

THE BOROUGH COUNCIL OF GATESHEAD

FRAMEWORK AGREEMENT FOR SERVICES

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	SCHEDULE 1 CALL-OFF TERMS AND CONDITIONS

BACKGROUND

- (1) The Council is seeking expressions of interest from Contractors for the provision of Services under a framework arrangement which would be accessible by the Contracting Authorities
- (2) This Framework Agreement sets out the award and ordering procedure for Services that may be required by the Contracting Authorities. There will be no obligation for any Contracting Authority to place any Order or Orders under this Framework Agreement during its Term.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Award Criteria"	the award criteria as set out in the Invitation to Tender;
"Call-Off Award Criteria"	the award criteria to be used for call –off contracts as set out in the Invitation to Tender;
"Call-Off Contract"	the legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services made between a Contracting Authority and the Contractor comprising: (i) the Order Form; (ii) the Contract Particulars; the Call-Off Terms and Conditions; (iii) any Special Terms and Conditions; and (iv) the Tender
"Call-Off Terms and Conditions"	the terms and conditions including any special terms and conditions at Schedule 1;
"Commencement Date"	the date set out in the Contract Particulars;

“Contractor(s)”	the contractor(s) who has/ve been appointed under the Framework and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members;
“Contract Particulars”	the document detailing the specific core terms of the Framework Agreement which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and the Specification (all as defined in the Call-Off Terms and Conditions) and relevant contract specific details of the Tender included in the document.
“Contracting Authority”	any local authority or public body identified in the OJEU notice (if applicable) and/or the Invitation to Tender entitled to use this Framework Agreement and enter into a Call-Off Contract .
“Council”	the Borough Council of Gateshead;
“Data Controller”	has the meaning set out in the Data Protection Legislation
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract
“Data Processing Schedule”	the schedule from the Tender detailing the data processing requirements.
“Data Processor”	has the meaning set out in the Data Protection Legislation
“Data Protection Impact Assessment”	An assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	Means (i) unless and until the GDPR is no longer directly applicable in the UK the GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act 2018 [subject to Royal Assent] and / or any other successor legislation to the GDPR or the Data Protection Act 1998 and (iii) all applicable Law about the processing of personal data and privacy

“Data Sharing Agreement”	A formal agreement that documents what data is being shared and how the data can be used between the Parties.
“Data Sharing Code of Practice”	the code of practice issued by the Information Commissioner in respect to the sharing of personal data.
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
“Data Subject”	has the meaning set out in the Data Protection Legislation.
“EIR”	The Environmental Information Regulations 2004
“FOIA”	The Freedom of Information Act 2000.
“Framework”	Means the overarching arrangement whereby the Council seeks to appoint one of more Contractors as a potential supplier of the Services as described in the Invitation to Tender;
"Framework Agreement"	Means the agreement between the Council and each Contractor which sets out the terms governing contracts to be awarded during the Term and which incorporates: The Framework Terms and Conditions; The Invitation to Tender; and The Tender;
“Framework Terms and Conditions”	Means the terms and conditions set out in this agreement and all the Schedules to this agreement;
"Guidance"	any guidance issued or updated by the UK Government from time to time in relation to the Regulations;
“Invitation to Tender”	the Council’s invitation to tender for the Services including all the Schedules thereto;
“Joint Data Controller”	has the meaning set out in the Data Protection Legislation.

"Law"	any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
'LED'	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)
"Lot"	means a package or category of Services for which economic operators may tender separately, without necessarily having to tender to provide the entirety of the Services to be supplied under the Framework Agreement. Details of the Lots (if applicable) are set out in the Invitation to Tender;
"Liabilities"	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
"Nominated Representative"	The person duly appointed by the Contracting Authority to act as that Contracting Authority's nominated representative as notified to the Contractor from time to time.
"Order"	an order for Services served by the Council on a Contractor in accordance with the Ordering Procedures;
"Order Form"	a document setting out details of an Order in a form to be specified by the Council;
"Ordering Procedures"	the ordering and award procedures specified in Clause 6;
"Party"	the Council and the Contractor;
"Personal Data"	has the meaning set out in the Data Protection Legislation.

“Prohibited Act”	include any of the following (i) materially increase or decrease the number of employees employed in connection with the Contract; (ii) or vary or purport or promise to vary the terms and conditions of any Employees; (iii) or terminate the employment of any of the Employees assigned to the provision of the Services for any reason whatsoever save where termination is lawful; or (v) assign or redeploy any Employee employed in connection with the Services to other duties unconnected with the Contract.
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
“Regulations”	The Public Contracts Regulations 2015;
“Replacement Contractor”	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract.
“Services”	the services described in the Invitation to Tender, to be supplied by the Contractor in accordance with the Framework Agreement;
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender;
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract
“Tender”	the Contractor’s tender for the Services in response to the Council’s Invitation to Tender;
"Term"	the period commencing on the Commencement Date and ending on the date shown in the Contract Particulars or on earlier termination of this Framework Agreement.
“Transferring Employees”	those employees employed wholly or mainly by the contractor in providing the Services and who will transfer to a Replacement Contractor or the Council (as the case may be) under the provisions of TUPE.
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 1.2 The interpretation and construction of this Framework Agreement shall be subject to the following provisions:-
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
 - 1.2.4 references to any person shall include natural 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 or transferees;
 - 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
 - 1.2.7 in the event and to the extent only of any conflict between the provisions of the Call-Off Terms and Conditions, Special Conditions of Contract and the Framework Agreement (excluding the Schedule) then, the application of the Clauses shall prevail in the following order:
 - i. Special Terms and Conditions of Contract
 - ii. Call-Off Terms and Conditions
 - iii. Framework Agreement

2. **TERM OF FRAMEWORK AGREEMENT**

- 2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.
- 2.2 If the Contract Particulars includes an option to extend the Framework Agreement and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Framework Agreement shall automatically expire after the initial Contract Period.

