

THE BOROUGH COUNCIL OF GATESHEAD

FRAMEWORK AGREEMENT FOR SERVICES

Mike Barker, Solicitor to the Council
Borough Council of Gateshead
Civic Centre
Regent Street
Gateshead
Tyne and Wear
NE8 1HH

CONTENTS

1	INTERPRETATION
2	TERM OF FRAMEWORK AGREEMENT
3	SCOPE OF FRAMEWORK AGREEMENT
4	CONTRACTOR'S APPOINTMENT
5	NON-EXCLUSIVITY
6	AWARD PROCEDURES
7	CALL-OFF CONTRACT PERFORMANCE
8	CONTRACT REBATE
9	CONSEQUENCES OF TERMINATION AND EXPIRY
10	TRANSFER AND SUB-CONTRACTING
11	VARIATIONS TO THE FRAMEWORK AGREEMENT
12	DATA PROTECTION
13	FREEDOM OF INFORMATION
14	TUPE AND RE-TENDERING
15	VARIATIONS TO THE FRAMEWORK AGREEMENT
16	LAW AND JURISDICTION
17	ENTIRE AGREEMENT
	SCHEDULE 1 CALL-OFF TERMS AND CONDITIONS

BACKGROUND

- (1) The Council is acting as lead authority for NEPO, on behalf of the LGA.
- (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 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:-

“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 Framework Agreement in the Contract Particulars or as amended from time to time and in default of such notification the Council’s Head of Service for Procurement or similar responsible officer.
“Award Criteria”	the award criteria as set out in the Invitation to Tender;
“Call-Off Award Criteria”	the award criteria to be used for call –off contracts as set out in the Invitation to Tender;
"Call-Off Contract"	the legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services made between a Contracting Authority and the Contractor comprising: (i) the Order Form; (ii) the Contract Particulars; the Call-Off Terms and Conditions; (iii) any Special Terms and Conditions; and (iv) the Tender
"Call-Off Terms and Conditions"	the terms and conditions including any special terms and conditions at Schedule 1;

"Commencement Date"	the date set out in the Contract Particulars;
"Contractor(s)"	the contractor(s) who has/ve been appointed under the Framework and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members;
"Contract Particulars"	the document detailing the specific core terms of the Framework Agreement which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and the Specification (all as defined in the Call-Off Terms and Conditions) and relevant contract specific details of the Tender included in the document.
"Contracting Authority"	any local authority or public body identified in the OJEU notice (if applicable) and/or the Invitation to Tender entitled to use this Framework Agreement and enter into a Call-Off Contract by virtue of their membership or affiliation with NEPO.
"Council"	the Borough Council of Gateshead; as lead authority of NEPO, on behalf of the LGA.
"EIR"	The Environmental Information Regulations 2004.
"FOIA"	The Freedom of Information Act 2000.
"Framework"	Means the overarching arrangement whereby the Council seeks to appoint one of more Contractors as a potential supplier of the Services as described in the Invitation to Tender;
"Framework Agreement"	Means the agreement between the Council and each Contractor which sets out the terms governing contracts to be awarded during the Term and which incorporates: The Framework Terms and Conditions; The Invitation to Tender; and The Tender ;

“Framework Terms and Conditions”	Means the terms and conditions set out in this agreement and all the Schedules to this agreement;
"Guidance"	any guidance issued or updated by the UK Government from time to time in relation to the Regulations;
“Invitation to Tender”	the Council’s invitation to tender for the Services including all the Schedules thereto;
"Law"	any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
“Lot”	means a package or category of Services for which economic operators may tender separately, without necessarily having to tender to provide the entirety of the Services to be supplied under the Framework Agreement. Details of the Lots (if applicable) are set out in the Invitation to Tender;
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“NEPO”	the North East Procurement Organisation which is a purchasing and contracting consortium.
"Order"	an order for Services served by the Council on a Contractor in accordance with the Ordering Procedures;
"Order Form"	a document setting out details of an Order in a form to be specified by the Council;
"Ordering Procedures"	the ordering and award procedures specified in Clause 6;
"Party"	the Council and the Contractor;

