE ISFT AT ANY TIME DURING THE TENDER PROCES~~

## INTERPRETATION

The definitions in this section apply in this Invitation to Submit Final Tender.

<b>Agreement</b>	means an agreement to be entered into by the Authority with a Qualified Bidder for the provision of the relevant Services. The draft form of Agreement for the services proposed is as referred to at Appendix B.
<b>Authority</b>	means West Northamptonshire Council ( <b>WNC</b> ).
<b>Award Criteria</b>	means the evaluation criteria to be applied by the Authority as set out in this document and Appendix B
<b>Tender Notice (UK4)</b>	means the notice published on the Central Digital Platform on 16 April 2025. Notice identifier ref: 2025/S 000-015519.
<b>Deadline</b>	means <del>[Day-Month]</del> <b>01 August 2025</b> . <del>(to follow at ISFT stage)</del>
<b>Descriptive Document</b>	means the document at Appendix A.
<b>Final Tender</b>	means a Response to this ISFT submitted by a Qualified Bidder.
<b>Information Legislation</b>	means the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any successor or replacement legislation and any codes or guidance issued under such legislation and/or by the Information Commissioner.
<b>Invitation to Submit a Final Tender (ISFT)</b>	means this document.
<b>Price Response Document</b>	means the price response document detailed in the Appendices to this ISFT. This is included in the Excel workbook 'Shelter requirements and pricing'.
<b>Procurement Specific Questionnaire (PSQ)</b>	means the questionnaire issued to potential providers interested in taking part in the procurement.
<b>Qualified Bidders</b>	means those organisations who have qualified from the PSQ stage of this process

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<b>Quality Questions</b>	means the quality questions as detailed in Appendix B
<b>Response</b>	means a Qualified Bidder's proposals submitted in response to and in accordance with the requirements (as appropriate) of the ISFT.
<b>Services</b>	means the Bus Shelter Advertising Concession and Maintenance Services to be delivered to the Authorities in reliance on this procurement as further set out in the Tender Notice, the Descriptive Document and the draft form of Agreement.

## INTRODUCTION

### 1. GENERAL INFORMATION

- 1.1 This Invitation to Submit Final Tender (hereafter referred to as “**ISFT**”) contains instructions and key information about the procurement process. Qualified Bidders must comply with the ISFT for their Final Tender to be considered. This ISFT constitutes the conditions of the procurement process and by participating, you are agreeing to these conditions.
- 1.2 West Northamptonshire Council (the “**Authority**”) wishes to invite ISFT Responses for the supply of the Services in respect of this requirement.
- 1.3 This procurement process is being managed by the Authority in accordance with the Procurement Act 2023.
- 1.4 The Authority has elected to use the Competitive Flexible Procedure under the Procurement Act 2023 to include one dialogue phase on the basis that the Agreement for the services cannot be awarded without prior negotiation because of the specific circumstances related to the nature and the complexity of the Services and the legal and financial makeup of the Services and risks attaching to the Services.
- 1.5 This procurement is being conducted in accordance with the Authority’s objectives and drivers as outlined in the Descriptive Document.
- 1.6 At the end of this procurement process, the Authority may choose to award the Agreement. Any Agreement which the Authority awards, will be to the Qualified Bidder who submitted the most advantageous tender.
- 1.7 Submission of a Response to this ISFT implies acceptance of its provisions by the Qualified Bidders.

### 2. PSQ CONDITIONS OF PARTICIPATION (COP) ASSESSMENT

- 2.1 With the publication of the Tender Notice, interested parties were provided with the PSQ and a draft ISFT document including the draft Award Criteria. The PSQ sought responses from interested parties and were assessed on their online questionnaires as part of the Conditions of Participation Assessment (“CoP”) and were assessed on their legal and financial capacity and technical ability to perform the contract. In addition, the Authority considered if any suppliers or related persons within its corporation group, associated persons relied on to meet the conditions of participation, or proposed sub-contractors were excluded or excludable.
- 2.2 The PSQ provided that the Authority would take forward all suppliers who met the requirements of the PSQ and Conditions of Participation and were not excluded or excludable and is issuing this ISFT to the Qualified Bidders.
- 2.3 The Authority will indicate where the result of the PSQ assessment means that a Qualified Bidder will be required to provide a parent company guarantee. The form of parent company guarantee is included with the Agreement. Even if the Authority has

## ISFT (Invitation to Submit Final Tender - DRAFT)

not indicated that a parent company guarantee is required, it reserves the right to require one prior to entering into the Agreement with a successful Qualified Bidder as a result of any change to financial standing since the PSQ and/or any other reason.

### 3. COMPETITIVE FLEXIBLE PROCEDURE

- 3.1 As outlined in the Descriptive Document, the Authority has elected to follow the Competitive Flexible Procedure under the PA23 to include a dialogue phase. There are several areas of the required solution for the Services that can be clearly defined and there are other areas that require engagement with the market to determine the content of the solution.
- 3.2 The dialogue phase that the Authority ~~proposes-conducted was is~~-targeted at specific areas of discussion and this is dealt with in further detail in the Descriptive Document together with the minimum requirements.

### 4. CONTRACT TERM AND VALUE

- 4.1 The Agreement duration, anticipated commencement date and valuation for the services are set out in the Descriptive Document at Appendix A and in the Agreement.
- 4.2 Following award of contract should the successful Qualified Bidder subsequently find that their proposed solution and/or price offer is not accurate and sustainable then the successful Qualified Bidders will not be permitted to amend their pricing bid to request any further monies associated with the full provision of the Services.

## PURPOSE OF ISFT

### 5. INVITATION TO SUBMIT FINAL TENDERS

- 5.1 This ISFT:
  - 5.1.1 asks Qualified Bidders to submit their Final Tenders in accordance with the instructions set out in the remainder of this ISFT;
  - 5.1.2 sets out the overall timetable and process for the procurement to Qualified Bidders;
  - 5.1.3 marks the start of the period of detailed commercial and technical dialogue with the Qualified Bidders and provides information about this period;
  - 5.1.4 provides Qualified Bidders with sufficient information to enable them to provide a compliant Response to this ISFT;
  - 5.1.5 sets out the Award Criteria that will be used both to evaluate the Responses and to evaluate Final Tenders; and
  - 5.1.6 explains the administrative arrangements for the receipt of Responses.
- 5.2 This ISFT comprises:

## ISFT (Invitation to Submit Final Tender - DRAFT)

- 5.2.1 this ISFT document (including Appendices C (Response requirements), D (Consortia and subcontracts);
  - 5.2.2 Appendix A – Descriptive Document;
  - 5.2.3 Appendix B – Award Criteria, Quality Questions, Price Response, Form of Agreement and Performance Measures (located in the Agreement).
- 5.3 No information in this document is, or should be relied upon as, an undertaking or representation as to the Authority's ultimate decision in relation to the requirement. The Authority reserves the right, without notice, to change the procurement process detailed in this ISFT, or to amend the information provided, including, but not limited to, changing the timetable, the scope and nature of the procurement and the procurement process. In particular, the Authority reserves the right to issue details to Qualified Bidders providing further information or supplementing and/or amending the procurement process for this ISFT. This will be subject to the normal rules of public law and procurement principles and rules.
- 5.4 The Authority, at its sole, explicit, and absolute discretion, reserves the right to amend or provide updated information on the procurement process (including, without limitation, the structure and number of stages of the procurement process and dialogue) by providing the appropriate notification to all Qualified Bidders still engaged in the process.
- 5.5 Qualified Bidders participate in this procurement process at their own risk. The Authority shall not accept liability nor reimburse Qualified Bidders for any costs or losses incurred by Qualified Bidders in relation to participation in this procurement process under any circumstances, whether the Authority has made changes to the procurement process or not.
- 5.6 The Authority also reserves the right, at any point and without notice, to discontinue the procurement process without awarding an Agreement in respect of the services, whether such discontinuance is related to the content of ISFT Responses or otherwise. In such circumstances, the Authority will not reimburse any expenses incurred by any person in the consideration of and/or response to this document. Qualified Bidders make all tenders, proposals and submissions relating to this ISFT entirely at their own risk.

## **6. STRUCTURE OF THE PROCUREMENT**

- 6.1 This procurement will follow a clear, structured, and transparent procurement process to ensure a fair and level playing field is maintained at all times and all Qualified Bidders are treated equally.
- 6.2 The Authority is following the Competitive Flexible Procedure to include a dialogue phase detailed in this ISFT. The current design of the procedure allows for one (1) stage of the process following completion of the PSQ stage. This is :
  - 6.2.1 Invitation to Submit a Final Tender (hereafter referred to as “**ISFT**”).
- 6.3 The Authority will not be applying the Award Criteria to reduce the number of Qualified Bidders in the process to Final Tender submission. Instead, the Authority will be

applying the Award Criteria to decide on awarding a contract for the Services concerned in this procurement. A Qualified Bidder may be removed from the process should any ground for disqualification arise as detailed in this ISFT.

## **INSTRUCTIONS AND GUIDANCE**

### **7. ELECTRONIC TENDERING (IN-TEND)**

- 7.1 The Authority is utilising an electronic tendering tool to manage this procurement process. All documents and communications issued by the Authority's Procurement Team will be sent via the Authority's e-Procurement portal provided by In-Tend.
- 7.2 In-Tend is located at <https://in-tendhost.co.uk/wnc>.
- 7.3 Qualified Bidders who experience technical difficulties when using In-Tend should contact the support desk Mon-Fri, 08:30 – 17:00 via Telephone: 0845 557 8079 or Email: [support@in-tend.co.uk](mailto:support@in-tend.co.uk)
- 7.4 Completed Responses and communications can only be submitted electronically, using the Authority's e-procurement portal. Fax, post and/or e-mail submissions will not be considered even if received before the relevant response deadline.
- 7.5 Where Qualified Bidders encounter any difficulties whilst using the In-Tend system, please refer to the user guide at [in-tendhost.co.uk/wnc/BuyerProfiles](https://in-tendhost.co.uk/wnc/BuyerProfiles) or contact the In-Tend support desk.
- 7.6 File size limit of 200MB apply when uploading files on the In-Tend system. Further information can be obtained from In-Tend by contacting the support desk.
- 7.7 Qualified Bidders are responsible for the successful submission of their Response. Responses will automatically be receipted upon a successful submission to the In-Tend system. If a Qualified Bidder does not receive an acknowledgement from In-Tend, it is unlikely that the submission has been received. In this instance it is advised that the Qualified Bidder contacts In-Tend support desk and the Authority prior to the Deadline.
- 7.8 Qualified Bidders are strongly advised to complete and submit their Responses, allowing an adequate amount of time before the Deadline to ensure that there is sufficient time to overcome any IT problems, which may accompany the submission of the tender. Qualified Bidders are strongly recommended not to leave uploading of all data to the last day. Neither the Authority nor its e-tendering system provider will be responsible for any failure to upload data due to insufficient time being allowed by Qualified Bidders. If you encounter a problem with using the e-Procurement portal that will prevent you from submitting your response before the Deadline you must log the problem with the In-Tend support desk taking note of the time and contact details of the advisor, you speak to. Please also notify the Authority prior to the Deadline of the advisor, you speak to. Please also contact the Authority prior to the Deadline.



## 8. CLARIFICATIONS

- 8.1 Any clarification questions relating to the ISFT must be submitted through the 'Correspondence' function of In-Tend before the deadline set out below. No approach of any kind in connection with this ISFT should be made to any other person within, or associated with, the Authority. Such communication could be construed as canvassing in order to gain an unfair advantage.
- 8.2 If the Authority considers any question or request for clarification to be of material significance, both the question and the response will be communicated, in a suitably anonymous form, via the clarification function on the Authority's e-Procurement portal to all Qualified Bidders. Therefore, Qualified Bidders should check the clarification function on the Authority's e-Procurement portal regularly. Qualified Bidders are wholly responsible for reading messages issued by the Authority in a timely manner.
- 8.3 If a Qualified Bidder wishes the Authority to treat a clarification as confidential and not issue the response to all Qualified Bidders, it must state this when submitting the clarification. If in the opinion of the Authority, the clarification is not confidential, the Authority will inform the Qualified Bidder, who will have an opportunity to withdraw it. If the clarification is not withdrawn, the response will be published to all Qualified Bidders in an anonymous form.
- 8.4 The Authority reserves the right not to answer clarification questions, which it receives after the deadline below.
- 8.5 **Clarifications must be submitted by ~~ISFT Date and Time TBC at ISFT stage~~ 16:00, 18th July 2025.** The Authority will respond to all reasonable clarifications as soon as possible. All clarifications and responses will be dealt with through the In-Tend portal.
- 8.6 Qualified Bidders must keep their contact details on the e-Procurement portal up to date or they will be unable to receive communications from the Authority.

## 9. ACCEPTANCE OF TERMS OF ISFT

- 9.1 Submission of a Final Tender implies acceptance of the provisions of this ISFT by the Qualified Bidder.

## 10. SOCIAL VALUE

- 10.1 The Public Services (Social Value) Act 2012 requires public authorities to have regard to economic, social and environmental wellbeing in connection with public service contracts, and for connected purposes.
- 10.2 Qualified Bidders are required to complete their social value response to this ISFT in accordance with the instructions set out in this document. In particular Qualified Bidders should have regard to the Quality Question on social value together with the requirements in the and Agreements.

## **11. WARNING OR DISCLAIMERS**

- 11.1 While the information contained in this ISFT and/or released by the Authority at any time during the process is believed to be correct at the time of issue, neither the Authority, its advisors nor any other awarding authorities will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability for any statement, opinion or conclusion contained in or any omission from this ISFT (including the Appendices) and for any other written or oral communication transmitted (or otherwise made available) to any Qualified Bidder. No representations or warranties are made for these statements, opinions or conclusions. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Authority. Any liability is hereby expressly excluded to the extent permitted by law, and no costs or expenses incurred for preparing or producing of the Final Tender (or any previous Response) will be accepted by the Authority.
- 11.2 Neither the issue of this ISFT nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Authority (or any other person including the Authorities) to enter into a contractual arrangement.
- 11.3 This ISFT should not be regarded as an investment recommendation made by the Authority or its appointed advisors. Neither the receipt of this document by any person, nor the supply of any information is to be taken as constituting the giving of investment advice by the Authority or any of its advisers to any Qualified Bidder.
- 11.4 The Authority relies on Qualified Bidders' own analysis and review of information provided. Consequently, Qualified Bidders are solely responsible for obtaining the information which they consider necessary to make decisions regarding the content of their Final Tender and to undertake any investigations they consider necessary to verify any information provided to them during the procurement process.
- 11.5 Qualified Bidders must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the ISFT and their Final Tender, without reliance upon any opinion or other information provided by the Authority or their advisers and representatives.