2.3 Clause 2.1 and 2.2 shall not apply to any Call-Off Contract made under this Framework Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Call-Off Contract.

3. SCOPE OF FRAMEWORK AGREEMENT

3.1 This Framework Agreement governs the relationship between the Council and the Contractor in respect of the provision of the Services by the Contractor to the Contracting Authorities and where the Contractor has been appointed to more than one Lot, this Framework Agreement shall apply to each Lot.

3.2 Any Contracting Authority may at their absolute discretion and from time to time order Services from the Contractor in accordance with the Ordering Procedure during the Term.

3.3 The Contractor acknowledges that there is no obligation for the Council or a Contracting Authority to purchase any Services from the Contractor during the Term.

3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council or a Contracting Authority in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

4. CONTRACTOR'S APPOINTMENT

4.1 The Council appoints the Contractor as a potential supplier of the Services referred to in the Invitation to Tender and the Contractor shall be eligible to be considered for the award of Orders for such Services by a Contracting Authority during the Term.

4.2 The parties agree that the Contractor is an independent contractor and not an agent, employee or partner of the Council and therefore not eligible to participate in any benefit programmes of the Council.

4.2.1 subject to clause 4.2.3 below the Contractor will be responsible for payment of his or her own Income Tax and National Insurance Payments or similar contributions in respect of his or her fees and the Contractor by this indemnifies the Council against any claims that may be made against the Council for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Contractor.

4.2.2 subject to clause 4.2.3 below the Contractor shall be responsible for any loss of benefits paid under his previous contract of employment, or additional tax liability incurred, by reason of his accepting a contract with the Council as a consultant which

commences immediately after the termination of his employment with the Council and the Contractor shall indemnify the Council in respect of any additional tax liability, loss or demand that the Council may incur because of that.

- 4.2.3 the Council reserves the right in relation to the Contractor to carry out H.M. Revenue and Customs' ("HMRC") PAYE status test and, in accordance with HMRC Guidance, to deduct from the Price and pay to HMRC such sums in respect of tax and National Insurance as it may be required to deduct and pay in accordance with that guidance.

5. **NON-EXCLUSIVITY**

The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Contractor and that the Council and a Contracting Authority is at all times entitled to enter into other contracts and agreements with other Contractors for the provision of any of the Services.

6. **AWARD PROCEDURES**

Awards under the Framework Agreement

Direct Awards

- 6.1 Where the Invitation to Tender allows for a Contracting Authority to award without re-opening competition (a direct award) a Contracting Authority shall, when ordering Services:-
- 6.1.1 identify the relevant Services;
- 6.1.2 (where there is more than one Contractor) select the Contractor in accordance with the method set out in the Invitation to Tender, or where the Invitation to Tender does not specify a selection method, identify the Contractor who offers best value for money for those Services on the basis of the price(s) submitted by the Contractor in its Tender and who is able to fulfil the Order within the time specified;
- 6.1.3 (subject to 6.2 below) place an Order with the successful Contractor which:-
- (a) states the requirements;
 - (b) identifies the Services;
 - (c) states the price payable in accordance with the Tender submitted by the successful Contractor; and
 - (d) incorporates the Call-Off Terms and Conditions.

Mini Competition

- 6.2 Where there is more than one Contractor appointed under the Framework (or under the relevant Lot) and the Invitation to Tender so specifies, a Contracting Authority shall, prior to placing an Order:
- 6.2.1 identify the Contractors capable of performing the Call-Off Contract for the Contracting Authority's requirements;
 - 6.2.2 supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance where applicable;
 - 6.2.3 invite tenders by conducting a mini-competition for its requirements in accordance with the Invitation to Tender, the Regulations and Guidance where applicable and in particular:
 - (a) confirm prior to the mini-competition whether or not the Contracting Authority intends to follow this with an electronic auction or use the mini-competition alone. Should this be the case the Contracting Authority shall provide all Contractors with full details prior to the e-auction including but not limited to how the e-auction is to be conducted and the outcome of the mini-competition;
 - (b) consult in writing all the Contractors capable of performing the Call-Off Contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
 - (c) set a time limit for the receipt by it of the tenders; and
 - (d) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
- 6.2.3 apply the Call-Off Award Criteria, including where relevant in any pricing the consideration of any and all additional cost(s) to the Contracting Authority, to the Contractors' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements.
- 6.3 The Contractor agrees that all tenders submitted by the Contractor in relation to a mini-competition held pursuant to Clause 6.2 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation issued by a Contracting Authority in accordance with the Ordering Procedure).
- 6.4 Notwithstanding the fact that a Contracting Authority has followed the procedure set out above in this Clause 6, a Contracting Authority shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Council or any Contracting Authority to place any Order.

Form of Order

- 6.5 Subject to Clause 6 above, a Contracting Authority may place an Order with the Contractor by serving an Order Form in writing in such form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions.
- 6.6 The Order constitutes an offer by a Contracting Authority to purchase the Services subject to the Call-Off Terms and Conditions.

Accepting and Declining Orders

- 6.7 Following receipt of an Order, the Contractor shall promptly, and in any event within 14 days of receipt, acknowledge receipt of the Order and either:-
- 6.7.1 notify the Nominated Representative in writing that it declines to accept the Order; or
 - 6.7.2 notify the Nominated Representative in writing that it accepts the Order.
- 6.8 If the Contractor:-
- 6.8.1 notifies the Nominated Representative that it declines to accept an Order; or
 - 6.8.2 the time-limit referred to in Clause 6.7 has expired;

then the offer from the Contracting Authority to the Contractor shall lapse and the Contracting Authority may offer that Order to the Contractor that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria or, if there is only one Contractor appointed under the Framework Agreement, or there is no other capable contractor, the Contracting Authority may make alternative arrangements for the provision of the Services.