“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 2006 as amended by the Public Contract Regulations 2009;
“Replacement Contractor”	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract.
“Services”	the services described in the Invitation to Tender, to be supplied by the Contractor in accordance with the Framework Agreement;
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender;
“Tender”	the Contractor’s tender for the Services in response to the Council’s Invitation to Tender;
"Term"	the period commencing on the Commencement Date and ending on the date shown in the Contract Particulars or on earlier termination of this Framework Agreement.
“Transferring Employees”	those employees employed wholly or mainly by the contractor in providing the Services and who will transfer to a Replacement Contractor or the Council (as the case may be) under the provisions of TUPE.
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2 The interpretation and construction of this Framework Agreement shall be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal

persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

1.2.7 in the event and to the extent only of any conflict between the provisions of the Call-Off Terms and Conditions, Special Conditions of Contract and the Framework Agreement (excluding the Schedule) then, the application of the Clauses shall prevail in the following order:

i. Special Terms and Conditions of Contract

ii. Call-Off Terms and Conditions

iii. Framework Agreement

2. TERM OF FRAMEWORK AGREEMENT

2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

2.2 If the Contract Particulars includes an option to extend the Framework Agreement and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Framework Agreement shall automatically expire after the initial Contract Period.

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

3. SCOPE OF FRAMEWORK AGREEMENT

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

- 3.2 Any Contracting Authority may at their absolute discretion and from time to time order Services from the Contractor in accordance with the Ordering Procedure during the Term.
- 3.3 The Contractor acknowledges that there is no obligation for the Council or a Contracting Authority to purchase any Services from the Contractor during the Term.
- 3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council or a Contracting Authority in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

4. **CONTRACTOR'S APPOINTMENT**

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

5. **NON-EXCLUSIVITY**

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

6. **AWARD PROCEDURES**

Awards under the Framework Agreement

Direct Awards

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

- (a) states the requirements;
- (b) identifies the Services;
- (c) states the price payable in accordance with the Tender submitted by the successful Contractor; and
- (d) incorporates the Call-Off Terms and Conditions.

6.2 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

6.3 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.

6.4 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

6.5 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:-

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

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

6.6 If the Contractor:-

6.6.1 notifies the Contracting Authority that it declines to accept an Order; or

6.6.2 the time-limit referred to in Clause 6.7 has expired;

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

Contracting Authority may make alternative arrangements for the provision of the Services.

- 6.7 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. TERMINATION BY THE COUNCIL

- 8.1 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.

- 8.2 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:

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

8.2.2 the Contractor is convicted of a criminal offence; or

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

- 8.2.4 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
- 8.2.5 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
- 8.2.6 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
- 8.2.7 the Contractor commits persistent minor breaches under one or more Call-Off Contracts whether remedied or not.

9. CONSEQUENCES OF TERMINATION AND EXPIRY

- 9.1 Notwithstanding the service of a notice to terminate the Framework Agreement under clause 8, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 9.
- 9.2 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.
- 9.3 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.

10. TRANSFER AND SUB-CONTRACTING

- 10.1 The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Council. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.
- 10.2 The Council shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the

Council provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

11. DATA PROTECTION

11.1 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.

11.2 PROTECTION OF PERSONAL DATA

'Affiliate'	In relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time-to-time. A person (X) controls another person (Y) for the purposes of this definition if X possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of Y (whether through the ownership of voting shares, by contract or otherwise).
'Data Controller'	has the meaning given in the Data Protection Act 1998 (DPA) from time-to-time.
'Data Processor'	has the meaning given in the DPA from time-to-time.
'Data Subject'	has the meaning given in the DPA from time-to-time.
'Information'	has the meaning given under section 84 of the Freedom of Information Act 2000.
'Personal Data'	has the meaning given in the DPA from time-to-time.
'Process'	has the meaning given to it under the DPA but for the purposes of this Contract, it shall include both manual and automatic processing.
'Regulatory Bodies'	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council and 'regulatory body' shall be construed accordingly.

11.2.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the Council is the Data Controller and that the Contractor is the Data Processor.

11.2.2 The Contractor shall comply with all of the following:

- 11.2.2.1 Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Council to the Contractor during the Contract Period);
- 11.2.2.2 Process the Personal Data only to the extent, and in such a manner, as it is necessary for the provision of the Services or as is required by law or any Regulatory Body;
- 11.2.2.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 11.2.2.4 Take reasonable steps to make sure of the reliability of any Contractor personnel who have access to the Personal Data;
- 11.2.2.5 Obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractors or Affiliates for the provision of the Services;
- 11.2.2.6 Make sure that all Contractor personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in clause F4;
- 11.2.2.7 Make sure that no Contractor personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council.
- 11.2.2.8 Notify the Council (within seven Business Days) if it receives any of the following;
 - 11.2.2.8.1a Request from a Data Subject to have access to that person's Personal Data;
 - 11.2.2.8.2a Complaint or request relating to the Council's obligations under the DPA;
- 11.2.2.9 Provide the Council with full cooperation and assistance in relation to any complaint or request made, including by doing all of the following to extent relevant at the time;

