

**Dorset Local Enterprise Partnership**

**and**

**[ TBC ]**

**FRAMEWORK AGREEMENT**

**relating to**

**Project Due Diligence Services**

**Reference [ TBC ]**

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**THIS FRAMEWORK AGREEMENT** dated [TBC]

BETWEEN

**(1) Dorset Local Enterprise Partnership** whose principal place of business is at Poole House, Fern Barrow, Poole, BH12 5BB ("the Dorset LEP") and

**(2) [Contractor]** (Company Number: [ ]) whose registered office is at [ ] ("the Contractor")

## 1. BACKGROUND

- 1.1. The Dorset LEP placed a contract notice on our website seeking expressions of interest from providers for Project Due Diligence Services under a framework agreement to the Dorset LEP .
- 1.2. On the basis of the Contractor's tender, the Dorset LEP will select the Contractor(s) to enter into a framework agreement to provide Goods and Services to the Dorset LEP on a call-off basis in accordance with this Framework Agreement.
- 1.3. This Framework Agreement sets out the award and ordering procedure for goods and services which may be required by the Dorset LEP, the main terms and conditions for any Call-Off Contract and the obligations of the Contractor during and after the term of this Framework Agreement.
- 1.4. It is the parties' intention that there will be no obligation for the Dorset LEP to award any Orders under this Framework Agreement during its Term.

## 2. DEFINITIONS

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

- 2.1 **"Audit"** means an audit carried out pursuant to Clause 27 (Records, Audit Access and Open Book Data);
- 2.2 **'Call-Off Contract' or 'Contract'** means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Goods or Services made between a Contracting Body and the Contractor comprising an Order and the Call-Off Terms and Conditions at Appendix 1;
- 2.3 **'Call-Off Terms and Conditions'** means the terms and conditions in Appendix 1;
- 2.4 **'Call-Off Commencement Date'** means the date set out in the Order;
- 2.5 **'Clauses'** are the terms in this Framework Agreement.
- 2.6 **'Commercially Sensitive Information'** means, if relevant, the information listed in a schedule or order comprised of trade secrets and information provided by the Contractor to the Dorset LEP in confidence;
- 2.7 **'Confidential Information'** means any information in this Agreement and of either party which forms the subject matter of patent, copyright, registered design or other protected propriety right, information of the other party designated as "Commercially Sensitive Information" or information which is by its nature clearly confidential;
- 2.8 **'Contracting Body'** means the Dorset Local Enterprise Partnership (Dorset LEP)

- 2.9** '**Contracting Officer**' means the representative Dorset LEP appointed by the Dorset LEP Director to act on its behalf as agent for the purpose of managing the Framework Agreement;
- 2.10** '**Contract Price**' means the price (exclusive of any applicable VAT), payable to the Contractor under the Framework Agreement and Call-Off Contract, as set out in the Order, for the full and proper performance by the Contractor of its obligations under the Contract;
- 2.11** '**Contractor**' means the person, firm or company appointed by the Dorset LEP to supply the Goods or Services under this Framework Agreement or any Call-Off Contract and shall include the Contractor's employees, personal representatives, successors and permitted assigns;
- 2.12** "**Change in Law**" means any change in Law which impacts on the supply of Goods or Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date;
- 2.13** '**Default**' means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Employees in connection with or in relation to the subject-matter of the Framework Agreement and/or Call-Off Contract and in respect of which such Party is liable to the other;
- 2.14** **Dorset LEP** means Dorset Local Enterprise Partnership;
- 2.15** '**DPA**' means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
- 2.16** "**Direct Award Criteria**" means the award criteria to be applied for the direct award of Call Off Contracts for Goods or Services set out in Section 6 (Award Procedure);
- 2.17** "**Dispute Resolution** " means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 32 (Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution set out in Section 30 (Dispute Resolution);
- 2.18** '**Employees**' means all persons employed by the Contractor together with the Contractor's servants, agents, contractors and sub-contractors used in the performance of its obligations under this Framework Agreement and Call-Off Contracts;
- 2.19** '**Equipment**' means the Contractor's equipment, plant and materials used in the performance of its obligations under this Framework Agreement or Call-Off Contracts;
- 2.20** '**FOIA**' means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
- 2.21** '**Framework Agreement**' or '**Agreement**' or '**Framework**' means this agreement consisting of all the Clauses and all Appendices to this agreement, And the invitation to tender, the Contractor's tender submission and any documents accompanying it;
- 2.22** '**Framework Agreement Commencement Date**' means 09.12.2020 ;

- 2.23 'Goods or Services'** means the supply and delivery of Goods or Services as ordered by the Contracting Body. Any reference to Goods shall apply equally to the performance of Services as appropriate unless otherwise stated;
- 2.24 "Law"** means any law, subordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
- 2.25 "Losses"** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
- 2.26 "Lot"** means the number of lots specified in Framework Agreement Specification (Goods and/or Services and Key Performance Indicators) and "Lots" shall be construed accordingly;
- 2.27 'Management Information'** means files, usage records, charging information, and such other management information as the Contractor is obliged to retain for information for the Dorset LEP.
- 2.28 'Month'** means a calendar month and "Monthly" shall be interpreted accordingly;
- 2.29 'Order'** means any order placed by the Contracting Body on the Contractor in accordance with this Framework Agreement and Call-Off Terms;
- 2.30 'Party'** means the Dorset LEP or the Contractor and "Parties" shall mean both of them;
- 2.31 'Premises' or 'Site'** means any location where the Goods or Services are delivered, or the Goods are required to be collected, as set out in the Order;
- 2.32 'Prohibited Act':** the following constitute Prohibited Acts
- 2.32.1 to directly or indirectly offer, promise or give any person working for or engaged by the Dorset LEP a financial or other advantage to:
  - 2.32.2 induce that person to perform improperly a relevant function or activity; or
  - 2.32.3 reward that person for improper performance of a relevant function or activity;
  - 2.32.4 to directly or indirectly request, agreed 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 Agreement;
  - 2.32.5 committing any offence:
  - 2.32.6 under the Bribery Act
  - 2.32.7 under the legislation creating offences concerning fraudulent acts;
  - 2.32.8 at common law concerning fraudulent acts relating to this Agreement or any other Contract or Agreement with the Dorset LEP or
  - 2.32.9 defrauding, attempting to defraud or conspiring to defraud the Dorset LEP.

- 2.33** **'Specification'** means the scope of the Goods or Services to be provided pursuant to this Framework Agreement and any Call-Off Contract and set out in Appendix 2;
- 2.34** **"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
- 2.35** **'Working Day'** means Monday to Friday inclusive but not including any declared public holiday in England and Wales.

### **3. INTERPRETATION**

- 3.1** The interpretation and construction of the Framework Agreement, including Appendices, shall be subject to the following provisions:
- 3.1.1 References to clauses and appendices are references to clauses and Appendices to this Framework Agreement;
  - 3.1.2 The provisions of the Appendices are incorporated in this Framework Agreement;
  - 3.1.3 Reference to the singular includes the plural and vice versa and references to any gender includes all genders;
  - 3.1.4 The words "include", "includes" and "including" are construed as they were immediately followed by the words "without limitation";
  - 3.1.5 References to any person shall include persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns and transferees;
  - 3.1.6 The headings in this Framework Agreement and Appendices are included for ease of reference only and shall not affect the interpretation or construction of the Agreement;
  - 3.1.7 Any periods of time referred to in this Framework Agreement or within the Call-Off Terms and expressed in days shall refer to calendar days unless stated otherwise;
  - 3.1.8 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force;
  - 3.1.9 Any condition referring to the delivery of Goods shall apply equally to the performance of Services as appropriate unless otherwise stated;
  - 3.1.10 Reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - 3.1.11 In the event of any conflict between the Clauses and the Appendices, the Appendices shall prevail.

## **PART ONE: FRAMEWORK AGREEMENT AND AWARD PROCEDURE**

### **4. FRAMEWORK PERIOD**

- 4.1 Term:** Subject to earlier termination in accordance with clause 28, this Framework Agreement shall commence on the Framework Agreement Commencement Date of 09.12.2020 and shall continue until 09.12.2022 unless extended in accordance with clause 4.2.
- 4.2 Option to extend:** The Dorset LEP may give notice to the Contractor at any time before the expiry of this Framework Agreement in accordance with clause 4.1 to mutually agree to extend the period of this Framework Agreement for a further 12 months, subject to satisfactory performance.

### **5. SCOPE OF FRAMEWORK AGREEMENT**

- 5.1 This Framework Agreement governs the relationship between the Dorset LEP and the Contractor in respect of the provision of the Goods or Services by the Contractor to the Dorset LEP.
- 5.2 The Dorset LEP does not make any warranty, representation or agreement as to the nature, value or quantity of any Goods or Services called off under this Framework Agreement.
- 5.3 The Contractor acknowledges that there is no obligation for the Dorset LEP to purchase any Goods or Services from the Contractor during the Term.
- 5.4 The Contractor acknowledges that in entering into this Framework Agreement no form of exclusivity or volume guarantee has been granted by the Dorset LEP for Goods or Services from the Contractor and that the Dorset LEP is at all times entitled to enter into other contracts with other contractors for the provision of Goods or Services.

### **6. AWARD PROCEDURE**

#### **6.1 Option 1 – Direct Award**

- 6.1.1 If the Dorset LEP decides to source Goods or Services through the Framework Agreement it may award a Call-Off Contract in accordance with the terms laid down in this Framework Agreement without reopening competition.

#### **6.2 Option 2 – Conducting Further Competition**

- 6.2.1 Where the terms laid down in the Framework Agreement are not precise or complete enough for the particular Call-Off, further competition will be held with all those Contractors within the Framework Agreement capable of meeting the particular requirement.
- 6.2.2 The basic terms and conditions of the Framework cannot be renegotiated, and the Specification used in setting up the Framework cannot be substantively changed.
- 6.2.3 **Price:** The Contracting Body may conduct further competition based on evaluation of 100% price where it seeks best price from Contractors to meet the particular circumstances of the individual Call-Off or Order, and no element of quality is to be evaluated.

6.2.4 Price and Quality: The Contracting Body, when conducting further competition, may at their option vary the % weighting ratios a part of any further competition if both quality and price is to be evaluated.

