

**DATED 20**

**------------**

**CALL OFF TERMS (LOT 1)**

**Between**

**THE ROYAL BOROUGH OF KINGSTON UPON THAMES**

**And**

**[INSERT NAME OF DESIGNER]**

Pursuant To The Framework Agreement For Print and Design Services

(Design Services)

© Royal Borough Of Kingston Upon Thames

Guildhall

High Street

Kingston Upon Thames

Surrey

KT1 1EU

**Contents**

**Clause**

1. Interpretation 1

2. Engagement 2

3. Creative Control 3

4. Obligations 4

5. Fees And Payment 5

6. Rights 5

7. Warranties 6

8. Confidentiality And Freedom Of Information 8

9. Anti-Bribery 8

10. Termination 9

11. Assignment And Other Dealings 10

12. Third-Party Rights 10

13. No partnership or agency 10

14. Waiver 10

15. Variation 10

16. Notices 10

17. Entire agreement 11

18. Governing Law And Jurisdiction 11

**THIS AGREEMENT** is dated **20[ ]**

**Parties**

1. **THE ROYAL BOROUGH OF KINGSTON UPON THAMES** whose principal address is The Guildhall, High Street, Kingston Upon Thames, Surrey, KT1 1EU (**Authority**).
2. [**INSERT FULL COMPANY NAME**] [incorporated and registered in England and Wales with company number [*insert company number*.]] **OR** [a charity registered in England and Wales with charity number (*insert charity number*.) and company number [*insert company number*.]] whose [registered office **OR** principal address] is at [*insert address*] (**Designer**).

**Background**

1. The Authority placed a contract notice with reference number [2021/S 000-026235](https://www.find-tender.service.gov.uk/Notice/026235-2021) on 20 October 2021 on the Find A Tender Service (FTS) seeking tenders from potential service providers for the provision of services (divided into Lots) to the Authority under a framework agreement.
2. On the basis of the Designer’s tender, the Authority selected the Designer to enter a framework agreement to provide services to the Authority on a call-off basis in accordance with the framework agreement.
3. The Authority undertook a mini-competition under the terms of the framework agreement and has selected the Designer to provide the Services and the Designer is willing and able to provide the Services in accordance with the terms and conditions of the Contract.

**Agreed Terms**

# **Interpretation**

The following definitions and rules of interpretation apply in these call off terms.

## Definitions:

**Acceptance Date:** the date on which the Authority notifies the Designer in accordance with clause 3.5 that it has received and accepts as satisfactory the **Artwork** and/or Delivery Materials (as the case may be).

**Artwork:** digital designs including illustrations, photographs, textual and non-textual material prepared for inclusion in any publication, advertisement or communication issued by the Authority.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Contract**: the written agreement between the Authority and the Designer consisting of the Order Form, these call off terms and the framework agreement.

**Delivery Date:** As set out in the Order Form.

**Delivery Materials:** the boards and text panels together with the frames as more particularly described in the Specification.

**Products:** The Signage together with the Delivery Materials.

**Signage:** the text designed and printed on the boards and/or text panels included in the Delivery Materials.

**Order Form:** the document (in the format of Schedule 4 to the framework agreement) completed by the Authority which sets out the description of the Services to be supplied by the Designer, relevant dates, pricing, payment information and other matters relevant to the Contract.

**Specification:** the document attached to the Order Form as Appendix 1.

**Term:** the period set out in the Order Form.

## The Order Form forms part of the Contract and shall have effect as if set out in full in the body of these call off terms. Any reference to these call off terms includes the Order Form.

## Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

# **Engagement**

In consideration of payment to the Designer of the sum set out in the Order Form, the Authority engages the Designer, and the Designer agrees, to produce the Artwork and/or Products (as the case may be) in accordance with the Specification and to provide such other services as are agreed between the parties from time to time in connection with producing the Artwork and/or Products (as the case may be). Pursuant to the Contract, the Designer shall:

### if relevant, select, gather, hold and develop in consultation with the Authority, material that is to be contributed to the design and development of the Artwork and/or Signage and Delivery Materials (as the case may be) by third parties;

### make all necessary preparations for the design and production of the Artwork and/or Signage and/or Delivery Materials (as the case may be) including providing or engaging staff and other necessary facilities and services necessary to meet its obligations under the Contract;

### create and produce the Artwork and/or Signage and/or Delivery Materials (as the case may be) in a timely fashion in accordance with the timetable agreed by the parties; and

### deliver to the Authority the Artwork and/or Products (as the case may be) on or before the Delivery Date and time shall be of the essence in respect of this obligation.