- 11.2.2.9.1 Providing the Council with full details of the complaint or request;
 - 11.2.2.9.2 Complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Council's instructions;
 - 11.2.2.9.3 Providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council);
 - 11.2.2.9.4 Providing the Council with any Information requested by the Council;
- 11.2.2.10 Permit the Council or the Council representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with any audit rights of the Council under this Contract or according to law, the Contractor's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- 11.2.2.11 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Council);
- 11.2.2.12 Not Process Personal Data outside the European Economic Area without the prior written consent of the Council and, where the Council consents to a transfer, to comply with each of the following as relevant:
- 11.2.2.12.1 The obligations of a Data Controller under the eight data protection principles set out in schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred;
 - 11.2.2.12.2 Any reasonable instructions notified to it by the Council;
 - 11.2.2.12.3 The Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the DPA.

12. FREEDOM OF INFORMATION

- 12.1 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.
- 12.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

13. TUPE AND RE-TENDERING

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

- 13.1.8 Details of any court or tribunal case claim or action, which the Contractor has reasonable grounds to believe that any of the Employees may bring against the Contractor or a Replacement Contractor arising out of the Employee's employment.
- 13.2 The Contractor shall permit the Council to use the information for the purposes of TUPE and for re-tendering. The Council shall be able to disclose this information to any prospective tenderer or Replacement Contractor without requiring the Council to enter in to a confidentiality agreement or otherwise imposing any conditions upon the disclosure of the information. The Contractor will secure all necessary consents from relevant Employees in order to release the information.
- 13.3 The Contractor will co-operate with the re-tendering of the Service by allowing the Replacement Contractor to communicate with and meet with the Employees and/or their representative(s).
- 13.4 In the event that the information provided by the Contractor in accordance with Clause 14.1 becomes inaccurate, whether due to changes to the employment and personnel details of the Employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate the Contractor shall notify the Council of the inaccuracies and provide the amended information.
- 13.5 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Council pursuant to an indemnity provided to the Replacement Contractor in connection with:
- 13.5.1 The employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);
- 13.5.2 Any act, omission or default of the Contractor in respect of the employment of the Employees;
- 13.5.3 The Contractor's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the Replacement Contractor to give the Contractor the information required from the Council or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE; and
- 13.5.4 The Contractor's failure to provide the employee liability information under Regulation 11 of TUPE;
- 13.5.5 Any claim by an Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the Replacement Contractor

is not participating, or pursuant to the Employee's terms and conditions of employment;

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

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

13.7 The Contractor will not in the event of notice of termination of this Contract or from a date of 12 months before expiry of the Contract Period carry out a Prohibited Act.

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 17 shall operate to exclude Fraud or fraudulent misrepresentation