- 6.9 The Contractor in agreeing to accept such an Order pursuant to Clause 6.7 above shall enter a Call-Off Contract with the Contracting Authority for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Contracting Authority's receipt of the written confirmation of acceptance of the Order provided by the Contractor (or such similar or analogous form agreed with the Contractor) pursuant to Clause 6.7.2.

7. CALL-OFF CONTRACT PERFORMANCE

- 7.1 The Contractor shall perform all Call-Off Contracts entered into with a Contracting Authority in accordance with:-
- 7.1.1 the requirements of this Framework Agreement; and
 - 7.1.2 the Call-Off Terms and Conditions, including any Special Terms and Conditions of the respective Call-Off Contracts.

7.1.3 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement (excluding the Schedule), the Call-Off Terms and Conditions, and any Special Terms and Conditions, the application of the Clauses shall prevail in the following order:

- i. Special Terms and Conditions
- ii. Call-Off Terms and Conditions
- iii. Framework Agreement.

8. **MANAGEMENT FEE**

8.1 The Contractor will pay the Council a management fee for all business received as listed in the Management Fee form where the level of this management fee and the method of payment are set out in the Contract Particulars.

9. **TERMINATION BY THE COUNCIL**

9.1 The Council shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving one month's written notice to the Contractor.

9.2 The Council may suspend or terminate the Framework Agreement with immediate effect by notice in writing to the Contractor on or at any time if:

9.2.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or

9.2.2 the Contractor is convicted of a criminal offence; or

9.2.3 the Contractor ceases or threatens to cease to carry on its business; or

9.2.4 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of any Call-Off Contracts; or

9.2.5 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Framework Agreement with the Contractor continuing; or

9.2.6 the Contractor is in material or substantial breach of any of its obligations under one or more Call-Off Contracts that is incapable of remedy, or if capable of remedy has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or

9.2.7 the Contractor commits persistent minor breaches under one or more Call-Off Contracts whether remedied or not.

10. CONSEQUENCES OF TERMINATION AND EXPIRY

10.1 Notwithstanding the service of a notice to terminate the Framework Agreement under clause 8, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 9.

10.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

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

11. TRANSFER AND SUB-CONTRACTING

11.1 The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Council. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

11.2 The Council shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

12. DATA PROTECTION

12.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.

12.2 In particular and without prejudice to the generality of clause 12.1 above, if the Contractor is acting as Data Controller within the meaning of the Data Protection Legislation for any data provided to the Contractor by the Council or vice versa under this contract then the following provisions shall apply:

12.2.1 The Contractor and the Council shall comply with the Data Sharing Code of Practice and as amended from time to time

12.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably and without good reason refuse to enter into a Data Sharing Agreement.

12.3 In particular and without prejudice to the generality of clause 12.1 above, if the Contractor and the Council are acting as Joint Data Controllers within the meaning of the Data Protection Legislation for any data collected by or provided to either Party under this Contract then the following provisions shall apply:

12.3.1 The Parties shall designate between them a contact point for Data Subjects in relation to any Personal Data under the joint control of the parties.

12.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the Data Protection Legislation and the preparation of any Data Protection Impact Assessment

12.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

12.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Employee or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data; and

12.3.5 Each Party shall notify the other immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to any data under the joint control of the Parties;
- (b) receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;

- (e) receives a request from any third Party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties;.

12.3.6 Each Party shall designate a data protection officer if required by the Data Protection Legislation

12.3.7 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

12.3.8 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.

12.4 In particular and without prejudice to the generality of clause 12.1 above, if the Contractor is acting as Data Processor on behalf of the Council within the meaning of the Data Protection Legislation for any data provided to it by the Council under this contract then the following provisions shall apply:

12.4.1 The Data Processing Schedule shall apply and the only processing that the Contractor is authorised to do is listed in the Data Processing Schedule (as may be amended by the Council) and may not be determined by the Contractor.

12.4.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

12.4.3 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.4.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) Process that Personal Data only in accordance with the Data Processing Schedule unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);
- (d) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Contractor's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (e) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

12.4.5 At the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

12.4.6 The Contractor shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

12.4.7 The Contractor's obligation to notify under clause 12.4.6 shall include the provision of further information to the Council in phases as details become available.

12.4.8 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access

- Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

12.4.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 12.4

12.4.10 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

12.4.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

12.4.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) notify the Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 12.4 such that they apply to the Sub-processor; and
- (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

12.4.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

12.4.14 The Council may, at any time on not less than 30 Working Days' notice, revise any part of this clause 12.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

12.4.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

13. **FREEDOM OF INFORMATION**

13.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information

forming part of the Call-Off Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

- 13.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
- 13.3 If the Contractor considers that any of the information provided by the Contractor under the Contract or as part of the procurement process is commercially sensitive (meaning it could reasonably cause prejudice to the organisation if disclosed to a third party) then it shall notify the Council and provide valid reasons in support of the information being exempt from disclosure under the Act and the EIR.
- 13.4 The Council will have regard to any such notification and reasons given by the Contractor before it releases any information to a third party under the Act or the EIR. However the Council shall be entitled to determine in its absolute discretion whether any information is exempt from the Act and/or the EIR, or is to be disclosed in response to a request of information. The Council must make its decision on disclosure in accordance with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under the Act or the EIR.
- 13.5 The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:
 - 13.5.1 has not been notified to the Council as being commercially sensitive with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible); or
 - 13.5.2 does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or
 - 13.5.3 in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.

