Energy Performance of Buildings Inspections Framework

ITT Schedule 2.3 - Call Off Contract Particulars and Call Off Terms and Conditions

|  |  |  |  |
| --- | --- | --- | --- |
| **Information Heading** |  | | |
| Contracting Authority | **[ ]** | | |
| Contracting Authority’s Address for Notice | **[ ]** | | |
| Contractor | [set out name of Contractor and company registration number (if any)] | | |
| Contractor’s Address for Notice | **[ ]** | | |
| Commencement Date | [ ] or the date that the Contractor commences performance of the Services. | | |
| Contract Period (including option to extend) |  | | |
| Type of Services | As described in the Order and the Framework Agreement. | | |
| Specification or description of Services to be provided by the Contractor | As fully described in the Order and the Framework Agreement. | | |
| Delivery Instructions | As fully described in the Order and the Framework Agreement. | | |
| Commercially Sensitive Information | [The information listed as being Commercially Sensitive Information in the Framework Agreement or any Order].  **OR**  [None]. | | |
| Price | [Set out the price for the Call-Off in accordance with the Pricing Schedule] | | |
| Limit on Contractor’s Liability | The Contractor’s total liability in respect of direct loss of or damage to the Council’s property under or in connection with the Contract is £5 million pounds per claim (or £5 million in aggregate for claims relating to products liability, pollution or contamination only).  The Contractor’s liability in respect of any breach of its obligations under the Contract, or any default, act, omission, negligence or negligent statement of the Contractor or any Employee in connection with or in relation to the subject-matter of the Contract is £2 million pounds per claim (or £2 million in aggregate where the breach relates to pollution and contamination only). Where the breach relates to asbestos only, the Contractor’s liability is limited to £1 million in aggregate. | | |
| Exclusivity of appointment | Contractor is retained on a non-exclusive basis. | | |
| Frequency of Progress Reports to be provided by the Contractor | [weekly][fortnightly][monthly][quarterly] [six-monthly][yearly]  [delete as appropriate] | | |
| Rebate | 1%  3 monthly in arrears | | |
| Intellectual Property Rights | [Include details of exceptions to Clause 35.1.2]  **OR**  [None] | | |
| **Council Authorised Officer** | | | |
| **Name** | | **Position** | **Email & Telephone Details** |
| **[ ]** | | **[ ]** | **[ ]** |

|  |  |  |
| --- | --- | --- |
| **Contract Manager** | | |
| **Name** | **Position** | **Email & Telephone Details** |
| **[ ]** | **[ ]** | **[ ]** |
| **Contractor Key Personnel** | | |
| **Name** | **Position** | **Email & Telephone Details** |
| **[ ]** | **[ ]** | **[ ]** |
| **[ ]** | **[ ]** | **[ ]** |

|  |  |
| --- | --- |
| **Insurance** | |
| **Insurance type** | **Minimum level** |
| Employer’s liability insurance | No less than £10 million for each and every claim or a higher level of cover appropriate to your Organisation |
| Public liability insurance | No less than £5 million for each and every claim  (£5 million in aggregate for products liability, pollution or contamination is acceptable) |
| Professional indemnity insurance | No less than £2 million for each and every claim  (£2 million in aggregate is acceptable for pollution and contamination only)  (£1 million in aggregate is acceptable for asbestos only) |

**SUNDERLAND CITY COUNCIL**

**STANDARD TERMS AND CONDITIONS OF CONTRACT** **FOR THE PURCHASE OF CONSULTANCY SERVICES**

**ENERGY PERFORMANCE OF BUILDINGS INSPECTIONS FRAMEWORK**

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PART A - OPERATIVE PROVISIONS