SCHEDULE 1
CALL-OFF TERMS AND CONDITIONS

CONTENTS

Clause Heading

PART A - OPERATIVE PROVISIONS

A1 DEFINITIONS

A2 HEADINGS

A3 NOTICES

A4 ENTIRE AGREEMENT

PART B - PROVISION OF SERVICES

B1 CONTRACT PERIOD

B2 PERFORMANCE

B3 CONTRACT MANAGER

B4 ORDERING PROCESS

B5 RISK IN AND TITLE TO GOODS

B6 WARRANTY

B7 CONTRACTOR'S EMPLOYEES

PART C - PRICE AND PAYMENT

C1 PRICE AND PAYMENT

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

D1 TERMINATION

D2 CONSEQUENCES OF TERMINATION

D3 DISPUTE RESOLUTION PROCEDURE

D4 SURVIVAL

PART E - INSURANCE AND LIABILITIES

E1 INSURANCE

E2 INDEMNITY AND LIABILITY

PART F - PROTECTION OF INFORMATION

F1 INTELLECTUAL PROPERTY

F2 DATA PROTECTION

F3 FREEDOM OF INFORMATION

F4 CONFIDENTIALITY

F5 RECORD KEEPING AND MONITORING

F6 TRANSPARENCY

PART G - STATUTORY OBLIGATIONS

G1 HEALTH AND SAFETY

G2 CORPORATE REQUIREMENTS

G3 LAW AND CHANGE IN LAW

G4 TUPE AND RE-TENDERING

PART H - GENERAL PROVISIONS

H1 CONTRACT VARIATION

H2 THIRD PARTY RIGHTS

H3 NO WAIVER

H4 SEVERANCE

H5 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

H6 FORCE MAJEURE

H7 INDUCEMENTS

H8 COSTS AND EXPENSES

H9 NO AGENCY OR PARTNERSHIP

H10 NON SOLICITATION AND OFFERS OF EMPLOYMENT

H11 INSPECTION OF CONTRACTOR'S PREMISES

H12 LAW AND JURISDICTION

PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

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

“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Call-Off Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Assigned Employees”	In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Call-Off Contract”	the agreement (made pursuant to the provisions of the Framework Agreement) in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority: <ol style="list-style-type: none"><li data-bbox="810 1792 1136 1827">1. the Order Form;<li data-bbox="810 1899 1254 1935">2. the Contract Particulars;<li data-bbox="810 1971 1238 2038">3. any Special Terms and Conditions;

4. the Call-Off Terms and Conditions;
5. the Tender.

“Call-Off Terms and Conditions”

The terms and conditions set out in this document;

‘Commercially Sensitive Information’

the information used in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss.

“Confidential Information”

any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal 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.

“Contract Manager”

the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.

“Contract Particulars”	the document detailing the specific core terms of the Framework Agreement which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and the Specification and relevant contract specific details of the Tender included in the document.
“Contract Period”	the period of the Call-Off Contract as stated in the Order Form (and any extension in accordance with clause B1).
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Council”	the Council placing the Order and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression ‘control’ shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“DPA”	The Data Protection Act 1998.
“Delivery Instructions”	the instructions provided in the Order Form and any other information that the Council considers appropriate to the provision of the Services.
“Employee”	any person employed by the Contractor to perform the Call-Off Contract which will also include the Contractor's

servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services..

“EIR”

The Environmental Information Regulations 2004.

“Framework Agreement”

The framework agreement for services included within the Council’s Invitation to Tender;

“FOIA”

The Freedom of Information Act 2000.

“Force Majeure”

any cause materially affecting the performance by a party of its obligations under this Call-Off Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.

“Good Industry Practice”

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

“HRA”

The Human Rights Act 1998.

“Intellectual Property Rights”

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

“Invitation to Tender”

the Council’s invitation to tender

“Key Personnel”

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

“Law”

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

“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.

“NEPO”

the North East Procurement Organisation which is a purchasing and contracting consortium.

“Order”

an order for Services served by the Council on a Contractor in accordance

with the procedures set out in the Framework Agreement;

“Order Form”

the document setting out details of an Order in a form to be specified by the Council;

“Price”

the price of the Services as set out in the Contract Particulars and specified, in relation to the Call-Off Contract, in the Order Form. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.

“Pricing Schedule”

the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.

“Prohibited Act”

include any of the following (i) 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.

“Replacement Contractor”

any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract.

“Services”

the services described in the Specification to be supplied by the Contractor in accordance with the Call-Off Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.

“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.
“Specification”	the specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Services.
“Tender”	the Contractor’s tender for the Services in response to the Council’s Invitation to Tender.
“Transferring Employees”	means those employees employed wholly or mainly by the contractor in providing the Services and who will transfer to a Replacement Contractor or the Council (as the case may be) under the provisions of TUPE.
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
‘VAT’	Value added tax

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

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

A2. HEADINGS

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

A3. NOTICES

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

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

A4. ENTIRE AGREEMENT

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

PART B - PROVISION OF SERVICES

B1. CALL OFF CONTRACT PERIOD

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

B2. PERFORMANCE

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

B3. CONTRACT MANAGER

B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Framework Agreement.