14. **TUPE AND RE-TENDERING**

- 14.1 In the event of expiry or termination of this Framework Agreement or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees. The required information is set out below but is not necessarily restricted to the following:

- 14.1.1 The total number of Employees whose employment with the Contractor in respect of the Services is likely to be terminated at the expiry of this Framework Agreement but for any operation of law;
 - 14.1.2 In respect of each Employee their age and gender, details of their salary and payment settlements which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual employees do not have to be given); and
 - 14.1.3 Full information about the other terms and conditions under which the Employees are employed (including but not limited to their working arrangements) or about where that information can be found; and
 - 14.1.4 Details of pension entitlements, if any; and
 - 14.1.5 Job titles of the Employees affected and the qualifications required for each position; and
 - 14.1.6 Disciplinary procedures taken against any Employees and any grievance procedures taken out by any Employees within the previous two years; and
 - 14.1.7 Details of any court or tribunal case, claim or action brought by any Employees against the Contractor within the previous two years; and
 - 14.1.8 Details of any court or tribunal case claim or action, which the Contractor has reasonable grounds to believe that any of the Employees may bring against the Contractor or a Replacement Contractor arising out of the Employee's employment.
- 14.2 The Contractor shall permit the Council to use the information for the purposes of TUPE and for re-tendering. The Council shall be able to disclose this information to any prospective tenderer or Replacement Contractor without requiring the Council to enter in to a confidentiality agreement or otherwise imposing any conditions upon the disclosure of the information. The Contractor will secure all necessary consents from relevant Employees in order to release the information.
- 14.3 The Contractor will co-operate with the re-tendering of the Service by allowing the Replacement Contractor to communicate with and meet with the Employees and/or their representative(s).
- 14.4 In the event that the information provided by the Contractor in accordance with Clause 14.1 becomes inaccurate, whether due to changes to the employment and personnel details of the Employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate the Contractor shall notify the Council of the inaccuracies and provide the amended information.
- 14.5 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly and

whether incurred by the Council pursuant to an indemnity provided to the Replacement Contractor in connection with:

14.5.1 The employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);

14.5.2 Any act, omission or default of the Contractor in respect of the employment of the Employees;

14.5.3 The Contractor's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the Replacement Contractor to give the Contractor the information required from the Council or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE; and

14.5.4 The Contractor's failure to provide the employee liability information under Regulation 11 of TUPE;

14.5.5 Any claim by an Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the Replacement Contractor is not participating, or pursuant to the Employee's terms and conditions of employment;

14.5.6 The Contractor's failure to comply with its obligations under Clause 14.6 below;

14.6 The Council shall be entitled to assign the benefit of the indemnity at Clause 14.5 to any Replacement Contractor.

14.7 During the 12 months preceding the expiry of the Contract Period or where notice of termination of this Contract has been given, the Contractor will not without the prior consent of the Council (not to be unreasonably withheld or delayed and not otherwise than in the ordinary course of business carry out a Prohibited Act.

15. **VARIATIONS TO THE FRAMEWORK AGREEMENT**

15.1 Any variations to the Framework Agreement must be made in writing and agreed by the Council and all Contractors on the Framework.

15.2 Any variation to the Framework Agreement must not amount to a material change in the Framework Agreement or the Services.

16. **LAW AND JURISDICTION**

16.1 The Parties accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English law.

17. **ENTIRE AGREEMENT**

- 17.1 This Framework Agreement including all Schedules 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.
- 17.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.
- 17.3 Nothing in this Clause 17 shall operate to exclude Fraud or fraudulent misrepresentation

SCHEDULE 1
CALL-OFF TERMS AND CONDITIONS
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PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

The terms and expressions used in these Call-Off Terms and Conditions shall have the meanings set out below:

“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Call-Off Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Assigned Employees”	In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Call-Off Contract”	<p>the agreement (made pursuant to the provisions of the Framework Agreement) in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none">1. the Order Form;2. the Contract Particulars;3. any Special Terms and Conditions;4. the Call-Off Terms and Conditions;5. the Tender.
“Call-Off Terms and Conditions”	The terms and conditions set out in this document;

“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Call-Off Contract.
‘Commercially Sensitive Information’	the information used in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss.
“Confidential Information”	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal (within the meaning of the Data Protection Legislation).
“Contractor”	the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.
“Contract Manager”	the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.
“Contract Particulars”	the document detailing the specific core terms of the Framework Agreement which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and

	the Specification and relevant contract specific details of the Tender included in the document.
“Contract Period”	the period of the Call-Off Contract as stated in the Order Form (and any extension in accordance with clause B1).
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Council”	the Council placing the Order and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression ‘control’ shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“Data Controller”	Has the meaning set out in the Data Protection Legislation.
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract.
“Data Processing Schedule”	the schedule from the Tender detailing the data processing requirements.
“Data Processor”	Has the meaning set out in the Data Protection Legislation.
“Data Protection Impact Assessment”	An assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	Means (i) unless and until the GDPR is no longer directly applicable in the UK the GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act 2018 [subject to Royal Assent] and / or any other successor

	legislation to the GDPR or the Data Protection Act 1998 and (iii) all applicable Law about the processing of personal data and privacy;
“Data Sharing Agreement”	A formal agreement that documents what data is being shared and how the data can be used between the Parties.
“Data Sharing Code of Practice”	the code of practice issued by the Information Commissioner in respect to the sharing of personal data
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Data Subject”	has the meaning set out in the Data Protection Legislation
“Delivery Instructions”	the instructions provided in the Order Form and any other information that the Council considers appropriate to the provision of the Services.
“Employee”.	any person employed by the Contractor to perform the Call-Off Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services..
“EIR”	The Environmental Information Regulations 2004.
“Framework Agreement”	The framework agreement for services included within the Council’s Invitation to Tender;
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Call-Off Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war,

industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.

“Good Industry Practice”

the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Call-Off Contract.

“HRA”

The Human Rights Act 1998.

“Intellectual Property Rights”

patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender”

the Council’s invitation to tender

“Joint Data Controller”

has the meaning set out in the Data Protection Legislation.