1. **DEFINITIONS**

1.1 The terms and expressions used in these Standard 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 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. | |
| “Bribery Act” | | the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation. | |
| “Business Day” | | any day other than a Saturday or Sunday or a public or bank holiday in England. | |
| “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 Commencement Date. | |
| “Commencement Date” | | the commencement date of the Order stated in the Contract Particulars. | |
| “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 reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored). This includes 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 data and sensitive personal data (within the meaning of the DPA). | |
| “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. | |
| “Call-Off Contract” | | the agreement in respect of the provision of an Order 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.   1. The Contract Particulars. 2. The Call-Off Terms and Conditions. 3. The Order. | |
| “Contract Manager” | | the person named in the Contract Particulars as the Contract Manager and any replacement from time-to-time in accordance with clause 9. | |
| “Contract Particulars” | | the document detailing the specific core terms agreed between the parties with regard to the Order which shall include but not be limited to the Price, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Commercially Sensitive Information, Contract Period, and the specific Services to be provided and any other relevant Call-Off Contract specific details. | |
| “Contract Period” | | the period of the Call-Off Contract as stated in the Contract Particulars (and any extension in accordance with clause 5). | |
| “Control” | | control as defined by sections 450, 451 and 707 of the Corporation Tax Act 2010. | |
| “Council” | | Sunderland City Council. | |
| “DPA” | | The Data Protection Act 1998. | |
| “Delivery Instructions” | | the instructions provided in the Contract Particulars 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 sub-contractors and representatives or, in respect of clause 43 (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. | |
| “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. This includes without limitation: acts of God, war, industrial action (subject to clause 49.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies. | |
| “Framework Agreement” | | the framework agreement entered into between (1) the Council and (2) the Contractor on [date] pursuant to which an Order is made for the provision of the Services in accordance with the Call-Off Terms and Conditions. | |
| “Good Industry Practice” | | the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a professional 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. | |
| “Information” | | has the meaning given under section 84 of the Freedom of Information Act 2000. | |
| “Initial Contract Period” | | the period of the Call-Off Contract as stated in the Contract Particulars without any extension to the Call-Off Contract in accordance with clause 5.2. | |
| “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. | |
| “Key Personnel” | | those persons named in the Contract Particulars as being key personnel and any replacement from time-to-time under clause 8.3. | |
| “Law” | | any applicable Act of Parliament, sub-ordinate 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. | |
| “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. | |
| “Order” | | a call-off of Services from the Framework as described in the Framework Agreement and subject to the Call-Off Terms and Conditions. | |
| “Price” | | the price of the Services in respect of an Order calculated in accordance with the Pricing Schedule as set out in the Contract Particulars. 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 | | Part 6 of the Framework Agreement. | |
| “Prohibited Act” | | the following constitute Prohibited Acts:  (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council (including without limitation any member or officer) a financial or other advantage to:  (i) induce that person to perform improperly a relevant function or activity; or  (ii) reward that person for improper performance of a relevant function or activity;  (d) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Call-Off Contract;  (e) committing any offence:  (i) under the Bribery Act;  (ii) under legislation creating offences concerning fraudulent acts;  (iii) at common law concerning fraudulent acts relating to this Call-Off Contract or any other contract with the Council; or  (iv) defrauding, attempting to defraud or conspiring to defraud the Council. | |
| “Quality Standards” | | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation, a relevant professional, accreditation or authorisation body, or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Order; | |
| “Replacement Contractor” | | any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract | |
| “Request for Information | | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR. | |
| “Services” | | the Services described in the Order and the Framework Agreement, together with:-   1. such other services as may be reasonably incidental to those set out in the Order and the Framework Agreement; and 2. all equipment required and any associated goods provided by the Contractor in relation to those Services. | |
| “Specification” | | Part 2 of the Framework Agreement. | |
| “Sub-contract” | | any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part of the Services, or facilities or Services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services. | |
| “Sub-contractor” | | the third parties that enter into a Sub-contract with the Contractor. | |
| Tender | | Part 5 of the Framework Agreement. | |
| TUPE | | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended). | |

1.2 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.

1.3 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.

1.4 In this Call-Off Contract “including” means “including without limitation”.

2 HEADINGS

2.1 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.

3 Notices

3.1 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.

3.2 Any notice serviced will be deemed to have been served as follows:

3.2.1 Any notice served personally will be deemed to have been served on the day of delivery;

3.2.2 Any notice sent by post will be deemed to have been served 48 hours after it was posted;

3.2.3 Any notice sent by fax will be deemed to have been served 24 hours after it was despatched;

3.2.4 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.

4 Entire Agreement

4.1 The Call-Off Contract and Framework Agreement constitute the entire agreement between the parties relating to the subject matter of the Call-Off Contract. The Call-Off Contract and Framework Agreement supersede all prior negotiations, representations and undertakings, whether written or oral, relating to the subject matter of the Call-Off Contract, except that this clause 4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B - PROVISION OF SERVICES

5 Contract Period

5.1 The Call-Off Contract shall commence on the Commencement Date and subject to clause 5.2 shall continue for the Contract Period.

5.2 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 Contract Particulars 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.

