

## **THE BOROUGH COUNCIL OF GATESHEAD**

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### **CONCESSION APPROVED PROVIDER LIST AGREEMENT**

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## **CONTENTS**

1	INTERPRETATION
2	TERM OF APPROVED PROVIDER LIST AGREEMENT
3	SCOPE OF APPROVED PROVIDER LIST AGREEMENT
4	CONCESSIONAIRE'S APPOINTMENT
5	NON-EXCLUSIVITY
6	AWARD PROCEDURES
7	CALL-OFF CONTRACT PERFORMANCE
8	MANAGEMENT FEE
9	TERMINATION BY THE COUNCIL
10	CONSEQUENCES OF TERMINATION AND EXPIRY
11	TRANSFER AND SUB-CONTRACTING
12	DATA PROTECTION
13	FREEDOM OF INFORMATION
14	VARIATIONS TO THE APPROVED PROVIDER LIST AGREEMENT
15	LAW AND JURISDICTION
16	ENTIRE AGREEMENT

### **SCHEDULE 1 CALL-OFF TERMS AND CONDITIONS**

## BACKGROUND

- (1) The Council is seeking expressions of interest from Concessionaires for the provision of a Concession under a Approved Provider List arrangement which would be accessible by the Contracting Authorities
- (2) This Approved Provider List Agreement sets out the award and ordering procedure for the Concession 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 Approved Provider List 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:-

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

<b>“Concessionaire(s)”</b>	the Concessionaire(s) who has/ve been appointed under the Approved Provider List and where applicable this shall include the Concessionaire's Employees, sub-Concessionaires, agents, representatives, and permitted assigns and, if the Concessionaire is a consortium or consortium leader, the consortium members;
<b>“Contract Particulars”</b>	the document detailing the specific core terms of the Approved Provider List 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.
<b>“Contracting Authority</b>	any local authority or public body identified in the OJEU notice (if applicable) and/or the Invitation to Tender entitled to use this Approved Provider List Agreement and enter into a Call-Off Contract .
<b>“Council”</b>	the Borough Council of Gateshead;
<b>“Data Protection Legislation”</b>	Means (i) unless and until the GDPR is no longer directly applicable in the UK the GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act 2018 [subject to Royal Assent] and / or any other successor legislation to the GDPR or the Data Protection Act 1998 and (iii) all applicable Law about the processing of personal data and privacy
<b>“EIR”</b>	The Environmental Information Regulations 2004
<b>“FOIA”</b>	The Freedom of Information Act 2000.
<b>“Approved Provider List”</b>	Means the overarching arrangement whereby the Council seeks to appoint one of more Concessionaires as a potential supplier of the Concessions as described in the Invitation to Tender;
<b>"Approved Provider List Agreement"</b>	Means the agreement between the Council and each Concessionaire which sets out the terms governing contracts to be awarded during the Term and which incorporates: <p>The Approved Provider List Terms and Conditions;</p> <p>The Invitation to Tender; and</p> <p>The Tender;</p>

<b>“Approved Provider List Terms and Conditions”</b>	Means the terms and conditions set out in this agreement and all the Schedules to this agreement;
<b>“Invitation to Tender”</b>	the Council’s invitation to tender for the Concessions including all the Schedules thereto;
<b>"Law"</b>	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;
<b>‘LED’</b>	Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )
<b>“Lot”</b>	means a package or category of Concessions for which economic operators may tender separately, without necessarily having to tender to provide the entirety of the Concessions to be supplied under the Approved Provider List Agreement. Details of the Lots ( if applicable) are set out in the Invitation to Tender;
<b>“Liabilities”</b>	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.
<b>“Nominated Representative”</b>	The person duly appointed by the Contracting Authority to act as that Contracting Authority’s nominated representative as notified to the Concessionaire from time to time.
<b>"Order"</b>	an order for a Concession served by the Council on a Concessionaire in accordance with the Ordering Procedures;
<b>"Order Form"</b>	a document setting out details of an Order in a form to be specified by the Council;
<b>"Ordering Procedures"</b>	the ordering and award procedures specified in Clause 6;
<b>"Party"</b>	the Council and the Concessionaire;

<b>“Replacement Concessionaire”</b>	any company, organisation or person who replaces the Concessionaire following termination or expiry of all or part of this Call-Off Contract.
<b>“Concessions”</b>	the Concessions described in the Invitation to Tender, to be supplied by the Concessionaire in accordance with the Approved Provider List Agreement;
<b>“Special Terms and Conditions”</b>	the additional terms and conditions attached which were set out in the Invitation to Tender;
<b>“Tender”</b>	the Concessionaire’s tender for the Concessions in response to the Council’s Invitation to Tender;
<b>"Term"</b>	the period commencing on the Commencement Date and ending on the date shown in the Contract Particulars or on earlier termination of this Approved Provider List Agreement.