“Key Personnel”

those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.

“Law”

any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

'LED'	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)
"Liabilities"	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
"PCR 2015"	The Public Contracts Regulations 2015;
"Personal Data"	has the meaning set out in the Data Protection Legislation.
"Order"	an order for Services served by the Council on a Contractor in accordance with the procedures set out in the Framework Agreement;
"Order Form"	the document setting out details of an Order in a form to be specified by the Council;
"Price"	the price of the Services as set out in the Contract Particulars and specified, in relation to the Call-Off Contract, in the Order Form. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
"Pricing Schedule"	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.
"Prohibited Act"	include any of the following (i) materially increase or decrease the number of employees employed in connection with the Contract; (ii) or vary or purport or promise to vary the terms and conditions of any Employees; (iii) or terminate the employment of any of the Employees assigned to the provision of the Services for any reason whatsoever save where termination is lawful; or (v) assign or redeploy any Employee employed in connection with the Services to other duties unconnected with the Contract.

“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
“Replacement Contractor”	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract.
“Services”	the services described in the Specification to be supplied by the Contractor in accordance with the Call-Off Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.
“Specification”	the specification included in the Contract Particulars setting out the Council’s detailed requirements in relation to the Services.
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract
“Tender”	the Contractor’s tender for the Services in response to the Council’s Invitation to Tender.
“Transferring Employees”	means those employees employed wholly or mainly by the contractor in providing the Services and who will transfer to a Replacement Contractor or the Council (as the case may be) under the provisions of TUPE.
“TUPE”	The Transfer of Undertakings (Protection

of Employment) Regulations 2006.

'VAT'

Value added tax

A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A2. **HEADINGS**

A2.1 The index and headings to the clauses and appendices to and schedules of this Call-Off Contract are for convenience only and will not affect its construction or interpretation.

A3. **NOTICES**

A3.1 Any notice required by this Call-Off Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

A3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

A4. **ENTIRE AGREEMENT**

A4.1 The Call-Off Contract constitutes the entire agreement between the parties relating to the subject matter of the Call-Off Contract. The Call-Off Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B - PROVISION OF SERVICES

B1. CALL OFF CONTRACT PERIOD

- B1.1 The Call-Off Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Order Form prior to the commencement of the extension. If no such notification is issued the Call-Off Contract shall automatically expire after the initial Contract Period.

B2. PERFORMANCE

- B2.1 The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- B2.2 The time of the delivery of the Services is of essence to the Call-Off Contract.
- B2.3 The Council will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Council's premises.
- B2.4 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Call-Off Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Call-Off Contract accordingly.
- B2.5 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Call-Off Contract, the Contractor shall inform the Council immediately.
- B2.6 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- B2.7 The Council retains the Contractor for the performance of the Services on a non exclusive basis.

B3. CONTRACT MANAGER

- B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Framework Agreement.
- B3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

B4. ORDERING PROCESS

B4.1 Orders shall be placed by the Council and be accepted by the Contractor in accordance with the provisions of the Framework Agreement.

B5. RISK IN AND TITLE TO GOODS

B5.1 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Call-Off Contract or otherwise.

B5.2 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

B6. WARRANTY

B6.1 The Contractor warrants to the Council that the Services will be provided:

B6.1.1 in a proper, skilful and workmanlike manner;

B6.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

B6.1.3 in accordance with the Call-Off Contract and any descriptions provided by the Contractor;

B6.1.4 to the reasonable satisfaction of the Authorised Officer;

B6.1.5 by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and

B6.1.6 in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.

B6.2 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:

- B6.2.1 be free from defects in design, material and workmanship; and
- B6.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

B6.3 Without prejudice to the Council's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Call-Off Contract, the Council shall be entitled to:

- B6.3.1 require the Contractor to provide replacement Services in accordance with the Call-Off Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
- B6.3.2 require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

B7. CONTRACTOR'S EMPLOYEES

B7.1 The Council reserves the right under the Call-Off Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

- B7.1.1 any member of the Contractor's Employees; and/or
- B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

B7.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Call-Off Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Council may reasonably desire.

B7.3 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

B7.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

B7.5 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason,

the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- B7.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

PART C - PRICE AND PAYMENT

C1. PRICE AND PAYMENT

- C1.1 The Council shall pay the Price for the Services to the Contractor.
- C1.2 The Price shall be fixed as detailed in the Invitation to Tender (Pricing Schedule).
- C1.3 The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable. The Council will consider and verify all invoices in a timely fashion.
- C1.4 Payment of any undisputed invoice will be made no later than thirty (30) days from the date on which the Council has determined that the invoice is valid and undisputed..
- C1.5 Where the Council fails to comply with clause C1.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause C1.3 after a reasonable time has passed.
- C1.6 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- (a) Provisions having the same effect as clauses C1.3 – C1.5 above; and
 - (b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses C1.3 – C1.5 above.

In clause C1.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

- C1.7 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- C1.8 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Bank of England base rate from time to time. The

Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.

C1.9 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Call-off Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.

C1.10 Further details of payment, if any, are set out in the Pricing Schedule.

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

D1. TERMINATION

D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Call-Off Contract with immediate effect by notice in writing to the Contractor on or at any time if:

D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or

D1.1.2 the Contractor is convicted of a criminal offence; or

D1.1.3 the Contractor ceases or threatens to cease to carry on its business; or

D1.1.4 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Call-Off Contract; or

D1.1.5 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Call-Off Contract continuing; or

D1.1.6 the Contractor is in breach of any of its obligations under this Call-Off Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or

D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Call-Off Contract which is incapable of remedy; or

D1.1.8 the Contractor commits persistent minor breaches of this Call-Off Contract whether remedied or not;

- D1.1.9 the Call-Off Contract has been subject to a substantial modification which would have required the Council to carry out a new procurement procedure in accordance with Regulation 72(9) of the PCR 2015;
- D1.1.10 the Contractor has, at the time of the Framework award, been in one of the situations referred to in Regulation 57(1) or (2) of the PCR 2015 (grounds for mandatory exclusion), and should therefore have been excluded from the procurement procedure; or
- D1.1.11 the Call-Off Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties (as defined in the PCR 2015) and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

D1.2 The Council reserves the right to terminate the Call-Off Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.