6.2.5 The Contracting Body may wish to conduct further competition to reflect particular circumstances for the individual Call-Off and weigh the evaluation / award criteria according to the Contracting Body's requirements.

6.2.6 Examples of possible requirements are:

- particular delivery timescales;
- particular invoicing arrangements and payment profiles;
- additional security needs;
- incidental charges;
- particular mixes of rates and quality;
- where the terms include a price mechanism;
- individual special terms (e.g specific to the particular products/services that will be provided to meet a particular requirement under the Framework).

6.3 The Contractor acknowledges that:

6.3.1 The Contracting Body may opt to use electronic methods for running their further competitions, and that evaluation of tenders may be included within an electronic process;

6.3.2 Equally, the Contracting Body may opt to use non-electronic methods;

6.3.3 Interview, presentations and/or site visits may be required as part of the process at further competition;

6.3.4 An electronic reverse auction may be conducted as part of the contract award process at further competition stage (even though an e-auction was not used to appoint Contractors onto the Framework itself).



## **PART TWO: CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS**

### **7. WARRANTIES**

- 7.1 The Contractor warrants and represents to the Dorset LEP that:
- 7.1.1 it has the full capacity and authority and all necessary consents, licences and permits to enter into and perform this Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;
  - 7.1.2 as at the date of this Framework Agreement it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Framework Agreement.
  - 7.1.3 as at the Framework Agreement Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Dorset LEP prior to the execution of this Framework Agreement and it will promptly advise the Dorset LEP of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
  - 7.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Dorset LEP.

### **8. CONTRACTOR'S EMPLOYEES**

- 8.1 The Contractor warrants and represents that all Employees assigned to the performance of the Services shall be suitably qualified, trained, experienced and supervised to provide the Services required and shall be made fully aware of the Contractor's obligations under this Framework Agreement and any Call-Off Contract as it affects them in the performance of their duties.
- 8.2 The Dorset LEP reserves the right to refuse to admit to, or to withdraw permission to remain on, the Premises any Employee or sub-contractor, agent or servant of the Contractor whose admission or continued presence would be in their reasonable opinion undesirable. The decision of the Dorset LEP in this regard shall be final and conclusive.
- 8.3 Should the Dorset LEP require the involvement in the Services of any Employee to be suspended or terminated in accordance with the clause above, the Contractor shall provide a replacement that is acceptable to the Dorset LEP. The Dorset LEP shall in no circumstances be liable either to the Contractor or to the Employee in respect of any award, cost, expenses, liability, loss or damage occasioned by such removal and the Contractor shall fully indemnify the Dorset LEP against any such claims made.
- 8.4 The Contractor shall employ sufficient persons to ensure that Services are provided at all times and in all respects in accordance with this Framework Agreement and any Call-Off Contract.

- 8.5 The Contractor shall ensure that all Employees shall at all times be properly attired in accordance with the requirements of the Specification.
- 8.6 The Contractor's Employees shall not act in a manner likely to bring discredit to the Dorset LEP.
- 8.7 Where apprentices are employed by the Contractor they must be properly supervised. All work carried out by apprentices must be checked. Under no circumstances shall apprentices carry out work unsupervised.

## **9. PREVENTION OF BRIBERY**

### **9.1 The Contractor:**

- 9.1.1 shall not, and shall procure that any agent, consultant, contractor, Employee and sub-contractor of the contractor or any of its sub-contractors shall not, in connection with this Framework Agreement, or subsequent Call-Off Contract, commit a Prohibited Act.
- 9.1.2 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 Dorset LEP, or that an agreement has been reached to that effect, in connection with the execution of this Framework, excluding any arrangement of which full details have been disclosed in writing to the Dorset LEP before execution of this Framework.

### **9.2 The Contractor shall:**

- 9.2.1 if requested, provide the Dorset LEP with any reasonable assistance, at the Dorset LEP's reasonable cost, to enable the Dorset LEP to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 9.2.2 within 14 Business Days of the date at the head of this Framework, and annually thereafter, certify to the Dorset LEP in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 9 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Framework. The Contractor shall provide such supporting evidence of compliance as the Dorset LEP may reasonably request.

### **9.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Dorset LEP ) to prevent any agent, consultant, contractor, employee and sub-contractor of the Contractor or any of its sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.**

### **9.4 If any breach of clause 9.1 is suspected or known, the Contractor must notify the Dorset LEP immediately.**

### **9.5 If the Contractor notifies the Dorset LEP that it suspects or knows that there may be a breach of clause 9.1, the Contractor must respond promptly to the Dorset LEP's enquiries, co-operate with any investigation, and allow the Dorset LEP to audit books, records and any other relevant documentation.9.6 The Dorset LEP may terminate this Framework by written notice with immediate effect if the Contractor its agents, consultants, contractors, Employees and sub-contractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause 9.1.**

### **9.7 Any notice of termination under 9.6 must specify:**

- i. the nature of the Prohibited Act;
- ii. the identity of the party whom the Dorset LEP believes has committed the Prohibited Act; and
- iii. the date on which this Framework will terminate.

9.8 Despite clause 30, any dispute relating to:

- i. the interpretation of clause 9; or
- ii. the amount or value of any gift, consideration or commission,

shall be determined by the Dorset LEP and its decision shall be final and conclusive.

9.9 Any termination under clause 9.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Dorset LEP.

## **10. DISCRIMINATION**

- 10.1 The Contractor shall not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation.
- 10.2 The Contractor shall at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Dorset LEP. The Contractor shall forward a copy of this policy to the Dorset LEP when required and demonstrate its operation in the performance of the Contract.
- 10.3 The Contractor shall take all reasonable steps to secure the observance of this clause by all Employees employed in the performance of the Contract.
- 10.4 In the event of a finding of discrimination being made by any court or employment tribunal against the Contractor or any sub-contractor appointed by the Contractor during the performance of this Contract, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of this Contract, the Contractor shall inform the Dorset LEP of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 10.5 The Contractor shall indemnify the Dorset LEP in respect of any claims against the Dorset LEP which arise by reason of the Contractor's breach of the legislation referred to in this clause 10.1 where such breach arises in the performance of its obligations under this Contract.
- 10.6 The Contractor may be required to answer questions raised by the Dorset LEP on matters referred to in clause.

## **11. BUSINESS CONTINUITY**

- 11.1 The Contractor shall demonstrate, in accordance with the requirements in the Specification, that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of the

Services or any part thereof to the Dorset LEP in the event of a major incident affecting its ability to provide the Services.

- 11.2 The Contractor must provide, to the satisfaction of the Dorset LEP's Contracting Officer its business continuity planning policy which must be supported, with tested contingency arrangements in place. The Dorset LEP reserves the right to request detailed evidence of contingency plans such as sight of the Contractor's business continuity plan.

## **12. ENVIRONMENTAL REQUIREMENTS**

- 12.1 The Contractor shall perform the Agreement in accordance with reasonable environmental standards, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, as well as the requirements set out in the Specification.

## **13. HEALTH AND SAFETY**

- 13.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc Act 1974 and all other Acts, orders, regulations and codes of practice relating to health and safety, including those provisions set out in the Specification, which may apply to the performance of the Contract.
- 13.2 The Dorset LEP may at its sole discretion suspend the provision of Services or part of it in the event of non-compliance by the Contractor with his legal duties in health and safety matters. The Contractor shall not resume provision of the Services or such part as remains until the Dorset LEP is satisfied that the non-compliance has been rectified.

## **14. CALL-OFF CONTRACT PERFORMANCE**

- 14.1 The Contractor shall perform all Call-Off Contracts entered into with the Dorset LEP in accordance with:
- 14.1.1 the requirements of this Framework Agreement and the Specification; and
  - 14.1.2 the terms and conditions of the respective Call-Off Contracts.
- 14.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of any Call-Off Contract, the terms and conditions of the Call-Off Contract shall prevail.

## **15. PRICES FOR GOODS OR SERVICES**

- 15.1 The prices offered by the Contractor for Call-Off Contracts to Contracting Bodies for the Goods or Services shall be the prices listed in the Pricing Schedule.
- 15.2 **Price Review:** The prices quoted in the Pricing Schedule detailing the rates for the supply of the Goods or Services shall not be revised for a period of at least 12 months from the Commencement Date but may be varied thereafter, with the agreement of both parties.

- 15.2.1 The Dorset LEP will not discuss any price proposal submitted by the Contractor without the Contractor also submitting supporting evidence on reason for said price proposal and transparent calculations how proposed revised price has been reached.
  - 15.2.2 Revision of prices shall be implemented by the Contractor with the agreement of the Dorset LEP and the Contractor acting both reasonably and in good faith.
  - 15.2.3 Should a price proposal be acceptable to the Dorset LEP then it may be implemented by the Contractor 28 days after being agreed by the Dorset LEP or on the implementation date agreed by both parties.
  - 15.2.4 Any agreed price variation shall be valid of a period of 12 months.
  - 15.2.5 The Dorset LEP, in the event of a price proposal being unacceptable to the Dorset LEP, reserves the right to negotiate with the Contractor and should these negotiations prove unsuccessful with no agreement reached by both parties, the Dorset LEP may at its discretion purchase goods or services elsewhere.
- 15.3 Any Price reduction shall have an immediate effect and must be notified to the Dorset LEP within 48 hours of it being known to the Contractor.
- 15.4 The Contractor will endeavour to keep pricing competitive throughout the life of the Framework Agreement.

## **16. MONITORING OF CONTRACT PERFORMANCE**

- 16.1 The Contractor will implement the Key Performance Indicators (KPI's) set out in Appendix 3 to demonstrate acceptable performance of the Framework Agreement. These KPI's will be addressed at regular contract review meetings and failure to meet the KPI's will be actioned in accordance with the remedies available to the Dorset LEP under the Call-Off Terms and Conditions.
- 16.2 The KPI's and Management Information to be covered at contract review meetings are detailed in Appendix 3 may be subject to change over the period of the Framework Agreement.
- 16.3 The Contractor will have effective management information systems in place to provide such information at the request of the Dorset LEP.
- 16.4 Contract review meetings may be held at the Dorset LEP offices and any costs incurred by the Contractor in attending these meetings will be at the Contractor's expense. If necessary, the Dorset LEP will attend meetings at the Contractor's premises to view specific data or for other reasons. 16.5 Contract review meetings will be chaired by the Contracting Officer and held from the Framework Agreement Commencement Date at the discretion of the Dorset LEP. Additional management information may be required by the Dorset LEP as agreed at contract review meetings.
- 16.6 The Dorset LEP may inspect the supply of the Goods or Services at any reasonable time.