5.3 Where the Call-Off Contract is extended pursuant to clause 5.2, there shall be no amendment to the terms of this Call-Off Contract (including the terms set out in Part C Price and Payment) during the period of extension.

6 the Services

6.1 During the continuance of this Call-Off Contract, and in consideration of the Price, the Contractor is to be retained by the Council (on the exclusivity basis set out in the Contract Particulars) to provide the Services to the Council on the terms set out in these Standard Terms and Conditions.

6.2 The Contractor shall provide the Services:-

6.2.1 in a proper, skilful and workmanlike manner and in accordance with the Law and Good Industry Practice;

6.2.2 in accordance with the Call-Off Contract and the reasonable instructions of the Authorised Officer, and to the extent that the standard of the Services has not been specified in the Call-Off Contract, the Contractor shall agree the relevant standard of the Services prior to the supply of the Services;

6.2.3 at all times in compliance with the Quality Standards, and where applicable, the Contractor shall maintain accreditation with the relevant Quality Standards authorisation body at all times; and

6.2.4 in a way that the Contractor takes every reasonable precaution to safeguard the Council’s property entrusted to the care of the Contractor, the Council’s interests and the Council’s reputation.

7 DELIVERY OF THE SERVICES

7.1 Unless otherwise agreed with the Council in writing, the Contractor will spend the number of hours set out in the Contract Particulars engaged in providing the Services.

7.2 The Contractor shall complete the Services in accordance with any programme, timetable or key task response time set out in the Order or the Call-Off Contract (for the purposes of this clause, in the event of any ambiguity, conflict or contradictions between these documents, the Call-Off Contract shall take priority).

7.3 Time of delivery shall be of the essence and if the Contractor fails to deliver the Services within the time promised or specified in the Specification, the Council may release itself from any obligation to accept and pay for the Services and/or terminate the Call-Off Contract, in either case without prejudice to any other rights and remedies of the Council.

7.4 Unless otherwise stated in the Order or otherwise agreed, the Services shall be delivered during the hours of 9am and 5pm on Business Days and at such other times as may be necessary for the performance of the Services.

7.5 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, or becomes aware of any other matter that could affect the performance of the Services in accordance with the Call-Off Contract, the Contractor shall inform the Council immediately.

8 Employees to Provide the Services

8.1 The Contractor shall provide to the satisfaction of the Council such appropriately qualified and experienced professional and clerical staff as shall be necessary for the proper performance of the Services including without limitation any Key Personnel specified in the Contract Particulars.

8.2 Key Personnel (if any) shall not be released from providing the Services without the written agreement of the Council, except by reason of:

8.2.1 sickness;

8.2.2 maternity leave;

8.2.3 paternity leave;

8.2.4 termination of employment;

8.2.5 request by the Council; or

8.2.6 the element of the Services in respect of which the individual was engaged having been completed to the Council’s satisfaction.

8.3 Any replacement 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.

8.4 The Contractor shall ensure that the Employees providing the Services are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:

8.4.1 the task or tasks such person has to perform;

8.4.2 all relevant policies, rules, procedures and standards of the Council which have been notified by the Council to the Contractor; and

8.4.3 all relevant rules, procedures and statutory requirements concerning health and safety.

8.5 The Contractor shall provide, and shall ensure that its Employees wear at all times when engaged in the provision of the Services and when on the property or premises of the Council, such identification (including photographic identification) as may be specified by the Council, and shall ensure that when requested to do so any Employee shall disclose his/her identity and status as an Employee of the Contractor and shall not attempt to avoid so doing.

8.6 The Contractor shall replace (at its own cost) any Employee who the Council reasonably considers to have failed to carry out their duties with reasonable skill and care. Following the removal of any such Employees for any reason, the Contractor shall make sure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

9 Contract Manager

9.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Call-Off Contract.

9.2 The Contractor shall give notice in writing to the Council at once 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.

10 conflict of interest

10.1 The Contractor shall not at any time during its appointment under this Call-Off Contract act in any capacity for any person or persons firm or company in circumstances where a conflict of interest between such person or persons firm or company and the Council shall thereby exist.

11 Ordering Process

11.1 The Contractor shall accept Orders made in writing by the Council under the provisions of the Framework Agreement.

12 Risk and ownership of Goods

12.1 Risk in any goods provided as part of the Services shall, without prejudice to any other rights or remedies of the Council, pass to the Council at the time of delivery.

12.2 The Council shall be entitled to reject any goods delivered which are not in accordance with the Call-Off Contract, and shall not be deemed to have accepted any goods until it has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the goods has become apparent.