D1.3 The Council reserves the right to terminate the Call-Off Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

D1.4 Termination of the Call-Off Contract under this clause D1 shall not cause the Framework Agreement to terminate automatically. For the avoidance of doubt, the Framework Agreement shall remain in force unless and until it is terminated or expires by its own terms.

D1.5 Termination of this Call-Off Contract under this clause D1 shall not cause other Call-Off Contracts, which may have been entered into separately by the Parties under the Framework Agreement, to terminate automatically.

D2. CONSEQUENCES OF TERMINATION

D2.1 If this Call-Off Contract is terminated in whole or in part the Council shall:

D2.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Call-Off Contract or the affected part of the Call-Off Contract up to the time of the termination; and/or

D2.1.2 except for termination under clause D1.3, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Call-Off Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Call-Off Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in

terminating the Call-Off Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or

D2.1.3 where termination arises under clause D1.3, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination; and/or

D2.1.4 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Call-Off Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

D2.2 Upon the termination of the Call-Off Contract for any reason, subject as otherwise provided in this Call-Off Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Call-Off Contract.

D3. **DISPUTE RESOLUTION PROCEDURE**

D3.1 If a dispute arises between the Council and the Contractor in connection with the Call-Off Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.

D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

D4. **SURVIVAL**

D4.1 Any provision of this Call-Off Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Call-Off Contract including the following clauses will survive termination or expiry of the Call-Off Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Data Protection), Clause F3 (Freedom of Information), Clause F4 (Confidentiality), Clause F5 (Record Keeping and Monitoring), Clause F6 (Transparency), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance),

Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

PART E - INSURANCE AND LIABILITIES

E1. INSURANCE

- E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Call-Off Contract as set out in the Contract Particulars.
- E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- E1.3 If the Contractor does not maintain the necessary insurances under the Call-Off Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

E2. INDEMNITY AND LIABILITY

- E2.1 Either Party (“the Indemnifying Party”) shall fully indemnify the other Parties (“the Indemnified Parties) in full without limit of liability for any losses arising from the Indemnifying Party’s breach of their obligations under this Contract, or the reckless, negligent or wilful default of the Indemnifying Party or their appointed agents, representatives or sub-contractors in the provision of the Services. For the avoidance of doubt, this indemnity shall include claims for damage or injury to the personal property of any third party (including any infringement of Intellectual Property Rights) which results in Liabilities awarded against or costs incurred by the Indemnified Parties.
- E2.2 Neither party seeks to exclude or limit its liability for:
 - E2.2.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party’s negligence);
 - E2.2.2 fraudulent misrepresentation; or
 - E2.2.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
- E2.3 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

PART F - PROTECTION OF INFORMATION

F1. INTELLECTUAL PROPERTY

- F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;
 - F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Call-Off Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
- F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Call-Off Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- F1.3 It is a condition of the Call-Off Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
- F1.4 At the termination of the Call-Off Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

F2. DATA PROTECTION

- F2.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.
- F2.2 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor is acting as Data Controller within the meaning of the Data Protection Legislation for any data provided to the Contractor by the Council or vice versa under this Contract then the following provisions shall apply:
- F2.2.1 The Contractor and the Council shall comply with the Data Sharing Code of Practice and as amended from time to time.

F2.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably and without good reason refuse to enter into a Data Sharing Agreement.

F2.3 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor and the Council are acting as Joint Data Controllers within the meaning of the Data Protection Legislation for any data collected by or provided to either Party under this Contract then the following provisions shall apply:

F2.3.1 The Parties shall designate between them a contact point for Data Subjects in relation to any Personal Data under the joint control of the parties.

F2.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the Data Protection Legislation and the preparation of any Data Protection Impact Assessment

F2.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Data Loss Event;
- c) state of technological development; and
- d) cost of implementing any measures;

F2.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Employees or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data; and

F2.3.5 Each Party shall notify the other immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to any data under the joint control of the Parties;
- b) receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
- d) receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;

- e) receives a request from any third Party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties;.

F2.3.6 Each Party shall designate a data protection officer if required by the Data Protection Legislation

F2.3.7 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

F2.3.8 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.

F2.4 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor is acting as Data Processor on behalf of the Council within the meaning of the Data Protection Legislation for any data provided to it by the Council under this Contract then the following provisions shall apply;

F2.4.1 The Data Processing Schedule shall apply and the only processing that the Contractor is authorised to do is listed in the Data Processing Schedule (as may be amended by the Council) and may not be determined by the Contractor.

F2.4.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

F2.4.3 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include;

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

F2.4.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- a) process that Personal Data only in accordance with the Data Processing Schedule unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal

Data unless prohibited by Law;

- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures), having taken account of the:
 - i) nature of the data to be protected;
 - ii) harm that might result from a Data Loss Event;
 - iii) state of technological development; and
 - iv) cost of implementing any measures;
- c) ensure that the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule.);
- d) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - i) are aware of and comply with the Contractor's duties under this clause;
 - ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- e) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - ii) the Data Subject has enforceable rights and effective legal remedies;
 - iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - iv) the Contractor complies with any reasonable

instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

F2.4.5 At the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

F2.4.6 The Contractor shall notify the Council immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract
- e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

F2.4.7 The Contractor's obligation to notify under clause F2.4.6 shall include the provision of further information to the Council in phases as details become available.

F2.4.8 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- a) the Council with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Council following any Data Loss Event;
- e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

F2.4.9 The Contractor shall maintain complete and accurate records and

information to demonstrate its compliance with this clause F2.4.

