

DATED 20 January 2026

**CUMBERLAND COUNCIL**

and

**QTS GROUP LTD**

**FRAMEWORK AGREEMENT**

for the procurement of

**Capital General Building Works and Civil Engineering Works**

**for Cumberland Council**

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**THIS DEED of AGREEMENT** is dated:

**BETWEEN:**

- (1) **CUMBERLAND COUNCIL** whose principal place of business is Cumbria House, 117 Botchergate, Carlisle CA1 1RD (the "**Council**") and
- (2) **QTS GROUP LTD** incorporated and registered in England and Wales with company number: SC346116 whose registered address is Rench Farm, Drumclog, Strathaven, South Lanarkshire, ML10 6QJ (the "**Supplier**")

(each a "**Party**" and together the "**Parties**")

**BACKGROUND**

- (A) On 19 November 2025, the Council advertised the establishment of this framework agreement under the Procurement Act 2023 by placing a contract notice on the UK digital platform, notice identifier 2025/S 000-075384, inviting prospective suppliers for the provision of Works to itself.
- (B) Consequently the Council has set up this framework for the delivery of capital general building and civil engineering Works within the administrative area of the Council for the period set out in clause 4 of this Framework Agreement (the "**Framework**").
- (C) The Framework is divided into 3 lots. Lot 1 is for capital general building Works, Lot 2 is for civil engineering Works and Lot 3 is for combined general building and civil engineering Works.
- (D) This Framework Agreement sets out the procedure for ordering Works and the obligations of the Supplier under this Framework Agreement.
- (E) On the basis of the Supplier's response to the advertisement and subsequent tender process, the Council selected and appointed the Supplier to the capital works framework.
- (F) It is the Parties' intention that Framework Users have no obligation to place Orders for Works with the Supplier under this Framework Agreement or at all.

**1 DEFINITIONS**

In this Framework Agreement the following words shall mean:-

**Achieved KPIs** means in respect of any Works in any measurement period, the standard of performance actually achieved by the Supplier in the provision of those Works in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 5);

**Applicable Law** means:

- any law, statute, statutory provisions or subordinate legislation; and
- to the extent they are legally binding, any other enactment, order, regulation, regulatory policy, guidance, industry code, applicable judgement or a relevant court of law or a decision of a tribunal or Regulatory Body, which applies to the provision of the Works and/or a party's obligations hereunder and as may be amended, modified, extended, varied, superseded, replaced, substituted or consolidated from time to time;

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Authorised Officer</b>                    | means an officer of the Framework User who has requisite authority to commit the Framework User to the expenditure in the Order;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Business Day</b>                          | means a day (other than a Saturday, Sunday or public holiday in England);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Call Off terms and conditions</b>         | means the stand alone contract awarded by a Framework User to a Supplier for the provision of Works under either Lot 1, 2 or 3 substantially in the form as set out under Schedule 3;                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Commencement Date</b>                     | means 5 January 2026;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Confidential Information</b>              | means all information whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the Parties), where the information is identified as confidential at the time of disclosure or which ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure including all Personal Data within the meaning of the Data Protection Legislation;                                                                                  |
| <b>Connected Person</b>                      | has the meaning given in paragraph 45, Part 3, Schedule 6 of Procurement Act 2023;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Control</b>                               | has the meaning (in relation to the Supplier) set out in section 450 of the Corporation Tax Act 2010;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Council's Representative</b>              | means the person specified as such in Clause 32 of this Framework Agreement or any replacement as notified from time to time;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Data Protection Legislation</b>           | means all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 (and regulations made thereunder), the UK General Data Protection Regulation the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) as incorporated into UK law by Section 3 of the European Union (Withdrawal) Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit Regulations 2019 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; |
| <b>Debarment List</b>                        | means the list of suppliers referred to in section 62 of the Procurement Act 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Direct Loss</b>                           | means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Loss;                                                                                                                                                                                                                                                                                                                 |
| <b>Disclosure Legislation</b>                | is defined in clause 16.1;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Environmental Information Regulations</b> | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Event of Insolvency</b>                   | means, in relation to a party, that party suffering or being subject to any of the following events: <ul style="list-style-type: none"> <li>(i) the party, being a company, is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (without any</li> </ul>                                                                                                                                                                                                                                                                                                               |

requirement to prove a matter stated therein to a Court) or any meeting is convened for the purpose of considering a resolution for, or any application or petition is presented or any other step is taken for the purposes of making an administration order against it, or for the appointment of an administrator over it (including, without limitation, the filing of a Notice of Intention to Appoint an Administrator), or for the winding-up or dissolution of it (otherwise than in the course of a solvent reorganisation or restructuring);

- (ii) the party, being an individual, partnership or firm, has entered into any composition or arrangement with its creditors, has a bankruptcy order made against it, has a creditors' petition for its bankruptcy presented to the Court, applies for a debt relief order under section 251A of the Insolvency Act 1986, has been made subject to an application for an interim order under section 253 of the Insolvency Act 1986, has an interim receiver of its property appointed under section 286 of the Insolvency Act 1986, or dies;
- (iii) the party has a receiver, manager or trustee appointed over, or any encumbrancer takes possession of, the whole or any part of its business or assets;
- (iv) the party has taken any steps are taken with a view to proposing or entering into any composition, compromise, voluntary arrangement, scheme of arrangement or any analogous procedure involving the party and its creditors or any class of them;
- (v) the party suspends or ceases to carry on business or any material part of its business or materially alters the nature of its business as conducted at the date of this Framework Agreement; or
- (vi) an event occurs which is analogous to any of the foregoing events anywhere in the world;

**FOIA**

means the Freedom of Information Act 2000 and any subordinate legislation made under this 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**

means any cause preventing either party from performing any or all of its obligations under this Framework Agreement and/or any Order which arises from or is attributable to any hindrance, causes or circumstances beyond the reasonable control of the party including, without limitation, to the extent that these are beyond such control:-

- a) acts of God;
- b) nuclear accident;
- c) war or terrorist activity;
- d) riot, civil commotion;
- e) fire or flood;
- f) epidemic or pandemic, or
- g) any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition but excluding shortage of personnel or equipment or industrial action;

**Framework User**

means any person who uses the Framework to purchase Works from the Supplier and who is the Council;

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Good Industry Practice</b>       | <p>means:</p> <ul style="list-style-type: none"> <li>- the exercise of the degree of skill, care, diligence prudence and foresight which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances; and</li> <li>- using standards, practices, methods and procedures in the performance of obligations and responsibilities under this Framework Agreement and/or any Order, which are of a quality which could reasonably be expected of a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;</li> </ul>                                  |
| <b>Indirect Loss</b>                | means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Information</b>                  | means "information" as defined in section 84 of the FOA or "environmental information" as defined in regulation 2(1) of the Environmental Information Regulations (as appropriate);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Intellectual Property Rights</b> | means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| <b>KPI</b>                          | means the key performance indicators set out at Schedule 5;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Losses</b>                       | means Direct Loss and Indirect Loss;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Lot</b>                          | means a lot of this Framework Agreement as set out in clause 3;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Normal Business Hours</b>        | means 08:00 to 16:00 on a Business Day;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Order</b>                        | means an order substantially in the form set out in Schedule 2 by a Framework User for provision of Works by the Supplier made in accordance with the procedure set out in Schedule 1;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>PA2023</b>                       | means the Procurement Act 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Personal Data</b>                | shall have the meaning set out in the Data Protection Legislation;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Premises</b>                     | means the premises or location where the Works are to be delivered;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Prohibited Act</b>               | <p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</li> <li>b) induce that person to perform improperly a relevant function or activity; or</li> <li>c) reward that person for improper performance of a relevant function or activity;</li> <li>d) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;</li> </ul>                  |

- e) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Council; or
- f) defrauding, attempting to defraud or conspiring to defraud the Council;.

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Regulatory Bodies</b>         | means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Council and " <b>Regulatory Body</b> " shall be construed accordingly; |
| <b>Request for Information</b>   | means any request for information made to the Supplier by a third party pursuant to the Disclosure Legislation;                                                                                                                                                                                                                                                                                    |
| <b>Scope</b>                     | means the scope of the Works as set out in Schedule 6;                                                                                                                                                                                                                                                                                                                                             |
| <b>Specification</b>             | means the specification of Works requirements identified in an Order;                                                                                                                                                                                                                                                                                                                              |
| <b>Sub-Contract</b>              | any contract or agreement (or proposed contract or agreement) between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Works from that third party;                                                                                                                                                                                      |
| <b>Sub-Contractor</b>            | the contractors or Suppliers that enter into a Sub-Contract with the Supplier;                                                                                                                                                                                                                                                                                                                     |
| <b>Supplier Lot</b>              | means the Lot the Supplier is appointed to as identified in clause 3;                                                                                                                                                                                                                                                                                                                              |
| <b>Supplier Personnel</b>        | means any person or persons used by the Supplier in the supply of the Works from time to time and for the avoidance of doubt includes employees, consultants, agency personnel, sub contractors, sub contractor personnel, directors, or volunteers;                                                                                                                                               |
| <b>Supplier's Representative</b> | means the person specified as such in Clause 32 or any replacement as notified from time to time;                                                                                                                                                                                                                                                                                                  |
| <b>Target KPI</b>                | means the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule 5                                                                                                                                                                                                                                                                |
| <b>Term</b>                      | means the duration of the Framework Agreement as set out in clause 4.1;                                                                                                                                                                                                                                                                                                                            |
| <b>Transparency Information</b>  | any information or notice, permitted or required to be published by the PA2023, any regulations published under the PA2023, and any Procurement Policy Notes (PPNs) pursuant to the PA2023 which shall be determined by the Council in its absolute discretion;                                                                                                                                    |
| <b>Works</b>                     | means the carrying out and completion of capital programme works commissioned under this Framework Agreement.                                                                                                                                                                                                                                                                                      |

## **2 Interpretation**

- 2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 2.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.3 A reference to a party shall be to a party to this Framework Agreement and the expression parties shall be construed accordingly.
- 2.4 Words in the singular shall include the plural and vice versa.
- 2.5 A reference to one gender shall include a reference to the other genders.
- 2.6 A reference to any statute, statutory provision, subordinate legislation, code or guideline ("**legislation**") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.
- 2.7 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.8 Subject to clause 32.5 a reference to writing or written includes e-mail.
- 2.9 Headings are included in this for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.
- 2.10 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.11 The Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules.
- 2.12 References in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered.
- 2.13 References in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered.
- 2.14 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 2.15 Any obligation on a party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done.
- 2.16 References to the Council shall be deemed to include its successors in title and assigns.
- 2.17 If any party to this Framework Agreement is a partnership then provision of this Framework Agreement will bind each and every partner jointly and severally.
- 2.18 Any period regulating a notice period that the Council is required or empowered to give under this Framework Agreement shall be a minimum notice period and in the event a longer period of notice is given by the Council this shall not invalidate the notice.