## **17. QUALITY**

- 17.1 The Contractor shall institute and maintain a properly documented quality system to ensure that the standards required under the Framework Agreement and any Call-Off

Contract are at all times properly maintained and evidenced, and such system to be in accordance with that submitted by the Contractor's tender and any agreed variations thereto. The system shall be open to inspection by the Dorset LEP whether or not the Specification is being met.

- 17.2 The documented quality system shall supplement any monitoring that may be instituted by the Dorset LEP and shall not be a substitute for it.

## **18. E-PROCUREMENT**

- 18.1 The Contractor shall participate in the any Contracting Body's requirement in relation to e-procurement and work with each Contracting Body in developing an e-trading relationship which is appropriate for the provision of the Goods or Services. Electronic orders may be placed by a Contracting Body with the Contractor via an e-procurement system in the form notified to the Contractor.

## **19. STATUTORY REQUIREMENTS**

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

### **PART THREE: CONTRACTOR'S INFORMATION OBLIGATIONS**

#### **20. CONFIDENTIALITY**

- 20.1 Each Party, its employees or any other person associated with either party will keep confidential:
- 20.1.1 the terms of this Framework Agreement and any Call-Off Contract; and
  - 20.1.2 any and all Confidential Information that it may acquire in relation to the other party
- 20.2 No Party will use or disclose the other party's Confidential Information, without prior written consent, except to persons and for the purpose of performing its obligations under this Framework Agreement and any Call-Off Contract.
- 20.3 The Contractor will take reasonable steps to ensure the Dorset LEP's Confidential Information is only given to its Employees, professional advisors, sub-contractors or consultants as strictly necessary for the performance of this Framework and any Call-Off Contract. The Contractor shall ensure its Employees, professional advisors, sub-contractors or consultants are aware of the Contractor's confidentiality obligations under this Contract.
- 20.4 The obligations on a Party set out in 20.1 to 20.3 will not apply to any Confidential Information which:
- i. a Party can demonstrate is or becomes public knowledge otherwise than by breach of this Framework Agreement and any Call-Off Contract;
  - ii. is in the possession of the receiving part without restriction in relation to disclosure before the date of receipt from the disclosing Party;
  - iii. is received from a third part who lawfully acquired it and who is under no obligation restricting its disclosure;
  - iv. is independently developed without access to the Confidential Information;
  - v. is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000.
- 20.5 Nothing in this clause shall prevent a Contracting Body:
- 20.5.1 disclosing any Confidential Information for the purpose of;
    - i. the examination and certification of the Dorset LEP's accounts; or
    - ii. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Dorset LEP has used its resources; or
  - 20.5.2 disclosing any Confidential Information obtained from the Contractor:
    - i. to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the confidential information to other government departments or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or

- ii. to any person engaged in providing any services to the Dorset LEP for any purpose relating to or ancillary to the Contract.

provided that in disclosing information under 20.5.2 the Dorset LEP discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 20.5.3 This clause shall survive termination of this Framework and any Call-Off Contract for a period of 6 years.

## **21. DATA PROTECTION**

- 21.1 The Contractor shall (and shall procure that all its Employees) comply with any notification requirements under the Data Protection Act 1998 ('DPA') and both parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement.

## **22. FREEDOM OF INFORMATION**

- 22.1 The Contractor acknowledges that the Dorset LEP are subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 and shall assist and co-operate with the Dorset LEP (at the Contractor's expense) to enable it to comply with its information disclosure requirements.
- 22.2 The Contractor shall and shall procure that its sub-contractors shall:
  - 22.2.1 transfer all requests for information to the Dorset LEP (where it is reasonably apparent that such are intended to be requests for information for the Dorset LEP) as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
  - 22.2.1 provide the Dorset LEP with a copy of any information in its possession or power in the form that the Dorset LEP requires within five Working Days (or such other period as the Dorset LEP may specify) of the Dorset LEP requesting that information; and
  - 22.2.3 provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 22.3 The Dorset LEP shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:
  - 22.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOI Act; or
  - 22.3.2 is to be disclosed in response to a request for information, and

In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Dorset LEP.



- 22.4 The Contractor acknowledges that the Dorset LEP may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA, be obliged to disclose information:
- 22.4.1 without consulting with the Contractor; or
  - 22.4.2 following consultation with the Contractor and having taken its views into account.
- 22.5 The Contractor shall ensure that all information produced in the course of this Framework Agreement is retained for disclosure and shall permit the Dorset LEP to inspect such records as requested from time to time.
- 22.6 The Contractor acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Dorset LEP may nevertheless be obliged to disclose Confidential Information in accordance with clause 22.4.

## **23. AUDIT**

- 23.1 The Contractor shall keep and maintain until seven years after the Framework Agreement has been completed full and accurate records of the Framework Agreement including the Call-Off Contract(s) provided under it, any expenditure reimbursed by the Dorset LEP and any payments made by the Dorset LEP.
- 23.2 The Contractor shall on reasonable notice afford the Dorset LEP such access to those records as may be required by the Dorset LEP in connection with the Framework Agreement.

## **PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**

### **24. TERMINATION**

- 24.1 This Framework Agreement shall terminate:
- 24.1.1 On the expiry of the Term;
  - 24.1.2 Immediately if either Party commits a fundamental breach of the terms and conditions of the Framework Agreement, with the offended Party serving written notice to the Party in breach, giving details of the way in which it is considered they are in breach;
- 24.2 The Dorset LEP may by notice in writing to the Contractor terminate this Framework Agreement as from the date of service of such notice if:
- 24.2.1 the Contractor passes a resolution or a court makes an order that the Contractor be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or
  - 24.2.2 circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Contractor; or
  - 24.2.3 the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of this Framework Agreement; or
  - 24.2.4 the Contractor becomes the subject of a voluntary arrangement under the Insolvency Act 1986; or
  - 24.2.5 the Contractor has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up; or
  - 24.2.6 the Contractor has a petition presented to any court for its winding up or for an administration order; or
  - 24.2.7 the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 24.2.8 the Contractor suffers any distress, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within 7 days.
- 24.3 The Dorset LEP may only exercise its right under clause 24.2.3 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contracting Officer immediately any change of control occurs.
- 24.4 The Dorset LEP shall be entitled to terminate this Framework Agreement immediately and recover from the Contractor the amount of any loss resulting from such cancellation if, in relation to any agreement with the Dorset LEP the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

- 24.5 The Dorset LEP may at any time by notice in writing to the Contractor terminate this Framework Agreement as from the date of service of such notice whenever any of the following events occurs:
- 24.5.1 the Contractor commits a material breach of any of its obligations under or in relation to this Framework Agreement which is not capable of remedy or, if capable of remedy, is not remedied within 30 days after receipt of written notice from the non-breaching party of its intention to terminate; or
  - 24.5.2 the Contractor is continually in breach or commits a series of repeated breaches of this Framework Agreement, which cannot be remedied within 30 days of written notice from the Dorset LEP of its intention to terminate.
- 24.6 The Dorset LEP shall have the right to terminate this Framework Agreement or to terminate the provision of any part of the Framework Agreement at any time by giving three month's written notice to the Contractor.
- 24.7 The termination or expiry of the Framework Agreement shall not automatically terminate any Call-Off Contract. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 24.8 No Other Contracting Body may terminate this Framework Agreement or the appointment of the Contractor under this Framework Agreement.
- 24.9 The Contractor shall upon the termination of the Framework Agreement immediately deliver up to the Dorset LEP all correspondence, documents, specification papers and property belonging to the Dorset LEP which may be in their possession or under their control.

## **PART FIVE: INSURANCE AND LIABILITY**

### **25. LIABILITIES AND INDEMNITIES**

- 25.1 Neither Party excludes or limits its liability for:
  - 25.1.1 Death or personal injury cause by its negligence;
  - 25.1.2 Fraud or fraudulent misrepresentation by it or its Employees;
  - 25.1.3 Breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 25.2 Subject to clause 25.1, both parties agree that each party's total aggregate liability in connection with this Framework Agreement in each twelve (12) month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall in no event exceed an amount equal to one hundred percent (100%) of the value of payments made. For the avoidance of doubt, the Parties acknowledge and agree that this clause 25.2 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in that Call-Off Contract.
- 25.3 Subject to clause 25.2 the Contractor shall indemnify and keep indemnified the Dorset LEP in full from against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury or loss of or damage to property financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by an act or omission of the Contractor. This shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury or loss or damage was not caused or contributed to by its negligence or default.
- 25.4 In no event shall either Party be liable to the other for:
  - 25.4.1 Loss of profits;
  - 25.4.2 Loss of business;
  - 25.4.3 Loss of revenue;
  - 25.4.4 Loss of or damage to goodwill;
  - 25.4.5 Loss of savings (whether anticipated or otherwise); and/or
  - 25.4.6 Subject to 25.5, any indirect, special or consequential loss or damage
- 25.5 Subject to the limits set out in clause 25.3, the Contractor shall be liable for the following type of loss, damage, cost or expense flowing from an act or Default of the Contractor which shall ( without in any way limiting other categories of loss, damage, cost or expense which may be recoverable by the Dorset LEP:
  - 25.5.1 any additional operational and / or administrative costs and expenses arising from any Default;
  - 25.5.2 the cost of procuring, implementing and operating any alternative or replacement services to the Services; and

- 25.5.3 any regulatory losses, fines, expenses or other losses arising from the breach by the Contractor of any law.