## **12. CHANGES TO THE ISFT AND PROCUREMENT PROCESS**

- 12.1 The information contained in this ISFT may be changed by the Authority from time to time without prior (or any) notice being given by the Authority.
- 12.2 In this document, words such as "anticipates", "expects", "projects", "intends", "plans", "believes" and "will" (and words and terms of similar substance) indicate the Authority's present expectation of future events, which are subject to a number of factors and uncertainties that could cause actual requirements to differ materially from those described.

- 12.3 Although it is intended that the remainder of this procurement will take place in accordance with this ISFT, the Authority reserves the right to terminate, amend or vary the procurement process by notice in writing.

### **13. CONFIDENTIALITY**

- 13.1 This ISFT and any other documents subsequently issued by the Authority as part of this procurement are issued to Qualified Bidders on a confidential basis and should not be disclosed. All such documents should not be copied, reproduced, distributed or passed to any other person at any time, except for the purpose of enabled the Qualified Bidder to respond to the procurement process.
- 13.2 Copyright and all intellectual property rights in this ISFT, all documents referred to in it and any other document created by the Authority as part of this procurement process vests in the Authority.
- 13.3 This ISFT may only be used in connection with the preparation and submission of Responses by Qualified Bidders and for the dialogue concerning this procurement.
- 13.4 No publicity regarding this procurement process or the award of any contract will be permitted unless and until the Authority has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Response, its contents, any ongoing dialogue between the Authority and a Qualified Bidder or any proposals relating to it, without the Authority's prior written consent.

### **14. FAIR COMPETITION AND CONFIDENTIALITY**

- 14.1 In accordance with the Procurement Act 2023 the Authority will conduct this procurement process in a way which is fair, transparent and does not distort competition nor unfairly discriminate for or against a Qualified Bidder. As indicated elsewhere in this document the answers to questions asked by Qualified Bidders (whether as clarifications or during a dialogue meeting) shall be disclosed to all other Qualified Bidders unless both the question and answer are confidential to the solution proposed by the Qualified Bidder asking the question and the Authority considers that disclosure to other Qualified Bidders would be in breach of public procurement law.
- 14.2 Proposals put forward by one Qualified Bidder will not be disclosed to others and all submissions will be treated confidentially during the procurement process (subject to any disclosure required by law and disclosure to officers, elected members, auditors and advisers to the Authority). However, Qualified Bidders should recognise that ideas they have are not necessarily unique to them and may have been considered by the Authority or other Qualified Bidders. Accordingly, while treating all Qualified Bidders equally and fairly, the Authority reserves the right to explore with all Qualified Bidders ideas and proposals which are topics in the public domain (in the specialist media, for example) notwithstanding that the idea already appears in the proposals of one Qualified Bidder.

- 14.3 Qualified Bidders should also note that the ~~Authority intends that the~~ dialogue process outlined in this ISFT ~~will assist~~ ed it in refining ~~its the Authority's~~ approach ~~so that wherever possible by Final Tenders it will~~ and set out its final position on matters discussed during dialogue and have been published in the ISFT documents and on the clarification log.

## **15. ELIGIBILITY REQUIREMENTS AND CHANGES AFFECTING A QUALIFIED BIDDER**

- 15.1 Qualified Bidders must inform the Authority in writing of any change in control, composition or membership of that Qualified Bidder or its consortium members and of any other material change to the Qualified Bidder's response to the PSQ. The Authority reserves the right to disqualify any Qualified Bidder from any further participation in the procurement process in these circumstances.
- 15.2 Qualified Bidders are reminded of the eligibility requirements applying to the procurement process at all times. In particular, these include the provisions set out in the PSQ and section 27 of the PA 2023. Any change in the eligibility of a Qualified Bidder, including but not limited to failing to continue to meet the Authority's minimum selection requirements, must be notified immediately to the Authority in writing and may result in the Qualified Bidder being disqualified from any further participation in the procurement.

## **16. QUALIFIED BIDDER CONDUCT AND CONFLICTS OF INTEREST**

- 16.1 Any attempt by Qualified Bidders or their advisors to influence the contract award process in any way may result in the Qualified Bidder being disqualified. Specifically, Qualified Bidders shall not directly or indirectly, at any time:
- 16.1.1 devise or amend the content of any Response in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance; or
  - 16.1.2 enter into any agreement or arrangement with any other person on the form or content of any other Response, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Response; or
  - 16.1.3 enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Response or includes an undertaking to unduly influence the decision-making process of the Authority; or
  - 16.1.4 canvass the Authority or any employees or agents of the Authority concerning this procurement; or attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another Qualified Bidder

or Response or undertake to obtain confidential information that may confer upon them undue advantages in the procurement procedure; or

16.1.5 negligently provide misleading information that may have a material influence on decisions concerning the process and/or contract award.

16.2 Qualified Bidders are responsible for ensuring no conflicts of interest exist between the Qualified Bidder, their advisors and their respective staff, and the Authority, its advisors and their respective staff. Any Qualified Bidder who fails to comply with this requirement may be disqualified from the procurement at the discretion of the Authority. If any conflict of interest or potential conflict of interest between the Qualified Bidder, their advisors, the Authority's advisors, or any combination thereof becomes apparent to the Qualified Bidder, they shall inform the Authority immediately. In such circumstances, the Authority shall, at its sole, explicit, and absolute discretion, decide on the appropriate course of action. If the Authority becomes aware of any conflict of interest that a Qualified Bidder has not declared to the Authority, they may be disqualified from the procurement process.

## **17. AUTHORITY'S RIGHTS**

17.1 The Authority reserves the right to:

17.1.1 waive and/or otherwise alter the requirements of this ISFT;

17.1.2 seek clarification or additional documents in respect of a submission made by a Qualified Bidder at any stage of the procurement process (provided always that the Authority is not obliged to so seek and will only seek where it considers this is compliant with applicable public procurement law);

17.1.3 disqualify any Qualified Bidder that does not submit a compliant Response in accordance with the instructions in this ISFT;

17.1.4 disqualify any Qualified Bidder that is guilty of serious misrepresentation in relation to its Response at any stage of this procurement process (including the PSQ) and/or its Final Tender;

17.1.5 disqualify any Qualified Bidder that is successful after Final Tender where the Qualified Bidder fails to supply supporting evidence following award or supplies supporting evidence that does not corroborate the representations of the Qualified Bidder in the PSQ and/or any Response or in circumstances where the Qualified Bidder no longer meets the PSQ requirements;

17.1.6 withdraw this ISFT at any time, or to re-invite Responses on the same or any alternative basis;

17.1.7 retain copies of all documents submitted by Qualified Bidders at any stage to satisfy its audit obligations and for other purposes;

17.1.8 choose not to award any contract as a result of the current procurement process;

## ISFT (Invitation to Submit Final Tender - DRAFT)

- 17.1.9 reduce or increase the number of stages during the competitive dialogue process to ensure the best overall outcome; and
- 17.1.10 make whatever changes it sees fit to the timetable, structure or content of the procurement process, depending on approvals processes or for any other reason.

## 18. COST

The Authority will not be liable for any bid costs, expenditure, work or effort incurred by a Qualified Bidder in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Authority.

## 19. LAW

This ISFT and any disputes concerning it (including non-contractual disputes or claims) shall be governed by English law and subject to the jurisdiction of the English courts.

## 20. TIMETABLE AND PROCUREMENT PROCESS

- 20.1 This procurement will follow a clear, structured and transparent procurement process to ensure a fair and level playing field is maintained at all times and all Qualified Bidders are treated equally.
- 20.2 The Authority is following the Competitive Flexible Procedure to include a dialogue phase as detailed in this ISFT. The current design of the procedure allows for one stage of the process following completion of the PSQ stage.
- 20.3 The Authority will **not** be applying the Award Criteria to reduce the number of Qualified Bidders in the process. A Qualified Bidder may still be removed from the process should any ground for disqualification arise as detailed in this ISFT.
- 20.4 The Authority, at its sole discretion, reserves the right to amend or provide updated information on the procurement process (including, without limitation, the timing, structure and number of stages of the procurement process and dialogue) by providing the appropriate notification to all Qualified Bidders still engaged in the process.
- 20.5 The procurement process is intended to follow the timetable set out in Table 3, below which is intended as a guide. Whilst the Authority does not intend to depart from the timetable, it reserves the right to do so at any time.

**Table 3 – Timetable**

## ISFT (Invitation to Submit Final Tender - DRAFT)

Activity	Time and Date (as applicable)
1. PSQ Phase	<del>April to May 2025 (Completed)</del>
2. Issue ISFT	<del>2<sup>nd</sup></del> June 2025
3. Dialogue Phase	<del>Week commencing 9<sup>th</sup> June month 2025</del> <u>Completed 2025</u>
4. Deadline for ISFT Clarifications	16:00, 18 <sup>th</sup> July 2025
5. Deadline for ISFT Response	12noon, 1 <sup>st</sup> August 2025
6. Evaluation	August – September 2025
7. Issue of Assessment Summaries	<u>End of</u> September 2025
8. Publication of Contract Award Notice and start of Standstill period	<u>End of</u> September 2025
9. Mobilisation	September/October 2025
10. Agreement Commencement	3 <sup>rd</sup> November 2025
11. Publication of Contract Details Notice	November 2025

20.6 Qualified Bidders must submit their ISFT Responses, including all documents comprising the tender, via the Authority's e-Procurement portal by no later than the Deadline for Submission of Final Tenders identified in Table 3.

20.7 Any Final Tender received after the Deadline for Submission of Final Tenders identified in Table 3, may be rejected. Therefore, it is the Qualified Bidder's responsibility to ensure that the deadline is not breached.

## 21. DIALOGUE RULES – COMPLETED (JUNE 2025)

21.1 The dialogue session will be in a structured format. Dialogue topics are further detailed in the Descriptive Document

21.2 The dialogue meeting will be face to face. Arrangements will be confirmed with Qualified Bidders through In-Tend. The Authority does not intend to use hybrid means for dialogue sessions. Further detail on the intended dates of dialogue meetings for ISFT are set out further below in this document.

## ISFT (Invitation to Submit Final Tender - DRAFT)

- 21.3 No recording of virtual or face to face dialogue sessions will be permitted. Where the Authority becomes aware that a Qualified Bidder or any person acting on its behalf (whether with the knowledge of the Qualified Bidder or not) has recorded a virtual or face to face dialogue then the Authority reserves the right to disqualify the Qualified Bidder.
- 21.4 The Authority will ensure that each Qualified Bidder is treated equally and has the same opportunity to interact with the Authority through the meetings.
- 21.5 When submitting Responses Qualified Bidders should have regard to the information supplied in writing only.
- 21.6 The Authority reserve the right to include additional dialogue sessions if required.

## **PROCUREMENT PROCESS**

### **22. EVALUATION TEAM AND APPROACH TO EVALUATION PROCESS**

- 22.1 Each Final Tender will be evaluated by an evaluation panel, which may include, but not be limited to, council officers, elected members, technical advisors and/or stakeholders (such as members of user groups, focus groups and/or tenant/resident panels). Members of the evaluation panel may evaluate all aspects of the ISFT Response or only certain aspects.
- 22.2 The Authority intends that the evaluation panel will be consistent throughout the procurement process but reserves the right to alter the composition of the evaluation panel at its absolute discretion.
- 22.3 The relevant members of the evaluation panel will evaluate responses to the Quality Questions separately in accordance with the guidance set out in this ISFT.
- 22.4 Evaluation of the Price Response Document will be undertaken by members of the evaluation panel appointed by the Authority who will carry out the evaluation in accordance with the guidance set out in this ISFT.
- 22.5 Once the initial evaluation has been undertaken, the evaluation panel will meet (either in person or virtually) on one or more occasions, such meetings will be facilitated by a member of the Authority's procurement/advisory team (the Moderator). The purpose of these meetings will be to consider each aspect of the evaluation to ensure that it has been undertaken in accordance with the rules of competition, and to enable the Moderator to facilitate a discussion between the relevant members of the evaluation panel, so that a consensus score and rationale can be agreed and recorded for each response.
- 22.6 As the result of any moderation, the evaluation panel may choose to revise a Qualified Bidder's score for each response to a Quality Question, either up or down to reach a final score.



## **23. DIALOGUE TEAMS COMPLETED (JUNE 2025)**

- 23.1 The Authority's dialogue team will comprise a mix of officers as required during the process.
- 23.2 Qualified Bidder dialogue teams will be limited to a maximum of **six (6)** attendees at any one time.

## **24. ISFT**

- 24.1 The ISFT is issued on the date of this ISFT document and commences the ISFT stage of the procurement process. This ISFT contains full details of what Qualified Bidders need to submit in their Final Tenders.
- 24.2 The objective of the ISFT stage is to enable Qualified Bidders to submit their Final Tenders for meeting the requirements of the Authority as it seeks to decide on the award. Qualified Bidders should only submit those elements that are requested at this stage, ~~and not any elements that relate to later stages.~~

## **25. DIALOGUE COMPLETED (JUNE 2025)**

The Authority ~~intends there to be held~~ one dialogue session per bidder at ISFT stage ~~with this lasting and lasted~~ no more than ~~three two~~ hours.

The ~~indicative~~ dialogue topics ~~are were~~ detailed in the Descriptive Document, ~~but and~~ the agenda ~~issued will state~~ the final topics ~~for discussion~~. Qualified Bidders ~~will were~~ also ~~be~~ invited to suggest agenda items that it would like included.