### **3 Structure and Lots**

#### **3.1 This Framework Agreement consists of the following Parts:**

Main Body: Framework Terms and Conditions

Schedule 1 Ordering Procedure

Schedule 2 Order Form

Schedule 3 Call Off terms and conditions with amendments and Z clauses

Schedule 4 Price Schedule

Schedule 5 KPI's

Schedule 6 Scope

Schedule 7 Supplier's Tender Response

- 3.2 This Framework Agreement is divided into three Lots. Lot 1 is for general building commissions such as maintenance, improvements, extensions and new build for a range of property requirements. Typical work procured under Lot 1 may include upgrading and refurbishment, new build and extensions and capital maintenance such as repairs and replacement of roofs, windows, and mechanical and electrical works.
- 3.3 Lot 2 is for civil engineering type commissions that may include aspects of maintenance, repair and development of highways assets. Typical work procured under Lot 2 may include structures and bridges, repair and maintenance of highways structures including retaining walls and bridges, improvements to town centre environments, footpaths, drainage, flood prevention schemes, slope stabilisation measures, improvements to signage and improvements to junctions, access roads, car parks and distributor routes to improve safety and or facilitate development.
- 3.4 Lot 3 is for a combination of Lot 1 and Lot 2 works as described under clauses 3.2 and 3.3.
- 3.5 The Framework User will identify the Lot and specific form of Call Off terms and conditions (under Schedule 3) to be awarded when advertising for the provision of Works.
- 3.6 The Lot limits are indicative only. A Framework User may choose to procure schemes with a lower construction cost than £50k or a higher construction cost than £5m through the Framework at its discretion. For schemes with an estimated construction cost of between £350k and £450k the Council may choose to procure the works through either the high value or low value lots or to use both lots at its discretion.
- 3.7 The Supplier is appointed to Lot 2.

### **4 Duration of Framework**

This Framework Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with this Framework Agreement or by operation of Law, shall remain in force for a period of 4 years (the "Term") and terminate automatically at the end of the Term.

### **5 Appointment of Supplier**

- 5.1 This Framework Agreement governs the relationship between the Council and the Supplier in respect of the operation of the Framework.
- 5.2 The Council appoints the Supplier to the Framework for the Term and the Supplier shall be eligible to be considered for the award of Orders for Works identified in the Supplier's Lot during the Term.
- 5.3 Not used.

- 5.4 Framework Users may at their absolute discretion and from time to time order Works from the Supplier in accordance with the procedure set out in Schedule 1 during the Term.
- 5.5 The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted for Works and that the Council is at all times entitled at its utmost discretion to enter into other contracts and agreements with other suppliers for the provision of any or all works which are the same as or similar to the Works.
- 5.6 The Supplier acknowledges and agrees that there is no obligation for the Council or Other Contracting Body to purchase any Works from the Supplier during the Term.
- 5.7 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Works to be ordered by them or the timing of any order pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 5.8 The Council shall not in any circumstances be liable to the Supplier or any Other Contracting Body for payment or otherwise in respect of any Works provided by the Supplier to any Other Contracting Body.

## **6 Council's Requirements**

- 6.1 The Supplier shall ensure that it complies with and adheres to any statements and or offers made in respect of works delivery including but not limited to social value, sustainability, environmental impact and responsiveness made by the Supplier in its tender response as included at Schedule 7.
- 6.2 The Council shall notify the Supplier of any material change to the Council's requirements under this Framework Agreement.
- 6.3 The Supplier shall use all reasonable endeavours to accommodate any changes to the needs and requirements of the Council.
- 6.4 The Supplier shall exercise all reasonable skill care and diligence in the discharge of its obligations under this Framework Agreement and any Orders it is awarded.

## **7 Scope and Ordering Procedure**

- 7.1 If a Framework User decides to source Works through this Framework Agreement it will order Works in accordance with Schedule 1.
- 7.2 Mini competitions for Orders shall be subject to the KPIs as set out in more detail in Schedule 4.
- 7.3 For the avoidance of doubt each Order issued by a Framework User and accepted by the Supplier shall constitute a standalone contract subject to the terms and conditions of this Framework Agreement, the Call Off terms and conditions and any additional requirements within the Order.

## **8. Framework Monitoring and Management**

- 8.1 The Council may require biannual meetings throughout the duration of the Framework with the Supplier and all other suppliers on the Framework. Where the Council decides such a meeting is required the Supplier shall attend. The meetings will focus on what matters the Council thinks are appropriate and will include the delivery and ongoing

development of the Council's capital works programme and the development of strong working relationships based on the Framework.

- 8.2 The Council may require biannual one to one meetings with the Supplier. Where the Council decides such meetings are required the Supplier shall attend. The meeting will focus on strategic issues but may include operational matters and biannual framework meetings focused on programmes, best practice and lessons learned.
- 8.3 The Supplier shall ensure its representatives at the above meetings are of sufficient seniority and shall include the Supplier's framework manager and as well as a senior manager and or company director. What constitute sufficient seniority shall be determined by the Council.
- 8.4 The Council will operate a contract management system in accordance with the PA2023 to manage all the contracts issued under this Framework Agreement. The Supplier shall comply with the requirements of the contract management system and provide information to the Council as required using the contract management system.
- 8.5 The Council also operates an asset management system (currently the Concerto Management system) to provide a comprehensive database of its property portfolio. The Supplier shall provide to the Council detailed as-built information and records in a suitable format upon the completion of any Order/Works to any individual property to allow the Council to update its records. The Supplier shall comply with the requirements of the asset management system and provide information to the Council as required using the asset management system.

## **9 Price**

- 9.1 The Price for any Works ordered under this Framework Agreement shall be as stated in the corresponding Call Off terms and conditions.
- 9.2 The Supplier shall not increase the costs and percentages set out in Schedule 4 but may during competition for Works decrease the percentages.
- 9.3 The Supplier acknowledges and accepts that the Council may at any time demand to see the evidence that the prices given in the mini competition are based on the costs and percentages as set out in Schedule 4.

## **10 Audit**

- 10.1 The Supplier shall keep and maintain for the duration of this Framework Agreement, and for a period of twelve (12) years after completion of Works pursuant to any Order, records to the satisfaction of the Council of:-
  - 10.1.1 all payments made by the Council in relation to the Works; and
  - 10.1.2 the Works provided pursuant to any Order entered into under this Framework Agreement;
- 10.2 The Supplier shall, on written request from the Council, afford the Council or its duly authorised representatives all reasonable assistance and such access to those records, the Supplier premises, Supplier Personnel as may be reasonably required by the Council in relation to the Framework Agreement and/or any Order in order to verify the Supplier's compliance with its obligations under this Framework Agreement and/or any Order or to fulfil any legally enforceable request by a Regulatory Body.
- 10.3 The Council and its duly authorised representatives shall have the right to take copies

- of any invoices (including information used to prepare the invoices), purchase orders and other records relating to the provision of the provision of or required in connection with this clause 10 and the Supplier shall provide the information free of charge.
- 10.4 The Council shall be entitled to inspect factory production control test results of the Supplier at any time and the Supplier shall use all reasonable endeavours to ensure that the Council is able to inspect on the date specified in its notice, which shall not be less than two Business Days from the date of the notice.

## **11 Due Diligence and Supplier's Warranty**

### **11.1 The Supplier acknowledges and confirms that:**

- a) the Council has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Framework Agreement;
- b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 11.1a);
- c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this Framework Agreement (including without limitation the suitability of Council Premises); and
- d) it has entered into this Framework Agreement in reliance on its own due diligence.

### **11.2 Save as provided in the Framework Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.**

### **11.3 The Supplier:**

- (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any request to participate (if applicable), are true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Framework Agreement;
- (b) shall promptly notify the Council in writing if it becomes aware during the performance of any Works under this Framework Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Works or meet any Target KPIs;
- (c) shall promptly notify the Council in writing if, during the Term:
  - i) the Supplier, the Supplier's Connected Persons or any Sub-Contractor is placed on the Debarment List;
  - ii) a mandatory exclusion ground or discretionary exclusion ground under the PA2023 applies to the Supplier, the Supplier's Connected Persons or any Sub-Contractor; and
  - iii) shall promptly notify the Council in writing within 2 days of any changes to the Supplier's Connected Persons together with information regarding the identity of the new Connected Persons.

### **11.4 The Supplier shall not be entitled to recover any additional costs or charges from the Council arising as a result of, nor be relieved from any of its obligations under this Framework Agreement or the Call Off terms and conditions awarded under it on the ground of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 11.3./**

## **12 Supplier Environmental Obligations**

12.1 The Supplier shall ensure that:

- (a) its operations comply with all applicable environmental law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
- (b) it will endeavour to use packaging materials that comply with applicable environmental law, and
- (c) it will minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Works taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by Supplier Personnel, emissions from Supplier offices and equipment.

12.2 The Council may audit the Supplier's compliance with this clause 12.

## **13 Prevention Of Bribery**

13.1 The Supplier:

- (a) shall not, and shall procure that the Supplier Personnel and any Sub-Contractors and Sub-Contractors' personnel shall not, in connection with this Framework Agreement and any Order made under it, commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Framework Agreement.

13.2 The Supplier shall:

- (a) if requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within 10 Business Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 13 by the Supplier and all persons associated with it or other persons who are supplying Works in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

13.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Supplier Personnel or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

- 13.4 If any breach of clause 13.1 is suspected or known, the Supplier must notify the Council promptly.
- 13.5 If the Supplier notifies the Council that it suspects or knows that there may be a breach of clause 13, the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents.
- 13.6 The Council may terminate this Framework Agreement by written notice with immediate effect, and without incurring any liability to the Supplier, if the Supplier, the Suppliers Personnel or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 13.1.
- 13.7 Any notice of termination under clause 13.6 must specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
  - (c) the date on which this Framework Agreement will terminate.
- 13.8 Despite clause 28, any dispute relating to:
- (a) the interpretation of this clause 13; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 13.9 Any termination under this clause 13 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

#### **14 Confidentiality**

- 14.1 Subject to clauses 14.2, 14.5, 15 and 16 of this Framework Agreement, both Parties shall procure that all Confidential Information disclosed by one to the other in accordance with the terms of this Framework Agreement shall be kept secret and confidential and shall not be used for any purposes other than those required or permitted by this Framework Agreement and shall not be disclosed to any third party except insofar as this may be required by law or for the proper operation of this Framework Agreement and in accordance with its terms.
- 14.2 The obligations of confidentiality shall not apply to any Confidential Information which:
- 14.2.1 is or becomes publicly known (other than by an act or omission of the receiving party);
  - 14.2.2 was in the other party's lawful possession prior to the disclosure;
  - 14.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 14.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence; and/or

- 14.2.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body (including without limitation pursuant to the provisions of clauses 15 or 16 of this Framework Agreement).
- 14.3 A party may disclose the other party's Confidential Information to those of its staff who need to know such Confidential Information for the purpose of performing its obligations under the Framework Agreement or any Order, provided that:
- 14.3.1 it informs such staff of the confidential nature of the Confidential Information prior to disclosure; and
- 14.3.2 at all times, it is responsible for such staff's compliance with the confidentiality obligations set out in this clause 14.
- 14.4 The provisions of this clause 14 shall continue to apply after termination or expiry of this Agreement.
- 14.5 Nothing in this Framework Agreement shall prevent the Council from disclosing the Supplier's Confidential Information:
- 14.5.1 to any other department, office or agency of the Government, or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to this Framework Agreement;
- 14.5.2 to any consultant, supplier or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
- 14.5.3 for the purpose of the examination and certification of the Council's accounts; or
- 14.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 14.6 Nothing in this clause 14 shall prevent either party from using any techniques, ideas or know-how gained during the performance of any Order in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

## **15 Publishing of the Framework Agreement**

- 15.1 The Parties acknowledge that the content of this Framework Agreement and any Order made under it is not, generally speaking, Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the content of this Framework Agreement or any Order is exempt from disclosure in accordance with the provisions of the PA2023 and Disclosure Legislation.
- 15.2 Notwithstanding any other term of this Framework Agreement or of any Order, the Supplier hereby gives its consent for the Council to publish this Framework Agreement and/or any Order in its entirety, including from time to time agreed changes to this Framework Agreement or any Order, to the general public.
- 15.3 The Council may consult with the Supplier to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.
- 15.4 The Supplier shall assist and cooperate with the Council to enable the Council to publish this Framework Agreement and/or any Order.