B3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

B4. ORDERING PROCESS

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

B5. RISK IN AND TITLE TO GOODS

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

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

B6. WARRANTY

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

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

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

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

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

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

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

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

B6.2.1 be free from defects in design, material and workmanship; and

B6.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

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

B6.3.1 require the Contractor to provide replacement Services in accordance with the Call-Off Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or

B6.3.2 subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

B7. CONTRACTOR'S EMPLOYEES

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

B7.1.1 any member of the Contractor's Employees; and/or

B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

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

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

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

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

B7.5 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

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

PART C - PRICE AND PAYMENT

C1. PRICE AND PAYMENT

- C1.1 There shall be no money exchanged for the use of this Framework Contract.
- C1.2 The Contractor shall pay a fee based on the number of consumers switching to the winning suppliers of the auctions
- C1.3** The contractor will pay fees to the Council, NEPO and LGA if required as pre-determined within the Pricing Schedule 3 of the tender document. For the avoidance of doubt, this will be from the switching fee (as detailed in the Price Schedule 3) and not any additional fee from the Contractor.
- C1.4 The contractor will pay these fees within 28 days of receiving the switching fee from the energy supplier for all residents switching through the schemes implemented from this Framework Contract.
- C1.5 The Local Government Association would like to reserve the right to take up to 25% of all income generated through use of the framework. This clause can be activated at any point throughout the life cycle of the framework by giving at least 28 days notice to all parties who are part of the framework agreement. This fee would be taken from the fees stated in C1.3.

The charge would be 25% of the switching fee, per completed switch..

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

D1. TERMINATION

- D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Call-Off Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
 - D1.1.2 the Contractor is convicted of a criminal offence; or
 - D1.1.3 the Contractor ceases or threatens to cease to carry on its business; or

- D1.1.4 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Call-Off Contract; or
- D1.1.5 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Call-Off Contract continuing; or
- D1.1.6 the Contractor is in breach of any of its obligations under this Call-Off Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
- D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Call-Off Contract which is incapable of remedy; or
- D1.1.8 the Contractor commits persistent minor breaches of this Call-Off Contract whether remedied or not.

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

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

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

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

D2. CONSEQUENCES OF TERMINATION

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

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

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

D2.1.3 where termination arises under clause D1.3, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E2.4; and/or

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

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

D3. DISPUTE RESOLUTION PROCEDURE

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

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

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

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

D4. SURVIVAL

D4.1 The following clauses will survive termination or expiry of the Call-Off Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Data Protection), Clause F3 (Freedom of Information), Clause F4 (Confidentiality), Clause F5 (Record Keeping and Monitoring), Clause F6 (Transparency), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

PART E - INSURANCE AND LIABILITIES

E1. INSURANCE

E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Call-Off Contract as set out in the Contract Particulars.

E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.

E1.3 If the Contractor does not maintain the necessary insurances under the Call-Off Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

E2. INDEMNITY AND LIABILITY

E2.1 Neither party seeks to exclude or limit its liability for:

E2.1.1 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);

E2.1.2 fraudulent misrepresentation; or

E2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

- E2.2 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.
- E2.3 Subject to clauses E2.1, E2.2 and E2.5, the Contractor's liability to the Council 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.
- E2.4 Subject to clauses E2.1 and E2.2, the Council's liability 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.
- E2.5 The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

PART F - PROTECTION OF INFORMATION

F1. INTELLECTUAL PROPERTY

- F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;
- F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Call-Off Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
- F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Call-Off Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-

exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

- F1.3 It is a condition of the Call-Off Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
- F1.4 At the termination of the Call-Off Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

F2. DATA PROTECTION

- F2.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA.
- F2.2 The Council will have access to all information that is provided to the Contractor through this Framework Contract and must be supplied to the Council on request, with no cost applied.

F3. FREEDOM OF INFORMATION

- F3.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Call-Off Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- F3.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

F4. CONFIDENTIALITY

- F4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall do each of the following:

F4.1.1 Treat the other party's Confidential Information as confidential and safeguard it accordingly; and

F4.1.2 Not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

F4.2 Clause F4.1 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:

F4.2.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause F3 (Freedom of Information);

F4.2.2 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

F4.2.3 Such information was obtained from a third party without obligation of confidentiality;

F4.2.4 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Contract; and

F4.2.5 It is independently developed without access to the other party's Confidential Information.

F4.3 The Contractor may only disclose the Council's Confidential Information to the Contractor personnel who are directly involved in the provision of the Services and who need to know the information, and shall make sure that such Contractor personnel are aware of and shall comply with these obligations as to confidentiality.