~~25.1 The agenda for the dialogue session (anticipated to take place week commencing 9<sup>th</sup> June 2025) face to face will be provided separately to Qualified Bidders ahead of the meeting.~~

~~25.2~~ 25.1 The Authority does not intend to issue a full minute of dialogue sessions to Qualified Bidders. However, it will issue a summary of key points discussed through In-Tend detailed in the redline documents. Where points are specific or confidential to a Qualified Bidder then the Authority will adopt the same approach as for clarifications in determining whether the information is made available to all Qualified Bidders having regard to the need to maintain the confidentiality of the detail of individual bids. For the avoidance of doubt where issues are discussed that are relevant to how the Authority approaches its requirements – and these are not confidential – then all Qualified Bidders will be made aware of any change in approach by the Authority.

## **26. ISFT RESPONSES**

- 26.1 Qualified Bidders must submit their Final Tenders by the Deadline by completing the Tender documents and the In-Tend online questions/declaration set out below and submitting through the In-Tend portal in accordance with the instructions set out in this ISFT. Any Response submitted after the Deadline or that is not compliant with the requirements of the ISFT will be disqualified and not considered further.

26.2 Qualified Bidders **must submit:**

26.2.1 a completed response to the Quality Questions (in electronic format via the In-Tend portal);

26.2.2 a completed Price Response Document (in MS Excel) (*'Shelter Requirements and Pricing'* Document)

26.3 The Qualified Bidder must also complete the declarations questionnaire on In-Tend in order to submit a compliant response.

26.4 The Quality Questions and Price Response Document have been designed to allow Qualified Bidders to explain how they will deliver the Service in terms of quality, social value, and price.

26.5 Qualified Bidder's Final Tender must demonstrate their ability to meet the requirements set out in the Authority's published requirements and their proposals for doing so.

26.6 Final Tenders are binding on Qualified Bidders. Qualified Bidders must provide full and complete Responses. **The Authority will make an award based on the Responses given to this ISFT.** Responses are to remain open for acceptance for a period of one hundred and eighty (180) days months from the Deadline for Final Tenders.

## 27. EVALUATION

27.1 An initial examination may be made to establish the completeness of the Final Tenders.

27.2 The Authority will check that the Final Tenders are compliant with the ISFT. Non-compliant Final Tenders may be disqualified (subject to any clarification which may be appropriate at the Authority's absolute discretion including concerning the correction of errors which the Authority considers can be made in compliance with public procurement law).

27.3 The Authority will be formally evaluating the Final Tenders, in line with the process set out below and applying the Award Criteria to identify the preferred Qualified Bidder.

27.4 The Authority reserves the right to clarify any Final Tender before determining whether it is compliant and/or finalising the scoring but are not obliged to do so.

## 28. CLOSE OF DIALOGUE – COMPLETED (JUNE 2025)

~~When the Authority determines that the dialogue has completed, it shall notify the Qualified Bidders remaining in the process that dialogue has closed.~~

## 29. EVALUATION AND AWARD

29.1 After the Authority has checked that the submissions are compliant with the ISFT and made any necessary disqualifications, all compliant submissions will be evaluated by the Evaluation Panel, using the Award Criteria. The Authority reserves the right to clarify any submissions before finalising the scoring but is not obliged to do so.

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- 29.2 The preferred Qualified Bidder shall be determined on the basis of the Final Tender that is the most advantageous tender on the highest price/quality score, as determined using the Award Criteria scheme set out in this ISFT.
- 29.3 Subject to the preferred Qualified Bidder being able to provide the necessary supporting evidence required under the PSQ, then the Agreement shall be awarded to the preferred Qualified Bidder. Should the preferred Qualified Bidder be unable to provide the supporting evidence required under the PSQ (and/or provide any required supporting information to any representations in the Final Tender) then the Agreement shall not be awarded and the Authority reserves the right to subsequently provisionally award the Agreement to the next highest scoring Qualified Bidder (assessed in line with the evaluation approach in this ISFT) (which would then become the preferred Qualified Bidder and be required to provide the necessary supporting evidence required under the PSQ and/or any Final Tender).

### NOTIFICATION, FEEDBACK TO BIDDERS AND CONTRACT

- 29.4 Following the identification of the preferred Qualified Bidder, the Authority will issue an assessment summary to all Qualified Bidders which have submitted a Final Tender. The assessment summary will contain the Qualified Bidder's:
- 29.4.1 Results of their tender assessment in accordance with the assessment methodology.
  - 29.4.2 Their scores awarded to the tender of each award criteria (including any sub-criteria) and an explanation as to why the score was awarded.
  - 29.4.3 Where the tender was unsuccessful, an explanation of why the tender was unsuccessful including whether it was because;  
It was disqualified for any other reason, and;  
Provide the scores and detailed reasons in respect of the successful (MAT tender).
- 29.5 The publication of the **Contract Award notice** (under section 50 of the Procurement Act 2023) commences the start of the eight (8) working day standstill period.
- 29.6 Where the standstill period has expired, the successful Qualified Bidder shall receive a post-standstill outcome letter confirming whether their Final Tender has been formally accepted.

### 30. AWARD CRITERIA

- 30.1 The Award Criteria for Quality is detailed in Table 4 below.
- 30.2 The sub-weighting of Price/Quality/SV is further detailed in Appendix B – Part 1'

Total Score	Price	Quality including Social Value
100%	50%	50%

### Quality (including Social Value)

30.3 Quality/Social Value will be evaluated by reference to the questions set out at Part 1 of Appendix B.

30.4 An initial examination will be made to establish the completeness of the Responses. The Authority reserves the right to reject any Response which is incomplete.

30.5 The Authority reserves the right (but is not obliged) to seek clarification of any aspect of a Qualified Bidder's Response during the evaluation stage. Qualified Bidders will only be permitted to correct or supplement their Response at the discretion of the Authority and only where that would be compliant (in the view of the Authority) with the Procurement Act 2023. Qualified Bidders shall respond to such requests promptly and within any given deadline. Qualified Bidders may be rejected if they do not satisfactorily respond within the given deadline.

30.6 All responses to the Quality Questions will be evaluated and scored a maximum of 4 marks independently by the Evaluation Panel against the Criteria set out in 'Award Criteria' Table 4 below.

30.7 The Authority requires a minimum quality threshold to ensure a high income does not skew a Response where the quality is fundamentally unacceptable.

30.8 Therefore, a Response may be rejected, where the response to any Quality Question fails to achieve a score of 2, even if it scores relatively well against all other criteria.

**Table 4 – Quality Scoring Criteria**

Score	Criteria for Awarding Score
0	<ul style="list-style-type: none"> <li>Considered to be a <b>POOR response</b> on the basis that:</li> <li>No response is provided; or</li> <li>It does not answer the question or is completely irrelevant.</li> </ul>
1	<p>Considered to be a <b>LIMITED response</b> on the basis that:</p> <ul style="list-style-type: none"> <li>Overall, it lacks sufficient detail or is perceived to be unclear, meaning that evaluators are not confident that the requirements will be delivered to an acceptable level.</li> </ul>
2	<p>Considered to be an <b>ACCEPTABLE response</b> on the basis that:</p>

Score	Criteria for Awarding Score
	<ul style="list-style-type: none"> <li>It addresses most of the requirements; and/or</li> <li>The supporting detail is clear for the most part and provides evaluators with an understanding that the requirements it does address will be met to an acceptable level.</li> </ul>
3	<p>Considered to be a <b>GOOD response</b> on the basis that:</p> <ul style="list-style-type: none"> <li>It addresses all relevant requirements; and/or</li> <li>The supporting detail is clear and provides evaluators with confidence that the requirements will be delivered to a good standard.</li> </ul>
4	<p>Considered to be an <b>OUTSTANDING response</b> on the basis that:</p> <ul style="list-style-type: none"> <li>It addresses all relevant requirements; and/or</li> <li>The supporting detail is clear and robust and provides evaluators with the utmost confidence that all requirements will be delivered to the highest standard.</li> </ul>

30.9 The moderated scores will be divided by 4 and multiplied by the sub weighting (%) of the relevant Quality Question, to give a final score (%) for each Quality Question.

30.10 For example, if the sub weighting for the question is 20% and the Potential Provider is marked a '2', their final score (%) for that question will be:

$$2/4 \times 20 = 10\%$$

30.11 The total moderated score (%) for the Quality Questions will be out of 100 and multiplied by the weighting allocated to the quality evaluation. For example, if the total moderated score was 65% and the weighting for the quality section was 40% the potential providers overall quality score would be calculated as follows:

$$65/100 \times 40 = 26\%$$

### Price

30.12 Qualified Bidders should satisfy themselves of the accuracy of all fees, rates and prices quoted, since they will be required to hold these or withdraw their Tender Response in the event of errors being identified after the Deadline.

30.13 Qualified Bidders are to refer to the guidance set out within the price response document (Excel workbook) 'Shelter Requirements and Pricing ISFT'. The price response document includes two pricing tables for completion – 'Table 4A' based on the Authority funds and owns the new Shelters and 'Table B' based on the Operator owns the Shelters'. Both prices will be evaluated. An internal decision will be made by the Council, taking into account the offers made, on providing capital for new bus shelters, which will then determine which option is selected and the overall winning tender.

30.14 If a Qualified Bidder fails to provide fully for the requirements of the Final Tender it must either:

30.14.1 absorb the costs of meeting the Authority's full requirements within its tendered price or withdraw its tender;

30.14.2 Withdraw from the procurement process.

30.14.3 The following criteria will be applied to evaluate price:

The Potential Supplier with the highest overall compliant income price will be awarded the full Price score. All other Tender Responses will be scored in accordance with the following calculation:

Score = Price Weighting – ((max price – bidder price) / (max price – min price)) x price weighting.

30.14.4 An example is provided in Example 1, below. This example is based on a 60% price weighting where the highest compliant income price is £5,000,000.

**Example**

Potential Supplier	Bid Income Price	Price Calculation	Price Score
1	£5,000,000	=60% (highest compliant income price)	60
2	£3,100,000	=60-((5,000,000 -3,100,000)/5,900,000)*60	40.68
3	£2,000,000	=60-((5,000,000-2,000,000)/5,900,000)*60	29.49
4	£-900,000	=60-((5,000,000+900,000)/5,900,000)*60	0.00

30.15 Qualified Bidders who receive a minus score will receive a zero (0) score for price for the purposes of evaluation.

30.16 In the event where the highest scoring Tender Responses are tied in total score to two (2) decimal points following the completion of the moderation, the Authority will award the Contract to the Bidder who scores highest on Quality. In the event the Bidders are still tied the Authority will award the Contract to the Bidder with the highest overall financial return to the Authority.

## **31. RESPONSE REQUIREMENTS**

### **A Compliant Response**

31.1 The Authority requires the Qualified Bidder to submit a compliant Final Tender comprising those documents outlined at paragraph ~~2626~~ above. The Response must comply with the requirements of this ISFT including those as set out at Appendix C.

31.2 All proposals contained in a Final Tender must be capable of delivery and the Final Tender must have commitment from within the Qualified Bidder's organisation.

### **Duplication**

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- 31.3 A Response may not refer to any information contained in the PSQ submitted by the Qualified Bidder.

### **Compliance Check**

- 31.4 All Final Tender received by the Deadline will be checked for compliance with the submission requirements set out in the ISFT. If a Final Tender is not considered compliant, the Authority will not be obliged to carry out any further evaluation and the Qualified Bidder may be eliminated from the procurement. During this period, clarification on any aspect of the bid may be sought – Qualified Bidders will only be permitted to correct or supplement their Final Tender at the discretion of the Authority and only where (in the Authority's view) this is compliant with public procurement law.
- 31.5 A compliant Final Tender is defined as one that meets the following criteria (as defined in this ISFT):
- 31.5.1 it is delivered before the Deadline;
  - 31.5.2 it is uploaded to In-Tend;
  - 31.5.3 it meets the Response requirements set out in this ISFT; and
  - 31.5.4 is otherwise compliant with the terms of this ISFT and any other requirements notified to the Qualified Bidders prior to the Deadline

## **32. CONTRACTUAL AND LEGAL REQUIREMENTS**

### **Agreement**

- 32.1 Details of the Agreement the Authority proposes to use is set out in Appendix B.
- 32.2 The Authority recognises that the competitive dialogue process may involve dialogue on minor aspects of the Agreement.
- 32.3 Qualified Bidders are to submit any concerns about the contractual documents via the 'Correspondence' section of the In-Tend portal before the ISFT Clarification deadline closes.
- 32.4 The Authority anticipates that:
- 32.4.1 following the ISFT Clarification deadline the Agreement terms will have been fully considered by Qualified Bidders and that the Authority will have made such amendments to the forms of Agreement as it considers necessary;
  - 32.4.2 Final Tender Responses will then be on the basis that the Qualified Bidder accepts the form of the Agreement as drafted and will not raise any further amendments. For the avoidance of doubt, no further comments, or mark-up from Qualified Bidders related to the terms of the Agreement (and any document referred to therein) should be submitted with Final Tenders.
- 32.5 A Qualified Bidder seeking to introduce new (or previously rejected) amendments in their Final Tender will be submitting a qualified Final Tender and be liable to disqualification.

## **TUPE**

- 32.6 It is expected that TUPE will not apply at commencement of the contract, as the existing operator has indicated it has no staff liable for transfer. Provision is made for the application of TUPE at the end of the term of this Agreement, if this turns out to be applicable.

## **33. CONSORTIA**

For bids submitted by consortia, further guidance on the Authority's requirements is set out in Appendix D.

## **34. FREEDOM OF INFORMATION**

- 34.1 As a public body, the Authority is subject to the provisions of the Freedom of Information Act 2000 ("FOIA") and all related or subordinate legislation, in respect of information it holds (including third-party information). Any member of the public or other interested party may make a request for information.
- 34.2 Potential Suppliers should be aware that, in compliance with its transparency obligations, the Authority routinely publishes details of its contract(s) and spend, including the contract values and the identities of its provider(s) on the Authority's website without consulting the provider(s) on that information.
- 34.3 The Authority shall be responsible for determining whether information is exempt under the FOIA and/or EIR and for determining what information will be disclosed in accordance with the legislation.
- 34.4 The Authority shall treat all Potential Supplier's responses as confidential during the procurement process. Requests for information received following the procurement process shall be considered on a case-by-case basis, applying the principles of the FOIA, which permits certain information to be withheld, for example where disclosure would be prejudicial to a party's commercial interests, and in accordance with the Authority's transparency obligations.
- 34.5 Therefore, potential suppliers are responsible for ensuring that any information that it considers confidential or commercially sensitive, has been clearly identified to the Authority.