## **16 Freedom of Information, Environmental Information & Transparency**

- 16.1 The Supplier acknowledges that the Council is subject to the requirements of the PA2023, FOIA and the Environmental Information Regulations (together the "**Disclosure Legislation**") and shall assist and cooperate with the Council to enable the Council to comply with these information disclosure requirements.
- 16.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 16.2.1 transfer all Requests for Information to the Council as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
  - 16.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Business Days (or such other period as the Council may specify) of the Council requesting that Information; and
  - 16.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council 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 (as the case may be).
- 16.3 The Council shall be responsible for determining at its absolute discretion and not withstanding any other provision in this Framework Agreement or any Order or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations. In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 16.4 The Supplier acknowledges that the Council may be obliged under the Disclosure Legislation to disclose Information:
- 16.4.1 without consulting with the Supplier, or
  - 16.4.2 following consultation with the Supplier and having taken its views into account.
- 16.5 The Supplier shall ensure that all Information produced in relation to the provision of the Works is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 16.6 The Parties acknowledge that Transparency Information is not Confidential Information.
- 16.7 Notwithstanding any other provision of this Framework Agreement or any Order under it, the Supplier hereby gives its consent for the Council publishing any Transparency Information.
- 16.8 At no additional cost, the Supplier shall assist and co-operate with the Council to enable the Council to publish the Transparency Information and comply with the Council's obligations under the PA2023, including providing information that is relevant to or arises from the provision of the Works on request by the Council at no additional cost to the Council.
- 16.9 The Supplier acknowledges that any information it provides to the Council under this clause 16 may otherwise be disclosable in law, including under the PA2023, FOIA or the EIRs. The Council will be responsible for determining in its absolute discretion the information to be disclosed.

## **17 Data Protection**

- 17.1 The Parties shall comply with their obligations under the Data Protection Legislation. For the avoidance of doubt, neither party will be processing any persona data under this Framework Agreement.
- 17.2 Where Data Protection Legislation imposes an obligation on either party to include provisions in this Framework Agreement relating to the sharing or processing of Personal Data, the Parties shall enter into a relevant data sharing or data processing agreement in accordance with the Council's standard terms.
- 17.3 Notwithstanding the general obligation in clause 17.1, the Supplier shall ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.
- 17.4 If the Supplier breaches this clause 17 or does not comply with any obligations under this clause 17 the Council shall be entitled to terminate this Framework Agreement by written notice with immediate effect and without incurring any liability to the Supplier.

## **18 Warranties and Exclusions**

- 18.1 Each party warrants, represents and undertakes that:
  - 18.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement and each Order entered into under it; and
  - 18.1.2 this Framework Agreement is executed by a duly authorised representative of that party.
- 18.2 The Supplier warrants, represents and undertakes that, for the duration of this Framework Agreement and each Order entered into under it:
  - 18.2.1 it shall perform, and procure the performance by Supplier Personnel, of its obligations under this Framework Agreement and any Order in compliance with all Applicable Laws;
  - 18.2.2 without prejudice to the generality of clause 18.2.1, it shall not, and shall procure that Supplier Personnel do not, unlawfully discriminate within the meaning and scope of any Applicable Laws relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment;
  - 18.2.3 the provision of the Works (as applicable), and the use of them by the Council, shall not infringe the Intellectual Property Rights or other proprietary rights of any third party;
  - 18.2.4 it shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Framework Agreement and any Order, and shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;
  - 18.2.5 it has, and will continue to hold, all approvals, consents, licences, concessions, certificates and statutory agreements required from any competent authority or third party necessary to perform its obligations under this Framework Agreement and any Order;
  - 18.2.6 there are and shall be no actions, suits or proceedings or regulatory investigations pending or, to the Supplier's knowledge, threatened against or

affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Framework Agreement and any Order;

- 18.2.7 it shall discharge its obligations under this Framework Agreement and each Order using Supplier Personnel of required skill, experience and qualifications; and
  - 18.2.8 it shall, and shall procure that Supplier Personnel, discharge the obligations under this Framework Agreement and any Order with all due skill, care and diligence including in accordance with Good Industry Practice.
- 18.3 The Supplier warrants, represents and undertakes that:
- 18.3.1 in entering into this Framework Agreement it has not committed any Prohibited Act;
  - 18.3.2 as at the Commencement Date, all information, statements and representations contained in the tender for this are to the best of its knowledge and belief true, accurate and not misleading save as may have been specifically disclosed in writing to the Council before the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading; and
  - 18.3.3 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement or any Order.
- 18.4 The Council's rights under this Framework Agreement and any Order are in addition to the statutory conditions implied in favour of the Council by the Sale of Goods Act 1979, the Supply of Goods Act 1982 and any other applicable statute in force from time to time.
- 18.5 Save as provided in this Framework Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and all such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

### **Exclusions**

- 18.6 The Supplier shall notify the Council as soon as reasonably practicable if:
- i. the Supplier considers that an exclusion ground within the PA2023 and any associated regulations applies to the Supplier, including where the Supplier is put on the Debarment List or becomes an excluded or excludable supplier by virtue of any associated persons or subcontractors where information relating to such was provided under section 28 of the PA2023; and/or
  - ii. there are any changes to the Supplier's associated persons within the meaning of the PA2023.
- 18.7 If the Supplier notifies the Council in accordance with clause 18.6 i. then the Supplier must promptly provide any information the Council reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.
- 18.8 If the Supplier notifies the Council in accordance with clause 18.6 ii. above then the Supplier must promptly provide any information requested by the Council in relation to

the change to the Supplier's associated persons, including any information set out in the Procurement Regulations 2024.

## **19 Indemnities**

19.1 The Supplier shall indemnify on demand, and hold harmless the Council against any and all Losses suffered or incurred as a result of or in connection with:

- 19.1.1 damage to real or personal property, including to any Premises (including where necessary all costs of replacement or reinstatement) and any loss of use of any property attributable to an act or omission of the Supplier and/or the Supplier Personnel;
- 19.1.2 death of or personal injury to any person attributable to an act or omission of the Supplier and/or the Supplier Personnel;
- 19.1.3 any breach or negligent performance by the Supplier of this Framework Agreement and or any Order;
- 19.1.4 any damage to or loss, corruption or unlawful or unauthorised disclosure of Data (as defined under the Data Protection Legislation) arising from any negligent act or omission of the Supplier and/or the Supplier Personnel;
- 19.1.5 any fine or penalty imposed on the Council by a Regulatory Body as a result of an act or omission of the Supplier and/or the Supplier Personnel; and
- 19.1.6 the enforcement of this Framework Agreement and or any Order against the Supplier.

## **20 Limitation of Liability**

20.1 Neither party limits its liability:

- 20.1.1 for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
- 20.1.2 for fraud, fraudulent misrepresentation, dishonesty, gross negligence, wilful default or any deliberate act or omission by a party, its employees, agents or Sub-Contractors; or
- 20.1.3 breach of any obligation as to title implied by statute (including without limitation section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods Act 1982);

20.2 Subject to 20.1, the Council shall not be liable to the Supplier for:

- 20.3.1 any indirect, special or consequential loss or damage; or
- 20.3.2 any loss of profits, business opportunities, revenue or damage to goodwill.

20.3 Subject to clauses 18.1, and 20.1, the total aggregate liability of the Council under this Framework Agreement or any Order in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with it, shall in no event exceed the total charges payable to the Supplier under this Framework.

20.4 Subject to clauses 18.1 and 20.1, the total aggregate liability of the Supplier under this Framework Agreement or any Order in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in

connection with it shall in no event exceed an aggregate sum of thirty million pounds (£30,000,000).

## **21 Insurance**

- 21.1 The Supplier shall take out and maintain adequate insurance with a reputable insurer to cover the liabilities of the Supplier arising under or in connection with this Framework Agreement and including all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property (including without limitation the Premises) which may result from the fault or negligence of the Supplier in carrying out or purporting to carry out its obligations under or in connection with this Framework Agreement.
- 21.2 On the written request of the Council, the Supplier shall provide the Council with evidence that the insurance policies satisfying the requirements of 21.1 are in place.
- 21.3 The Supplier shall effect and maintain the following insurances for the duration of this Framework Agreement, or such levels as set out in the Order, in relation to the performance of this Framework Agreement:-
- 21.3.1 public liability insurance with a minimum limit of indemnity of ten million pounds (£10,000,000); and
  - 21.3.2 employers' liability insurance with a minimum limit of indemnity of ten million pounds (£10,000,000).
  - 21.3.3 professional services liability insurance with a minimum limit of indemnity of five million pounds (£5,000,000)
- 21.4 The Supplier shall, for the duration of this Framework Agreement and for a period of one year after completion of the Works pursuant to any Order:
- 21.4.1 administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for the Council set out in this clause 21;
  - 21.4.2 do nothing to invalidate any insurance policy or to prejudice the Council's entitlement thereunder; and
  - 21.4.3 procure that the terms of the insurance policies are not altered in such a way as to diminish the benefit of the insurance policies for the Council which are provided as at the commencement of this Framework Agreement.