# **Creative Control**

## The parties agree to liaise from time to time as agreed between them to consult in good faith with each other over the development of Artwork and/or Signage and/or Delivery Materials (as the case may be) provided that the Authority shall, in its absolute discretion but with full discussion with the Designer and giving good faith consideration to the Designer's views as a professional design company, have final editorial and artistic control over the Artwork and/or Signage (as the case may be) .

## The Authority shall appoint a representative (**Authority Representative**) who shall have the right on behalf of the Authority to accept as satisfactory the Artwork and/or Signage and/or Delivery Materials (as the case may be).

## The Designer will submit to the Authority details of the design for the Artwork or Signage (as the case may be) for review and acceptance by not later than the date specified in the Order Form and the Authority shall confirm either its acceptance or non-acceptance with reasons in writing (within the period set out in the Order Form) after receipt of such details. If the Designer does not receive notice of such acceptance or non-acceptance within the period of set out in the Order Form, the Authority will be deemed to have accepted such details, which will then form part of the Artwork or Signage (as the case may be).

## If the Authority declines to accept any of the Artwork or Signage or Delivery Materials(as the case may be), the Designer will within the period set out in the Order Form make all necessary changes to them, in consultation with the Authority, the Authority having given written reasons for non-acceptance. The Designer will then submit to the Authority the revised material or replaced materials and the provisions of clause 3.3 and this clause 3.4 will apply.

## The Authority's Representative shall have the opportunity to accept, or refuse to accept, the Artwork and design for the Signage (as the case may be) at rough cut and fine cut stage delivered for online or electronic review at the Designer's cost. Subject to dates being agreed in advance, the Authority shall be entitled to request within a period of five (5) Business Days from receipt of each of the rough cut and fine cut of the Signage, reasonable amendments which shall be undertaken by the Designer at its own cost. If the Authority does not request amendments within five (5) Business Days, acceptance shall be deemed to have occurred and the Artwork and or design for the Signage (as the case may be) accepted.

# **Obligations**

## The Designer agrees that it shall:

### render the services to the highest professional standards and in accordance with the Authority's reasonable instructions and requests;

### perform the services in co-operation with the Authority via the Authority Representative and where requested by the Authority its other professional advisors and agents such as the Authority's PR or communications department;

### not without the Authority's written consent, order goods nor incur any liability on the Authority's behalf nor pledge its credit nor hold itself out as being entitled to do so other than as is contemplated in the Contract;

### subject to clause 6.5 not without prior discussion with the Authority make any commercial use of its role in, or association with, the design, development and production of the Artwork and/or Signage and Delivery Materials(as the case may be);

### be responsible for arranging and supervising the performance of the services and delivery of the Artwork and/or Products (as the case may be);

### maintain throughout the Term a policy of public liability, employer’s liability and professional indemnity insurance providing not less than the level of cover (set out in the Order Form) in respect of any act or omission of the Designer; and

### for the avoidance of doubt, be responsible for the payment of all wages, fees, costs and payments of any nature due to all personnel engaged or employed by the Designer to render services in connection with the Contract;

### including all income tax, national insurance and any and all payment in lieu of holiday connected therewith and for the payment of all goods and services acquired by the Designer to perform the services, and the Authority shall have no liability in respect of such costs.

## The Authority agrees that it shall:

### where it deems it relevant, that the Designer shall require access to any of the Authority’s premises for the proper performance of the Contract, provide the Designer with reasonable access to its premises at no expense to the Designer inclusive of the cost of space, heat, light, power providing that the Designer shall, and shall procure that all its employees and contractors shall, enter into the Authority's standard conditions for such access if so required; and

### where necessary and agreed, give the Designer access to the Authority's personnel and instruct such personnel to assist and support the Designer wherever possible, to comply with the Designer's reasonable requests in developing the Products, and in particular to provide such information as the Designer may request; and

### if relevant, provide access to digital information, company graphics and website for use in the design and development of the Artwork and/or Signage (as the case may be) . Website access will be limited to 'read' only.