## **35. DATA TRANSPARENCY**

- 35.1 The UK government has announced its commitment to greater data transparency. Accordingly, the Authority reserves the right to publish its procurement documents,



contracts and data from invoices received. In so doing, the Authority may at its sole, explicit, and absolute discretion take account of the exemptions that would be available under the Information Legislation. The Authority will comply with its transparency obligations under local government access to information legislation and the Local Government Transparency Code 2015.

- 35.2 Notwithstanding paragraph ~~35.135.1~~, Qualified Bidders should be aware that, in compliance with its transparency obligations, the Authority routinely publishes details of its contract(s), including the contract values and the identities of its suppliers on its website without consulting the provider of that information. Further information on the Authority's transparency obligations can be located at: <https://www.gov.uk/government/publications/local-government-transparency-code-2015>.

### **36. ACCURACY OF INFORMATION**

- 36.1 In submitting a Final Tender in response to this ISFT, Qualified Bidders undertake that:

- 36.1.1 All information contained in any Final Tender at any time provided to the Authority in relation to the opportunity is true, accurate, and not misleading and that all opinions stated in any part of the Qualified Bidder's Final Tender are honestly held and that there are reasonable grounds for holding such opinions; and
- 36.1.2 Any matter that arises that renders any of such information untrue, inaccurate, and/or misleading will be brought to the attention of the Authority immediately.

### **37. CHANGES IN CIRCUMSTANCES**

- 37.1 Qualified Bidders (including, for this purpose, each participant in any joint venture, consortium arrangement) are required to inform the Authority promptly and in any case no later than fourteen (14) days, after the occurrence of:

- 37.1.1 Any change to their corporate structure from that set out in their response to the PSQ. This includes the grant of any options to acquire shares, any agreement relating to the exercise of rights attaching to such shares, and any material amendments to a shareholders' agreement, articles of association or similar constitutional documents;
- 37.1.2 Any changes to any other information provided to the Authority as part of this procurement process; and/or
- 37.1.3 any other change of circumstances, or the basis of Qualified Bidder's response to the PSQ and/or any part of this procurement process, which may be expected to influence the Authority's decision on their suitability for qualification for receipt of details related to the subsequent stages of this procurement process, or to be selected as the successful Qualified Bidder(s).

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- 37.2 The Authority reserves the right to approve (subject to conditions) or reject the changes referred to above (including any changes to the basis on which Qualified Bidders pre-qualified to receive this ISFT and to any subsequent stages of this procurement process). A rejection of the changes may result in the Qualified Bidder being excluded from further participation in the procurement process or disqualification of their Final Tender.
- 37.3 The Authority reserves the right and may, in certain cases, be required under the procurement rules, to disqualify any Qualified Bidder that has been selected to receive this ISFT and/or details related to any subsequent stages of this procurement process where the composition of the Qualified Bidder's bid vehicle, joint venture, or consortium has changed after the announcement of those Qualified Bidders who qualified to receive this ISFT and/or any details related to any subsequent stages of this procurement process. Qualified Bidders are therefore advised to discuss any proposed changes of this nature with the Authority before they are put into effect.
- 37.4 Where, following notification to the Authority by the Qualified Bidder, at any stage, of a material change in any of the information provided in a Qualified Bidder's response to the PSQ or any subsequent stage of this procurement process (or failure to give such notification), the Authority is of the opinion that the Qualified Bidder does not have, or is unlikely, by the date of commencement of the contract, to have an appropriate financial position, technical capacity and/or managerial competence, or are otherwise an unsuitable person, to be the successful Supplier(s), the Authority reserves the right to disqualify the Qualified Bidder from the procurement process.

## **38. ABNORMALLY LOW TENDER RESPONSES**

- 38.1 Responses will be reviewed to consider if they appear to be abnormally low in cost. An initial assessment will be undertaken using a comparative analysis of the price proposal received from all Qualified Bidders.
- 38.2 If the assessment shows that a Qualified Bidder's price offer may be abnormally low, the Authority will request from a written explanation and/or evidence of the Qualified Bidder's price offer and/or Response, or of those parts of a Qualified Bidder's price offer and/or Response, which the Authority considers contribute to the Response being abnormally low, to justify the Response and its price and/or value(s) offered.
- 38.3 The Qualified Bidder will also be asked to evidence that they are not practicing modern slavery (via a declaration).
- 38.4 On receipt of a Qualified Bidder's written explanation, the Authority will verify the price offer, Response or parts of the Response.
- 38.5 If the Authority is still of the opinion that the Qualified Bidder has submitted an abnormally low offer, the Authority will confirm this to the Qualified Bidder and will advise either:
- 38.5.1 that the Qualified Bidder's Response has been rejected;

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38.5.2 or that, for tender evaluation purposes, the Authority will make an adjustment to the price proposal to take account of any consequences of accepting an abnormally low tender Response.

38.6 Where the Qualified Bidder is unable to prove, within a sufficient time limit, such justification for the low price and/or value, the Authority reserves the right to reject the Response.

### **39. DUE DILIGENCE**

39.1 The Authority will undertake its due diligence in advance of any contract award.

39.2 The preferred Qualified Bidder(s) will not be awarded the Agreement until the Authority is satisfied with any further checks and due diligence it has carried out and these will need to be acceptable to the Authority before a contract can be awarded.

39.3 The Authority reserves the right to disqualify any Final Tender which is incomplete.

39.4 Due diligence may include credit checks in relation to the preferred Qualified Bidder(s) (including each member of any consortium and of any key subcontractor). This is important to the Authority to ensure that any organisation who wishes to enter into a contract with the Authority will be able to provide the goods, services, and/or works on an ongoing basis as agreed within any contract. The Authority works with external credit agencies to provide these financial checks.

39.5 The Authority reserves the right to reject a Qualified Bidder from the procurement process, where any findings from the Authority's due diligence reveal a serious concern or risk for the Authority (as determined by the Authority, acting reasonably) that cannot be remedied in a reasonable (as determined by the Authority, acting reasonably) amount of time before award. Qualified Bidders are strongly encouraged to check and manage their financial score within the industry.

39.6 The Authority reserves the right to revisit any selection criteria questions at any time before award stage, where the Authority believes there is a risk that selection responses might have changed. The Authority reserves the right to disqualify any Qualified Bidder who no longer meets the selection criteria if it originally led to them continuing in the procurement process.

### **40. REJECTION AND DISQUALIFICATION OF ISFT RESPONSES**

40.1 The Authority reserves the right to reject or disqualify any Final Tender and or a Qualified Bidder, where the Qualified Bidder:

40.1.1 Fails to submit their Final Tender by the Deadline for Submission of Final Tender, set out in the procurement timetable outlined in the ISFT;

40.1.2 Submits a Final Tender which contains gaps, omissions, misrepresentations, errors, uncompleted sections, and/or changes to the format of the ISFT provided;

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- 40.1.3 Submits a Final Tender which contains handwritten amendments which have not been initialled by the authorised signatory;
- 40.1.4 Submits a Final Tender which does not reflect and confirm full and unconditional compliance with all the documents issued by the Authority forming part of this ISFT;
- 40.1.5 Submits a Final Tender which contains any caveats or any other statements or assumptions qualifying the Final Tender that are not capable of evaluation in accordance with the Authority's published evaluation model or requiring changes to any documents issued by the Authority in any way;
- 40.1.6 Submits a Final Tender which contains any alterations or additions to any documents issued by the Authority forming part of this ISFT;
- 40.1.7 Cannot commit to providing a PCG where required as a part of providing the requirement to the Authority;
- 40.1.8 Cannot commit to achieve any Key Dates for elements and/or milestones etc. as set out in the Agreement;
- 40.1.9 Submits a Final Tender which is not submitted in a manner consistent with the provisions set out in this ISFT;
- 40.1.10 Fixes or adjusts the amount of its Final Tender by or in accordance with contract or arrangement with any other party;
- 40.1.11 Communicates to any party other than the Authority or as applicable, relevant participating body, the amount or approximate amount of its proposed Final Tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence, to obtain quotations necessary for the preparation of a complete and accurate Final Tender or insurance or any necessary security);
- 40.1.12 Enters into any contract or arrangement with any other party that such other party shall refrain from submitting a Final Tender or shall limit or restrict the prices to be shown by any other Qualified Bidder in its Final Tender;
- 40.1.13 Offers or agrees to pay or gives or does pay or gives any sum or sums of money, inducement, and/or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to its Final Tender or any other proposed Final Tender;
- 40.1.14 Commits an offence under the Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
- 40.1.15 Directly or indirectly canvasses any officer, elected member, employee, or agent of the Authority or its members or any relevant participating body or any of its officers or members concerning the establishment of the contractual relationship and/or who directly and/or indirectly obtains and/or attempts to

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obtain information from any such officer, elected member, employee, and/or agent and/or concerning any other Qualified Bidder, Final Tender or proposed Final Tender;

- 40.1.16 Fails to declare any conflict of interest or any circumstances that could give rise to a conflict of interest (Qualified Bidders must notify the Authority via the messaging function of the Authority's e-Procurement portal);
  - 40.1.17 Fails to comply fully with the requirements of this ISFT or makes a misrepresentation in any information supplied in their Final Tender;
  - 40.1.18 Submits a Final Tender where thereafter there is a change in identity, control, financial standing, and/or other factor impacting on the selection and or evaluation process affecting the Final Tender;
  - 40.1.19 Submits a Final Tender which does not comply with any mandatory requirement (where the word "shall" or "must" is used); or fails to comply with the Revised Prevent Duty Guidance: for England and Wales; para. 45 "publicly-owned venues and resources do not provide a platform for extremists to disseminate extremist views"; para 46 "organisations who work with the local authority on Prevent are not engaged in any extremist activity or espouse extremist views"; or contradict para 47 "new contracts for the delivery of their services are being made to ensure that the principles of the duty are written into those contracts in a suitable form";
  - 40.1.20 Submits a Final Tender which is submitted by any Qualified Bidder (for the purposes of this paragraph, this also includes any company who has control of the legal entity submitting the Final Tender or a member of the group, if submitting as a group of economic operators) who has longstanding unpaid debts of any value with the Authority, which have not been disputed by the Qualified Bidder and/or where no payment plan has been agreed with the Authority within one-hundred and twenty (120) days of the date the invoice was due to be paid. For the avoidance of doubt, longstanding in this instance, is defined as equal to or greater than one-hundred and twenty (120) days;
  - 40.1.21 Submits a Final Tender that is in any other way deemed non-compliant by the Authority.
- 40.2 By participating in this procurement process, Qualified Bidders accept that the Authority shall have no liability to a rejected or disqualified Final Tender and/or Qualified Bidder in these circumstances.

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## **APPENDIX A DESCRIPTIVE DOCUMENT**

***[See separate document uploaded to In-Tend]***

## APPENDIX B

### Part 1 – Award Criteria

QUALITY (50%)	
<p>The quality Award Criteria are sub-divided below with weightings out of a total of 100%.</p> <p>The total Quality weighting of 50% will be allocated to the highest scoring quality response.</p> <p>Qualified Bidders should have regard to Part 2 – Quality Questions. Note that the Authority reserves the right to amend Part 2 – Quality Questions during the process.</p>	
Sub-Award Criteria	Proportion of Total Quality Score
Q.1 Service Delivery	20%
Q.2 Delivery of Initial Works Programme	20%
Q.3 Design of Shelters	20%
Q.4 Commercial Approach	10%
<u>Social Value:</u> Q.5 Low Carbon Q.6 Ecological Q.7 Local Labour	10% 10% 5%
Q.8 Health & Safety	5%
Q. 9 Geographical Classification	Pass/fail
Total Quality	100%
PRICE (50%)	

The Price evaluation will be carried out as detailed in the main body of the ISFT having regard to the inputs required from Qualified Bidders as detailed in the '*Shelter Requirements and Pricing*' response document. The Authority reserves the right to amend the Price Response Document during the process.

Part 2 – Quality Questions *See online questionnaire within the ISFT stage of the In-Tend portal, located on the project under ~~'My Tender Return--Main'~~ section.*

Part 3 – Shelter Requirements and Pricing *See separate document (Excel workbook) uploaded to In-Tend.*

Part 4 – Agreement – Bus Shelter Advertising Concessions and Maintenance *See separate document uploaded to In-Tend*

Performance Measures – located in the 'Agreement' document under '*section 2*' of '*Part 1 Maintenance Services*'



## **APPENDIX C RESPONSE REQUIREMENTS**

### **PART 1**

Qualified Bidders must:

- Only submit one (1) Final Tender.
- Submit all documents and materials, which comprise the Final Tender, written in English only.
- Answer all relevant questions in the online questionnaire(s), complete all documents required by this ISFT and respond in accordance with any specific requests as detailed in the question e.g. maximum word/page limits, etc. All words in any format (including but not limited to words in diagrams, pictures, maps, tables, and charts) will count towards the word count, except where indicated otherwise by the Authority. Qualified Bidders must state the number of words in any diagram, picture, map, table, or chart directly underneath it. This includes any other method of presentation which is not just text. Qualified Bidders must not attempt to circumnavigate the word limit e.g., by joining up words or using special characters to join words. Words/pages submitted over this limit will not be evaluated.
- Ensure all additional information, which is outside the scope of the information specifically requested, is include in clearly referenced annexes However, the Authority reserves the right not to take the additional information into account, when it evaluates the Final Tender;
- Ensure that if uploading attachments to place holders, the document title must be used as the file name;
- Clearly identify any information contained in or submitted at any stage (such as information in their PSQ) which is no longer accurate or has been subject to change since the date of its submission. By submitting a Final Tender, Qualified Bidders confirm that, except where identified, the information contained in and previously submitted at all previous stages is accurate;
- Submit any attachments requested in an acceptable format to the Authority, which includes MS Word, MS Excel, MS PowerPoint, JPEGs and PDF files or any file format as specified in the question or elsewhere in this ISFT. Qualified Bidders who wish to submit an attachment in an alternative format must first check with the Authority that it will be accepted;
- Submit only information requested by the Authority. Additional information which has not been requested will not be considered as part of the tender.
- Meet the Authority's minimum requirements, operate as a standalone bid and not be dependent on any other bid or any other factors external to the Final Tender itself;
- Submit any zipped files in WinZip format only.