## **22 Termination**

- 22.1 Either Party shall be entitled to terminate the Framework Agreement (without prejudice to its other rights and remedies) immediately (or following such notice period as it sees fit), by giving written notice to the other party if:
- 22.1.1 the other party commits a material breach and/or persistent repeated breaches of any term of the Framework Agreement or an individual Order and, if such breach or breaches is or are remediable, fails to remedy such breach(es) within a period of fourteen (14) days after being notified in writing to do so; or
  - 22.1.2 the other party is subject to an Event of Insolvency.
- 22.2 The Council shall be entitled to terminate the Framework Agreement (without prejudice to its other rights and remedies) immediately (or following such notice period as it sees fit), by giving written notice to the Supplier if:

- 22.2.1 a persistent failure of the Supplier to carry out the Works in any Order or comply with this Framework Agreement or any Order;
  - 22.2.2 where any Framework User terminates an Order awarded to the Supplier under this Framework Agreement as a consequence of default by the Supplier;
  - 22.2.3 where the Supplier Sub-Contracts the Framework Agreement in whole or in part without the Council's prior written consent;
  - 22.2.4 where the Framework Agreement is novated or any part is assigned to a third party without the Council's prior written consent;
  - 22.2.5 where the Supplier in the Council's opinion (acting reasonably) has made a serious misrepresentation to the Council in the Tender and or during the Term;
  - 22.2.6 if the Supplier or any of the Supplier Personnel is guilty of any gross misconduct affecting the business of the Council;
  - 22.2.7 if the Supplier or any of the Supplier Personnel is convicted of any criminal offence (other than an offence under any road traffic legislation for which a fine or non-custodial penalty is imposed);
  - 22.2.8 if the Supplier or any of the Supplier Personnel is guilty of any fraud or dishonesty or acts in any manner which, in the opinion of the Council brings, or is likely to bring, the Supplier or the Council into disrepute or is materially adverse to the interests of the Council;
  - 22.2.9 breach of clause 24 by the Supplier; or
  - 22.2.10 where the breach of any clause in this Framework Agreement explicitly states it gives rise to a right to terminate.
- 22.3 For the purposes of clause 22.1.1 what is persistent shall be determined by the Council's reasonable opinion.
- 22.4 The Council shall be entitled to terminate the Framework Agreement and any Order(s) immediately by notice in writing to the Supplier if the Supplier undergoes a change of Control and the Council reasonably determines that such change of Control is likely to adversely impact upon the ability of the Supplier to discharge its obligations under this Framework Agreement and/or any Order and/or the change of Control may impact on the commercial interests of the Council.
- 22.5 The Supplier shall notify the Council immediately promptly if the Supplier undergoes a Change of Control. The Council may terminate the Framework Agreement by giving notice in writing of not less than thirty (30) days to the Supplier with immediate effect within six Months of:
- a) being notified that a Change of Control has occurred; or
  - b) where no notification has been made, the date that the Council becomes aware of the Change of Control;
- but shall not be permitted to terminate where a written approval was granted before the Change of Control.
- 22.6 Either party shall have the right to terminate this Framework Agreement at any time by giving a minimum of ninety days written notice to the other party.

- 22.7 For the avoidance of doubt the termination of the Framework Agreement shall not operate to terminate any Order. For the avoidance of doubt Orders shall remain in force unless and until they end or are terminated in accordance with their own terms and conditions.
- 22.8 The Council may give the Supplier written notice of its intention to terminate the Supplier's obligation to Provide the works if it considers that a termination ground listed in section 78(2) of the PA2023 applies.
- 22.9 A notice of an intention to terminate under clause 22.8 must:
- (a) set out which termination ground the Council considers applies pursuant to section 78(2) of the PA2023 together with the Council's reasons for deciding to terminate on this basis;
  - (b) invite the Supplier to make representations to the Council about the existence of the termination ground and the Council's decision to terminate;
  - (c) specify the means by which, and the time by which, such representations must be made; and
  - (d) insofar as it states the Council's intention to terminate by reference to the status of a Sub-Contractor under section 78(2)(b) or 78(2)(c) of the PA2023, specify a time by which the Supplier may terminate the Sub-Contract and, if necessary, appoint an alternative Sub-Contractor.
- 22.10 On the expiry of time for the Supplier to make representations under clause 22.9(c), if, after considering any representations, the Council is satisfied that the termination ground applies, it may terminate the Framework Agreement and any Call Off terms and conditions with immediate effect by giving final written notice to the Supplier.
- 22.11 The Council may terminate the Supplier's obligation to Provide the works if:
- i) the Supplier has failed to provide notification under clause 18.6 i) as soon as reasonably practicable after the Supplier becoming aware that an exclusion ground within the PA2023 and any associated regulations does or may apply to the Supplier;
  - ii) the Supplier has failed to provide notification under clause 18.6 ii) as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's "associated persons" within the meaning of the PA2023; and/or
  - iii) any notification or information provided by the Supplier under clause 18.6, 18.7 and/or 18.8 is incomplete, inaccurate or misleading.
- 22.12 Clause 22.11 is without prejudice to the Council's rights to terminate the Supplier's obligations to Provide the works in accordance with clauses 22. 8 and 22.11 which shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against such losses or costs which the Council may suffer as a result of any such termination.

## **23 Consequences of termination**

- 23.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under it until the date of its expiry or termination or such other date as required under this clause 23.

- 23.2 The expiry or earlier termination of this Framework Agreement shall not automatically terminate any Orders that are in existence at the time of such expiry or earlier termination. Notwithstanding the service of a notice to terminate it, the Supplier shall continue to fulfil its obligations under any undelivered Order until the termination of the Order.
- 23.3 On expiry or termination of this Framework Agreement each party shall deliver to the other party all documents and materials containing the other party's Confidential Information and/or Intellectual Property Rights or any other data or information disclosed or supplied by the other party under or in connection with this Framework Agreement and erase the same from its computer systems (to the extent possible) or, at the other party's written request and option, destroy them and provide evidence of their destruction to the other party;
- 23.4 Any provision which expressly or by implication is intended to survive or come into force on or after the termination or expiry of the Framework Agreement shall remain in full force and effect.
- 23.5 For the avoidance of doubt where an Order continues beyond the termination or expiry of the Framework Agreement any provision in the Framework Agreement which is either expressed to or by implication is intended to apply to an Order shall survive until the Order is terminated.
- 23.6 Where the Framework Agreement and or an Order is terminated due to a breach of this Framework Agreement and or Order by the Supplier, the Council shall be entitled to recover from the Supplier;
- 23.6.1 additional operational and administrative costs and expenses arising from the Supplier's default;
  - 23.6.2 wasted expenditure or charges rendered unnecessary and incurred by the Council arising from the Supplier's default;
  - 23.6.3 any cost of procuring and implementing replacement works from an alternative supplier in the event of the Supplier's default; and or
  - 23.6.4 any fines, expenses or other losses incurred by the Council and arising from a breach by the Supplier of any Applicable Laws.
- 23.7 Prior to and following the expiry or termination (for whatever reason) of this Framework Agreement in whole or the termination of any Order, the Supplier shall, and shall procure that the Supplier Personnel shall co-operate in any tender process conducted by the Council for the purposes of selecting any replacement supplier(s) and provide any advice, assistance, information or documentation reasonably required by the Council to effect a full and orderly handover of responsibility under this Framework Agreement to the Council and/or any replacement supplier.
- 23.8 Subject to clause 20, in the event of termination of the Framework Agreement by the Council neither the Council nor any other Framework User shall have liability to the Supplier for any Direct Loss or Indirect Loss suffered by the Supplier caused by such termination.

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

## **24 Equality and Diversity**

- 24.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age, marital status, pregnancy or maternity, gender reassignment or otherwise).
- 24.2 The Supplier shall take all reasonable steps to ensure Supplier Personnel and Sub-Contractors to the Supplier do not unlawfully discriminate within the meaning and scope of any law enactment order or regulations relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age, marital status, pregnancy or maternity, gender reassignment or otherwise).
- 24.3 In performing its obligations under the Framework Agreement, the Supplier shall:
- (a) comply with all applicable equality laws, statutes, regulations and codes from time to time in force including but not limited to the Equality Act 2010;
  - (b) not engage in any activity, practice or conduct that is prohibited by the Equality Act 2010
  - (c) include in contracts with its direct Sub-Contractors and suppliers provisions which are at least as onerous as those set out in this clause 24;
  - (d) notify the Council as soon as it becomes aware of any actual or suspected breach of the Equality Act 2010; and
  - (e) maintain a complete set of records to trace the supply chain of all Works provided to the Council in connection with this Framework Agreement; and permit the Council and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause.

## **25 Modern Slavery**

- 25.1 In performing its obligations under the Framework Agreement, the Supplier, Supplier Personnel and its Sub-Contractors shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - (c) include in contracts with its direct Sub-Contractors and suppliers provisions which are at least as onerous as those set out in this clause 25;
  - (d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement; and
  - (e) maintain a complete set of records to trace the supply chain of all Works provided to the Council in connection with this Framework Agreement; and permit the Council and its third party representatives to inspect the Supplier's premises,

records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause.

- 25.2 The Supplier represents and warrants that at the date of this Framework Agreement it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## **26 Health and Safety**

- 26.1 The Supplier shall make available an up-to-date and maintained copy of their health and safety manual related to this Framework Agreement at all times during the period of the Framework Agreement. This shall include all generic risk assessments, method statements and safe working practices appropriate for the most common operations carried out under the framework, and any other appropriate health, safety or welfare information including proactive inspections and audits for safety management systems.
- 26.2 The Supplier shall comply with all current legislation regarding health and safety. All Suppliers shall maintain working conditions that ensure the health and safety of all persons at all sites, comply with the requirements of Approved Code of Practice or industry best guidance, which are applicable to the work being undertaken, and ensure that all employees and Sub-Contractors comply with this requirement.
- 26.3 The Construction (Design and Management) Regulations 2015 (CDM) apply to all works within the framework. The Supplier shall submit a specific construction phase plan (CPP) for any works they win under this Framework Agreement which must be completed before work starts. Upon completion of the works the Supplier shall complete, and submit to the Framework User (who will be the Client under the CDM Regulations unless otherwise notified) who commissioned the works, a health and safety file for the completed works. The health and safety file shall, as a minimum, include the requirements of the CDM Regulations Approved Code of Practice. The Framework User may add or remove items for inclusion in the health and safety file. The Framework User will inform the successful supplier at the pre-start meeting what additional items are to be included in the health and safety file and what may be omitted.
- 26.4 The Supplier shall carry out regular (at least weekly) health, safety and environmental site inspections throughout the contract period of any Works. Results from all site inspections should be copied to the work package project manager. The Council will from time to time carry out its own site inspections and will agree the outcomes and any actions with the Supplier's site manager.
- 26.5 When delivering any works under the framework the Supplier must comply with the Council's Contractor Health and Safety Code of Practice (attached as Appendix 1) or any subsequent versions
- 26.6 The Supplier shall report to the Framework User's Health and Safety department all accidents, incidents (including all those reportable to the relevant enforcing authority under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) and near misses that occur to any employees, Sub-Contractors, agents or members of the public as a result of carrying out works commissioned under this Framework Agreement. Accidents or incidents involving injury are to be reported to the Council without delay, allowing an opportunity to visit the site as soon as possible. Records of the incident shall include the following:
- where and when accident/injury occurred;
  - general site conditions (day/night time, what traffic management in use, etc);
  - type of works being undertaken;
  - details of injury or incident (e.g. property damage);
  - the type of accident that occurred; and
  - the investigation and actions to prevent reoccurrence.