## **26. INSURANCE**

- 26.1 The Contractor shall effect and maintain the following insurances at its own expense for the duration of the Framework Agreement in relation to the performance of the Framework Agreement.
  - 26.1.1 a valid policy or policies of public liability insurance with a minimum level of Indemnity of £5 million for any one claim;
  - 26.1.2 a valid policy or policies of employer's liability insurance with a minimum level of indemnity of £10 million for any one claim in respect of all sums the Contractor is found legally liable to pay for injury, illness or disease suffered by an employee of the Contractor acting in the course of his duties;
- 26.2 Details of the above policies together with evidence that the policies are currently in force must be produced to any Dorset LEP on demand.
- 26.3 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Framework Agreement or any Call-Off Contract.
- 26.4 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Framework Agreement then the Dorset LEP may make alternative arrangements to protect its interests and recover the costs of such arrangements from the Contractor.

## **PART SIX: OTHER PROVISIONS**

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

- 27.1 The Contractor shall not transfer, assign or sub-contract directly or indirectly to any person or persons any portion of the Framework Agreement without the previous written permission of the Dorset LEP.
- 27.2 Where the Dorset LEP has consented to the placing of sub-contracts the Contractor shall:
  - 27.2.1 ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty days from the receipt of a valid claim.
  - 27.2.2 at the request of the Dorset LEP send copies of each sub-contract to the Dorset LEP as soon as reasonably practicable.
- 27.3 Sub-Contracting any part of this Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 27.4 The Dorset LEP shall be entitled to assign the benefit of this Framework Agreement or any part of it to a successor organisation/authority and shall give written notice of any assignment to the Contractor.

### **28. VARIATIONS TO THE FRAMEWORK AGREEMENT**

- 28.1 The Dorset LEP may propose a variation to the Framework Agreement by serving the Contractor with written notice of the proposal to vary the Framework Agreement.
- 28.2 The notice of variation will contain sufficient detail to allow the Contractor to consider whether any changes to the Pricing Schedule are necessary.
- 28.3 On receipt of the notice, the Contractor has 7 days to respond in writing with any objections to the variation. Where the Dorset LEP does not receive any written objections within the timescales detailed, the Dorset LEP may serve the Contractor with a written agreement detailing the variation to be signed and returned by the Contractor within 7 days of receipt.
- 28.4 Where the Contractor can demonstrate that a variation would result in a change to the prices set out in the Pricing Schedule, the Dorset LEP may require further evidence from the Contractor that any additional costs to the Contractor will be kept to a minimum.
- 28.5 The Dorset LEP may require the Contractor to meet and discuss any proposed changes to the Price Schedule that would result from a variation.
- 28.6 Where a change to the Pricing Schedule is agreed by the Dorset LEP the Dorset LEP shall notify its acceptance of the change to the Contractor in writing.
- 28.7 In the event that the Dorset LEP and the Contractor cannot agree to the changes to the prices set out in the Price Schedule, the Dorset LEP may withdraw the variation or propose an amendment to it. Alternatively, the matter may be dealt with through the dispute resolution provisions at clause 31.

- 28.8 Variations to the Framework Agreement shall be agreed through the Dorset LEP Contracts Officer at the Dorset LEP and no other section or department unless notified to the contrary.

## **29. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 29.1 Contacting Bodies shall be entitled to benefit from those provisions of this Framework Agreement which confer on them a benefit or right as against the Contractor and accordingly, each of them in its own right enforce those provisions in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 29.2 Except as provided for in clause 29.1, it is not intended that anything contained in this Framework Agreement should confer any enforceable rights or benefits upon third parties who are not parties to this Framework Agreement.

## **30. WAIVER**

- 30.1 Failure by the Dorset LEP or the Contractor to insist on strict performance of this Framework Agreement or to exercise any right or remedy upon breach of any provision of this Framework Agreement shall not constitute a waiver of the contract conditions or a waiver of any subsequent breach or default in the performance of the Framework Agreement.
- 30.2 The rights and remedies provided in this Framework Agreement are cumulative and not exclusive of any rights and remedies provided by law.

## **31. DISPUTE RESOLUTION**

- 31.1 In the event that any disagreement or difference of opinion arises out of this Framework Agreement the matter shall be dealt with as follows:
- 31.1.1 the Dorset LEP Contracting Officer and the Contractor representative shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either Party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred by either Party to the next level of management within the respective organisations for immediate resolution.
- 31.1.2 if within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the Parties shall thereafter seek to determine the matter in dispute by adopting one of the procedures set out below.
- 31.2 An independent expert can be appointed by agreement between the Parties. The Parties shall promptly furnish to such expert all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the Parties taking into account the respective rights and obligations of the Parties.
- 31.3 The decision of the expert shall be final and binding on the Parties.
- 31.4 The Parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.

- 31.5 Alternatively, either Party may refer the matter for decision to arbitration whereupon the Parties shall comply with the following provisions:
- 31.5.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 31.5.2 the arbitration fees shall be met by the Dorset LEP and Contractor in equal shares;
  - 31.5.3 the decision of the arbitrator shall be binding on the Parties.

## **32. SEVERANCE**

- 32.1 If any part of this Framework Agreement becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which gives effect to their original intentions.

## **33. NOTICES**

- 33.1 Any Notice to be given under this Framework Agreement shall be e-mailed to the given email address or in writing sent by recorded first class mail to the address of the Contractor and the Dorset LEP at the head of this Framework Agreement or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 33.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received :
- 33.2.1 if the email is acknowledged;
  - 33.2.2 if a letter delivered by recorded first class inland mail, five Working Days after the day of posting.
- 33.3 In proving the giving of a notice it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.

## **34. CONFLICT OF INTEREST**

- 34.1 The Contractor shall use reasonable endeavours to ensure that neither the Contractor nor any of its Employees, servants, agents, suppliers or sub-contractors is placed in a position where there is or may be an actual conflict or potential conflict between the pecuniary interests of the Contractor or such persons and the duties owed to the Dorset LEP under the provisions of the Framework Agreement. The Contractor shall disclose to the Dorset LEP full particulars of any such conflict of interest which may arise.
- 34.2 The provision of this clause shall apply during the continuance of the Framework.

## **35. CHANGE IN LAW**

- 35.1 The Contractor shall not be relieved of its obligations to perform the Services under this Framework Agreement as a result of a change in law, if the change and its effect are known at the Commencement Date.



- 35.2 If a change in law occurs or is shortly to occur which will significantly affect the provision of the Services including the cost of doing so, the Contractor shall notify the Dorset LEP to express an opinion of the likely effects of the change including;
- 35.2.1 whether any change is required to the Services or the terms of this Framework Agreement; and
- 35.2.2 whether the Contractor requires any relief from compliance with its obligations.
- 35.3 If the parties to this Framework Agreement agree upon the effects of the change in law and any financial consequences, such agreement shall be implemented through the variation provisions of Clause 28.
- 35.4 In the case of any dispute arising under this Clause, it shall be resolved in accordance with the dispute resolution provisions set out in Clause 31.

### **36. ENTIRE AGREEMENT**

- 36.1** This Framework Agreement represents the entire agreement between the Contractor and the Dorset LEP in relation to the subject matter hereof, save for such Call-Off Contracts as may be entered into between the Dorset LEP and Contractor pursuant to this Framework Agreement.

### **37. LAW AND JURISDICTION**

- 37.1** This Framework Agreement shall be governed by and interpreted in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF** this Framework Agreement has been executed as a Deed by the Parties below and delivered on the date first above written.

EXECUTED as a DEED  
**DORSET LEP**

Authorised Signatory

EXECUTED as a DEED by  
**[CONTRACTORS FULL NAME – AND COMPANY NUMBER]**  
acting as a Director of the company

Director .....

Secretary/Director .....

Witness: .....

Witness Signature .....

Print Name .....

Address .....

Occupation .....

*This document must be executed as a Deed, you should check with your company Articles to ensure you comply with the requirements for your company. Most commonly a document can be signed by a Director and a Secretary or two Directors. If you wish to have just one Director sign this document you will need someone to witness their signature and complete the 'Witness' details.*

## APPENDIX 1 – CALL-OFF TERMS AND CONDITIONS

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### 1. DEFINITIONS

- 1.1 **'Contract'** or **'Call Off Contract'** means the legally binding agreement for the provision of Goods or Services made between a Contracting Body and the Contractor comprising an Order, the Specification and these clauses;
- 1.2 **'Commencement Date'** means the date set out in the Order;
- 1.3 **'Commercially Sensitive Information'** means, if relevant, the information listed in a schedule or order comprised of trade secrets and information provided by the Contractor to the Dorset LEP in confidence;
- 1.4 **'Confidential Information'** means any information in this Agreement and of either party which forms the subject matter of patent, copyright, registered design or other protected propriety right, information of the other party designated as "Commercially Sensitive Information" or information which is by its nature clearly confidential;
- 1.5 **'Contracting Body'** means the **Dorset Local Enterprise Partnership** (Dorset LEP).
- 1.6 **'Contracting Officer'** means the representative of the Contracting Body appointed by the Body to act on its behalf as agent for the purpose of managing the Order;
- 1.7 **'Contract Price'** means the price (exclusive of any applicable VAT), payable to the Contractor by the Contracting Body as set out in the Order, for the full and proper performance by the Contractor of its obligations under the Contract;
- 1.8 **'Contractor'** means the person, firm or company with whom the Contracting Body enters into the Contract to supply the Goods or Services as set out in the Order, and shall include the Contractor's employees, personal representatives, successors and permitted assigns;
- 1.9 **'Default'** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Employees in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;
- 1.10 **'DPA'** means the Data Protection Act 1998;
- 1.11 **'Employees'** means all persons employed by the Contractor together with the Contractor's servants, agents, Contractors and sub-contractors used in the performance of its obligations under the Contract;
- 1.12 **'Equipment'** means the Contractor's equipment, plant and materials used in the performance of its obligations under the Contract;
- 1.13 **'FOIA'** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time with any guidance and/or codes of practice issued by the Information Commissioner in relation to the legislation;
- 1.14 **'Force Majeure'** means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including fire; flood, violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear; biological or chemical warfare; or any other disaster; natural or man-made, but excluding:

