DATED 2015

**(1) The Council of the City of Sunderland**

**(2) [ ]**

## FRAMEWORK AGREEMENT

For the Energy Performance of Buildings Inspections

Elaine Waugh LLB

Head of Law and Governance

Civic Centre

Sunderland

SR2 7DN

Ref: JMP/64229

**This AGREEMENT** is made as the day of 2015

**BETWEEN:**

**(1) The COUNCIL OF City of Sunderland** of Civic Centre, Sunderland, SR2 7DN (“the Council”)

and

**(2) [ ]** (“the Contractor”).

**BACKGROUND**

1. The Council is acting as lead authority for NEPO.
2. 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.
3. This Framework Agreement sets out the award and ordering procedure for Services that may be required by the Council and other 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:-

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| “Authorised Officer” | means the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council 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; |
| “Award Criteria” | means the award criteria as set out in the Invitation to T ender; |
| “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" | means 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 and 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:  (i) the Order Form;  (ii) any Special Terms and Conditions;  (iii) the Call-Off Terms and Conditions;  (iv) the Mini-Competition Tender (if any); and  (v) the Framework Agreement; |
| "Call-Off Terms and Conditions" | means the terms and conditions specified in Schedule 1; |
| "Commencement Date" | means the date set out in the Contract Particulars; |
| “Contractor(s)” | means the contractor(s) who has/have 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; |
| “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 by virtue of their membership or affiliation with NEPO; |
| “Council” | means the Council of the City of Sunderland; |
| “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 Framework Particulars; * The Invitation to Tender; and * The Tender; |
| “Framework Particulars” | means the document detailing the specific core terms agreed between the parties with regard to the Frameworks which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification; |
| “Framework Terms and Conditions” | means the terms and conditions set out in this agreement and all the Schedules to this agreement; |
| "Guidance" | means any guidance issued or updated by the UK Government from time to time in relation to the Regulations; |
| “Invitation to Tender” | means the Council’s invitation to tender to be included as a Contractor on the Framework for the Services; |
| "Law" | means 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; |
| “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; |
| “Mini-Competition Tender” | means the tender response submitted by the Contractor in accordance with the mini-competition procedure set out at clause 6.2; |
| “NEPO” | the North East Procurement Organisation which is a purchasing and contracting consortium; |
| "Order" | means an order for Services served by the Contracting Authority on a Contractor in accordance with the Ordering Procedures; |
| "Order Form" | means the document completed by the Contracting Authority and setting out details of an Order in writing in such form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions; |
| "Ordering Procedures" | means the ordering and award procedures specified in Clause 6; |
| "Party" | means the Council and the Contractor; |
| “Prohibited Act” | include any of the following (i) termination of employment; (ii) or the alteration or change of terms and conditions of any Employees; (iii) or the recruitment of any employees; or (v) relocation or assignment to new duties of any employees; |
| “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 a Call-Off Contract; |
| “Services” | means 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; |
| “Tender” | means the Contractor’s tender for the provision of Services under the Framework in response to the Council’s Invitation to Tender; and |
| "Term" | means 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. |

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 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 Council or a Contracting Authority and where the Services are divided into Lots, this Framework Agreement shall apply to each Lot 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**

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 the Council or a Contracting Authority during the Term.

**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 or 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 and any relevant Special 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 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 Mini-Competition tenders; and

(d) keep each Mini-Competition Tender confidential until the expiry of the time limit for the receipt by it of the same.

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 Mini-Competition Tenders as the basis of its decision to award a Call-Off Contract for its requirements.

6.3 The Contractor agrees that all Mini-Competition Tenders shall remain open for acceptance for one hundred and twenty (120) days (or such other period specified in the invitation issued by the 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 a reasonable period determined by the Contracting Authority and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days), acknowledge receipt of the Order and either:-

6.7.1 notify the Contracting Authority in writing that it declines to accept the Order; or

6.7.2 notify the Contracting Authority in writing that it accepts the Order.

6.8 If the Contractor:-

6.8.1 notifies the Contracting Authority 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 Call Off 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. CONTRACT REBATE**

8.1 The Contractor will pay NEPO a contract rebate for all business received against all Call-off Contracts placed by any Contracting Authority under this Framework Agreement where the level of this rebate 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 9, 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 parties to it and neither party shall assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the other party. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this 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 DPA.

**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.

**14. VARIATIONS TO THE FRAMEWORK AGREEMENT**

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

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

**15. LAW AND JURISDICTION**

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.

**16. ENTIRE AGREEMENT**

16.1 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.

16.2 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.

16.3 Nothing in this Clause 16 shall operate to exclude Fraud or fraudulent misrepresentation

**17. PUBLICITY**

17.1 The Contractor shall not make any press announcements or publicise in any other media this Agreement or any Contract without the Council’s prior written consent.

17.2 The Council and the Contracting Authority shall be entitled to publicise this Agreement or any Contract pursuant to any legal obligation on the Council or Contracting Authority.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be executed the day and year first above written.

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| EXECUTED on behalf of THE COUNCIL OF THE CITY OF SUNDERLAND by | | )  )  ) |
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