F2.4.10 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

F2.4.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

F2.4.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- a) notify the Council in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Council;
- c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause F2.4 such that they apply to the Sub-processor; and
- d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

F2.4.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

F2.4.14 The Council may, at any time on not less than 30 Working Days' notice, revise any part of this clause F2.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

F2.4.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

F3. FREEDOM OF INFORMATION

F3.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Call-Off Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

F3.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

F3.3 If the Contractor considers that any of the information provided by the Contractor under the Contract is commercially sensitive (meaning it could reasonably cause

prejudice to the organisation if disclosed to a third party) then it shall notify the Council and provide valid reasons in support of the information being exempt from disclosure under the Act and the EIR.

- F3.4 The Council will have regard to any such notification and reasons given by the Contractor before it releases any information to a third party under the Act or the EIR. However the Council shall be entitled to determine in its absolute discretion whether any information is exempt from the Act and/or the EIR, or is to be disclosed in response to a request of information. The Council must make its decision on disclosure in accordance with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under the Act or the EIR.
- F3.5 The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:
- F3.5.1 has not been notified to the Council as being commercially sensitive with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible); or
 - F3.5.2 does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or
 - F3.5.3 in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.

F4. **CONFIDENTIALITY**

- F4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall do each of the following:
- F4.1.1 Treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - F4.1.2 Not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- F4.2 Clause F4.1 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:
- F4.2.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause F3 (Freedom of Information);
 - F4.2.2 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- F4.2.3 Such information was obtained from a third party without obligation of confidentiality;
 - F4.2.4 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Contract; and
 - F4.2.5 It is independently developed without access to the other party's Confidential Information.
- F4.3 The Contractor may only disclose the Council's Confidential Information to the Contractor personnel who are directly involved in the provision of the Services and who need to know the information, and shall make sure that such Contractor personnel are aware of and shall comply with these obligations as to confidentiality.
- F4.4 The Contractor shall not, and shall procure that the Contractor personnel do not, use any of the Council's Confidential Information received other than for the purposes of this Call-Off Contract.
- F4.5 At the written request of the Council and if reasonable in the circumstances to make that request, the Contractor shall procure that those members of the Contractor personnel identified in the Contract Particulars sign a confidentiality undertaking prior to commencing any work in accordance with this Call-Off Contract.
- F4.6 Nothing in this Call-Off Contract shall prevent the Council from disclosing the Contractor's Confidential Information in any one or more of the following circumstances:
- F4.6.1 To any Crown body or any other contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Council. All crown bodies or such contracting authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;
 - F4.6.2 To any consultant, Contractor or other person engaged by the Council;
 - F4.6.3 For the purpose of the examination and certification of the Council's accounts; and/or
 - F4.6.4 For any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

F5. RECORD KEEPING AND MONITORING

- F5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Call-Off Contract has been completed, full and accurate records of the Call-Off Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Call-Off Contract.
- F5.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Call-Off Contract.

F6. TRANSPARENCY

- F6.1 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council is required to publish information on its website detailing any item of expenditure over £500 and any contract with a value that exceeds £5,000. The information published will include the Contractor's details and the Price to be paid. The parties acknowledge that this information is not Confidential Information or Commercially Sensitive Information.
- F6.2 The parties acknowledge that, except for any information which is exempt from disclosures in accordance with the provisions of the FOIA, the content of this Call-Off Contract is not Confidential Information or Commercially Sensitive Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of the Call-Off Contract is for disclosure in accordance with the FOIA. Notwithstanding any other term of this Call-Off Contract, the Contractor hereby gives his consent for the Council to publish the Call-Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to the Call-Off Contract, to the general public.

PART G - STATUTORY OBLIGATIONS

G1. HEALTH AND SAFETY

- G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.

G2. CORPORATE REQUIREMENTS

- G2.1 The Contractor shall comply with all obligations under the HRA.
- G2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:

- G2.2.1 equality and diversity policies;
 - G2.2.2 sustainability;
 - G2.2.3 information security rules;
 - G2.2.4 whistleblowing and/or confidential reporting policies; and
 - G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.
- G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
- G2.5 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
- G2.5.1 details of the finding; and
 - G2.5.2 the steps the Contractor has taken to remedy the situation.
- G2.6 The Contractor represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Contractor nor any of its officers, employees or other persons associated with it:
- G2.6.1 has been convicted of any offence involving slavery and human trafficking;
 - G2.6.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- G2.7 The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- G2.8 The Contractor shall use all reasonable endeavours to adhere to the principles of the 'Prevent' strategy under the Counter-Terrorism and Security Act 2015.
- G2.9 The Contractor shall ensure that its employees, agents and subcontractors are familiar with and have a good understanding of the 'Prevent' strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.

G3. LAW AND CHANGE IN LAW

- G3.1 The Contractor shall comply at all times with the Law in its performance of the Call-Off Contract.
- G3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.
- G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Call-Off Contract is intended to allow the Contractor double recovery of any increase in costs.