- 1.14.1 any industrial action occurring within the Contractor's or any sub-contractors organisation; or
- 1.14.2 the failure by any sub-contractor to perform its obligations under any sub-contract.
- 1.15 **'Framework Agreement'** or **'Agreement'** or **'Framework'** means the Framework Agreement for the Review of Business Case Services.
- 1.16 **'Goods or Services'** means the supply and delivery of Goods or Services to be supplied as specified in the Order. Any reference to Goods shall apply equally to the performance of Services as appropriate unless otherwise stated;
- 1.17 **'Management Information'** means files, usage records, changing information, and such other management information, as the Contractor is obliged to retain for information for the Contracting Body as detailed in the Specification;
- 1.18 **'Month'** means calendar month;
- 1.19 **'Order'** means an order for Goods or Services served by any Contracting Body on the Contractor in accordance with this Framework Agreement;
- 1.20 **'Party'** means the Contracting Body or the Contractor as set out in the Order;
- 1.21 **'Premises'** or **'Site'** means any location where the Goods or Services are delivered, or the Goods are required to be collected, as set out in the Order;
- 1.22 **'Prohibited Act'**: the following constitute Prohibited Acts:
- 1.22.1 to directly or indirectly offer, promise or give any person working for or engaged by the Dorset LEP a financial or other advantage to:
- I. induce that person to perform improperly a relevant function or activity; or
  - II. reward that person for improper performance of a relevant function or activity;
- 1.22.2 to directly or indirectly request, agreed 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 Agreement;
- 1.22.3 committing any offence:
- I. under the Bribery Act
  - II. under the legislation creating offences concerning fraudulent acts;
  - III. at common law concerning fraudulent acts relating to this Agreement or any other Contract or Agreement with the Dorset LEP; or
- 1.22.4 defrauding, attempting to defraud or conspiring to defraud the Dorset LEP.
- 1.23 **'Specification'** means the scope of the Goods or Services to be provided as set out in Appendix 2 of the Framework Agreement;
- 1.24 **'Working Days'** means Monday to Friday inclusive but not including any declared public holiday.

## **2. INTERPRETATION**

- 2.1 The interpretation and construction of the Contract shall be subject to the following provisions:
  - 2.1.1 Reference to the singular includes the plural and vice versa and references to any gender includes both genders;
  - 2.1.2 The words "include", "includes" and "including" are construed as they were immediately followed by the words "without limitation";
  - 2.1.3 References to any person shall include persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns and transferees;
  - 2.1.4 The headings in the Contract included for ease of reference only and shall not affect the interpretation or construction of the Contract;
  - 2.1.5 Any periods of time referred to in the Contract and expressed in days shall refer to calendar days unless stated otherwise;
  - 2.1.6 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force;
  - 2.1.7 Any condition referring to the delivery of Goods shall apply equally to the performance of Services as appropriate unless otherwise stated;
  - 2.1.9 Reference to a clause is a reference to the whole of that clause unless stated otherwise;

## **3 GENERAL PROVISIONS**

### **3.1 Contractor's Status**

- 3.1.1 At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

### **3.2 Entire Agreement**

- 3.2.1 This Contract, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 3.2.2 In the event of any conflict between the Order, the Specification, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in the following order of precedence:
  - i. the Order;
  - ii. the Specification

- iii. the Clauses of the Contract;
- iv. any other document referred to in the clauses of the Contract

### **3.3 Notices**

- 3.3.1 Any Notice to be given under this Framework Agreement shall be e-mailed to the given email address or in writing sent by recorded first class mail to the address of the Contractor and the Dorset LEP at the head of this Framework Agreement or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 3.3.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received :
  - 3.3.2.1 if the email is acknowledged;
  - 3.3.2.1 if a letter delivered by recorded first class inland mail, five Working Days after the day of posting.
- 3.3.3 In proving the giving of a notice it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.

### **3.4 Conflicts of Interest**

- 3.4.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor its Employees or any servant, agent, contractor or sub-contractor is placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Contracting Body under the provisions of this Call-Off Contract. The Contractor will disclose to the Contracting Body full particulars of any such conflict of interest which may arise.

## **4. SUPPLY OF GOODS OR SERVICES**

### **4.1 The Goods or Services**

- 4.1.1 The Contractor shall supply the Goods or Services in accordance with the Contracting Body's requirements in the Framework Agreement, the Specification, the Order, any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 and all relevant specifications applicable to such including those of the British Standards Institution or European equivalent (or if there be no such specification shall be of the highest standard).
- 4.1.2 The Contractor acknowledges that the Contracting Body relies on the skill and judgment of the Contractor in the supply of the Goods or Services and the performance of its obligations under the Contract.

### **4.2 Delivery of Goods**

- 4.2.1 The Contractor shall deliver the Goods/ Services at the time(s), date(s) and Premises as specified in the Order and strictly in accordance with the Specification at all times.
- 4.2.2 The Contractor shall not deliver any Goods/ Services without the Contracting Body's prior request and approval.

- 4.2.3 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods/ Services within the time specified by the Contracting Body, the Contracting Body may release itself from any obligation to accept and pay for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Contracting Body.
- 4.2.4 The Contracting Body shall be under no obligation to accept or pay for any Goods/ Services delivered in excess of those ordered. If the Contracting Body elects not to accept such over-delivered Goods/ Services it shall give notice in writing to the Contractor to remove item within five Working Days and to refund to the Contracting Body any expenses incurred by it as a result of such over –delivery (including but not limited to the costs of moving and storing the Goods/ Services), failing which the Contracting Body may dispose of such Goods/ Services and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods/ Services shall remain with the Contractor unless they are accepted by the Contracting Body. The Contracting Body shall be under no obligation to accept or pay for any Goods/ Services supplied earlier than the date for delivery stated in the Order.
- 4.2.5 Acceptance of delivery shall take place when a person authorised by the Contracting Body to give an acceptance receipt, gives the Contractor such a receipt.
- 4.2.6 In delivering the Goods/ Services to the Premises the Contractor shall take all reasonable care to avoid injury to persons thereon and damage to property.
- 4.2.7 The Contractor shall comply with all reasonable security requirements relating to the Premises and shall ensure that all its Employees, agents and sub-contractors shall likewise comply with such requirements.

#### **4.3 Delivery of Services**

- 4.3.1 The Contractor shall deliver the Services at the time(s), date(s) and Premises as specified in the Order and strictly in accordance with the Specification at all times.
- 4.3.2 The Contractor shall not deliver any Services without the Contracting Body's prior request and approval.
- 4.3.3 The Contracting Body shall be under no obligation to accept or pay for any Services delivered in excess of those ordered.
- 4.3.4 The Contracting Body shall be under no obligation to accept or pay for any Services supplied earlier than the date for delivery stated in the Order.
- 4.3.5 The Contractor shall comply with all reasonable security requirements relating to the Premises including those set out in the Specification and shall ensure that all its Employees, agents and sub-contractors shall likewise comply with such requirements.

#### **4.4 Collection**

- 4.4.1 The Contractor shall have the Goods/ Services ready for collection at the time(s), date(s) and method as specified in the Order and strictly in accordance with the Specification at all times.
- 4.4.2 If the Contractor fails to have the Goods/ Services ready for collection within the time specified by the Contracting Body, the Contracting Body may release itself from any obligation to collect and pay for the Goods and/or

terminate the Contract, in either case without prejudice to any other rights and remedies of the Contracting Body.

- 4.4.3 In collecting the Goods/ Services from the Premises the Contracting Body shall take all reasonable care to avoid injury to persons thereon and damage to property.

#### **4.5 Ownership and Risk**

- 4.5.1 Ownership and risk in the Goods/ Services shall, without prejudice to any other rights or remedies of the Contracting Body, pass to the Contracting Body at the time of acceptance. Risk transfers on delivery.

#### **4.6 Rejection**

- 4.6.1 The Contracting Body may by written notice to the Contractor reject any of the Goods/ Services which fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to the Contracting Body of such Goods/Services. If the Contracting Body rejects any of the Goods or Services pursuant to this clause the Contracting Body may (without prejudice to other rights and remedies) either:-

- (a) have such Goods or Services promptly, and in any event within five (5) Working Days, replaced by the Contractor with Goods/ Services which conform in all respects with the Order; or
- (b) treat the Contract as discharged by the Contractor's breach and obtain a refund from the Contractor in respect of the Goods/ Services concerned together with payment of any additional expenditure reasonably incurred by the Contracting Body in obtaining other Goods or Services in replacement provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods/ Services.

- 4.6.2 The issue by the Contracting Body of a delivery receipt for the Goods/ Services shall not constitute any acknowledgement of the condition, quantity or nature of those Goods/ Services.

#### **4.7 Contractor's Employees**

- 4.7.1 The Contractor warrants and represents that all its Employees assigned to the performance of the Services shall be suitably qualified, trained and experienced to provide the Services required and shall be made fully aware of the Contractor's obligations under the Contract as it affects them in the performance of the Services.
- 4.7.2 The Employees engaged in the provision of the Services shall obey all reasonable instructions given to them by the Contracting Body in any matter relating to health and safety.
- 4.7.3 The Contractor shall employ sufficient persons to ensure the Services are provided at all times and in all respects in accordance with the Contract.
- 4.7.4 All Employees of the Contractor shall at all times be properly dressed in clothing suitable for the performance of the Services which ensures compliance with health and safety regulations.
- 4.7.5 The Contractor shall ensure all Employees deployed on work relating to the Contract are properly managed and sufficiently instructed, trained and



supervised with regard to the provision of the Services, and are appropriately attired to meet health and safety regulations.

- 4.7.6 The Contractor shall give, and ensure that its Employees give all reasonable assistance to the Contracting Body in the investigation of complaints, disciplinary matters, claims for damages, and similar matters.
- 4.7.7 The Contracting Body shall have power upon written notice to require the Contractor, but not unreasonably or vexatious, to remove any Employees from involvement in the Services whose admission or continued presence would be, in the reasonable opinion of the Contracting Body, undesirable.
- 4.7.8 The decision of the Contracting Body as to whether any person is to be refused admission to the Site shall be final and conclusive.
- 4.7.9 The Contracting Body shall in no circumstances be liable either to the Contractor or to any Employees in respect of any award, cost, expenses, liability, loss or damage occasioned by such a removal and the Contractor shall fully indemnify the Contracting Body in respect of any claims made.