- 26.7 Further details of all accidents and incidents including root cause analysis investigation and preventative action plan shall be supplied no later than 28 days after the accident. The Supplier shall also afford the Framework User access to any investigation outcomes, including actions being taken by the Supplier as a consequence. Any accidents deemed to have involved the Framework User in any way shall be duly notified.
- 26.8 For works commissioned under this Framework Agreement, the successful supplier is the Principal Contractor under the CDM Regulations unless otherwise notified in writing by the Framework User. The Principal Designer will be identified in the specific scheme information for each Order. For Design & Build works the successful supplier is both Principal Contractor and Principal Designer unless otherwise notified in writing by the Framework User.
- 26.9 Not used.
- 26.10 Not used.
- 26.11 Failure to comply with clause 26 will give the Council the right to terminate this Framework Agreement.
- 26.12 Notwithstanding clause 26.11, where the Supplier commits any serious breach of their requirements in relation to Health & Safety or repeatedly commits minor breaches of such requirements under this Framework Agreement and or any Order, the Council reserves the right suspend the Supplier's participation on the framework. Where the Council exercise its right to suspend the Supplier the Council shall notify the Supplier in writing the reasons for the suspension and the duration of it or actions that need to take place to end the suspension. The effect of any suspension shall be the Supplier is not eligible to be receive expressions of interest or bid for any Works under Schedule 1.

## **27 Working at the Council Premises**

- 27.1 Where the Framework Agreement and/or any Order requires or allows the Supplier or any of the Supplier Personnel to access Council Premises the Supplier shall comply (and shall ensure that all Supplier Personnel comply) with the site rules.
- 27.2 The Supplier agrees and acknowledges that:
- 27.2.1 the Council has not given it any warranty or assurance as to the condition, safety or suitability for any purpose of any Premises and that, to the extent permitted by law, access to and use of such Premises is at the Supplier's risk, and the Supplier shall be responsible for the health and safety of all Supplier Personnel at such Premises;
  - 27.2.2 neither it nor any of the Supplier Personnel shall at any time ever be entitled to exclusive possession of any Premises or any part of them to any other property from time to time owned or occupied by the Council;
  - 27.2.3 the Council may restrict the access of the Supplier and Supplier Personnel to and use of facilities at any Premises which the Council, in its sole discretion, considers sensitive to the business or operations of the Council.
- 27.3 All of the Supplier's property located on the Council's Premises shall remain at the sole risk and responsibility of the Supplier, except that the Council shall be liable for the loss of or damage to any of Supplier's property located on any Premises which is due to the negligent act or omission of the Council.

## **28 Dispute Resolution**

- 28.1 Any disputes or disagreements in relation to this Framework Agreement will be resolved in the following way:

- 28.1.1 by discussion between the representatives named in the notice table in clause 32;
- 28.1.2 if no agreement is reached within ten (10) days of the discussions referred to in clause 28.1.1 the dispute shall be escalated to the relevant Assistant Director for the Council service area ordering the works, or equivalent person nominated by a Framework User (or such other person as is notified to the Supplier by the Council in writing) and a Director or such other representative of the Supplier of comparable rank as is notified to the Council by the Supplier in writing who will discuss the dispute with a view to achieving a resolution of the disagreement;
- 28.1.3 if no agreement is reached within ten (10) days of the discussion referred to in clause 28.1.2 the dispute shall be escalated to the Council's Corporate Director with oversight of Capital works (or such other person as is notified to the Supplier by the Council in writing) and a representative of the Supplier of comparable rank who will discuss the dispute with a view to achieving a resolution of the disagreement.
- 28.2 If no agreement is reached within ten (10) days of the meeting referred to in clause 28.1.3 this dispute mechanism shall be deemed exhausted.

## **29 Assignment and Sub-Contracting**

- 29.1 The Supplier shall not, without the prior written consent of the Council, assign, novate, transfer or deal in any other manner with this Framework Agreement or any Order or any of its rights and obligations under or arising out of this Framework Agreement or any Order
- 29.2 The Supplier shall not Sub-Contract or delegate in any manner any or all of its obligations under any Order to any third party without the prior written consent of the Council.
- 29.3 For the avoidance of doubt, the Council shall not consent to any proposed Sub-Contract if the Sub-Contractor (or any Connected Person of the Sub-Contractor) is on the Debarment List.
- 29.4 In the event that the Supplier enters into any Sub-Contract in connection with an Order under this Framework Agreement it shall:
- (a) remain responsible to the Council for the performance of its obligations under the Framework Agreement and be responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own;
  - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Framework Agreement and shall procure that the Sub-Contractor complies with such terms; and
  - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 29.5 The Council may require the Supplier to terminate a Sub-Contract where the acts or omission of the relevant Sub-Contractor have given rise to the Council's right to terminate pursuant to clause 22.1 or if there is a change of control of a Sub-Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) or the Sub-Contractor suffers an Event of Insolvency.

- 29.6 The Council reserves the right to require the Supplier to advertise all Sub-Contract opportunities arising from or in connection with the provision of the Works above a minimum threshold of £30,000 and provide such information relating to the same as requested by the Council.
- 29.7 The Council shall be entitled to novate or transfer (and the Supplier shall be deemed to consent to any such novation or transfer) the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council. Where the Council exercises its right under this clause the Supplier shall if required by the Council take all action and enter into all documentation required to enable the novation or transfer to take place.
- 29.8 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing obligations under this Framework Agreement, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a period not exceeding 30 days from receipt of a valid invoice. A person who is not a party to this Framework Agreement may enforce this clause.

### **30 Force Majeure**

- 30.1 Notwithstanding anything else contained in this Framework Agreement, neither party shall be liable to the other for any loss arising from any failure or delay in performing its obligations in this Framework Agreement if such failure or delay is caused by Force Majeure.
- 30.2 Notwithstanding the foregoing in clause 30.1, this Framework Agreement will remain in full force and effect for the duration of the Force Majeure subject to clause 30.5 below and the Parties shall use all reasonable endeavours to perform or resume performance of such obligations hereunder for the duration of the Force Majeure.
- 30.3 If either party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall promptly notify the other party of the reasons for the delay and the likely duration of the delay. The affected party shall use all reasonable efforts to mitigate the effects of the Force Majeure on the performance of its obligations hereunder.
- 30.4 Immediately after the end of the Force Majeure the affected party shall notify the other party in writing that the Force Majeure has ended and shall resume performance of its obligations under this Framework Agreement.
- 30.5 If either party is prevented from performance of substantially all of its obligations by Force Majeure for a continuous period of more than three (3) months in total, either party may terminate this Framework Agreement immediately on service of written notice upon the other party, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

### **31 Relationship of the Parties**

Nothing in the Framework Agreement is intended to, or shall be deemed to, establish a partnership or joint venture between any of the Parties. Nothing in the Framework Agreement or any Order or Call Off terms and conditions shall constitute any Party the agent of another Party nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## 32 Notices

|                        | QTS Group Ltd | Council                                                         |
|------------------------|---------------|-----------------------------------------------------------------|
| Name of Representative |               |                                                                 |
| Address                |               | Cumberland Council<br>Parkhouse Building<br>Carlisle<br>CA6 4SJ |
| Telephone Number       |               |                                                                 |
| E-mail address         |               |                                                                 |

32.1 Any notice given under this Framework Agreement shall be in writing in the English language and delivered personally or sent by email, or signed for post or recorded delivery post or prepaid first class post (or air mail post if to an address outside the United Kingdom) to the address set out above.

32.2 A notice shall be deemed to have been received:-

32.2.1 if delivered personally, at the time of delivery;

32.2.2 if sent by signed for, recorded delivery or prepaid first class post, on the second Business Day after the date of posting;

32.2.3 if sent by prepaid air mail post, on the fifth Business Day from the date of posting; or

32.2.4 if sent by email, upon acknowledgement by the recipient or by the issue of a delivered receipt or similar by the recipient's system.

32.3 In proving service:-

32.3.1 by personal delivery, it shall be necessary only to produce a receipt for the notice signed by or on behalf of the party due to receive it;

32.3.2 by post, it shall be necessary only to prove that the notice was contained in an envelope which was duly addressed and posted in accordance with this clause 32; or

32.3.3 by email, it shall be necessary only to produce a copy of the acknowledgement of the email from the recipient or the delivered receipt issued by the recipient's system.

32.4 Either party may change its address for service by serving a notice in accordance with this clause.

32.5 This clause 32 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.

32.6 A notice received or deemed to be received in accordance with clause 32 on a day which is not a Business Day or after 5.00pm on any Business Day shall be deemed to be received at 9.00am on the next Business Day.

### **33 Variation**

- 33.1 No variation of the Framework Agreement shall be effective unless it is executed and delivered as a deed. For the avoidance of doubt no variation of this Framework Agreement shall be valid if made by email.

### **34 Entire Agreement**

- 34.1 This Framework Agreement and the Schedules constitute the whole agreement and understanding between the Council and the Supplier and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Framework Agreement.
- 34.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it has not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance of any person other than as expressly set out herein. Each Party irrevocably waives all claims, rights and remedies which but for this clause 34 it might otherwise have had in relation to any of the foregoing.

- 34.3 Nothing in this clause shall limit or exclude any liability for fraud, fraudulent misrepresentation or fraudulent misstatement.

### **35 Rights of Third Parties**

Unless explicitly set out in the Framework Agreement a person who is not a party to it shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

### **36 Waiver**

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

### **37 Severance**

If any provision of this Framework Agreement (or part of any such provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Framework Agreement (as appropriate), and the validity and enforceability of the other provisions of the Framework Agreement (as appropriate) shall not be affected.

### **38 Publicity**

The Supplier shall not make, or permit any person to make, any public announcement concerning the Framework Agreement without the prior written consent of the Council except as required by law or any governmental or regulatory authority or by any court or other authority of competent jurisdiction.

### **39 Non solicitation**

- 39.1 The Supplier shall not, except with the prior written consent of the Council, directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Council any person employed or engaged by the Council at any time during the Term or for a further period of six (6) months after the expiry or termination of this

Framework Agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

- 39.2 The Supplier shall procure equivalent 39.1 obligations from all Sub-Contractors engaged in relation to the provision of the Works.

#### 40 Further Assurance

At its own expense each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Framework Agreement.

#### 41 Law and Jurisdiction

- 41.1 The Framework Agreement and each Order shall be governed by and construed in accordance with the laws of England and Wales.
- 41.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Framework Agreement or its subject matter.

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

**EXECUTED** (but not delivered until the )  
date hereof) **AS A DEED** by affixing the )  
**COMMON SEAL** of **CUMBERLAND** )  
**COUNCIL** in the presence of:- )

[Redacted Signature]

Authorised Signatory

**EXECUTED** (but not delivered until the )  
date hereof) **AS A DEED** by **QTS**  
**GROUP LTD** acting by a director:

[Redacted Signature]

Print Director Name

in the presence of a witness:-

Print Name

Address:

[Redacted Address]

Occupation:

[Redacted Signature]

Director Signature

[Redacted Signature]

Witness Signature

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## SCHEDULE 1

### Ordering Procedure

#### 1.0 Mini Competition Procedure

##### 1.1 Initiation:

When the Council wishes to purchase Works, they will initiate a mini competition as outlined below:

##### 1.2 Opportunities:

The Council will advertise opportunities in advance via a pipeline of projects. This pipeline will be updated as projects are approved or cancelled, including amendments to proposed tender and start completion dates required for operational or governance reasons.

##### 1.3 Lot Selection:

The Council will determine the most appropriate Lot for the mini competition. They may choose to open the mini competition to more than one Lot at their discretion.