# **Fees And Payment**

## Subject to the provisions of the Contract and to the due performance by the Designer of its material obligations under the Contract, the Authority shall as inclusive remuneration and as full and complete consideration for the Services and all rights granted to the Authority under the Contract , pay to the Designer fee payable in accordance with the Order Form.

# **Rights**

## The Designer hereby grants and assigns to the Authority absolutely:

### the entire copyright throughout the world in all media whether now known or hereafter developed for the full period of copyright and all renewals, revivals, reversions and extensions thereof (and thereafter, in so far as it is able, in perpetuity) including so called rental and lending rights and, to the extent relevant, by way of present assignment of future copyright; and

### all other rights whatsoever including all consents under Part II of the Copyright, Designs and Patents Act 1988 or any statutory modification or re-enactment thereof for the time being in force (**CDPA**) in the Products, and the Designer hereby agrees to procure the giving of similar consents from all persons engaged or employed by the Designer and whose intellectual property rights are incorporated in the Products, to enable the Authority to make the fullest use of the Products without restriction or payment of further fees.

## The Designer recognises that the Authority has the unlimited right to edit, copy, alter, add to, take from, adapt and translate all or any part of the Products after delivery by the Designer and hereby irrevocably and unconditionally waives the benefits of any provision of law relating to so-called "moral rights" (including without limitation any rights of the Designer under section 77 to section 85 inclusive of the CDPA) and any similar laws of any jurisdiction in relation to the Products. The Designer further agrees to procure the waiver of all such rights in favour of the Authority and its successors in title by all persons engaged or employed by the Designer and who contribute to the design and development of the Products to whom such rights may accrue.

## The Designer shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract, and shall use all reasonable endeavours to procure that any third parties shall also do so as necessary.

## The Authority agrees that the Designer may use the Authority's name and intellectual property rights solely to the extent necessary for the purpose of performing its obligations under the Contract, such as by including them in the Products, referring to them in paperwork and in discussions with third parties in order to indicate the nature of the services to be delivered hereunder, and including them in the Designer's own promotional materials in accordance with clause 6.5. The Authority warrants that no such use shall infringe the rights of any third party.

## The Designer shall have the non-exclusive right for a period of five (5) years from the Delivery Date to use extracts from the Artwork and/or Signage (as the case may be) for its own promotional use in internal and prospective Authority presentations and on the Designer's website.

# **Warranties**

## The Designer hereby warrants, represents and undertakes to the Authority that:

### the Designer is fully entitled to enter into and to perform the Contract;

### the Artwork and/or Signage (as the case may be) (save to the extent that it incorporates material made available to the Designer by the Authority) will be wholly original to the Designer and will not infringe the copyright or any other rights of any third party, including rights to privacy;

### the Designer shall not make any commercial exploitation of any of the Products except as permitted under the Contract; and

### the Designer shall indemnify the Authority and keep the Authority fully and effectively indemnified against all actions, costs, demands, losses, claims and expenses of whatsoever kind or nature arising from any actual or threatened breach or non-performance of any of the warranties, representations, undertakings or obligations on the Designer's part contained in the Contract.

## In order to receive the indemnification under clause 7.1(d) the Authority shall promptly notify the Designer of a claim and shall grant the Designer the sole right to defend, control and settle such claim, and the Designer shall have the right at its own cost to have its own legal counsel present at all meetings and hearings relating to the claim. The Authority shall not compromise, settle or otherwise resolve a claim without the Designer's prior written consent, not to be unreasonably withheld or delayed.

## The Authority hereby warrants, represents and undertakes to the Designer that:

### it is fully entitled to enter into and perform the Contract;

### it shall either own, or have obtained and paid for licences to use, all materials provided to the Designer by the Authority in connection with the production of the Artwork and/or Signage (as the case may be); and

### the Authority shall indemnify the Designer and keep the Designer fully and effectively indemnified against all actions, costs, demands, losses, claims and expenses of whatsoever kind or nature arising from any actual or threatened breach or non-performance of any of the warranties, representations, undertakings or obligations on the Authority's part contained in the Contract.