12.3 Ownership in any goods provided as part of the Services shall, without prejudice to any other rights or remedies of the Council, pass to the Council at the time of delivery (or payment if earlier).

13 Warranties and Representations

13.1 The Contractor represents and warrants to the Council that it has read and fully understood the Framework Agreement, and that the Contractor is capable of performing the Services in all respects in accordance with Framework Agreement and the Call-Off Contract, and has all necessary staff, equipment, and experience for the purposes.

13.2 The Contractor warrants to the Council that in the performance of the Services, and in regard to all documents and information prepared by the Contractor, and all ancillary Services provided by the Contractor in connection with the Services, it has exercised and will continue to exercise Good Industry Practice.

13.3 No enquiry, inspection, approval, sanction, comment, consent, decision, or instruction (other than specific instructions given to the Contractor) at any time made or given by or on behalf of the Council or any other party in relation to any such document or information, and no failure of the Council or any other party to discern any defects in or omission from any such document or information, shall operate to exclude or limit the obligations of the Contractor under this clause 13.

14 Replacement Services

14.1 Without prejudice to the Council’s rights to terminate under clause 29 (Termination), if any of the Services supplied are not in accordance with the Call-Off Contract, the Council shall be entitled to require the Contractor to:-

14.1.1 provide replacement Services in accordance with the Call-Off Contract as soon as reasonably practicable and in any event within 14 days of a request to do so; or

14.1.2 repay 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.

15 additional services

15.1 The Council may at any time within twelve months of the completion of the Services request the performance by the Contractor of any additional services relating to the Services already provided.

15.2 Subject to the Contractor’s prior express agreement, the Contractor shall duly perform the additional services in accordance with the terms of this Call-Off Contract, save that the Council and the Contractor shall agree a programme and a completion date for such additional services in writing in advance.

15.3 The Contractor shall be entitled to be paid for the additional services based on the rates set out in the Tender. In the event that the rates are not applicable, the Contractor shall be entitled to be reimbursed at such rates as shall be fair and reasonable in all the circumstances.

15.4 Additional services shall not include replacement Services to be provided in accordance with clause 14 (Replacement Services).

**16 Status of Contractor**

16.1 The Contractor is an independent contractor and nothing in the Call-Off Contract shall be construed as creating an employment or agency relationship as between the Council and the Contractor.

16.2 Where the Contractor is an individual, the parties declare that it is their intention that the Contractor shall have the status of a self-employed person and shall be responsible for all and any tax liabilities, including national insurance contributions, in respect of any fees and other payments due to him under the Call-Off Contract.

16.3 For the avoidance of doubt, the Contractor and any Employees (not being employees of the Council) shall not be entitled to any pension, holiday pay, sick pay or other fringe benefits from the Council.

**17 Absence**

Not used.

**18 Contractor’s Authority**

Not used

**19 Information and Assistance**

19.1 Both parties agree that the performance of the Services by the Contractor may be dependent upon the Council providing the Contractor with such information and assistance as may reasonably be required from time to time and which may include access to the Council’s premises.

19.2 Information provided by the Contractor to the Council that is provided in draft shall not be relied upon by the Council, who recognises and agrees that such information may be subject to change.

20 Admission to the Council Premises

20.1 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:

20.1.1 any Employee; and/or

20.1.2 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.

20.2 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.

20.3 Any Employee 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.

20.4 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.

PART C – PRICE AND PAYMENT

21 Price and Payment

21.1 In consideration of the provision of the Services, and subject to the other provisions of this Call-Off Contract, the Council shall pay the Price to the Contractor.

21.2 The Council shall, in addition to the Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.

21.3 The Contractor shall submit a single VAT invoice to the Council no later than seven days after the end of each calendar month detailing:-

21.3.1 the Services provided during that calendar month;

21.3.2 subject to clause 22, any allowable expenses incurred during that calendar month; and

21.3.3 the total amount payable.

21.4 The Contractor shall ensure that each invoice is supported by any other information or documentation reasonably required by the Council to substantiate the invoice***.***

21.5 Payment of any undisputed invoice will be made no later than 30 days following the date of receipt of the invoice by the Council.

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

22 allowable expenses

Not used.

23 Deductions for Employment Income

23.1 If it is determined that any payment due to the Contractor under the Call-Off Contract fall to be taxable as employment income, the Council reserves the right to deduct from such payment, any amounts of income tax and national insurance contributions payable on, or in relation to, such fees or sums.