##### 1.4 Expression of Interest:

All Suppliers on the selected Lot(s) will receive a request to provide an "Expression of Interest", as Appendix A, via the Chest. Suppliers with Key Performance Indicator (KPI) scores below the target minimum will be excluded from requests to express interest, in accordance with Schedule 5 of the framework agreement.

##### 1.5 Contractor Response:

Contractors must respond within the minimum time period specified in the request (not less than 2 working days) to confirm their interest. Responses must be submitted via the Chest by midnight unless otherwise stated. Late responses will not be considered.

##### 1.6 Tender List:

The Council will assess the expressions of interest and establish a mini-competition tender list. If there are up to 6 interested suppliers, all will be invited to participate. If there are more than 6, the Framework User will request a high-level method statement and quality plan from all interested suppliers, to be returned within a specified period (not less than 3 working days). The top 4 scoring suppliers will be shortlisted. Contractors not selected for the mini competition will be informed via the Chest, within 5 working days.

##### 1.7 Tender Documents:

Selected contractors will receive the mini-competition tender documents, including assessment criteria, Call-Off terms and conditions, work package drawings, schedules, and specifications. The return period for tenders will be

determined by the Framework User, considering the complexity and urgency of the works, generally between three and six weeks.

1.8 Assessment:

Returned mini competition tender documents will be assessed based on the criteria set out in the tender documents. The assessment will consider Social Value, Price, and Quality, with weightings varying from 100% Price: 0% Social Value and Quality to 0% Price: 100% Social Value and Quality. Quality criteria may include methodology, programme, resources, innovation, sustainability, and social or environmental impacts.

1.9 Selection:

All contractors who tendered will be informed of the mini-competition outcomes. The selected contractor will complete the Call-Off terms and conditions. The Council, as the Framework User, is not obliged to place any Order or enter into any contract following a mini competition. However, if the Council does place an Order, the contractor shall enter into a form of contract comprising the documents in Schedule 2, as amended, and any other documents issued as part of the mini-competition invitation.

1.10 Performance Based Adjustments:

Contractors with an average quarterly KPI score exceeding the Upper Band level will have their price score adjusted for all mini competitions in the following quarter, in line with Schedule 5 of the framework agreement.

1.11 Contractor Capacity:

The Council acknowledges that a Contractor's capacity to undertake work may vary, and thus, allows Contractors to withdraw or opt out from tender opportunities as necessary. This flexibility enables the Council to monitor trends and enhance the framework progressively.

## Appendix A – Expression of Interest

# CAPITAL WORKS FRAMEWORKS

### Request to Express Interest in Work Package to be issued via ‘The Chest’

To: **All suppliers within the selected sub-lot**

Date: [XX/XX/202X]

Capital Works Framework – Lot [XX] Property/Civils under £3,000,000/over £2,500,000

Request to Express Interest for [work package name]

The Council wishes to procure the following the following work:

Brief Description of the work including location, the nature of the works, key components, indicative quantities, areas or numbers and any significant constraints

The current anticipated programme is as follows:

|                                     |                    |
|-------------------------------------|--------------------|
| Expressions of interest returned    | <i>Insert Date</i> |
| Expected issue of mini-competition  | <i>Insert Date</i> |
| Expected return of mini-competition | <i>Insert Date</i> |
| Proposed start of works             | <i>Insert Date</i> |
| Indicative completion date          | <i>Insert Date</i> |

A location plan is attached Ref: [location plan ref]

The estimated value of the Works is: [estimated works cost]

Suppliers must express interest in the work package by submitting a positive response on the Chest by [insert return date and time (not less than 2 working days)]. Suppliers who do not respond by this date and time will be assumed to not be interested in tendering for this Work.

Where there are up to 6 responses confirming interest in participating in the mini-competition the mini-competition will be issued to all interested suppliers. Where there are more than 6 interested suppliers, a high level method statement and quality plan will be requested from all interested suppliers to be returned by [Insert return date and time (not less than 3 working days)]. The responses will be scored and the Framework User will establish a shortlist of 4 suppliers based on the highest scoring responses.

Any questions regarding this request to express interest should be submitted via the Chest.

## **SCHEDULE 2**

### **Order for Works Terms and Conditions**

**Orders will be subject to the and amended by the following and also by additional amendments issued as part of the mini competition process**

**SCHEDULE 3**  
**CALL-OFF TERMS AND CONDITIONS**

**See documents:**

- Capital Works - NEC4 ECC 2024
- Capital Works - NEC4 Short Contract 2024  
*(with amendments January 2019, October 2020 and January 2023)*
- JCT Minor Works Building Contract MW 2024
- JCT Design and Build Contract DB 2024

## **SCHEDULE 4**

### **PRICE SCHEDULE**

#### **4.0 General**

- 4.1 In mini competition, these "Not to Exceed" fee percentages and hourly rates can be improved upon (i.e., reduced), depending on the nature of the build, however the principle is that they should not be exceeded in mini competition.

The commercial response pricing fees should be in respect of ALL types of projects. However, in exceptional circumstances such as historic or heritage buildings, the fees may be bid off-template at Client's discretion.

#### **Profit and Overheads**

- 4.2 Contractors are required to provide percentages for Profit and Overheads that will remain fixed throughout the duration of the framework.
- 4.3 Overheads are defined as indirect costs that cannot be directly attributed to production and encompass all incidental expenses associated with running the business as a whole.

The Framework overheads will include, at a minimum:

- Provider's framework management costs.
  - Director's salaries and expenses.
  - Head office technical staff salaries and associated costs, such as surveyors, planners, buyers, etc., who are non-project charged visiting staff. Note that the cost of estimating and bidding for a task is part of the overheads.
  - Head office administrative staff salaries and associated costs, including accountants, credit departments, health and safety, human resources, administrative and other support staff, cleaners, maintenance staff, and similar roles.
  - Administrative expenses such as postage, courier costs, printing, stationery, telephones, and similar items.
  - Purchase or rent, rates, maintenance, and running costs of offices, plant, and yards.
  - Furniture and equipment for offices, including IT.
  - Travelling expenses, including the provision of motor cars for directors and head office staff.
  - Recruitment, redundancy and training costs.
  - Legal, professional and auditor's fees.
  - Company insurances (head office, not project-specific).
  - Finance charges.
  - Taxes excluding project-specific VAT.
  - Pension fund contributions.
  - Franchises, royalties, licenses.
  - Marketing, advertising, and business development costs.
  - Any other costs required to maintain the business.
- 4.4 Profit margins are defined as the return sought on capital and turnover employed on a project. These margins shall exclude discounts for prompt payment or otherwise, which shall not be payable by any sub-provider or

supplier to the main provider under the framework. Any benefits from discounts obtained from sub-providers or suppliers shall be passed on to the Contracting Authority.

#### **NEC Fee and Equipment**

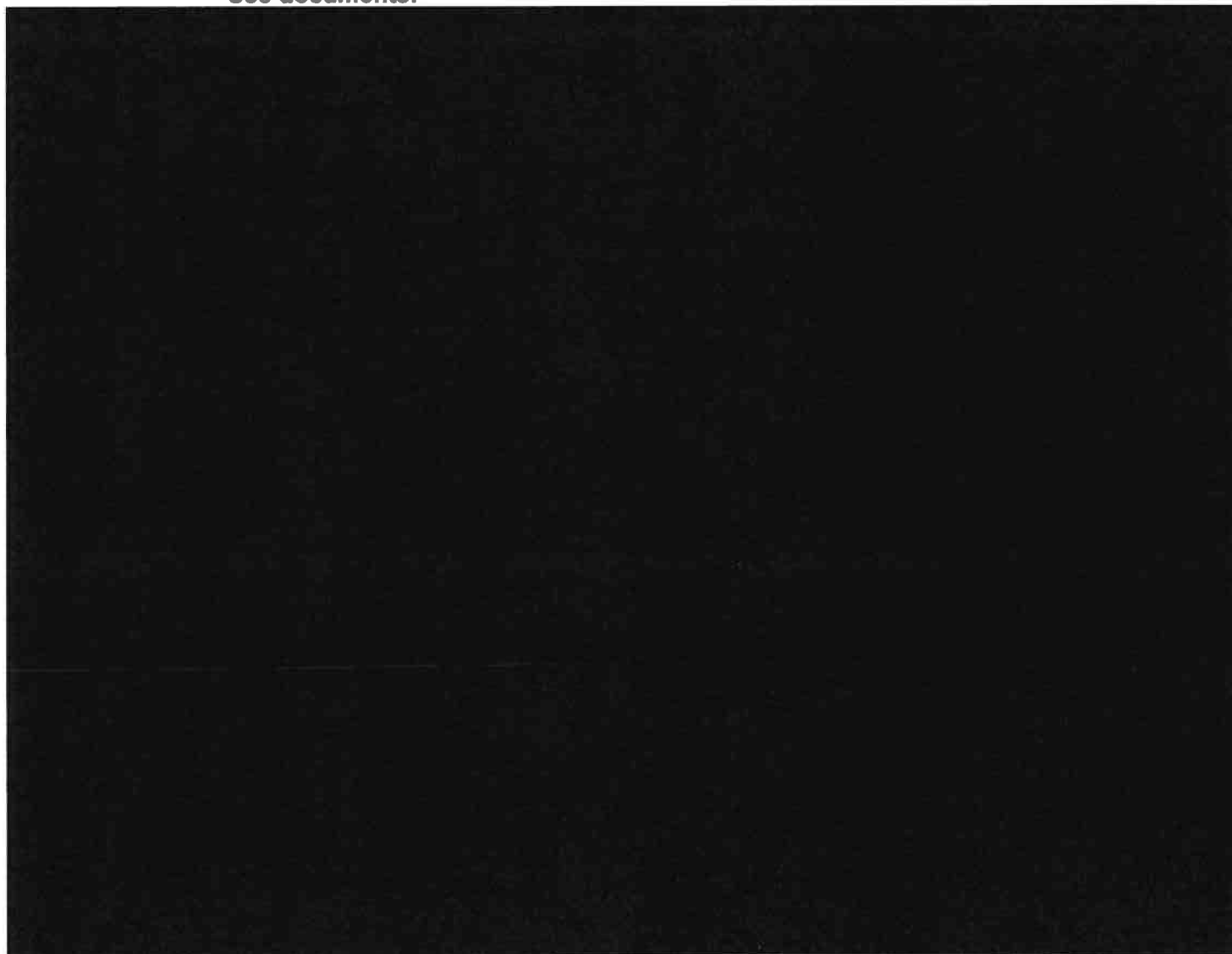
- 4.5 Contractors are required to provide percentages for Fee and Equipment that will remain fixed throughout the duration of the framework.

#### **Staff**

- 4.6 Contractors are to provide hourly staff rates, which will be increase on 1 April each year based on RPIX index at preceding February. The rates are not to be exceeded but can be better when tendering for an opportunity.

Staff Rates are to be all inclusive i.e., all salary, employers on-costs, benefits, bonuses, national insurance, pensions, holiday pay, sick pay, travel costs, personal communication and ICT equipment, car allowances / leasing charges and subsistence. This list is not exhaustive.