#### **4.8 Contractor's Equipment**

- 4.8.1 The Contractor shall provide all Equipment necessary for the provision of the Services.
- 4.8.2 The Contractor shall maintain in a safe and clean condition all Equipment used in the course of the Contract.
- 4.8.3 All equipment belonging to the Contractor which is brought onto the Contracting Body's premises shall be at the Contractor's risk.

### **5. CONTRACT PERFORMANCE**

- 5.1 The Contractor shall perform its obligations under the Contract:-
  - i. with appropriately experienced, qualified and trained Employees with all due skill, care and diligence;
  - ii. in a timely manner; and
  - iii. in compliance with all applicable legislation, including but not limited to, any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.
- 5.2 The Contractor shall ensure that the Goods or Services conform in all respects with the Specification and are fit and sufficient for all the purposes for which such Goods or Services are ordinarily used and for any particular purpose made known to the Contractor by the Contracting Body.

### **6. PAYMENT AND CONTRACT PRICE**

#### **6.1 Contract Price**

- 6.1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Contracting Body shall pay the Contract Price in accordance with clause 6.2.

- 6.1.2 The Contracting Body shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods or Services supplied in accordance with the Contract.
- 6.1.3 Payment shall, unless otherwise stated, be deemed to be inclusive of all costs, expenses and overheads of any kind incurred by the Contractor including delivery costs.

## **6.2 Payment and VAT**

- 6.2.1 In consideration of the Contractor performing its obligations under the Contract, the Contracting Body shall pay all sums due to the Contractor in cleared funds within thirty (30) days of receipt of a correct invoice.
- 6.2.2 Invoices and purchaser orders must legibly state the information set out in the Specification.
- 6.2.3 All payments will be made in sterling unless otherwise agreed by the Parties.
- 6.2.4 If the Contracting Body intends to withhold all or any part of a payment it must not later than 5 Working Days before the final date for payment give notice to the Contractor to that effect which notice must specify the amount proposed to be withheld and the ground for doing so.

## **6.3 Recovery of Sums Due**

- 6.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any breach of the Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Contracting Body.
- 6.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 6.3.3 The Contractor shall make any payments due to the Contracting Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Body to the Contractor.

# **7. STATUTORY OBLIGATIONS AND REGULATIONS**

## **7.1 Discrimination**

- 7.1.1 The Contractor shall not unlawfully discriminate in the supply of the Goods or Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion, belief or age and without prejudice to the generality of the foregoing shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation, or any statutory modification or re-enactment.

7.1.2 The Contractor shall at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Contracting Body. The Contractor will forward a copy of this policy to the Contracting Body when required to demonstrate its operation in the supply of the Goods or Services.

7.1.3 The Contractor shall take all reasonable steps to secure the observance of clause 7.1.1 by all servants, Employees or agents of the Contractor and all contractors and sub-contractors employed in the execution of the Contract.

## **7.2 The Contracts (Rights of Third Parties) Act 1999**

7.2.1 A person who is not a Party to the Contract shall not have any rights under or in connection with it.

## **7.3 Health and Safety**

7.3.1 The Contractor shall comply with the requirements of the Specification and of the Health and Safety at Work etc Act 1974 and all other Acts, orders, regulations and codes of practice relating to health and safety which may apply to the performance of the Contract.

7.3.2 The Contractor shall promptly notify the Contracting Body of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Contract.

7.3.3 The Contractor shall make its health and safety policy statement available on request.

7.3.4 The Contracting Body shall be empowered to suspend the performance of the Contract in the event of non-compliance by the Contractor with its legal duties in health and safety. The Contractor shall not resume performance of the Contract until the Contracting Body is satisfied that the non-compliance has been rectified.

# **8. CONTROL OF THE CONTRACT**

## **8.1 Assignment and Sub-Contracting**

8.1.1 The Contractor shall not transfer, assign or sub-contract directly or indirectly to any person or persons any portion of the Framework Agreement without the previous written permission of the Dorset LEP.

8.1.2 Where the Dorset LEP has consented to the placing of sub-contracts the Contractor shall:

- a) ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty days from the receipt of a valid claim.
- b) at the request of the Dorset LEP send copies of each sub-contract to the Dorset LEP as soon as reasonably practicable.

8.1.3 Sub-Contracting any part of this Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

- 8.1.4 The Dorset LEP shall be entitled to assign the benefit of this Framework Agreement or any part of it to a successor organisation/authority and shall give written notice of any assignment to the Contractor.

## **8.2 Waiver**

- 8.2.1 Failure by the Contracting Body or the Contractor to insist on strict performance of the Contract or to exercise any right or remedy upon breach of any provision of the Contract shall not constitute a waiver of the Contract conditions or a waiver of any subsequent breach or Default in the performance of the Contract.
- 8.2.2 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

## **8.3 Variation**

- 8.3.1 Subject to the provisions of this clause 8.4, the Contracting Body may request a variation to Goods or Services ordered provided that such variation does not amount to a material change to the Order.
- 8.3.2 The Contracting Body may request a variation by giving sufficient information for the Contractor to assess the extent of the variation and any additional cost that may be incurred. The Contractor shall respond to a request for a variation within the time limits specified by the Contracting Body.
- 8.3.3 In the event that the Parties are unable to agree a change to the Contract Price, the Contracting Body may:-
- i. agree to continue to perform their obligations under the Contract without the variation; or
  - ii. terminate the Contract with immediate effect, except where the Contractor has already delivered part of all of the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed in clause 11.2.
- 8.3.4 If the Parties agree the variation, the Contractor shall carry out such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Contract.

## **8.4 Severability**

- 8.4.1 If any part of this Contract becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which gives effect to their original intentions.

## **8.5 Remedies in the event of inadequate performance**

- 8.5.1 In the event that the Contracting Body is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Contracting Body may, without prejudice to its rights under clause 10, do any of the following:-
- i. without terminating the Contract, itself supply or procure the supply of all or part of the Goods or Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Contracting

Body that the Contractor will once more be able to supply all or such part of the Goods or Services in accordance with the Contract;

- ii. without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods or Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods or Services;
- iii. terminate, in accordance with clause 10 the whole of the Contract; and/or
- iv. charge the Contractor for, and the Contractor shall pay, any costs reasonably incurred by the Contracting Body (including any reasonable administration costs) in respect of the supply of any part of the Goods or Services by the Contracting Body or a third party provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods or Services.

8.5.2 If the Contractor fails to supply any of the Goods or Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Body shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 (ten) Working Days of the Contracting Body's instructions or such other period of time as the Contracting Body may direct.

8.5.3 In the event that the Contractor:-

- i. fails to comply with clause 8.5.2 above and the failure is materially adverse to the interests of the Contracting Body or prevents the Contracting Body from discharging a statutory duty; or
- ii. persistently fails to comply with clause 8.5.2 above;

the Contracting Body may terminate the Contract with immediate effect by giving the Contractor notice in writing.

8.5.4 Without prejudice to any other right or remedy which the Contracting Body may have, if any Goods or Services are not supplied in accordance with, or the Contractor fails to comply with any of the terms of, the Contract the Contracting Body shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods or Services have been accepted by the Contracting Body:-

- i. to rescind the Order;
- ii. to reject the Goods or Services (in whole or in part) and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Goods or Services so returned shall be paid forthwith by the Contractor;
- iii. at the Contracting Body's option to give the Contractor the opportunity at the Contractor's expense to either remedy any defect in the Goods or Services or to supply replacement Goods or Services;
- iv. to refuse to accept any further deliveries of the Goods or Services but without any liability to the Contracting Body; and

- 8.5.5 to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract.

## **9. LIABILITIES, INDEMNITIES AND INSURANCE**

### **9.1 Liability and Indemnity**

- 9.1.1 Nothing in this clause attempts to limit or exclude either Party's liability for:
- (a) Death or personal injury caused by its negligence;
  - (b) Fraud or fraudulent misrepresentation by it or its Employees;
  - (c) Breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 9.1.2 Subject to Clause 9.1.1, both Parties agree that each Party's total aggregate liability in connection with this Contract whether those liabilities are expressed as an indemnity or otherwise in each twelve (12) month period during the Contract Period (whether in contract, tort including negligence breach of statutory duty or howsoever arising) shall in no event exceed one hundred and fifty per cent (150%) of the Contract Price for the Contract.
- 9.1.3 For the avoidance of doubt, the Parties acknowledge and agree that this clause shall not limit either Party's liability under the Framework Agreement and that each Party's liability in relation to the Framework Agreement shall be as set out in the Framework.
- 9.1.4 Nothing in this clause or clause 29 of the Framework Agreement shall allow either Party to recover twice for any loss.
- 9.1.5 Subject to clause 9.1.1 and 9.1.2 the Contractor shall indemnify and keep indemnified the Contracting Body on demand in full from and against all legally enforceable claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with any death or personal injury or loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused by an act or omission of the Contractor.
- 9.1.6 Clause 9.1.5 shall not apply to the extent that the Contractor is able to demonstrate that such loss detailed in that clause was not caused or contributed to by its negligence or Default, or the negligence or Default of the Contractor's Employees.
- 9.1.7 In no event shall either Party be liable to the other for:
- (a) Loss of profits;
  - (b) Loss of business;
  - (c) Loss of revenue;
  - (d) Loss of or damage to goodwill;
  - (e) Loss of savings (whether anticipated or otherwise); and/or

- (f) Subject to 9.1.8, any indirect, special or consequential loss or damage.

9.1.8 The Contractor shall be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Contractor which shall (without in any way limiting other categories of loss, damage, cost or expense which may be recoverable by the Contracting Body) be recoverable by the Contracting Body:

- (a) any additional operational and/or administrative costs and expenses arising from any Default;
- (b) the cost of procuring, implementing and operating any alternative or replacement services to the Services;
- (c) any wasted expenditure or charges rendered unnecessary and/or uncured by the Contracting Body arising from the Contractor's Default (to include wasted staffing costs in the event of delayed delivery);and
- (d) any regulatory losses, fines, expenses or other losses arising from a breach by the Contractor of any laws.