24 Withholding of Payment for Non-Performance

24.1 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 (in the Council’s sole opinion) 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.

25 Overdue Sums

25.1 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.

25.2 The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums unless the Contractor is entitled to terminate the Call-Off Contract under clause 29.3 (Termination by the Contractor).

26 Set-off

26.1 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 however 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 Call-Off Contract or otherwise.

27 Payment of Sub-contractors

27.1 Subject to clause 48 (Assignment, Sub-contracting and Responsibility), where the Contractor enters into a sub-contract with a supplier or Contractor for the purpose of performing its obligations under the Call-Off Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

28 Rebate

28.1 Where the Contractor has offered the Council a rebate on business received against this Call-Off Contract, the terms of such rebate will be set out in the Contract Particulars.

28.2 The Contractor will pay the rebate to the Council in accordance with the Contract Particulars.

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

29 Termination

29.1 Termination by the Council

29.1.1 Subject to the provisions of clause 49 (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:

* + - 1. the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a Property and Affairs Deputy appointed under the Mental Capacity Act 2005 or dies;
      2. the Contractor dies or becomes unable to perform his duties under this Call-Off Contract due to his incapacity for any consecutive or aggregate period of two weeks in any period of 12 calendar months;
      3. the Contractor is convicted of a criminal offence;
      4. the Contractor ceases or threatens to cease to carry on its business;
      5. the Contractor has a change in Control or a change in its composition of staffing which the Council reasonably believes will have a substantial impact on the performance of the Call-Off Contract;
      6. the Contractor is guilty of any conduct bringing itself or the Council into serious public disrepute, including but not limited to, a breach of clause 50 (Prevention of Bribery);
      7. the Contractor commits any act of dishonesty or serious or persistent misconduct whether or not in connection with or referable to the Services;
      8. it becomes unlawful for the Contractor to perform the Services or any authorisation, consent, licence or registration necessary to enable the Contractor to perform the Services is not obtained or, having been obtained, is revoked, withdrawn, suspended, modified or made subject to conditions;
      9. the Contractor experiences (in the reasonable opinion of the Authorised Officer whose opinion shall be final and binding) an irreconcilable conflict of interest;
      10. 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;
      11. 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;
      12. the Contractor commits persistent minor breaches of this Call-Off Contract whether remedied or not; or
      13. the Contractor has made warranties and representations as set out in clause 13 (Warranties and Representations) which prove to be untrue or incorrect.

29.1.2 the Council reserves the right to terminate the Call-Off Contract in part in the case of termination under clauses 29.1.1(j), 29.1.1(k), 29.1.1(l) and 29.1.1(m).

29.1.3 Not used.

29.2 Termination at Will

29.2.1 The Council reserves the right to terminate the Call-Off Contract at will, in whole or in part, at any time with the provision of 28 days’ notice in writing.

29.3 Termination by the Contractor

29.3.1 If the Council fails to pay the Contractor any sums of money which are lawfully due under this Call-Off Contract, the Contractor shall notify the Council in writing of such failure to pay, setting out the Contractor’s intention to terminate the Call-Off Contract if payment is not received. If the Council fails to pay such undisputed sums within 30 calendar days of the date of such written notice, the Contractor may terminate the Call-Off Contract in writing with immediate effect, save that (for the avoidance of doubt) such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 26 (Set-Off).

30 Consequences of Termination

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

30.1.1 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

30.1.2 except for termination under clause 29.2, 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 Call-Off 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

30.1.3 not used; and/or

30.1.4 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 the Council’s debt or to recover the Contractor’s debt as a civil debt.

30.2 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. For the avoidance of doubt upon any termination of this Call-Off Contract, the Council shall not be liable to the Contractor for any loss of profit or opportunity, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination.

30.3 Upon any termination of the Call-Off Contract for any reason, the Contractor shall deliver to the Council all physical and electronic documents relating to the Services or prepared by the Contractor in performing the Services (whether in the course of preparation or completed).

31 Dispute Resolution Procedure

31.1 Any dispute arising in relation to any aspect of this Call-Off Contract shall be resolved in accordance with this clause 31.

31.2 The Contractor and the Council shall endeavour to notify each other of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.

31.3 Both Parties shall endeavour to resolve any failure to agree matters or any disputes by direct negotiations between senior representatives of both parties.