#### **See documents:**



## SCHEDULE 5

### KEY PERFORMANCE INDICATORS (KPI's)

#### 5.0 Performance Monitoring

- 5.1 The following performance management process applies to all projects awarded to a Contractor under the Framework Agreement. The purpose of these evaluations is to maintain high standards and incentivise excellence.
- 5.2 Performance monitoring will be conducted electronically and measured through a suite of Key Performance Indicators (KPIs) as outlined in **Appendix A**.
- 5.3 Each project will be evaluated quarterly. Contractors must ensure that KPI scores are agreed upon and reported within four weeks of the end of each quarter. Failure to submit an agreed KPI score by the end of week six will result in the Contractor being immediately excluded from all mini competitions until the KPI is agreed upon by both the Contractor and the Project Manager, as illustrated in the diagram below.

| KPI PROCESS             |           |   |   |   |   |   |   |   |   |    |    |    |    |           |    |    |    |    |    |    |    |    |    |    |    |    |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |           |    |    |    |    |    |    |    |    |    |  |  |  |           |  |  |  |  |  |  |  |  |  |  |  |  |
|-------------------------|-----------|---|---|---|---|---|---|---|---|----|----|----|----|-----------|----|----|----|----|----|----|----|----|----|----|----|----|-----------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----------|----|----|----|----|----|----|----|----|----|--|--|--|-----------|--|--|--|--|--|--|--|--|--|--|--|--|
| Week No.                | 1         | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14        | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27        | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43        | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 |  |  |  |           |  |  |  |  |  |  |  |  |  |  |  |  |
| Performance Period      | Quarter 1 |   |   |   |   |   |   |   |   |    |    |    |    | Quarter 2 |    |    |    |    |    |    |    |    |    |    |    |    | Quarter 3 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | Quarter 4 |    |    |    |    |    |    |    |    |    |  |  |  |           |  |  |  |  |  |  |  |  |  |  |  |  |
| Assessment Period       | Q4        |   |   |   |   |   |   |   |   |    |    |    |    | Q1        |    |    |    |    |    |    |    |    |    |    |    |    | Q2        |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | Q3        |    |    |    |    |    |    |    |    |    |  |  |  |           |  |  |  |  |  |  |  |  |  |  |  |  |
| Notice Period           | Q4        |   |   |   |   |   |   |   |   |    |    |    |    | Q2        |    |    |    |    |    |    |    |    |    |    |    |    | Q2        |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | Q3        |    |    |    |    |    |    |    |    |    |  |  |  |           |  |  |  |  |  |  |  |  |  |  |  |  |
| Reward / Penalty Period | Quarter 3 |   |   |   |   |   |   |   |   |    |    |    |    | Quarter 4 |    |    |    |    |    |    |    |    |    |    |    |    | Quarter 1 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | Quarter 2 |    |    |    |    |    |    |    |    |    |  |  |  | Quarter 3 |  |  |  |  |  |  |  |  |  |  |  |  |

- 5.4 If a Contractor has multiple scores across a Lot in a given quarter, these will be combined into a single average score for the subsequent quarter.
- 5.5 Contractor overall project performance will be assessed against the table below:

| Score    | Defintion                               | Action                                                                                                                                                                                                                                                                                                                                                                      |
|----------|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 86 - 100 | Upper Band - High performance           | The Contractor will receive a 5% deduction from their tender prices for assessment purposes in all mini competitions issued in the subsequent performance quarter.                                                                                                                                                                                                          |
| 66 - 85  | Minimum Band - Satisfactory performance | No action required.                                                                                                                                                                                                                                                                                                                                                         |
| 0 - 65   | Lower Band - Low performance            | If a project or Contractor average KPI score falls below the target minimum, or if the contractor scores zero for any individual indicator, the Contractor will be excluded from future mini-competitions. The exclusion will remain until agreed remedial actions have been implemented to address the reasons for poor performance, as approved by the Framework Manager. |

- 5.6 If a Contractor's KPI scores fall below the target band minimum on two or more different projects within two rolling periods, the Council may terminate the Framework Agreement.
- 5.7 The Council reserves the right to amend the KPI scoring guidance definitions and the levels of the Upper and Minimum target bands at any time.

## Appendix A – Performance Monitoring

\*Please enter data in all entries, even if 0.  
 \*New status (not yet signed on) completion confirmed as signed off & include the reason that issue.  
 \*Please email any status changes (date) must be up to date with current progress.

|                  |                                |                                                                                                                                                                                                                               |
|------------------|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Project:         | Let Number:                    |                                                                                                                                                                                                                               |
| Contractor Name: | Employer's Authorized Officer: | Consistency with the <b>scoring methodology</b> available by searching an option from the drop-down list. Do not attempt to manually enter the score (see scoring guidelines). Please provide evidence to justify your score. |
| XPI Quarter:     | Final Outturn Cost:            |                                                                                                                                                                                                                               |
|                  | Completion Date:               |                                                                                                                                                                                                                               |

| KPI Ref.                      | Key Performance Indicator                                                                                                   | Max Score | Undertaken by | Scoring methodology | Score | Comments/ Justification |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------|---------------|---------------------|-------|-------------------------|
| <b>TIME MANAGEMENT</b>        |                                                                                                                             |           |               |                     |       |                         |
| 1                             | Completion of work package in line with agreed programme                                                                    | 15        | Contractor    |                     | BN/A  |                         |
| <b>FINANCIAL MANAGEMENT</b>   |                                                                                                                             |           |               |                     |       |                         |
| 2                             | Completion of work package within tendered total of the prices                                                              | 15        | Contractor    |                     | BN/A  |                         |
| <b>QUALITY OF WORKMANSHIP</b> |                                                                                                                             |           |               |                     |       |                         |
| 3.1                           | Did the contractor achieve a high quality of work, first time or was a need for rework prompted by other parties            | 10        | Contractor    |                     | BN/A  |                         |
| 3.2                           | How quickly did the contractor resolve defects after practical completion                                                   | 10        | Contractor    |                     | BN/A  |                         |
| <b>EMPLOYER SATISFACTION</b>  |                                                                                                                             |           |               |                     |       |                         |
| 4                             | Overall satisfaction with Contractor's performance                                                                          | 20        | Employer      |                     | BN/A  |                         |
| <b>HEALTH AND SAFETY</b>      |                                                                                                                             |           |               |                     |       |                         |
| 5.1                           | Reportable accidents/incidents                                                                                              | 5         | Contractor    |                     | BN/A  |                         |
| 5.2                           | Health & Safety inspections                                                                                                 | 5         | Contractor    |                     | BN/A  |                         |
| <b>ENVIRONMENTAL IMPACT</b>   |                                                                                                                             |           |               |                     |       |                         |
| 6                             | Environmental initiatives to reduce carbon footprint, minimise transport impact and promote the use of alternative products | 10        | Contractor    |                     | BN/A  |                         |
| <b>SOCIAL VALUE</b>           |                                                                                                                             |           |               |                     |       |                         |
| 7                             | Social Value measures delivered as offer                                                                                    | 10        | Employer      |                     | BN/A  |                         |

BASE TOTAL: 100

TOTAL: BN/A

Prepared and agreed by:  
 Supplier  
 Signed  
 Date

Employer's Authorized Officer  
 Name  
 Signed  
 Date

## SCORING GUIDANCE

### Time Management

|                                                                                                    |    |
|----------------------------------------------------------------------------------------------------|----|
| Actual progress more than a week ahead of programme, adjusted to include agreed extensions of time | 15 |
| Actual progress less than a week ahead of programme, adjusted to include agreed extensions of time | 12 |
| Actual progress on programme, adjusted to include agreed extensions of time                        | 10 |
| Actual progress behind programme but within 2 weeks, adjusted to include agreed extensions of time | 5  |
| Actual progress more than 2 weeks behind programme, adjusted to include agreed extensions of time  | 0  |

### Financial Management

|                                                                                                                                              |    |
|----------------------------------------------------------------------------------------------------------------------------------------------|----|
| Cost to date more than 5% below forecast based on the work done to date and the tendered total of the prices                                 | 15 |
| Cost to date within 5% of the forecast based on the work done to date and the tendered total of the prices                                   | 12 |
| Cost to date within 5% of the forecast based on the work done to date and the tendered total of the prices including agreed variations       | 10 |
| Cost to date between 5-10% the forecast based on the work done to date and tendered total of the prices including agreed variations          | 5  |
| Cost to date more than 10% over the forecast based on the work done to date and the tendered total of the prices including agreed variations | 0  |

### Quality - Right First Time

|                                                 |    |
|-------------------------------------------------|----|
| Workmanship "right first time".                 | 10 |
| Workmanship minor snagging required             | 7  |
| Workmanship some isolate area require reworking | 3  |
| Workmanship major rework required               | 0  |

### Quality - Defects

|                                                   |    |
|---------------------------------------------------|----|
| Zero defects outstanding at handover              | 10 |
| All defects resolved within one week of handover  | 7  |
| All defects resolved within one month of handover | 3  |
| Defects still unresolved one month after handover | 0  |

### Employer Satisfaction

|                                                                                                           |    |
|-----------------------------------------------------------------------------------------------------------|----|
| Supplier exceeds expectation in all areas                                                                 | 20 |
| Supplier meets expectation in all areas and exceeds expectation in some                                   | 17 |
| Suppliers meets expectation in all areas                                                                  | 15 |
| Supplier meets or exceeds expectation in most areas but fails to meet expectation in some                 | 10 |
| Suppliers fails to meet expectation in a significant number of areas                                      | 7  |
| Suppliers fails to meet expectation in most areas or falls seriously below expectation in any area        | 3  |
| Supplier fails to meet expectation in any area or falls seriously below expectation in more than one area | 0  |

### Health & Safety - Accidents

|                                                                                          |   |
|------------------------------------------------------------------------------------------|---|
| No reportable accidents or recorded incidents                                            | 5 |
| No reportable accidents and no more than 3 recorded incidents                            | 2 |
| Any reportable accidents, more than 3 recorded incidents or any failed safety inspection | 0 |

### Health & Safety - Inspections

|                                                                                                     |   |
|-----------------------------------------------------------------------------------------------------|---|
| All inspections passed, no issues raised, no notices issued                                         | 5 |
| All inspections passed, minor issues raised, no notices issued                                      | 2 |
| Any inspections failed, any serious issues raised, any notices issued OR no evidence of inspections | 0 |

### Environmental Impact

|                                                                                                                   |    |
|-------------------------------------------------------------------------------------------------------------------|----|
| Evidence of initiatives to reduce impact in carbon footprint, transport distances and use of alternative products | 10 |
| Evidence of initiatives to reduce impact in one or more areas                                                     | 5  |
| No evidence of initiatives to reduce impact                                                                       | 0  |

### Social Value

|                                                                                             |    |
|---------------------------------------------------------------------------------------------|----|
| Social value offered benefits delivered                                                     | 10 |
| Social value offered benefits not delivered for operational reasons however are in progress | 5  |
| Social values offered not delivered                                                         | 0  |

## SCHEDULE 6

### SCOPE

#### 6.0 Overview

- 6.1 To undertake construction projects across various locations within Cumberland, with an individual project budget of up to £6,000,000. The Council reserves the right to advertise projects exceeding this value if it considers it appropriate.