## **9.2 Insurance**

9.2.1 The Contractor shall effect and maintain the following insurances at its own expense for the duration of the Contract arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor:

- i. a valid policy or policies of public liability insurance with a minimum level of indemnity of £5 million for any one claim;
- ii. a valid policy or policies of employer's liability insurance with a minimum level of indemnity of £10 million for any one claim in respect of all sums the Contractor is found legally liable to pay for injury, illness or disease suffered by an employee of the Contractor acting in course of his duties;

9.2.2 The Contractor shall give the Contracting Body, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

9.2.3 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

9.2.4 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

## **9.3 Warranties and Representations**

9.3.1 The Contractor warrants and represents that:-

- i. it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract and the Contract is executed by a duly authorised representative of the Contractor;
- ii. it will supply the Goods or Services using reasonable care, skill and diligence using suitably qualified personnel and in accordance with generally accepted industry standards and practice.
- iii. in entering the Contract it has not committed any fraud;
- iv. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- v. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- vi. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

## **10. DEFAULT, DISRUPTION AND TERMINATION**

### **10.1 Termination**

- 10.1.1 The Contracting Body may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor:-
- i. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - ii. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
  - iii. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - iv. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - v. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
  - vi. the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which



impacts adversely and materially on the performance of the Contract. The Contracting Body may only exercise its right to terminate within six months after a change of control occurs.

- 10.1.2 The Contracting Body shall be entitled to terminate this Contract immediately and recover from the Contractor the amount of any loss resulting from such cancellation if, in relation to any agreement with the Contracting Body, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.
- 10.1.3 The Contracting Body may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a material Default and if:
- i. the Contractor has not remedied the Default to the satisfaction of the Contracting Body within ten (10) Working Days, or such other period as may be specified by the Contracting Body, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - ii. the Default is not, in the opinion of the Contracting Body, capable of remedy.
- 10.1.4 The Contracting Body shall have the right to terminate the Contract at any time by giving 30 days written notice to the Contractor.
- 10.1.5 The Contracting Body may terminate the Contract by giving written notice to the Contractor with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

## **10.2 Consequences of Expiry or Termination**

- 10.2.1 Where the Contracting Body terminates the Contract under clause 10.1.3 and then makes other arrangements for the supply of Goods or Services, the Contracting Body may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Body throughout the remainder of the Contract Period. The Contracting Body shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated due to the Contractor's Default, no further payments shall be payable by the Contracting Body until the Contracting Body has established the final cost of making those other arrangements.
- 10.2.2 Save as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

## **10.3 Disruption**

- 10.3.1 The Contractor shall immediately inform the Contracting Body of any actual or potential industrial action, whether such action be by its own Employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 10.3.2 In the event of industrial action by the Employees, the Contractor shall seek the Contracting Body's approval to its proposals for the continuance of the

supply of the Goods or Services in accordance with its obligations under the Contract.

- 10.3.3 If the Contractor's proposals referred to in clause 10.3.2 are considered insufficient or unacceptable by the Contracting Body acting reasonably then the Contract may be terminated with immediate effect by the Contracting Body by notice in writing.
- 10.3.4 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Contracting Body, an appropriate allowance by way of extension of time will be approved by the Contracting Body. In addition, the Contracting Body will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

#### **10.4 Recovery upon Termination**

- 10.4.1 On the termination of the Contract for any reason, the Contractor shall:
- i. immediately deliver to the Contracting Body all property that may have been provided to the Contractor by the Contracting Body.
  - ii. assist and co-operate with the Contracting Body to ensure an orderly transition of the provision of the Services to the replacement Contractor and/or the completion of any work in progress.

#### **10.5 Force Majeure**

- 10.5.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 10.5.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or contractor shall be regarded as due to Force Majeure only if that agent, sub-contractor or contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 10.5.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 10.5.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

### **11. DISPUTES AND LAW**

#### **11.1 Law and Jurisdiction**

- 11.1.1 This Contract shall be governed by and interpreted in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the English courts.

## **11.2 Dispute Resolution**

- 11.2. In the event that any disagreement or difference of opinion arises out of this Contract the matter shall be dealt with as follows:
- i. the Contracting Body's Contracting Officer and the Contractor Representative shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either Party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred by either Party to the next level of management within the respective organisations for immediate resolution.
  - ii. if within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the Parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.
- 11.3 An independent expert shall be appointed by agreement between the Parties. The Parties shall promptly furnish to such expert all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the Parties taking into account the respective rights and obligations of the Parties.
- 11.4 The decision of the expert shall be final and binding on the Parties.
- 11.5 The Parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.
- 11.6 In respect of all other disputes either Party may refer the matter for decision to arbitration whereupon the Parties shall comply with the following provisions:
- 11.6.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 11.6.2 the arbitration fees shall be met by the Contracting Body and Contractor in equal shares;
  - 11.6.3 the decision of the arbitrator shall be binding on the Parties.



**Dorset Local Enterprise  
Partnership**

**REQUEST FOR TENDERS**

**Due Diligence**

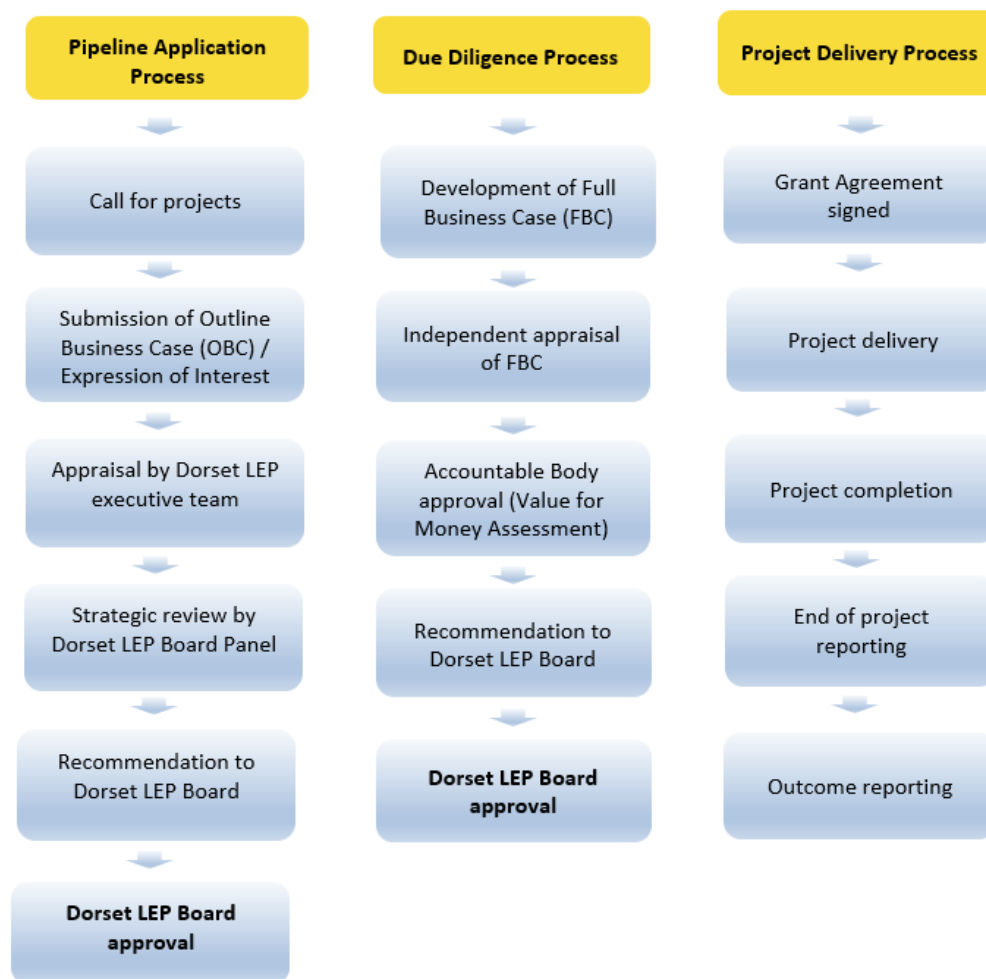
**September 2020**

## 1. BACKGROUND

- 1.1. Established in 2011, Dorset Local Enterprise Partnership (LEPs) is a private sector-led organisation responsible for speaking on behalf of businesses, championing important issues with government and ultimately driving the economic growth of Dorset.
- 1.2. Dorset LEP is responsible for setting the strategic direction for the Dorset economy and delivering an investment programme of around £250m. Working in partnership with local government, businesses, educational institutions and other public, private and community sector organisations, Dorset LEP keeps Dorset firmly on the map.
- 1.3. Led by an experienced and dedicated board of public and private sector members, Dorset LEP aims to make Dorset the best place to do business in the UK by putting in place the building blocks to drive productivity in Dorset.
- 1.4. Dorset is proud of its £18 billion contribution to the UK economy and its robust employment and business survival rates. However, like many parts of the UK, Dorset's productivity rate lags behind the national average and we face renewed global competition in a post-Brexit economy. Despite this, Dorset's economy is resilient, growing, and has the potential to deliver greater prosperity for Dorset and beyond for generations to come.
- 1.5. Dorset LEP's modern industrial vision is to double Dorset's productivity and economic output to £35.6 billion over the next twenty years, generating 80,000 jobs, building around 78,000 new homes, and creating a local economy that is sustainable, innovative and inclusive.
- 1.6. Dorset LEP is working to fulfil our Local Industrial Strategy, which sets out how Dorset can achieve its ambition for economic growth. The strategy outlines how Dorset LEP will work in partnership with the local business community and anchor institutions to deliver economic growth, prosperity and productivity in Dorset. Other key documents include the forthcoming Dorset Skills Plan and Dorset Investment Prospectus.

## 2. DUE DILIGENCE

- 2.1. Dorset LEP requests submission of full business cases from shortlisted applications submitted to Dorset LEP funded programmes.
- 2.2. Full Business Cases will be reviewed in line with Dorset LEPs [Local Assurance Framework](#).
- 2.3. In line with the process outlined in [Decision Making and Due Diligence Policy](#) and the flow chart below, Dorset LEP will employ independent expertise to undertake objective and independent due diligence of full business cases. This will provide additional rigour to inform decision making.



2.4 In addition to due diligence work on full business cases, we may also require specific assessments linked to projects such as market analysis or to establish if projects have met their specified outcomes.