31.4 If the parties fail to resolve the dispute through such consultation either party may refer the matter to an adjudicator (“the Adjudicator”). The Adjudicator shall be selected by agreement between the parties, or where the Parties are unable to agree on the identity of the adjudicator within 14 days, the President for the time being of the Chartered Institute of Arbitrators shall appoint the Adjudicator within thirty (30) Business Days of any application for such appointment by either party.

31.5 Within five (5) Business Days of nomination in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

31.6 In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Days of the Adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. The Adjudicator's decision shall state any reasons for his decision. Unless and until revised, cancelled or varied by the English Courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

31.7 The Adjudicator’s costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

31.8 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

31.9 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Call-Off Contract.

31.10 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 38 (Freedom of Information) and clause 37 (Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator’s work.

31.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

If:-

31.11.1 either party is dissatisfied with or otherwise wishes to challenge the Adjudicator’s decision made in accordance with clause 31.6 (Adjudicator’s Decision); or

31.1.2 both parties agree,

then either party may (within twenty (20) Business Days of receipt of the Adjudicator’s decision, where appropriate), notify the other party of its intention to refer the dispute to the courts.

31.12 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 31 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause 31.

32 Survival

32.1 The following clauses will survive termination or expiry of the Call-Off Contract:

32.1.1 clause 12 (Risk in and Title to the Goods);

32.1.2 clause 30 (Consequences of Termination);

32.1.3 clause 33 and 34 (Insurance, Indemnity and Liability);

32.1.4 clause 35 (Intellectual Property);

32.1.5 clause 36 (Data Protection)

32.1.6 clause 37 (Freedom of Information);

32.1.7 clause 38 (Confidentiality);

32.1.8 clause 39 (Record Keeping and Monitoring);

32.1.9 clause 43 (TUPE and Re-tendering);

32.1.10 clause 47 (Severance);

32.1.11 clause 53 (Non Solicitation and Offers of Employment); and

32.1.12 clause 55 (Law and Jurisdiction).

PART E – INSURANCE, INDEMNITY AND LIABILITY

33 Insurance

33.1 The Contractor shall effect and maintain with a reputable insurance company throughout the Contract Period and for a period of six (6) years from the expiration or earlier termination of the Call-Off Contract, a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor arising out of the performance of its obligations under the Call-Off Contract, including death, personal injury, loss of or damage to property, and other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

33.2 The insurance to be effected and maintained by the Contractor in accordance with clause 33.1 shall, as a minimum, include the specified insurances at the levels set out in the Contract Particulars.

33.3 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.

33.4 If the Contractor fails to give effect to or to maintain the necessary insurances required by the provisions of 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.

34 Indemnity and Liability

34.1 Neither party seeks to exclude or limit its liability for:

34.1.1 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);

34.1.2 fraud or fraudulent misrepresentation; or

34.1.3 any breach of any obligations implied Section 2 of the Supply of Goods and Services Act 1982; or

34.1.4 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

34.2 Subject to clauses 34.3 and 34.5, the Contractor shall indemnify the Council and keep the Council indemnified fully against all Liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services, or the performance or non-performance by the Contractor of its obligations under the Call-Off Contract or the presence of the Contractor or any Employee on the Council’s premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

34.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Call-Off Contract.

34.4 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.

34.5 Subject to clauses 34.1, 34.4 and 35.3, the Contractor’s liability per claim to the Council under the Call-Off Contract whether in contract, tort (including negligence) or otherwise shall be subject to the financial limits set out in the Contract Particulars.

34.6 Subject to clauses 34.1 and 34.4, the Council’s liability per claim to the Contractor under the Call-Off Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.

Part F - Protection of Information

35 Intellectual Property

35.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

35.1.1 provided to the Contractor by the Council shall remain the property of the Council; and

35.1.2 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 solely to the Council, subject to any exceptions set out in the Contract Particulars.

35.2 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 the 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.

35.3 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.

35.4 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.

36 Data Protection Act

36.1 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.

37 Freedom of Information

37.1 The Contractor acknowledges that the Council is subject to the requirement of the Code of Practice on Government information, FOIA and the EIR and shall assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations.

37.2 The Contractor shall and shall procure that its sub-contractors shall do all of the following where relevant.

37.2.1 Transfer to the Council all requests for information that it receives as soon as practicable and in any event within two Business Days of receiving a Request for Information.

37.2.2 Provide the Council with a copy of all information in its possession, or power in the form that the Council requires within five Business Days (or such other period as the Council may specify) of the Council’s request.