- F4.4 The Contractor shall not, and shall procure that the Contractor personnel do not, use any of the Council's Confidential Information received other than for the purposes of this Call-Off Contract.
- F4.5 At the written request of the Council and if reasonable in the circumstances to make that request, the Contractor shall procure that those members of the Contractor personnel identified in the Contract Particulars sign a confidentiality undertaking prior to commencing any work in accordance with this Call-Off Contract.
- F4.6 Nothing in this Call-Off Contract shall prevent the Council from disclosing the Contractor's Confidential Information in any one or more of the following circumstances:
- F4.6.1 To any Crown body or any other contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Council. All crown bodies or such Contracting Authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such Contracting Authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;
 - F4.6.2 To any consultant, Contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - F4.6.3 For the purpose of the examination and certification of the Council's accounts; and/or
 - F4.6.4 For any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

F5. RECORD KEEPING AND MONITORING

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

F6. TRANSPARENCY

- F6.1 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council will be disclosing information on its website with effect from the 1st January 2011 in relation to monthly expenditure over £500 (five hundred pounds). The information will include the Contractor's name and the monthly Price paid. The parties acknowledge that this information is not Confidential Information or Commercially Sensitive Information.
- F6.2 The parties acknowledge that, except for any information which is exempt from disclosures in accordance with the provisions of the FOIA, the content of this Call-Off Contract is not Confidential Information or Commercially Sensitive Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of the Call-Off Contract is for disclosure in accordance with the FOIA. Notwithstanding any other term of this Call-Off Contract, the Contractor hereby gives his consent for the Council to publish the Call-Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to the Call-Off Contract, to the general public.

PART G - STATUTORY OBLIGATIONS

G1. HEALTH AND SAFETY

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

G2. CORPORATE REQUIREMENTS

G2.1 The Contractor shall comply with all obligations under the HRA.

G2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:

G2.2.1 equality and diversity policies;

G2.2.2 sustainability;

G2.2.3 information security rules;

G2.2.4 whistleblowing and/or confidential reporting policies; and

G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.

G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

G2.5 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:

G2.5.1 details of the finding; and

G2.5.2 the steps the Contractor has taken to remedy the situation.

G3. LAW AND CHANGE IN LAW

G3.1 The Contractor shall comply at all times with the Law in its performance of the Call-Off Contract.

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

G4. TUPE AND RE-TENDERING

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

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

- G4.5.5 Any claim by an Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Council or the Replacement Contractor is not participating, or pursuant to the Employee's terms and conditions of employment;
- G4.5.6 The Contractor's failure to comply with its obligations under Clause G4.6 below;
- G4.6 The Council shall be entitled to assign the benefit of the indemnity at Clause G4.5 to any Replacement Contractor.
- G4.7 The Contractor will not in the event of notice of termination of this Contract or from a date of 12 months before expiry of the Contract Period carry out a Prohibited Act.

PART H - GENERAL PROVISIONS

H1. CONTRACT VARIATION

- H1.1 Subject to clause H1.2, no variation or modification to the Call-Off Contract is valid unless it is in writing and signed by the Council and the Contractor.
- H1.2 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 used to calculate the Price in the Tender.

H2. THIRD PARTY RIGHTS

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

H3. NO WAIVER

- H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Call-Off Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Call-

Off Contract nor affect the validity of the Call-Off Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H3.2 No waiver of any of the provisions of this Call-Off Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

H4. **SEVERANCE**

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

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

H5.1 Subject to any express provision of this Call-Off Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Call-Off Contract or sub-contract the provision of the Services.

H5.2 The Council shall be entitled to:

H5.2.1 assign, novate or dispose of its rights and obligations under this Call-Off Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

H5.2.2 transfer, assign or novate its rights and obligations where required by Law.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

H5.4 Notwithstanding Clauses H5.1 and H5.2 the Contractor may assign to a third party ("the Payment Assignee") the right to receive payment of the Price or any part thereof due to the Contractor under this Call-Off Contract. Any assignment under this Condition shall be subject to:

H5.4.1 Reduction of any sums in respect of which the Council exercises its right of recovery;

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

H5.4.3 The Council receiving notification both under Conditions H5.1 and H5.4

H5.5 In the event the Contractor assigns the right to receive the Price under Condition H5.4 the Contractor or the Payment Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

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

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

H6. **FORCE MAJEURE**

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

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

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

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

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

H7. INDUCEMENTS

- H7.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.
- H7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Council by the Contractor or on the Contractor's behalf.
- H7.3 Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Council, the Council has the right to:
- H7.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
 - H7.3.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

H8. COSTS AND EXPENSES

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

H9. NO AGENCY OR PARTNERSHIP

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

H10. NON SOLICITATION AND OFFERS OF EMPLOYMENT

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

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

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

H11. INSPECTION OF CONTRACTOR'S PREMISES

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

H12. LAW AND JURISDICTION

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