### 3. OBJECTIVE

- 3.1. In response to the above requirements, Dorset LEP is seeking to procure independent expertise to undertake objective and independent due diligence on Local Growth Deal projects, and other funding streams as appropriate in the future, via a flexible framework arrangement.
- 3.2. Assessments will be on an ad hoc basis and Dorset LEP will approach the framework at the earliest opportunity to commission this work.
- 3.3. Assessment on the business case will be to ensure that the project fits the Green Book Business Case template and that it fits with the 5 case model, i.e.: Strategic; Economic; Commercial; Financial; Management.
- 3.4. There is no prescribed format or template for business cases. However, we do expect business cases to be compliant with the established Government guidance including the HM Treasury Green Book, and they must include the following:
  - An outline of the scheme and the economic outcomes to be delivered;
  - Evidence that all relevant consents are in place (or are scheduled to be in place) by a specified date to facilitate delivery;
  - Evidence that third party funding is in place (if applicable);

- A full financial appraisal to include financial forecasts, phasing of expenditure and cash-flow for phase 1 delivery;
  - A full project delivery plan;
  - A risk register;
  - Strategy for procurement of contractors to deliver works (where relevant).
- 3.5. For transport schemes, business cases must be developed in accordance with WebTAG advice provided by Department for Transport:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85930/df-t-transport-business-case.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85930/df-t-transport-business-case.pdf)

## 4. OUTPUT

4.1. Assessment and review of full business cases a range of projects:

- Capital and revenue
- Small to large scale
- Including the following themes: Transport, Innovation, Skills, Housing, 5G, Digital
- Project value ranging from £250k to £10m

4.2. Submission of a full report on each business case identifying the following:

- Compliance with relevant HM Treasury Green Book guidance (overview in Appendix A)
- An evaluation of the viability of the business case, including the robustness of key assumptions and sensitivity analysis, where necessary
- Highlighting the key financial risks
- Full due diligence on all of the financial data contained within the financial model highlighting any errors, omissions, mistakes of methodology or technique or any other concerns
- Assessment of the financial suitability / status of the delivery partner (where appropriate)
- Identification of any potential State Aid implications
- Any data not provided but required in order to properly assess the business case
- Critical review on the risk register
- State of preparedness of project for delivery (i.e. designs, consents in place, contracting arrangements)

4.3. Submission of a final report evaluating each business case with clear findings and any necessary recommendations; including any advice on any pre-conditions to be incorporated into grant agreements or before grant agreements are signed. Recommendations for the Dorset LEP Board must also be included.

4.4. Each review will have an expectation of a time line being attached such that the process of awarding a grant or loan can flow through the committee structures of the Dorset LEP and arrive at the Board for final agreement in a timely manner; maximum timescales for delivery of the assessment once commissioned are

Business case submission to assessor	Day 1
Assessment take place	Day 2-14

Report supplied to Dorset LEP	Day 15
Changes made to business case as appropriate	Day 16

## 5. BUDGET AND DURATION

5.1. The contract will run from 9 December 2020 until 9 December 2022.

5.2. The budget allocated is up to £95,000

5.3. Dorset LEP reserves the right not to make any appointment.

## 6. BID DOCUMENTATION

6.1. In responding, proposals should set out the following:

- Explain the process for undertaking the stage 2 due diligence process, including a sample report template.
- The name of any individual/individuals who will work on the contract, their role, the amount of time to be spent on the work and a summary of their qualifications and relevant subject knowledge and experience. Full CVs are not required.
- An estimated cost on a per business case basis (recognising that individual costs will be agreed on the basis of the complexity of individual projects within the total contract value).
- A day rate.
- Availability to undertake this work, and demonstrable ability to operate in a flexible manner to manage a steady flow of work throughout the period as well as the anticipated work flow peaks.
- Evidence of completing similar work with Local Enterprise Partnerships and local authorities or other similar bodies.
- Details of any conflicting or complementary work which you may be undertaking at the same time.
- Highlight any areas of expertise relating to the range of projects that Dorset LEP delivers.
- Confirmation of professional indemnity insurance, including amount of cover held.
- Contact details for two references.

## 7. CONTRACT MANAGEMENT AND MONITORING

7.1. The work will be overseen by the Dorset LEP Programme Manager and Performance and Investment Committee.

7.2. The supplier should nominate a dedicated point of contact to act as Contract Manager to oversee the work and liaise with and report to the Dorset LEP Programmes Manager.

7.3. Dorset LEP requires a high level of accuracy and quality in this piece of work. In addition, any information provided to the supplier by the scheme promoter and Dorset LEP should be considered as commercially sensitive and therefore treated with utmost confidentiality.



## 8. TIMETABLE

Invitation to request for quotation (RFQ)	30.09.20
Deadline for the submission of RFQ	30.10.20
Assessment of responses received finalised	13.11.20
Interviews	02.12.20
Appointment finalised	09.12.20
Inception meeting	04.12.20

## 9. EVALUATION CRITERIA

9.1. Supplier selection will be made at the discretion of Dorset LEP.

9.2. Scoring weightings are broken down as follows:

- Process – 33.3%
- Resources – 33.4%
- Fees – 33.3%

## 10. SCORING METHODOLOGY

4 Excellent	Proposal meets and in some places exceeds the required standard
3 Good	Proposal meets required standard
2 Acceptable	Proposal meets the required standard in most respects, but is lacking or inconsistent in others
1 Poor	Proposal falls short of expected standard
0 Unacceptable	Completely or significantly fails to meet required standard or does not provide the relevant answer

## 11. CONFLICTS OF INTEREST

11.1. Dorset LEP may exclude the Supplier if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

11.2. Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Supplier to inform the LEP, detailing the conflict in the Supplier response to this RFQ.

## 12. PROPOSAL SUBMISSION

12.1. In order to be considered for selection, applications must be received by noon on 30<sup>th</sup> October 2020.

12.2. Any individual or organisation responding must submit its quote via email and must be sent to Corrina Osborne, Head of Governance & Operations – [cosborne@bournemouth.ac.uk](mailto:cosborne@bournemouth.ac.uk).

## **Appendix A – HM Treasury Guidance – adjusted for Dorset LEP purposes**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/190603/Green\\_Book\\_guidance\\_checklist\\_for\\_assessing\\_business\\_cases.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190603/Green_Book_guidance_checklist_for_assessing_business_cases.pdf)

### **Strategic Case: (the case for change)**

- Should cover rationale, background, policy context and strategic fit.
- Are there clear SMART objectives in terms of outcomes and are dependencies, constraints and risks identified?

### **Economic Case: (Economic Appraisal)**

- Is there a reasonable range of options?
- Are results of each option presented clearly including do nothing/minimum option?
- Is ruling out of potential promising options clearly justified?
- Are all economic costs and benefits clearly calculated for each year covered by the proposal with NPV calculated correctly?
- Are all costs and benefits quantified, if not is this justified?
- Are there any decisive unquantified cost/benefits and are they clearly explained?
- Are there appropriate sensitivity analyses, including worst case scenario?
- Are risks, constraints and dependencies identified and managed?
- Is optimism bias properly included and aligned with risk?
- Are wider impacts assessed e.g. sustainability, competition, regulatory impact?
- Is there a Benefits register; benefits realisation (delivery) plan?
- Does the preferred option give best value for money?

### **Commercial Case**

- Is the proposal commercially feasible / deliverable?
- What procurement is required; goods, services, land, buildings?
- What is the procurement strategy?
- What are the key contractual issues?
- There must be clear contractual key milestones and delivery dates
- Is risk identified and managed and allocated?

### **Financial Case: (Financial Appraisal)**

- Focus on affordability; is full budget funding secured and budgeted by all parties?
- What are the impacts on income/expenditure a/c and on balance sheet if applicable?
- Are potential cost over runs provided for are there any contingent liabilities?

### **Management Case (programme or project management)**

- Is the proposal practically deliverable and what are the delivery plans?
- Are the appropriate permissions in place e.g. planning, land?
- Are there clear delivery dates and detailed milestones?
- Is there a contract management plan?
- Is there a contingency plan with arrangements & provision for risk management?
- Does the plan include monitoring arrangements (who when how and costs)?
- Does the plan include post implementation evaluation arrangements (including who, when, how and costs)?

## **APPENDIX 3 –KEY PERFORMANCE INDICATORS & FRAMEWORK REVIEWS**

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### **Due Diligence of Full Business Cases Key Performance Indicators**

1. Evidence of direct written/phone engagement with the full business case applicant clarifying any issues in the submitted business case and their resolution, where possible, prior to final assessment report is submitted to Dorset LEP.
2. Submission of a full assessment report on each business case which identified the following:
  - a. Compliance with relevant HM Treasury Green Book guidance (overview in Appendix A)
  - b. An evaluation of the viability of the business case, including the robustness of key assumptions and sensitivity analysis, where necessary
  - c. Highlighting the key financial risks
  - d. Full due diligence on all of the financial data contained within the financial model highlighting any errors, omissions, mistakes of methodology or technique or any other concerns
  - e. Assessment of the financial suitability / status of the delivery partner (where appropriate)
  - f. Identification of any potential State Aid implications
  - g. Any data not provided but required in order to properly assess the business case
  - h. Critical review on the risk register
  - i. State of preparedness of project for delivery (i.e. designs, consents in place, contracting arrangements)
  - j. A summary of findings and any necessary recommendations on any pre-conditions to be incorporated into grant agreements or to be resolved before grant agreements are signed.
3. Meeting timescales provided for the completion of the final assessment report/ work commissioned.

### **Framework Reviews**

Quarterly monitoring and review meetings will be established, at least one month in advance of the meeting date. Attendance at the meeting will be the Contracting Officer and any other relevant organisation staff and the Contractors named representative (or an individual from the Contractor's company, subject to agreement from both parties).

#### **APPENDIX 4 –PRICE SCHEDULE**

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As due diligence and related work will vary in terms of length, complication, budget, risk and the expertise of the reviewer required, a set amount per review will not be established.

As part of this tender process, evaluations for suppliers will be conducted based on the award criteria and quality elements of the tender and suppliers. The successful suppliers will be offered a place on the framework as appropriate and the Contracting Authority will run mini-competitions under the framework terms, outlining their exact requirements to establish which provider is offering the best value for money.