37.2.3 Provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

37.3 the Council shall be responsible for determining in its absolute discretion despite any other provision in this Call-Off Contract or any other agreement whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the EIR.

37.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

37.5 The Contractor acknowledges that (despite the provisions of clause 38 (Confidentiality)) the Council may, be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services:

37.5.1 in certain circumstances without consulting the Contractor; or

37.5.2 following consultation with the Contractor and having taken their views into account.

37.6 Provided always that where 37.5.1 applies the Council shall, in accordance with any recommendations of the code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

37.7 The Contractor shall make sure that all information is retained for disclosure in accordance with any record keeping obligations of the Contractor under this Call-Off Contract and shall permit the Council to inspect such records as requested from time-to-time.

37.8 The Contractor acknowledges that the Commercially Sensitive Information is indicative only and that the Council may be obliged to disclose it in accordance with this clause 37.

38 Confidentiality

38.1 Information set out or referred to in this Call-Off Contract or in the Framework Agreement and all further information and documents provided to, or prepared by, the Contractor at any time in connection with the Services, are and shall be, strictly private and confidential. The Contractor shall not (and shall ensure that its Employees do not) disclose or hand over any such information or documents to any third party without the prior written consent of the Council. All such information and documents shall be kept secret by the Contractor and shall be used only for the performance of the Services.

38.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Call-Off Contract, the Council shall do the following:

38.2.1 treat the Contractor’s Confidential Information and the Commercially Sensitive Information as confidential and safeguard it accordingly; and

38.2.2 not disclose the Contractor’s Confidential Information or the Commercially Sensitive Information to any other person without the Contractor’s prior written consent.

38.3 Clauses 38.1 and 38.2 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:

38.3.1 Such disclosure is a requirement of Law, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause 37 (Freedom of Information);

38.3.2 Such information was in the Contractor’s possession without obligation of confidentiality prior to its disclosure by the Council;

38.3.3 Such information was obtained from a third party without obligation of confidentiality;

38.3.4 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Contract; and

38.3.5 It is independently developed without access to the Council’s Confidential Information.

38.4 The Contractor may only disclose the Council’s Confidential Information to the Employees who are directly involved in the provision of the Services and who need to know the information, and shall make sure that such Employees are aware of and shall comply with these obligations as to confidentiality.

38.5 The Contractor shall not, and shall procure that the Employees do not, use any of the Council’s Confidential Information received other than for the purposes of this Call-Off Contract.

38.6 At the written request of the Council and if reasonable in the circumstances to make that request, the Contractor shall procure that those Employees identified in the Council’s notice sign a confidentiality undertaking prior to commencing any work in accordance with this Call-Off Contract.

38.7 Nothing in this Call-Off Contract shall prevent the Council from disclosing the Contractor’s Confidential Information or the Commercially Sensitive Information in any one or more of the following circumstances.

38.7.1 To any Crown body or any other contracting authority as defined in Regulation 3(1) of The Public Contracts Regulations 2006 other than the Council. All crown bodies or such contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;

38.7.2 To any Contractor, Contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;

38.7.3 For the purpose of the public inspection, examination and certification of the Council’s accounts; and/or

38.7.4 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.

39 Record Keeping, Monitoring and audit

39.1 The Contractor shall at its own cost:-

39.1.1 keep the Authorised Officer informed of the Contractor’s activities in relation to the provision of the Goods;

39.1.2 provide to the Authorised Officer such regular reports on progress as are reasonably requested by the Council; and

39.1.3 provide to the Authorised Officer any other information that may be required by the Council to comply with the Council’s procedures for monitoring of the Contract.

39.2 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 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 Goods 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.

part g - statutory Obligations

40 Health and Safety

40.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Employees, Council staff, or other persons working on the premises where the Services are to be delivered.

40.2 While on the premises where the Services are to be delivered, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Employees, Council staff, or other persons working on the premises.

40.3 The Contractor shall notify the Council:

40.3.1 immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Council’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury; and

40.3.2 promptly of:

(a) any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract; or

(b) any health and safety hazards which may exist or arise at the Council’s premises and which may affect the Contractor in the performance of its obligations under the Call-Off Contract.

41 Corporate Requirements

41.1 The Contractor shall comply with all obligations under the HRA.

41.2 [When working on the Council’s premises,] the Contractor shall comply with all the Council policies and rules, such as, but not limited to:

41.2.1 equality and diversity policies;

41.2.2 sustainability;

41.2.3 information security rules;

41.2.4 whistleblowing and/or confidential reporting policies; and

41.2.5 all site rules relevant to the fulfilment of the Contractor’s obligations in the performance of the Services.