**Exceptions:** General building projects with a budget below £200,000 will not be included in this framework. Instead, these smaller projects will be managed through a separate Minor Works framework that is already in place.

- 6.2 The projects are divided into the following work packages (Lots):

- **Lot 1:** General Building Works
- **Lot 2:** Civil Engineering Works
- **Lot 3:** Combined General Building and Civil Engineering Works

Projects will be a mix of traditional and design & build, depending on the individual project complexities. Traditional projects typically follow a linear sequence of design, bid, and build, which can be more straightforward but may take longer. Design & build projects, on the other hand, integrate design and construction phases, potentially speeding up the process and allowing for more flexibility and innovation. This mix ensures that we can tailor our approach to the specific needs and challenges of each project.

- 6.3 The framework will span 4 years, from Winter 2026 to Winter 2030.
- 6.4 Contractors will be appointed as the principal contractor (BSA & CDM) for each project.
- 6.5 Contractors must ensure they have the necessary capabilities to perform the tasks described in each work package summary for the respective lots.
- 6.6 Please see Appendix F of the ITT. All bidders submitting a tender must indicate on the table in this schedule which Lots they wish to be considered for. Please note, there is no guarantee as to which or how many Lots you will be appointed to.
- 6.7 Cumberland use a Professional Services Framework for Consultancy/Design Services. Therefore, the appointed contractor will be expected to work with the relevant consultant to deliver traditional projects. For design & build projects, the contractor can use their own consultants.

## **6.8 Lot Information**

- 6.9 Contractors are expected to demonstrate that they have the capability and resources to manage and deliver a diverse range of projects across the Council's entire asset portfolio, maintaining the highest standards of safety and quality. This includes providing all necessary labour, materials, and expertise to execute various work packages. Additionally, contractors should exhibit flexibility and adaptability to meet the unique requirements of each project. A list of previous historic project examples is included in **Appendix A**.

## **6.10 Lot 1: General Building Works**

- Project Value Range: £0.2 million to £3 million
- Estimated Annual Projects: 15 to 20
- Average Project Value: £0.9 million

Contractors are expected to undertake a variety of works including:

- Planned Maintenance: This may involve repairs and replacements of roofs, windows, and mechanical and electrical systems (M&E). Capital maintenance projects are typically low value and primarily focused on ensuring buildings are safe, windproof, and watertight.
- Upgrading and Refurbishment: This includes the enhancement and renovation of the Council's existing portfolio of corporate and school properties.
- New Builds and Extensions: This involves constructing new buildings and extending existing corporate and school properties, utilising a wide range of building types, including modular and offsite fabrication.

## **6.11 Lot 2: Civil Engineering Works,**

- Project Value Range: Up to £3 million
- Estimated Annual Projects: 15 to 20
- Average Project Value: £1 million

Contractors are expected to undertake a variety of works including:

- Structures & Bridges: This involves the repair and maintenance of highway structures, including retaining walls and bridges. Tasks may include culvert replacement, masonry arch bridge repairs, replacement of sections of retaining walls, and sea wall repairs. These structures are primarily made of stone or stone-faced materials, reinforced or mass concrete, or structural steelwork, and are most often located on carriageway local roads.

- Public Realm: This includes improvements to town centre environments, likely involving highway surfacing, footpaths, drainage, and signage enhancements.
- Highway Improvements: This involves improvements to junctions, access roads, car parks, and distributor routes to enhance safety and facilitate development.
- Footpath/Cycleway Improvements: This includes improvements to or the construction of new cycle and pedestrian infrastructure to improve links between existing infrastructure to ensure compliance with new design standards.
- Drainage, Ground Stabilisation, and Flood Prevention Schemes: These schemes could include packages of several small drainage projects, piling, slope stabilisation, or slope protection schemes adjacent to highways. They may also encompass a variety of flood prevention initiatives.

#### **6.12 Lot 3: Combined Building and Civil Engineering Works,**

- Project Value Range: £2.5 million to £6 million but may be used to procure schemes above £6m (with no upper limit) based on complexity, risk and other considerations
- Estimated Annual Projects: 2 to 5
- Average Project Value: £4.5 million

Contractors are expected to undertake a variety of works including:

- Similar projects to those outlined in Lots 1 and 2.

## Appendix A – Historic Projects

### Lot 1: General Building Works

| Project                                                    | Budget    |
|------------------------------------------------------------|-----------|
| Aspatia Community Hub                                      | 610,000   |
| Cumwhinton School – Classroom                              | 695,000   |
| Refurbishment of Eskdale House, Longtown, Carlisle         | 2,228,500 |
| Installation of nurse call bell system- Cumberland Council | 200,000   |
| The Wave Upgrade                                           | 2,300,000 |
| Port of Workington - New Warehouse                         | 472,000   |
| Distington Crematorium Planned Maintenance Works           | 395,000   |
| Paxton Roll Out                                            | 226,000   |
| Hensingham Day Centre Rewire and Heating upgrade           | 392,000   |
| Brampton Highways Depot - Welfare Provision                | 370,000   |
| Solway Community College - Electrical Renewal              | 1,253,000 |
| Netherhall School - Roofing Renewal                        | 820,000   |
| Wigton Infant School - Electric Renewal                    | 450,000   |
| Bewcastle Primary School - Heating & Electrical Renewal    | 260,000   |
| Shankhill School - Heating & Electrical Renewal            | 254,000   |
| Netherhall School - Fire Door Continuation                 | 465,000   |
| St Michaels- Pitch Roof Renewal                            | 395,000   |
| Petterli Bank School - fabric & electrical remedial works  | 285,000   |
| SEND Additional Places 2022 - St Edmunds                   | 1,285,000 |

### Lot 2: Civil Engineering Works

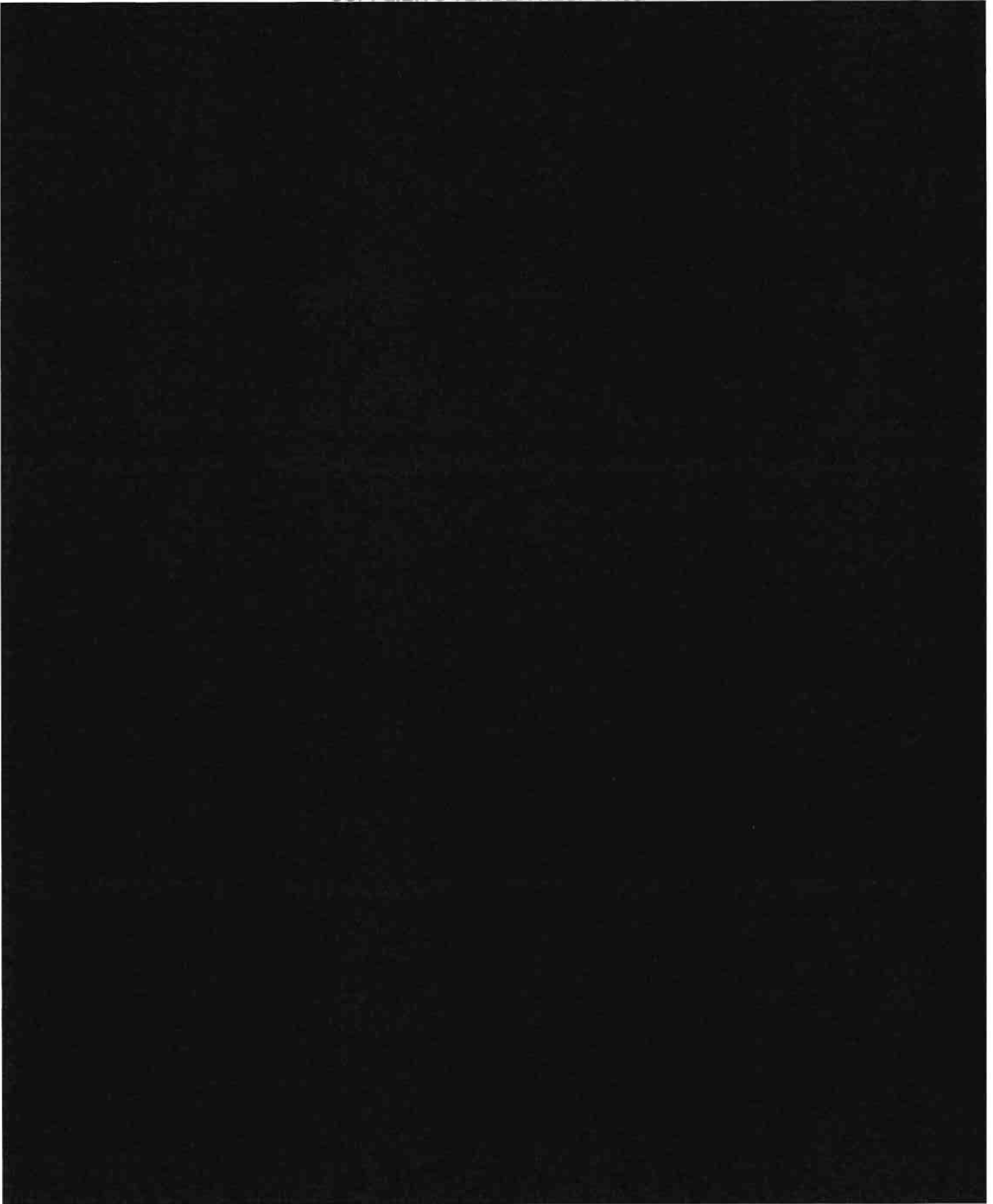
| Project                                          | Budget    |
|--------------------------------------------------|-----------|
| Cargo Cycleway                                   | 656,000   |
| Flimby                                           | 1,230,000 |
| Fairways, Seascale Attenuation Scheme            | 263,000   |
| West End Aspatia                                 | 70,000    |
| Brundholme Gardens, Keswick                      | 25,000    |
| Devonshire Street Pedestrian Improvements        | 2,290,000 |
| Central Plaza                                    | 727,000   |
| Maryport Future High Street Public Realm Project | 825,000   |
| Port of Workington - Port Roads                  | 1,016,000 |
| Workington Gateway - Ramsay Brow and Hall Brow   | 2,015,000 |
| Workington Cycleway Scheme                       | 445,000   |
| Workington Town Centre Accessibility             | 2,445,000 |

### Lot 3: Combined General Building and Civil Engineering Works

| Project                                            |   | Budget    |
|----------------------------------------------------|---|-----------|
| Re-imagining the Market Square and the Greenmarket | - | 5,050,000 |
| Cleator Moor - Connected Town                      | - | 5,925,000 |
| Sands Centre - Auditorium Roof Replacement         | - | 2,700,000 |
| Carlisle Digital and Community Learning Hub        | - | 3,250,000 |
| Arts and Enterprise Centre, Millom                 | - | 2,610,000 |
| Connecting Millom & Haverigg                       | - | 4,350,000 |

**SCHEDULE 7**

**SUPPLIER'S TENDER RESPONSE**



## **Appendix A**

### **Cumberland Council current Contractor Health & Safety Code of Practice**



Contractor H & S  
Code of Practice.pdf