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- Take sole responsibility for any costs and expenses incurred in connection with the participation in this procurement, including but not limited to the preparation and submission of their Response.
- Notify the Authority promptly of any perceived ambiguity, inconsistency or omission in the ISFT, any of its associated documents and/or any other information issued to them during the procurement process.
- Accept that all Final Tender become the property of the Authority upon submission and will be subject to the Freedom of Information Act 2000; and
- Identify any information contained within the Qualified ISFT Response that may be considered exempt under Section 43 of the Freedom of Information Act 2000, and the Qualified Bidder's view on which of the exemptions contained within the Section apply to information contained within their ISFT Response.

## **APPENDIX D CONSORTIA AND SUBCONTRACTORS**

The Authority requires all Qualified Bidders to identify whether and which sub-contracting or consortium arrangements apply in the case of their Final Tender, and, specify the share of the contract it intends to sub-contract, any proposed sub-contractors, and who the Qualified Bidder intends the Authority to contract with. For the purposes of the ISFT, the following terms apply:

- Consortium arrangement – Groups of companies come together specifically for the purpose of bidding for appointment as the provider(s) and envisage that they will establish a special purpose vehicle as the prime contracting party with the Authority.
- Sub-contracting arrangement – Groups of companies come together specifically for the purpose of bidding for appointment as the provider(s) but envisage that one of their number will be the provider(s), the remaining members of that group will be sub-contractors to the provider(s).
- Potential Suppliers submitting a Tender Response as a consortium arrangement and/or are reliant on essential subcontractors, parent companies, affiliates to meet tender requirements must also complete CDP/Debarment & Conditions of Participations.

If tendering as a Consortium, the Authority may require members of the Consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.



# West Northamptonshire Council

Appendix B - Part 2 ISFT Quality Questions REDLINE version (Quality Questions are to be completed on the In-Tend electronic questionnaire)

**ISFT QUALITY QUESTION FOR ISSUE AT PSQ STAGE – THIS IS A DRAFT ISSUED FOR INFORMATION PURPOSES AND THE AUTHORITY RESERVES THE RIGHT TO AMEND THE ISFT AT ANY TIME DURING THE TENDER PROCES**

Question	Description	Word Count	Weighting %
1	Service delivery	2000	20
2	Delivery of Initial Works Programme (IWP)	2000	20
3	Design of Shelters	2000	20
4	Commercial approach	1000	10
5	Low carbon	1500	10
6	Ecology	1000	10
7	Local labour	800	5
8	Health & Safety	1000	5
9	Geographical Classification	2000	N/A (Pass/Fail)
Total			100

## Q1 - Service Delivery (20%) (max word limit 2000)

How will your organisation approach the delivery of the services across West Northamptonshire? Please ensure you provide details of the following as a minimum, within your response:

- How you will deliver the service on a day-to-day basis.

- How you will manage the delivery of the service across the lifetime of the contract.
- Your proposed staffing structure and detail how you will organise your workforce to meet the service requirements.
- Location(s) from which this contract will be managed.
- How you will ensure that the contract delivers optimal quality and performance including meeting the contract KPI's, managing poor performance, ongoing service improvements and performance metrics for your staff.

**Q2 - Delivery of the Initial Works Programme (IWP) (20%)**  
(max word limit 2000)

Please detail how you will deliver the IWP. Your response must address each item set out in the Agreement under paragraph 11 of Schedule 2 and include an implementation plan assuming a contract award date of 03/11/2025. (supporting Gantt charts or similar can be included as part of the response to this question and will not count towards the maximum word limit).

**Q3 - Design of Shelters (20%)**  
(max word limit 2000)

Please detail your proposed design of each type, and if applicable sub-type, and roof type of Shelter (including the options for special robustness in line with the Agreement under paragraph 2 '*General Requirements for Shelters*' of Schedule 2). You can provide any many sub-types as you wish, provided they are all clearly defined. Where you have defined sub-types for a particular type, when you complete the Pricing Schedule you must identify for each Shelter the sub-type you propose to use.

Your response should detail any accreditations you have achieved as well as any industry specification your designs adhere to. Your response should also take into consideration the Aims in section 3.5 of the Descriptive Document. (supporting technical drawings, illustrations and shelter designs can be included as part of the response to this question and will not count towards the maximum word limit).

**Q4 – Commercial Approach (10%)**  
(max word limit ~~4~~2000)

As set out elsewhere, the income for the Council attributed to each type of shelter is fixed as part of this contract. Whilst the risk is thus with the operator, the Authority wants to be confident that the contract is commercially sustainable for the operator.

To demonstrate this, please detail your commercial approach to optimising advertising opportunities and how you will manage your risk in having funds to meet your obligations under the contract, including shelter maintenance and providing us with the tendered guaranteed income.

### **Social Value (Q. 5 – 7)**

Your response to the below questions (questions 5, 6 and 7) should refer back to the Tender Documents and Contract Terms and include:

- A section clearly identifies your commitments.
- Your overall approach to Social Value.
- Your key social value objectives of the contract and your proposals for monitoring, reporting, and verification and enhancing your social value proposals over the lifetime of the contract.

### **Q5 – Low Carbon (10%) (max word limit 1500)**

Please explain how you will support net zero carbon in the manufacturing, construction, installation, maintenance, use and removal/repurposing of our structures. Please detail any accreditations you have achieved to support this.

### **Q6 – Ecological (10%) (max word limit 1000)**

Please detail your methodology and approach to measures to enhance biodiversity (including, for example, green roofs) for this contract and who you will work with to ensure the best outcomes to meet our aim of supporting biodiversity. Please detail any accreditations you have achieved to support this.

Note that these responses must be consistent with your overall proposals. In particular, if your proposals include for green roofs (or any other kind of measure associated with Shelters), then you will need to include these in your Shelter specifications and in the Pricing Schedule identify where you propose to use each type. (Alternatively, if you are unsure at this point which Shelters should be 'special' sub-types, you may allow for the price difference in the 'tenderers

### **Q7 – Local Labour (5%) (max word limit 800)**

Please detail how you will ensure that where possible local labour is utilised and training given to improve the lives of local residents. This may include the use of local sub-contractors and suppliers.

### **Q8 – Health & Safety (5%) (max word limit 1000)**

Please provide details on the how you will manage health and safety effectively and control significant risks relevant to the contract (including risks from the use of contractors, where relevant) during the contract term.

Your response should refer back to the Specification and Contract Terms and include:

How you will:

- report and investigate accidents and near misses
- follow up any actions to prevent repeated occurrence and risk assessments
- promote positive H&S culture and training and how it is cascaded to your staff

Please provide details of the number of and type of Health and Safety incidents in the last 3 years, how you responded and rectified them.

Please provide details of the number of and type of RIDDOR incidents in the last 3 years, and your response to that action.

Please confirm that a copy of your Health and Safety Policy can be provided to the Authority on request.

**Q9 - Geographical Classification – Pass/Fail**  
**(max word limit 2000)**

The supplier must have a method to determine the geographic classification of locations for Shelters (see the Pricing Schedule). Please provide details and what form that will take to ensure clear and unambiguous classification for any location in West Northamptonshire. This might, for example, refer to road classifications or to a plan in which different areas are marked. For the avoidance of doubt, it is permissible for the geographic classification to simply be 'West Northamptonshire' meaning there would be no geographic distinction in advertising income attributed to Shelters.

Provided the geographical classification is clear and unambiguous, it will pass. Otherwise, it will fail.

When you complete the Pricing Schedule, you will need to identify each site's geographical classification site by reference to your chosen definition of the geographical areas. Obviously, your responses must be consistent with your geographical classification as defined here.

## Introduction to pricing sheets

This spreadsheet is used to show the current and intended status of Shelters in West Northamptonshire, alongside providing for tenderers to provide their values for costs and income to WNC.

In the 'Pricing' tab, tenderers should:

- In Table 1, Add any sub-types of Shelter they wish to propose. For example, this may be a sub-type with a green roof or a different architectural treatment. Sub-types should follow the main type e.g. a sub-type of Type 4 would be Type 4A. Where a sub-type is offered in a 'special robustness' version as well as a conventional version, this should be shown. In the previous example, this would be Type 4AR.
- Provide in Table 1 the annual costs for maintaining each type (and sub-type) of Shelter.
- Provide in Table 2 the costs of changing from no Shelter to any of the types (and sub-types) of Shelter, from any of the types (and sub-types) of Shelter to no Shelter (i.e. removal), and from one type (or sub-type) of Shelter to another type (or sub-type). *Note that if sub-types are added to Table 1, the axes of Table 2 will automatically adjust.*
- Provide in Table 3 the different geographical areas of West Northamptonshire they wish to use for the purposes of setting the value of advertising income attributable to WNC (as in the terms of the Agreement, this can be one area if the tenderer so wishes), and the value relating to each area. The dummy data should be removed and replaced.
- If they wish, *after having completed the 'Shelters' tab*:
  - inset a figure for block advertising income (that is, income they would attribute to the Council irrespective of the number and ilocation of Shelters)
  - Indicate if they plan to retain (where not required to replace for other reasons) the Shelters currently owned by AdShell. The default value is "No"; this should only be changed to "Yes" if the prospective Operator has an agreement in place which would allow it to retain those Shelters.
  - Insert an adjustment figure for the cost to WNC of the Initial Works Programme (IWP).

In the 'Shelters' tab, tenders should insert in the relevant columns:

- Any sub-type they propose should be used for each Shelter. If they have not proposed sub-types for the type in question, no sub-type should be inserted.
- The geographic area (in accordance with the definition they have provided) each Shelter is within.

**Tenderers should not make any other changes to the spreadhsheet. Any other modification may result in**

All figures should be fixed UK pounds. Provision for inflationary adjustment is made in the terms of the Agreement and no attempt should be made to allow for it here.

The financial effects of the tenderer's proposals will appear in Table 4 of the 'Pricing' tab. Tenderers should check this is producing the results they expect, and query with WNC through the approved channels if there appears to be

In the unlikely event that Table 2 on the 'Pricing' tab is not large enough, WNC should be contacted through the approved channels and a revised version will be provided.

Apart from its use in establishing prices and values and therefore in tender evaluation, this spreadsheet will form the basis (with inflationary adjustments) of the sums due on additon, removal, and changes to Shelters, and the annual sum due. The 'Shelters' tab is the 'Shelter Schedule' referred to in the Agreement, and (in line with the Agreement) it will form the basis of the 'List' during the life of the concession contract.