G4. TUPE AND RE-TENDERING

- G4.1 In the event of expiry or termination of this Call-off Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees. The required information is set out below but is not necessarily restricted to the following:
- G4.1.1 The total number of Employees whose employment with the Contractor in respect of the Services is likely to be terminated at the expiry of this Call-Off Contract but for any operation of law;
- G4.1.2 In respect of each Employee their age and gender, details of their salary and payment settlements which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual employees do not have to be given); and
- G4.1.3 Full information about the other terms and conditions under which the Employees are employed (including but not limited to their working arrangements) or about where that information can be found; and
- G4.1.4 Details of pension entitlements, if any; and
- G4.1.5 Job titles of the Employees affected and the qualifications required for each position; and
- G4.1.6 Disciplinary procedures taken against any Employees and any grievance procedures taken out by any Employees within the previous two years; and

- G4.1.7 Details of any court or tribunal case, claim or action brought by any Employees against the Contractor within the previous two years; and
- G4.1.8 Details of any court or tribunal case claim or action, which the Contractor has reasonable grounds to believe that any of the Employees may bring against the Contractor or a Replacement Contractor arising out of the Employee's employment.
- G4.2 The Contractor shall permit the Council to use the information for the purposes of TUPE and for re-tendering. The Council shall be able to disclose this information to any prospective tenderer or Replacement Contractor without requiring the Council to enter in to a confidentiality agreement or otherwise imposing any conditions upon the disclosure of the information. The Contractor will secure all necessary consents from relevant Employees in order to release the information.
- G4.3 The Contractor will co-operate with the re-tendering of the Service by allowing the Replacement Contractor to communicate with and meet with the Employees and/or their representative(s).
- G4.4 In the event that the information provided by the Contractor in accordance with Clause G4.1 becomes inaccurate, whether due to changes to the employment and personnel details of the Employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate the Contractor shall notify the Council of the inaccuracies and provide the amended information.
- G4.5 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Council pursuant to an indemnity provided to the Replacement Contractor in connection with
 - G4.5.1 The employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);
 - G4.5.2 Any act, omission or default of the Contractor in respect of the employment of the Employees;
 - G4.5.3 The Contractor's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the Replacement Contractor to give the Contractor the information required from the Council or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE; and
 - G4.5.4 The Contractor's failure to provide the employee liability information under Regulation 11 of TUPE;

- G4.5.5 Any claim by an Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the Replacement Contractor is not participating, or pursuant to the Employee's terms and conditions of employment;
- G4.5.6 The Contractor's failure to comply with its obligations under Clause G4.6 below;
- G4.6 The Council shall be entitled to assign the benefit of the indemnity at Clause G4.5 to any Replacement Contractor.
- G4.7 During the 12 months preceding the expiry of the Contract Period or where notice of termination of this Contract has been given, the Contractor will not without the prior consent of the Council (not to be unreasonably withheld or delayed and not otherwise than in the ordinary course of business carry out a Prohibited Act.

PART H - GENERAL PROVISIONS

H1. CONTRACT VARIATION

- H1.1 The parties may agree to modify the Call-Off Contract in any of the circumstances set out in Regulation 72 of the PCR 2015.
- H1.2 Subject to clause H1.3, no variation or modification to the Call-Off Contract is valid unless it is in writing and signed by the Council and the Contractor.
- H1.3 Where the Council intends to modify the Call-Off Contract it shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), a variation order setting out the proposed modification or variation to the Call-Off Contract. As soon as practicable after receiving the variation order, the Contractor shall confirm whether it is able to comply with the modification or variation and if so confirm any change to the Price for the modification or variation. Where a mechanism for agreeing a price for the modification or variation has not been set out in the initial procurement documents, the Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

H2. THIRD PARTY RIGHTS

- H2.1 This Call-Off Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Call-Off Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

H3. **NO WAIVER**

- H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Call-Off Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Call-Off Contract nor affect the validity of the Call-Off Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- H3.2 No waiver of any of the provisions of this Call-Off Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

H4. **SEVERANCE**

- H4.1 If any provision of the Call-Off Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H5. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

- H5.1 Subject to any express provision of this Call-Off Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Call-Off Contract or sub-contract the provision of the Services.
- H5.2 The Council shall be entitled to:
- H5.2.1 assign, novate or dispose of its rights and obligations under this Call-Off Contract either in whole or part to any contracting authority (as defined in The PCR 2015); or
 - H5.2.2 transfer, assign or novate its rights and obligations where required by Law.
- H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.
- H5.4 Where the Services are to be provided at a facility under the direct oversight of the Council, the Contractor shall notify the Council of the name, contact details and legal representatives of any sub-contractors involved in delivering the Services.
- H5.5 Notwithstanding Clauses H5.1 and H5.2 the Contractor may assign to a third party ("the Payment Assignee") the right to receive payment of the Price or any part thereof due to the Contractor under this Call-Off Contract. Any assignment under this Condition shall be subject to:
- H5.4.1 Reduction of any sums in respect of which the Council exercises its right of recovery;

H5.4.2 All related rights of the Council under the Call-Off Contract in relation to the recovery of sums due but unpaid; and

H5.4.3 The Council receiving notification both under Conditions H5.1 and H5.5

H5.5 In the event the Contractor assigns the right to receive the Price under Condition H5.5 the Contractor or the Payment Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

H5.6 The Contractor shall notify the Council in writing of the Payment Assignee's contact information and bank account details to which the Council shall make payment.

H5.7 The provisions of C1 (Price and Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the approval of the Council.

H6. **FORCE MAJEURE**

H6.1 Neither party shall be liable for failure to perform its obligations under the Call-Off Contract if such failure results from Force Majeure.

H6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Call-Off Contract.

H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.

H6.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Call-Off Contract immediately or on a set termination date.

H6.5 If the Call-Off Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

H7. **INDUCEMENTS**

H7.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any

such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.

H7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Council by the Contractor or on the Contractor's behalf.

H7.3 Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Council, the Council has the right to:

H7.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

H7.3.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

H8. COSTS AND EXPENSES

H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Call-Off Contract.

H9. NO AGENCY OR PARTNERSHIP

H9.1 Nothing contained in this Call-Off Contract, and no action taken by the parties pursuant to this Call-Off Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H10. NON SOLICITATION AND OFFERS OF EMPLOYMENT

H10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Call-Off Contract:

H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Call-Off Contract or at any time during the period of one month immediately preceding the date of termination; or

H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

H11. INSPECTION OF CONTRACTOR'S PREMISES

H11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Call-Off Contract.

H12. LAW AND JURISDICTION

H12.1 This Call-Off Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.