## In order to receive the indemnification under clause 7.3(c), the Designer shall promptly notify the Authority of any claim and shall grant the Authority the sole right to defend, control or settle such claim and the Designer shall have the right to have their own counsel present at the Designer's sole cost and expense.

## Neither party shall be liable to the other party for incidental, consequential, special or punitive damages or loss of profits which the other party may suffer arising out of any breach of the Contract.

# **Confidentiality And Freedom Of Information**

## The Designer shall not, without the prior consent of the Authority, make to any third party any statement or supply any information or photograph relating to the Artwork and/or the Products or to the business or legal affairs of the Authority, other than to state that it is designing and delivering the Artwork and/or the Products (but this shall not prevent proper disclosures of information to its professional advisers or as required by law).

## The Designer acknowledges that the Authority is subject to the Freedom of Information Act 2000 and may be required to release information pursuant to that Act.

# **Anti-Bribery**

## The Designer shall:

### comply with all applicable laws, statutes, and regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

### not engage in any activity, practice or conduct which would constitute an offence under section 1, section 2 or section 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

### comply with such policies relating to ethics, anti-bribery and anti-corruption as the Authority may provide to the Designer and update from time to time (**Relevant Policies**);

### have and shall maintain in place throughout the term of the Contract their own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will comply with them where appropriate;

### promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Designer in connection with the performance of the Contract; and

## Breach of this clause 9 shall be deemed a material breach of the Contract under clause 10.3(a).

## For the purpose of this clause 9, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under sections 8 and 9 of that Act).

# **Termination**

## The Authority may terminate the Contract without cause in accordance with the Order Form.

## On termination under clause 10.1, the Designer shall be entitled to receive payment:

### of all sums that the Designer is, up to the date of termination, contractually obligated to pay third parties; and

### such other sums that are due for services rendered up to the date of termination.

## The Authority may terminate the Contract with immediate effect by giving written notice to the Designer if:

### the Designer commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of four (4) Business Days after being notified in writing to do so; or

### the Designer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

### the Designer is prevented from rendering the Services for more than either five (5) consecutive Business Days or fourteen (14) Business Days in the aggregate.

## On termination under clause 10.3, the Designer shall not be entitled to receive any further payment.

## On termination of the Contract for any reason:

### neither party shall have any further obligation to the other under the Contract except as stated in the Contract ;

### the rights, remedies or obligations of the parties that have accrued or become due before termination shall remain unaffected; and

### the Authority shall remain entitled to all rights granted or assigned to it under the Contract.

# **Assignment And Other Dealings**

## The Designer shall not, without the prior written consent of the Authority, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## The Authority shall be entitled to assign the benefit of the Contract, the Products and/or the Services to any third party and the Designer shall render the Services to such assignee. The Authority shall remain primarily liable to the Designer for all its obligations under the Contract notwithstanding any such assignment.

# **Third-Party Rights**

No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

# **No partnership or agency**

## Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

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

# **Waiver**

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

# **Variation**

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# **Notices**

## Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

### delivered by hand or by prepaid first-class post or other next working day delivery service at its principal place of business; or

### sent by fax to its main fax number or by email to the address set out in the Order Form.

## Any notice or communication shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

### if sent by prepaid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

### if sent by fax or email, at 9.00 am on the next Business Day after transmission.

# **Entire agreement**

## The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

#  **Governing Law And Jurisdiction**

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

This Contract has been entered into on the date stated at the beginning of it.

| EXECUTED  |   |
| --- | --- |
| by **THE ROYAL BOROUGH OF KINGSTON** acting by and under the signature of |  |
|  |  |
| Name: | ................................. |
|   | Signature  |
| Position: |  |
| EXECUTED  |   |
| by **[INSERT NAME OF DESIGNER]** |   |
| acting by and under the signature of: |   |
| Name: | ................................. |
|   | Signature  |
| Position: |  |