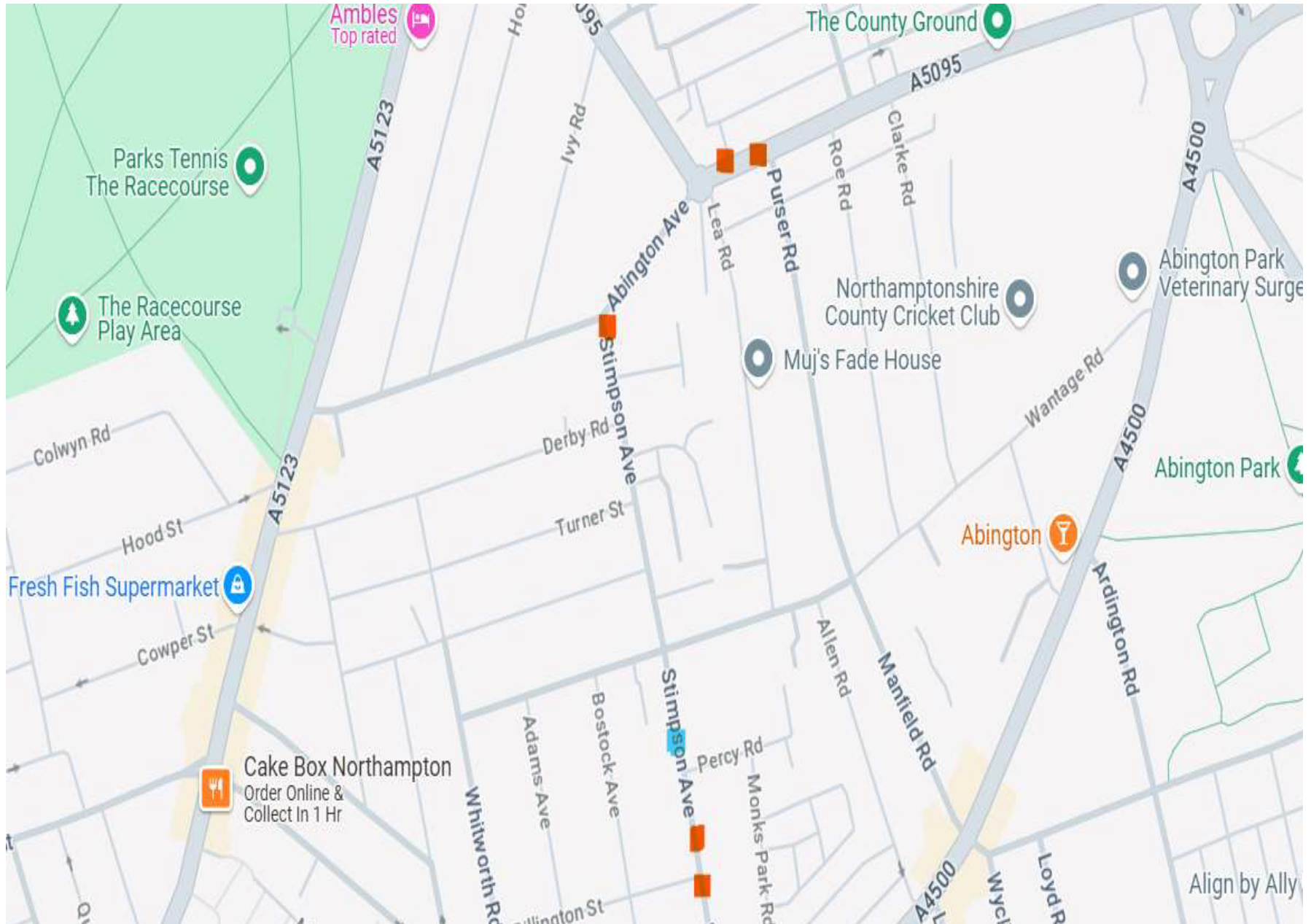


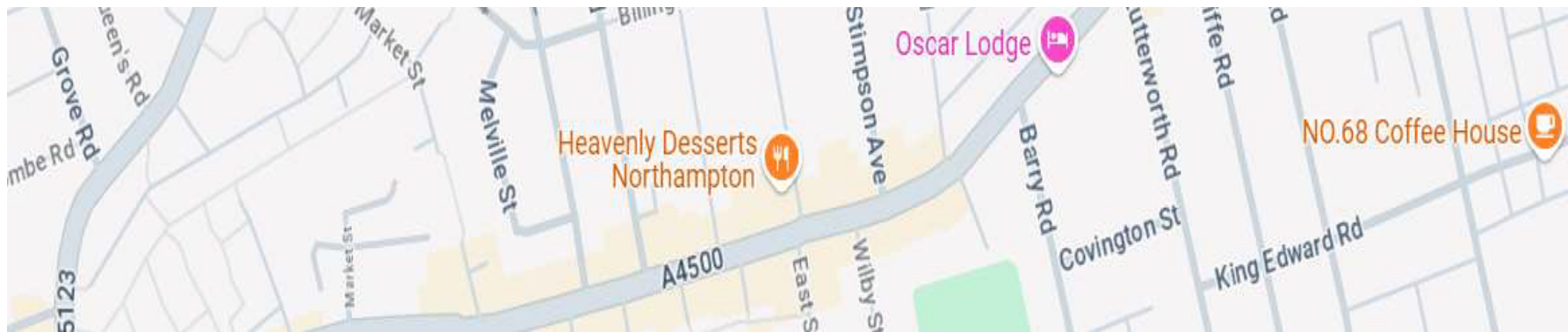




Freemans Way	near to underpass	Quantity	Unknown	substructure/gravel	454046_202230	10%	Type 8	No	N/A	No	Good	N/A	10%	Type 8	No action	Council	Council	Quantity	£10.00	£200.00	£200.00	£0.00	£0.00	£0.00	£0.00
Asby Road	at Cornhillon Rise	Quantity	Unknown	basin/repayment/curbs	457027_200179	10%	Type 8	No	N/A	Yes	Poor/good	N/A	10%	Type 8	Reinforce with stone base	Council	Contractor	Quantity	£75.00	£150.00	£200.00	£900.00	£900.00	£900.00	£900.00
London Road	at Chantry Hospital	Quantity	Unknown	ground/curbs/kerbs	457108_201808	10%	Type 8	No	N/A	No	Good/good	N/A	10%	Type 8	Reinforce with stone base	Council	Contractor	Quantity	£100.00	£200.00	£200.00	£900.00	£900.00	£900.00	£900.00
Percentage Council																100%	20%								

Plan for Shelters to be removed





## **'Red line' notes - changes for ISDP**

It is not possible to 'red line' in Excel so these notes outline the substantive changes made from the previous versions of this spreadsheet.

### Pricing tab

1. Addition of the facility for a block income to be attributed to the Council. This responds to comments during dialogue and is explained further on the relevant tab.
2. Addition of a facility for prospective Operator to indicate whether it proposes to retain (in general) the Shelters currently owned by AdShell. See notes on the 'Intro' tab relating to this.
3. Corresponding changes to Tables 4A and 4B (so that both the block income and the total of income from individual Shelters flows though into calculating the Fee).

### Shelters tab

4. Modification of columns X and Y and addition of columns Z and AA, so that the different implications of whether or not the AdShell Shelters are assumed to be removed are all calculated. Note that whilst this has made this tab even larger, the information required of prospective Operators has not changed. As before, it is only columns S and T which need to be completed (to identify which Types of Shelters the prospective Operator proposes, and the geographical area each falls within (as per the prospective Operator's proposed system of geographical classification)).

### Intro

5. Addition of instructions (on rows 11 and 12) for dealing with items 1 and 2 above.



Project Name:	Bus Shelter Advertising Concession and Maintenance Services
Project Ref:	WNC00000512
Subject:	Tender Clarification Register
Project Stage:	ISFT

In-Tend Clarification Query Ref	Correspondence/Question	Date Received	WNC Clarification Response	WNC Response Date	Formal Amendment Required to Document	Date Document Amended
1	Please confirm that a power supply is not required at each site, and that bidders can choose to power using alternative measures, e.g. solar to ensure power is available for courtesy lighting	24.06.2025	Mains power is not required at all sites only sites where solar is not an option	03.07.2025		
2	Please provide a specification for any aerial the Council wishes to attach to a roof.	24.06.2025	An aerial is no longer required at each location, only where they already exist.	03.07.2025		
3	Please confirm that the minimum shelter sizes can be a. Overall width: 1,500mm. b. Overall height: 2,355mm. c. Overall length: 2,500mm. This will ensure footprint is managed without compromising other requirements	24.06.2025	Agreed. Note there are a small number of specialist shelters at Daventry Bus Station and the Drapery, Northampton.	03.07.2025	Sch 2, 2.4 amended	
4	To ensure passenger comfort and accessibility standards, we propose that in any new shelter, seating should be a minimum requirement as opposed to perches. In narrow or restricted width locations, then perches may be installed.	24.06.2025	The minimum standard will not be amended, but if tenders offer a better standard this would be allowed for in evaluation.	03.07.2025		
5	RTPI provision. We note the Council is considering its future RTPI provision. Please can the Council consider a stretch style RTPI solution to be mounted at the end of the shelter on a bracket as is standard in many authorities. A rear mounted large RTPI will take a whole bay and will mean space will not be available for timetables in a consistent manner across the estate. Positioning a large screen at the end of the shelter should be avoided as this would require the shelter roof height to be raised, driving additional customisation and cost.	24.06.2025	No new provision for large RTPI kit is required, only to accommodate existing RTPI equipment if the relevant Shelters are replaced or modified. Other Shelters will use new e-ink equipment. Over time it is expected many of the existing RTPI displays will also be replaced with e-ink equipment.	03.07.2025		
6	Wi-fi provision in shelters. We would respectfully suggest that the Council does not move forward with this element in the final ITT, on the basis that evidence suggests this creates more anti-social behaviour than benefit.	24.06.2025	Agreed	03.07.2025		
7	Solar cells across the whole roof – please limit this to solar cells required to power courtesy lighting/e-ink RTPIs to avoid unnecessary use of solar cells which will not deliver additional benefit.	24.06.2025	The Specification already does not require the whole 'Available Roof' to be used unless this is necessary for powering the equipment.	03.07.2025		
8	Power supply for RTPIs – this should be the responsibility of the Council and not the operator. Seeking to confirm this is agreed. In the event the operator elects to power a specific location, power may be drawn from RTPI (should be separately metered to establish power costs)	24.06.2025	Agreed. RTPI equipment has (and will have) separate main power supplies where required - although see above regarding e-ink RTPI, which is typically battery powered and therefore does not require a power supply at all.	03.07.2025		
9	Pricing structure – to simplify the income provision, please give the option of a contract rent for bidders to complete as opposed to a full site by site rent analysis.	24.06.2025	This has been provided for in the revised pricing spreadsheet.	03.07.2025		
10	Maintenance costs – please ensure that costs are indexed to allow for wage inflation etc.	24.06.2025	This is the intention and is provided for in the drafting; see the payment mechanism. (This also applies to income to the Council.)	03.07.2025		
11	Refurbishment of type 1 shelters – please can the Council provide a detailed specification for refurbishment given the historical nature of the buildings.	24.06.2025	To follow - this has been requested			
12	Glazing – please allow a mid rail solution to minimise the use of glazing, but also for passenger safety to provide a contrasting band solution for visually impaired.	24.06.2025	Agreed that where a mid rail is in place a further contrasting band will not be required. See revised provisions.	03.07.2025		
13	SLAs – request to consider 90% threshold.	24.06.2025	The KPIS have been amended follow the dialogue sessions.	03.07.2025		
14	Quality questions – please allow the supply of drawings/shelter designs on the Question 3 Design of Shelter shelter question, and increase the word count to 2000 words on Question 4 – Commercial Approach	24.06.2025	Accepted request - see redline document for changes and the In-Tend electronic questionnaire.	03.07.2025		
15	Legal Questions - see attached pdf document - 'legal clarification_ref 15'	24.06.2025	Please see our response within the attached pdf document - 'legal clarification_ref 15'	03.07.2025		



<b>Project Name:</b>	Bus Shelter Advertising Concession and Maintenance Services
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<b>Project Stage:</b>	ISFT

Clarification Ref 15

WNC Response date 03.07.2025

## Legal Questions

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
Definitions	<b>Applicable Laws:</b> means the laws of England and Wales and the European Union and any other laws or regulations, statute, by-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body which apply to the provision of the Services, <u>and are legally binding on the Operator's business.</u>	This current drafting includes non-binding "guidance" and "industry codes", which are often unclear or evolving. The new wording avoids potentially extending the definition of legal compliance beyond conventional boundaries.	Additional wording added to agreement.
Definitions	<u>New Definition:</u>  <u>Working Hours: 08:00 AM to 6:00 PM, Monday through Friday, excluding public and bank holidays</u>	Where notice is given to the Operator to carry out any of the Maintenance Services in Schedule 1, Part 1, the notice must be given within Working Hours.	Additional definition added to agreement (by means of reference to the Working Days definition).
Clause 4	<del>The Authority</del> <u>Either party</u> may, by giving the <del>Supplier</del> <u>other party</u> not less than 12 months' written notice prior to expiry of the Initial Term, request the extension of this agreement in respect of the whole (or part) of the Services and on the same terms mutatis mutandis, for a period of up to five years from the day following expiry of the Initial Term.	We request that the extension obligation be mutual.	Clause updated for clarity but the extension must be requested by WNC with the Operator having the option to agree. In practice this effect is the same as sought.
Clause 7.4	The Authority's position is that:  <ul style="list-style-type: none"> <li>the Shelters are authorised as permitted development under Part 12 Class A of the General</li> </ul>	We have made some minor adjustments to reflect the language under the advertising regime.	Clause updated.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	<p>Permitted Development Order 2015;</p> <ul style="list-style-type: none"> <li>existing advertising on Shelters is permitted either by express <u>advertisement</u> consent or <del>as permitted development</del> <u>by deemed advertisement consent</u> under class 13 or 14 of the Advertising Regulations; and</li> <li>under the Advertising Regulations, carrying advertising on Shelters which did not previously carry advertising, adding illumination to existing advertising locations, or installing digital advertising panels in place of static advertising panels requires (as of the date of this agreement) express <u>planning permission</u> <u>advertisement consent</u>.</li> </ul>		
Clause 7.5	<p>Where there is any conflict or inconsistency between the provisions of Schedule 1 and Schedule 2 and the requirements of a Necessary Consent, then the Authority shall determine at its sole discretion if the Shelter is to be provided despite the inconsistency and will issue the instruction in writing to the Operator, <u>provided always that the Operator may refuse works if in its reasonable opinion delivery or installation would be in breach of any Applicable Law</u>.</p>	<p>This drafting is necessary to clarify that installation will not happen where this would be unlawful.</p>	Clause updated.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
Clause 7.6.5	<p>The Operator acknowledges and confirms that: ...</p> <p>7.6.5 it has entered into this agreement in reliance on its own due diligence, <u>including responses provided by the Authority as part of the diligence process.</u></p>	This amendment is necessary to clarify that the Operator's due diligence also included Q&A processes it placed reliance on.	Clause updated.
Clause 7.9	<p>The Operator shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Operator in accordance with clause 7.8.2 save where such additional costs or adverse effect on performance have been caused by the Operator having been provided with <del>fundamentally</del> <u>materially</u> misleading <u>or incorrect</u> information by or on behalf of the Authority and the Operator could not reasonably have known that the information was incorrect or misleading at the time such information was provided <u>or relied upon</u>. If this exception applies, the Operator shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined between the Parties.</p>	<p>The Operator can only recover costs or be relieved from obligations if the Authority provided fundamentally misleading information and the Operator could not reasonably have known it was wrong. This is a very high bar for relief: excludes most situations where the Operator relied on wrong data in good faith. The amendments are necessary to adjust the clause to a more commercially reasonable standard.</p>	Clause updated.
Clause 8	<p>8. SHELTERS</p> <p>8.1 The Authority shall own and retain ownership of all Shelters which the Authority funds. Any new Shelters funded by the Authority shall be owned by the Authority save for any advertisement panels <u>and advertisement equipment</u> attached.</p> <p>8.2 The Operator shall own and retain ownership of all Shelters which the Operator funds. Any new Shelters funded by the Operator shall be owned by the Operator and <del>irrevocably licenced the</del> <u>Operator hereby grants a non-exclusive, non-transferable, revocable licence to the</u> Authority <u>to use such Shelters solely for the purpose of providing public bus</u></p>	<p>These amendments are necessary to ensure that nothing in this clause shall transfer any ownership interest in the Shelters or any associated intellectual property to the Authority.</p>	Clause updated.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	<u>shelter services while the Operator remains the operator of this concession during the Term. For the avoidance of doubt, the licence granted to the Authority under Clause 8.2 is a licence to use the physical Shelters for the purposes of this agreement only. It does not include any licence or right to use, reproduce, adapt, modify or exploit any Intellectual Property, software, designs, technology, or proprietary systems owned or developed by the Operator (or its licensors) in connection with or embedded within the Shelters</u>		
Clause 10.1	<p>The Operator shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services <u>that come to its attention in the ordinary course of providing the Services, managing its operations, or engaging with industry developments. This obligation shall not require the Operator to undertake proactive research or investigation beyond its usual business practices.</u> - As part of this obligation the Operator shall identify and report to the Authority's Authorised Representative <u>quarterly-annually</u> in each Contract Year on:</p> <p>10.1.1 the emergence of new and evolving relevant technologies which could improve the Services;</p> <p>10.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;</p> <p>10.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of risk; and</p> <p>10.1.4 changes in ways of working that would enable the Services to be delivered at lower costs, higher income, and/or at greater benefits to the Authority,</p>	<p>This language clarifies that this clause does not oblige the Operator to proactively conduct research on behalf of the Authority and reporting does not oblige implementation unless changes are mutually agreed and funded. We have also changed the reporting requirements from quarterly to annually as we think this is a more appropriate interval and prevents such reporting requirements becoming an administrative burden or distraction to the services.</p>	Clause updated.



Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	<u>provided such changes are commercially feasible and operationally viable.</u>		
Clause 10.2	Any potential changes highlighted as a result of the Operator's reporting in accordance with this clause <del>8-10</del> shall be addressed by discussion between the Parties. <u>Implementation of any improvement shall be subject to mutual agreement, including agreement on costs, timelines, commercial impact, and any required contractual variations.</u>	This language clarifies that reporting does not oblige implementation unless changes are mutually agreed and funded.	Clause updated.
Clause 13 Personnel	<p>13.2 The Authority may refuse to grant access to, and remove, any of the Operator's Personnel <u>where it has demonstrable evidence that such personnel have materially breached the Authority's applicable policies previously made known to the Operator, or where there is a substantiated and material security risk. The Authority shall provide the Operator with details of the grounds for any such decision and afford the Operator a reasonable opportunity to address the issue before removal is effected, unless the circumstances reasonably require immediate action.</u> <del>who do not comply with any such policies, or if they otherwise present a security threat.</del></p> <p>13.3 The Operator shall <u>use reasonable endeavours to</u> replace any of the Operator's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Operator's Personnel for any reason, <u>any replacement shall be provided within a reasonable timeframe, taking into account availability and operational requirements, and shall possess the necessary training and skills to perform the relevant Services. The Operator shall not be obliged to remove or replace personnel unless the concerns are substantiated, material, and have not been resolved through reasonable remedial steps.</u> <del>the</del></p>	We propose these amendments to strike a fair and practical balance between the Authority's legitimate need to manage site access and personnel performance, and the Operator's need to manage its workforce in a consistent, legally sound, and operationally sustainable manner.	Clause updated in part. Reasonable endeavours (13.3) not accepted, as the Operator can take these actions.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	<del>Operator shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services</del>		
Clause 16.2	16.2 Nothing in this agreement shall interfere with the rights and responsibilities of the Operator <u>in</u> any Pre-Existing IPR.	Minor typo.	Noted.
Clause 16.3	16.3 In the absence of prior written agreement by the <del>Authority Parties</del> to the contrary, <del>all-only</del> Intellectual Property created by the Operator <del>at the request of the Authority or any employee, agent or subcontractor of the Operator:</del> <del>16.3.1 in the course of performing the Services; or</del> <del>16.3.2 specifically</del> and exclusively for the purpose of performing the Services, shall vest in the Authority on creation.	If all IP created "in the course of performing the Services" were to automatically vest in the Authority, it could unintentionally transfer IP ownership in our core assets which would not be commercially viable or acceptable for us. Instead we wish to amend this clause to clarify that the Authority should own any bespoke IP developed specifically and solely for its use under this agreement.	Clause updated.
Clause 18 – Indemnities	The Operator shall indemnify and keep indemnified the Authority against <del>any third-party claims, proceedings, damages, or losses (including reasonable legal costs) arising directly from all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever:</del>  <del>the Operator's negligence, whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim</del>	We are happy to provide indemnities for high-risk items, but not for general breaches of the agreement that would ordinarily be dealt with by a claim for damages. We consider that the approach proposed be market standard and a fair allocation of risk between the parties.	Clause updated.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	<p><del>is due to the breach of contract, negligence</del>, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its representatives (excluding the Operator or any Sub-Contractor); or</p> <p>arising out of, or in connection with, any advertising placed by the Operator under the Concession <u>which is found to be in breach of applicable law or regulation.</u></p>		
Clause 19.3	<p>19.3 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:</p> <p>19.3.1 fraud or fraudulent misrepresentation;</p> <p>19.3.2 deliberate default of the Operator;</p> <p>19.3.3 death or personal injury caused by its negligence;</p> <p>19.3.4 breach of any obligation as to title implied by statute;</p> <p><del>19.3.5 any action or omission by the Operator not instructed</del></p>	<p>The Operator has deleted limb 19.3.5 as it may unintentionally void the Operator's liability cap in a number of ambiguous scenarios as nearly any default or negligence by the Operator could be argued to fall within this exclusion—even if capped elsewhere in the agreement,</p>	Clause updated.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	<p><del>by, and outside the control of, the Authority ; or</del></p> <p>19.3.6 any other act or omission, liability for which may not be limited under any applicable law.</p>		
NEW Clause 19.6	<p><u>Each party shall promptly notify the other party in writing upon becoming aware of any claim, demand, or circumstance which may give rise to a claim under this Agreement. Such notice shall:</u></p> <p><u>(a) provide reasonable details of the nature and basis of the claim (to the extent known);</u></p> <p><u>(b) include any supporting documentation reasonably available; and</u></p> <p><u>(c) state the amount claimed (if known or estimated).</u></p> <p><u>Failure to notify a claim in accordance with this clause shall not relieve the other party of its liability, except to the extent that such failure materially prejudices the other party's ability to defend or mitigate the claim.</u></p>	<p>Notification of claims is not specifically dealt with in this agreement. Our proposed clause provides greater certainty as to the process.</p>	Clause added.
Clause 24	General	<p>Could you please amend this clause to add in some termination rights for the Operator, including if the Authority is in material breach, not remedied following notice, if it becomes illegal to advertise on the units or if there is a change in law as detailed in new suggested clause 5A such that the contract becomes commercially unviable for the Operator.</p>	New clause 24.2 added providing termination following material breach if not remedied.
Clause 26.3	<p>A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act <del>or, neglect</del> <del>or—negligent</del> failure to take</p>	<p>Failure to take reasonable precautions is a very</p>	Clause updated.



Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	reasonable precautions against the relevant Force Majeure Event.	high and objective standard. Force Majeure events (e.g. extreme weather, pandemics, cyberattacks) are often unpredictable and difficult to fully prepare for. Requiring parties to perfectly anticipate and prevent such events—or lose relief—is commercially inappropriate. To ensure the Force Majeure clause is fair, commercially balanced, and legally robust, we have limited the exclusion to situations where there has been a negligent failure to take reasonable precautions which encourages parties to take reasonable, risk-based precautions, without forcing exhaustive or impractical risk elimination efforts.	
Clause 26.4	The Operator cannot claim relief if the Force Majeure Event is one where a reasonable Operator should have foreseen <u>(including its scale and consequences) such event at the time of entry into this Agreement</u> and provided for the cause in question.	This carve out is a potentially broad and subjective standard, so the added wording clarifies what time period and level of foreseeability is being referred to.	Clause updated.
Clause 26.7	<del>The Authority</del> <u>Either party</u> may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Operator if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than <del>ten</del> <u>Working—Days:three months.</u> <u>However, prior to issuing such notice, the parties shall engage in</u>	The purpose of a Force Majeure clause is to address unforeseeable and uncontrollable events—not to offer a fast-track exit from the agreement. Requiring dialogue before termination ensures	Clause updated.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	<u>good faith discussions with a view to agreeing a mutually acceptable course of action, including any potential variations or mitigations, and shall allow a reasonable period for such discussions to take place.</u>	that termination is a last resort, only considered after the parties have explored all reasonable alternatives, such as temporary variations, mitigations, or rephrasing of obligations.	
Clause 27 of (Prevention of Corruption)	27.1 <del>Neither Party</del> <del>The Operator</del> shall not (directly or indirectly) offer or give, or agree to give, to any employee, agent, servant or representative of the <del>other Party</del> <del>Authority</del> or any other public body or person employed by or on behalf of the <del>other Party</del> <del>Authority</del> , any gift or consideration or financial or other advantage of any kind which could act as an inducement or reward for: 27.1.1 doing, refraining from doing, or for having done or refrained from doing, any act in relation to this agreement or any other contract with the <del>other Party</del> <del>Authority</del> or any other public body or person employed by or on behalf of the <del>other Party</del> <del>Authority</del> (including its award to the Provider, execution or any rights and obligations contained in it); 27.1.2 showing or refraining from showing favour or disfavour to any person in relation to any such contract; or 27.1.3 improperly performing a relevant function or activity.	• Please make the prevention of Corruption clauses mutual.	Clause updated.
Clause 28	If the Operator or its staff commits fraud in relation to this agreement or any other contract with the Authority, the Authority may terminate this agreement by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination, including any loss of Charge income and the cost reasonably incurred by the Authority of making other arrangements for the supply	Given this clause contains a termination right, we believe its appropriate to specify that appropriate dialogue and an opportunity to remedy the situation occurs first.	Clause updated including further wording.

Concession Agreement Section/Clause No.	Amendment to wording or point of discussion	Rationale	WNC Response
	of the Services for the remainder of the term of this agreement had it not been terminated. <u>The Authority shall not terminate under this clause without first giving the Operator reasonable opportunity to respond and demonstrate corrective action unless fraud is admitted or proven</u>		
Clause 29	Subject to clause 29.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Operator sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority <u>(such consent not to be unreasonably withheld or denied).</u>	Given this fetter on our abilities, it is appropriate to clarify that consent cannot be unreasonably withheld or denied.	Clause updated but with delay, not denied.
Schedule 1 Specifications	Where notice is given to the Operator to carry out any of the Maintenance Services in Schedule 1, Part 1, please specify that any reference to hours means a reference to within Working Hours.	As above, in the definitions section where a new definition of Working Hours has been provided.	Updated where required.
Schedule 1 Specifications	1.1.3 Graffiti and posters and fly posting is to be removed whenever the Shelters are cleaned and also within 24 hours of the Operator being given notice of the presence of any of these  1.1.10 Any offensive graffiti or fly posting must be removed within five hours of notification during Working Hours to the Operator.	Inconsistent whether removal of Graffiti needs to take place after 5 hours or 24. The time period should only start to run during Working Hours.	There is a distinction between 1.1.3 and 1.1.10 (now moved). Offensive graffiti to be dealt with more urgently as set out in the agreement.  Carve out working hours for 1.1.10. 24 hours response.
Schedule- Specification	2.1.6  Percentage of time the customer response facilities are available and responded to - 99%	It is not clear what is meant by this clause. Please provide clarification.	Cross reference added.

## Bus Shelter Advertising Concession and Maintenance Services

Our Ref: WNC 00000512

The Council greatly appreciates the input from all tenderers in the clarification questions and dialogue sessions. It has found them useful in helping shape the final contract package to maximise the benefit to our residents and both parties. Changes made include:

- Various amendments to the liability and related provisions in the contract, responding to suggestions made by tenderers.
- Adding a specification for works to the two historic tram shelters (this will follow shortly).
- Allowing for termination for Authority breach (not that the Council expects to breach the contract).
- Clarifying the requirements for Shelters, including:
  - Adding special Types for The Drapery, Northampton and for Daventry Bus Station.
  - Removing some requirements, including for Wi-Fi and some RTP1 requirements.
  - Adjusting size requirements to enable more standard units to be used.
  - Removing the provisions which somewhat vaguely called for larger Shelters where there was high demand and which regulated sizes when Shelters are replaced.

Mark up versions are provided, but in the case of the Shelter and pricing spreadsheet this is not practical. Therefore, a tab called 'Red line' has been added which explains the changes which have been made to that document.

### **Documents issued at ISFT stage and checklist:**

Please note, the 'Redline' documents are for information only and identify the changes made to the tender documents that were published at PSQ stage. Qualified Bidders are not required to complete the Redline documents as part of their ISFT submission.

Document Name	Purpose
1. Appendix A Descriptive Document Bus Shelters	Information
2. Redline Appendix A Descriptive Document Bus Shelters	Information – Redline PSQ to ISFT
3. Agreement Bus shelter advertising concession and maintenance – draft v 5 clean	Information
4. Redline Agreement Bus shelter advertising concession maintenance – draft v 5	Information – Redline PSQ to ISFT

5. Invitation to Submit Final Tender	Information
6. Redline Invitation to Submit Final Tender	Information – Redline PSQ to ISFT
7. Redline Appendix B Part 2 ISFT QQ	Information – Redline PSQ to ISFT (do not complete this as part of your Quality response – the electronic version must be submitted)
8. Shelter requirements and pricing ISFT	Qualified Bidders to complete and return in their ISFT Submission Response (within the relevant placeholder)
9. Clarification Log Bus Shelters ISFT Stage and Legal Clarification_ref 15	Information
10. ISFT document list (this document)	Information

<b>Electronic Questionnaires - to be completed on the In-Tend portal:</b>
Response to ISFT Quality Questions
WNC Declarations – Bus Shelter Advertising and Maintenance_512-ISFT Stage