41.3 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 or otherwise and shall take all reasonable steps to secure the observance of this clause by all Employees.

41.4 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.

41.5 If the Contractor has a finding against it relating to its obligations under clause 41.4 it will provide the Council within ten (10) Working Days of the finding with:

41.5.1 details of the finding; and

41.5.2 the steps the Contractor has taken to remedy the situation.

42 Law and Change in Law

42.1 The Contractor shall comply at all times with the Law in its performance of the Call-Off Contract.

42.2 Not used.

43 TUPE and Re-tendering

43.1 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 including but not limited to, providing Employee liability information as required under Regulation 11 of TUPE.

43.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.

43.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

part H - general Provisions

44 Call-Off Contract Variation

44.1 Subject to clause 44.2, no variation or modification to the Call-Off Contract is valid unless it is in writing and signed by the Council and the Contractor.

44.2 The Council 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), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised delivery instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices as set out in the Pricing Schedule.

45 Third Party Rights

45.1 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 Call-Off Contracts (Rights of Third Parties) Act 1999 are excluded.

46 No Waiver

46.1 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.

46.2 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 3 (Notices).

47 Severance

47.1 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.

48 Assignment, sub-Call-Off Contracting and responsibility

48.1 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-Call-Off Contract the provision of the Services.

48.2 The Council shall be entitled to:

48.2.1 assign, novate or dispose of its rights and obligations under this Call-Off Contract either in whole or part to any Call-Off Contracting authority (as defined in The Public Call-Off Contracts Regulations 2006); or

48.2.2 transfer, assign or novate its rights and obligations where required by Law.

48.3 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.

49 Force Majeure

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

49.2 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.

49.3 Industrial action by, or illness or shortage of the Contractor’s Employees, agents or sub-contractors, failure or delay by any of the Contractor’s suppliers to supply Services, components, Services or materials and breach of the Contractor’s warranties under clause 13 shall not be regarded as an event of Force Majeure.

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

49.5 If the Call-Off Contract is terminated in accordance with clause 49.4 neither party will have any liability to the other except that any rights and Liabilities which accrued prior to termination will continue to exist.

50 PREVENTION OF BRIBERY

50.1 The Contractor:

50.1.1 shall not, and shall procure that any Employee shall not, in connection with this Call-Off Contract commit a Prohibited Act;

50.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Call-Off Contract.

50.2 The Contractor shall:

50.2.1 if requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

50.2.2 within 5 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 50 by the Contractor and all persons associated with it or other persons who are supplying Services or Services in connection with this Call-Off Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

50.3 The Contractor shall operate and maintain throughout the Call-Off Contract Period an anti-bribery policy (which shall be disclosed to the Council) to prevent any Employee from committing a Prohibited Act and shall enforce it where appropriate.

50.4 If any breach of clause 50.1 is suspected or known, the Contractor must notify the Council immediately.

50.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 50.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

50.6 Without prejudice to any other rights and remedies available under this Call-Off Contract, the Council may terminate this Call-Off Contract by written notice with immediate effect if the Contractor or Employee (in all cases whether or not acting with the Contractor's knowledge) breaches clause 50.1 and recover from the Contractor the amount of any loss suffered by the Council arising from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Call-Off Contract Period.

50.7 Any notice of termination under clause 50.6 must specify:

50.7.1 the nature of the Prohibited Act;

50.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

50.7.3 the date on which this Call-Off Contract will terminate.

50.8 Notwithstanding clause 31 (Dispute Resolution), any dispute relating to:

50.8.1 the interpretation of clause 50; or

50.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

50.9 Any termination under clause 50.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

50.10 For the avoidance of doubt, the Contractor shall be responsible for the acts and omissions of any Sub-contractor and for the purpose of this clause 50, any act, default or omission of any Sub-contractor shall be deemed to be an act, default or omission of the Contractor.

51 Costs and Expenses

51.1 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.

52 No Agency or Partnership

52.1 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.

53 Non solicitation and Offers of Employment

53.1 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, Contractor, partner or otherwise during the Call-Off Contract Period or for a period of 12 months following termination of this Call-Off Contract:

53.1.1 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 Contractor 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

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

54 Inspection of Contractor’s Premises

54.1 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.

55 Law and Jurisdiction

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