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Project Ref:	WNC00000512
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7	Solar cells across the whole roof – please limit this to solar cells required to power courtesy lighting/e-ink RTPIs to avoid unnecessary use of solar cells which will not deliver additional benefit.	24.06.2025	The Specification already does not require the whole 'Available Roof' to be used unless this is necessary for powering the equipment.	03.07.2025		
8	Power supply for RTPIs – this should be the responsibility of the Council and not the operator. Seeking to confirm this is agreed. In the event the operator elects to power a specific location, power may be drawn from RTPI (could be separately metered to establish power costs)	24.06.2025	Agreed. RTPI equipment has (and will have) separate main power supplies where required - although see above regarding e-ink RTPI, which is typically battery powered and therefore does not require a power supply at all.	03.07.2025		
9	Pricing structure – to simplify the income provision, please give the option of a contract rent for bidders to complete as opposed to a full site by site rent analysis.	24.06.2025	This has been provided for in the revised pricing spreadsheet.	03.07.2025		
10	Maintenance costs – please ensure that costs are indexed to allow for wage inflation etc.	24.06.2025	This is the intention and is provided for in the drafting, see the payment mechanism. (This also applies to income to the Council.)	03.07.2025		
11	Refurbishment of type 1 shelters – please can the Council provide a detailed specification for refurbishment given the historical nature of the buildings.	24.06.2025	Please see the attached as summary of refurbishment and ongoing maintenance requirements for the Tram Stops. We have requested further information from our Archives Team on the tram stop colour for the metal work regarding the two historical tram stops based in Northampton town, if this information becomes available, it will be provided as a clarification	14.07.2025		
12	Glazing – please allow a mid rail solution to minimise the use of glazing, but also for passenger safety to provide a contrasting band solution for visually impaired.	24.06.2025	Agreed that where a mid rail is in place a further contrasting band will not be required. See revised provisions.	03.07.2025		
13	SLAs – request to consider 90% threshold.	24.06.2025	The KPIS have been amended follow the dialogue sessions.	03.07.2025		
14	Quality questions – please allow the supply of drawings/shelter designs on the Question 3 - Design of Shelter shelter question, and increase the word count to 2000 words on Question 4 – Commercial Approach	24.06.2025	Accepted request - see redline document for changes and the In-Tend electronic questionnaire.	03.07.2025		
15	Legal Questions - see attached pdf document - 'legal clarification_ref 15'	24.06.2025	Please see our response within the attached pdf document - 'legal clarification_ref 15'	03.07.2025		
16	We would like to request a 2 week extension to the current tender deadline. We have a number of key staff on annual leave and an extension will ensure we are able to provide the best possible response to the Council.	07.07.2025	An extension of 2 weeks has been granted. The deadline for the ISFT response will close at 12 noon on Friday, 15 August 2025. The deadline for ISFT clarifications has been extended and will close at 16:00 on Friday, 1st August 2025. Please see attached amended ISFT and Redline documents.	10.07.2025	05 Invitation to Submit Final Tender_v2 10.07.25	10.07.25

17	<p>08 Shelter Requirements and Pricing ISFT</p> <p>The Council has made additions to the schedule. With reference to the following points:</p> <p>Intro</p> <p>Indicate if they plan to retain (where not required to replace for other reasons) the Shelters currently owned by Adshell. The default value is "No"; this should only be changed to "Yes" if the prospective Operator has an agreement in place which would allow it to retain those Shelters.</p> <p>Dealing with Adshell Shelters</p> <p>Tenderers should mark here whether the existing Clear Channel Shelters will be retained (subject to the requirements for refurbishment or replacement) or not. This will draw the correct numbers from the 'Shelters' tab to reflect either their complete replacement or only replacement/upgrading where needed.</p> <p>Clear Channel Shelters to be retained?</p> <p>These points are also referred to in document 04 Agreement Bus Shelter advertising Concession and maintenance Draft 5 under Schedule 2 11.2 and 11.3.</p> <p>We understands that the current operator Clear Channel (now Bauer Media) will remove all shelters at the end of the contract if unsuccessful. It will not leave or sell their existing estate to any other operator. They have currently not agreed any sale or gift of estate to the Council prior to the tender release.</p> <p>How are these new additions commercially fair to any other bidder who will have no option other than to replace the shelters removed by the incumbent?</p>	08.07.2025	<p>We understand the concern which lies behind the point, but do not think the arrangement introduces any unfairness between bidders. It is a simple fact that Clear Channel has Shelters on the ground, covering some of the sites where Shelters are now wanted. The arrangements in the spreadsheet are designed to provide clear and unequivocal pricing responses. All tenderers are required to deliver the full fleet of Shelters in a condition meeting the Specification, and (assuming this is the option the Council chooses once it has the tenders) all Shelters will then be paid for and owned by the Council. Whilst Clear Channel may have an advantage (if it was to tender) through having some Shelters it can merely upgrade, other bidders may have other advantages, for example in the way their supply chains work or in the quality of their offering.</p> <p>The Council encourages all bidders to put their best bids forward, and will treat them all fairly, in accordance with the arrangements set out. It has no preference between bidders</p>	10.07.2025		
18	<p>BMO Question -</p> <p>I. In the pricing schedule – 'Shelters' sheet, where shelters are assigned "no action", does this require a sub-type? Or, can these cells remain blank?</p> <p>II. In the Pricing Schedule – 'Pricing' sheet, please clarify what is involved in the "cost to maintain"? Does this figure represent an estimate of the average cost for maintenance (i.e. scheduled and unscheduled repairs, replacement of damaged parts, equipment testing, etc.) undertaken in a calendar year? Or, does this refer to all cleaning and maintenance activities undertaken during a calendar year (i.e. as described in 'Part 1 - Maintenance Services' of the Specification)?</p>	18.07.2025	<p>I. No. In any Event Sub-Types are optional (provided the tenderer has provided details for each Type). In this case a tenderer may wish to propose a Sub-Type; if it does, the implication would be that it would make the Shelter in question conform to that Sub-Type (for example, by modifying it or replacing it). If a tenderer made such a proposal and was successful, it would be bound to deliver it.</p> <p>II. This represents the total amount (each year) the tenderer would be attributing to the Council for each Shelter of that type in accordance with its obligations under the contract. Presumably, it would include all the costs mentioned, although how a tenderer calculates the figure is a matter for it.</p>	21.07.2025		
19	Urgent faults require immediate temporary action within 5 hours of notification (per Specification, "leav[ing] a Non-urgent fault in place for the time being"). Non-urgent faults must be resolved within 5 working days of report. Does this mean that once temporary action has been taken to make an Urgent fault safe, the operator will have 5 days to resolve the fault?	21.07.2025	Any urgent issues that are addressed within 5 hours, even with a temporary fix, the full repair timeframe can be 5 days. However, a "temporary" action must leave the shelter in a safe and usable state until fully resolved and any temporary action must not remain in place for longer than 5 days.	22.07.2025		
20	Pricing Schedule - in the Pricing Schedule 'Shelters' sheet, should the 8 'Draperies' shelters be classified as 'Type 6 S/L', and if so, could we have some guidance as to which shelters are short/long? Similarly, which shelters are located at Daventry Bus Station? Should they be classified as 'Type 7'?	22.07.2025	<p>All shelters to have at least a minimum internal depth of 1360mm and at least a minimum height of 2350mm</p> <p>The Long shelters are Bays 15,16,18,19</p> <p>The Short Shelters are Bays 17,21,22 and The Bay near Santander Bank that does not have a flag number</p> <p>Yes, Daventry should be classified as Type 7</p>	23.07.25		
21	Pricing Schedule - With reference our previous clarification concerning the types of shelters required at the Drapery and Daventry Bus Station, could the Council advise on the correct types of specific shelters (as they appear in the Pricing Schedule) so they can be amended in the Pricing Schedule? Or, could the Council provide an updated Pricing Schedule which accurately identifies the types of shelters required at the Drapery and at Daventry Bus Station?	23.07.2025	At present we would not expect anything other than a like for like replacement in respect of layout, cantilever fully enclosed, partially enclosed etc based on the materials proposed by a bidder the only caveat for Drapery and New Street would be the colour which will be agreed with the Council once the successful bidder is able to advise of options	23.07.2025		
22	Due to the complexity of the Pricing Schedule and in order to provide a satisfactory response we are requesting a one-week extension to the clarifications deadline to ensure the Council can provide guidance in the event of unforeseen complications.	01.08.2025	An extension for ISFT clarifications has been granted. The deadline for clarifications will close at 16:00 on Friday, 8th August 2025. Please make the request as soon as possible to minimise any delay to the process.	04.08.2025		
Clarifications - Pricing (ref 23 - 28):						
23	Our assumption in pricing table is 'maintain' includes cost to clean as per the SLA. Should this also include damage repair costs e.g. broken glass, structure damage etc? If so, will WNC provide component spares for WNC owned shelters?	07.08.2025	The Operator is to do everything required in the Agreement to and for the Shelters as described in Part 1 of Schedule 1 (Maintenance Services). This includes cleaning etc. No, WNC will not be providing any parts etc.: all of these must be provided by the Operator at its cost. Therefore this item should allow for that.	12.08.2025		
24	Types 6 and 7 are not detailed on the shelter tab, please update and re-issue this so we are able to supply correct information in the submission for each specific location	07.08.2025	Types 6 (actually 6S and 6L) and 7 are included on the costing tab. Please check the version issued with the ISFT documents.	12.08.2025		
25	Can we confirm that shelter cost to be inputted includes supply, install, power and ancillary costs (e.g. traffic management)?	07.08.2025	It includes all costs the Operator incurs. See in particular Section 3 (Shelter Provision Specification) of Schedule 2.	12.08.2025		
26	Where the Council has requested the removal of a shelter can you confirm this includes make good costs? Our removal cost will assume hot roll tarmac. Other specific make good requirements would be costed appropriately on case-by-case basis	07.08.2025	Yes, it includes making good. See Schedule 2, sections 4 (Shelter removal specification) and 5 (Reinstatement requirements). These must be complied with (unless in a specific case the Council chooses, at its discretion, to agree an alternative reinstatement).	12.08.2025		

27	What is the purpose of 2b – there is £0 cost to you as the operator will fund – we would respectfully request that this is removed as there will be no requirement to fill this in.	07.08.2025	It is each tender's choice about how to complete this table, but if it is £0 in each case then the effect would be the Council could require as many Shelters, including changes between Types of Shelter, as it likes with no up-front cost, even for installation.	12.08.2025	
28	Table 3 income to the Council may differ depending on who funds the shelters – the current format does not allow for this – please can we ask for this to be updated to account for 2 options to allow this?	07.08.2025	The gross income to the Council would be (and is required to be) identical irrespective of ownership of the Shelters. The cost would be reflected in the cost items (Table 1 and Tables 2A and 2B).	12.08.2025	
29	Clause 7.4.3: Please note, our suggested update to clause 7.4.3 was not carried across in full. Could the authority please change the words express "planning permission" to say express "advertisement consent"	30.07.2025	In this case the intention was that 'planning permission' was understood in the generic sense of any permission required under the Planning Acts or regulations made under them, and thus included advertisement consent within its scope. This was to avoid cumbersome wording along the lines of "planning permission and/or advertising consent as applicable" and applies throughout clause 7. However, on reflection it would be useful to clarify this so we will, prior to signature, add an interpretative provision which makes this clear.	08.08.25	
30	Legal Question - Clause 8: Please note, the wording "irrevocably licensed" at the start of this clause should be deleted (otherwise the sentence does not make sense).	30.07.2025	Clause 8 - Noted. This will be corrected prior to signature. The license should be irrevocable during the life of the Agreement – for the obvious reason that if they cannot be used as bus shelters there would be no point in the Agreement existing.	08.08.25	
31	<p>In response to Q24 – we cannot see a revised pricing schedule on the portal. In the tab titled "Shelter" there are no Type 6 or 7 shelters, yet these are listed as an option within the "Pricing" tab. Should there be?</p> <p>The council's response to questions 27 and 28 raises major questions around our interpretation of the tender requirements and has resulted in an additional set of questions that we urgently need answering ahead of the upcoming tender deadline.</p> <p>Our interpretation is that table 2a captures the cost of shelter changes where ownership rests with the council. Put another way, the council purchases the shelters from us at the prices stipulated in the table.</p> <p>Under table 2b, ownership rests with the operator. We have interpreted this, correctly or incorrectly, as the operator funds the replacement of the shelter - we have to pay for the shelter to own it. In this scenario there is no cost to the council – hence the rationale for our question 27s (zero cost to the council) and 28 (additional income options as an operator funding shelters would reduce the overall income they would be prepared to share with the council).</p> <p>Please can you confirm: a) The council expects to pay for shelters under each scenario – 2a and 2b; b) Under option 2b the operator will own the shelters even though the council purchases these – why and how? c) Why would the council expect there to be a difference in prices submitted for 2a and 2b if the council pays for both?</p>	13.08.2025	<p>We are slightly puzzled by the confusion here, but will try again to clarify accordingly - if the Operator owns the Shelters, the Operator still incurs a cost to manufacture or purchase them, and also to install them. Whilst of course the Council would be happy if this cost was not passed on, it seems unlikely an Operator, or its shareholders, would act pro bono. Therefore, in this case, it is expected the cost to the Operator will be passed through to the Council under either, or (more likely) a combination of, the annual charges in Table 1 and the one-off costs in Table 2B. The most logical split would appear to be that the installation costs are covered in Table 2B – as they only arise once – and the cost of the Shelter (effectively, a form of 'rent') is covered in Table 1. But this is a choice for Tenderers and the Council is not seeking to direct a particular approach, only explain why the options are provided as they are.</p> <p>It should also be noted that Table 2B (and also Table 2A) contains cases where a Shelter is removed and the site reinstated. In those cases, Table 1 would clearly not provide a mechanism to cover the Operator's costs in so doing.</p> <p>With this context the replies to the specific questions asked are as follows:</p> <p>a) Where the Council is, in effect, purchasing the Shelters the Council would own them outright, including after the contract ended. It would be expected it paid for them accordingly. Where the Operator owns the Shelters, as noted above, they still have a cost/value and it is expected the Operator would seek to pass that on to the Council in some form. For example, if a Shelter had a useful economic life of X years, and the contract length was Y years, it would normally be expected the cost/value of the Shelter would (in one form or another) pass through to the Council at the fraction Y/X. Additionally, as noted above, there are costs of installation.</p> <p>b) Under the Operator-ownership model, the Council would expect to pay for the relevant fraction of the lifetime Shelter value (as above) and the installation costs.</p> <p>c) Because the Council is purchasing outright ownership, and installation, in the case of Table 2A, and only for the use during the life of the contract, and installation, under Table 2B.</p> <p>These arrangements seem to have caused confusion, which is regrettable. They are simply intended to (a) allow tenderers to make the best financial offers they can, without having to place a risk premium on things the Council controls (such as adding or removing Shelters during the life of the contract), and (b) allowing the Council to maximise revenue income from the contract, at the cost of inputting capital. Since the Council can generally borrow more cheaply than private sector operators, this is likely to be financially beneficial (although the final decision will depend on the contents of tenders received).</p>	13.08.25	