1.2 The interpretation and construction of this Approved Provider List 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 Approved Provider List Agreement for ease of reference only and shall not affect the interpretation or construction of this Approved Provider List 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 Approved Provider List 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. Approved Provider List Agreement

## **2. TERM OF APPROVED PROVIDER LIST AGREEMENT**

- 2.1 The Approved Provider List Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Approved Provider List 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 Approved Provider List Agreement and the Council intends to take up the option, the Concessionaire 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 Approved Provider List 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 Approved Provider List 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 APPROVED PROVIDER LIST AGREEMENT**

- 3.1 This Approved Provider List Agreement governs the relationship between the Council and the Concessionaire in respect of the provision of the Concession by the Concessionaire to the Contracting Authorities and where the Concessionaire has been appointed to more than one Lot, this Approved Provider List Agreement shall apply to each Lot.
- 3.2 Any Contracting Authority may at their absolute discretion and from time to time order a Concession from the Concessionaire in accordance with the Ordering Procedure during the Term.
- 3.3 The Concessionaire acknowledges that there is no obligation for the Council or a Contracting Authority to appoint the Concessionaire 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 Concessions to be ordered by them pursuant to this Approved Provider List Agreement and the Concessionaire acknowledges and agrees that it has not entered into this Approved Provider List Agreement on the basis of any such undertaking, statement, promise or representation.

## **4. CONCESSIONAIRE'S APPOINTMENT**

- 4.1 The Council appoints the Concessionaire as a potential provider of the Concessions referred to in the Invitation to Tender and the Concessionaire

shall be eligible to be considered for the award of Orders for such Concessions by a Contracting Authority during the Term.

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

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

4.2.2 subject to clause 4.2.3 below the Concessionaire shall be responsible for any loss of benefits paid under his previous contract of employment, or additional tax liability incurred, by reason of his accepting a contract with the Council as a consultant which commences immediately after the termination of his employment with the Council and the Concessionaire shall indemnify the Council in respect of any additional tax liability, loss or demand that the Council may incur because of that.

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

## 5. **NON-EXCLUSIVITY**

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

## 6. **AWARD PROCEDURES**

### **Awards under the Approved Provider List 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 appointing a Concessionnaire:-



- 6.1.1 identify the relevant Concession;
- 6.1.2 (where there is more than one Concessionaire) select the Concessionaire 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 Concessionaire who offers best value for money for those Concessions on the basis of the price(s) submitted by the Concessionaire 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 Concessionaire which:-
  - (a) states the requirements;
  - (b) identifies the Concession;
  - (c) states the price payable in accordance with the Tender submitted by the successful Concessionaire; and
  - (d) incorporates the Call-Off Terms and Conditions.

### **Mini Competition**

- 6.2 Where there is more than one Concessionaire appointed under the Approved Provider List (or under the relevant Lot) and the Invitation to Tender so specifies, a Contracting Authority shall, prior to placing an Order:
  - 6.2.1 identify the Concessionaires capable of performing the Call-Off Contract for the Contracting Authority's requirements;
  - 6.2.2 supplement and refine the Call-Off Terms and Conditions only to the extent that it is fair and transparent to do so;
  - 6.2.3 invite tenders by conducting a mini-competition for its requirements in accordance with the Invitation to Tender and in particular:
    - (a) confirm prior to the mini-competition whether or not the Contracting Authority intends to follow this with an electronic auction or use the mini-competition alone. Should this be the case the Contracting Authority shall provide all Concessionaires with full details prior to the e-auction including but not limited to how the e-auction is to be conducted and the outcome of the mini-competition;
    - (b) consult in writing all the Concessionaires capable of performing the Call-Off Contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
    - (c) set a time limit for the receipt by it of the tenders; and

- (d) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.

6.2.3 apply the Call-Off Award Criteria, including where relevant in any pricing the consideration of any and all additional cost(s) to the Contracting Authority, to the Concessionaires' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements.

6.3 The Concessionaire agrees that all tenders submitted by the Concessionaire in relation to a mini-competition held pursuant to Clause 6.2 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation issued by a Contracting Authority in accordance with the Ordering Procedure).

6.4 Notwithstanding the fact that a Contracting Authority has followed the procedure set out above in this Clause 6, a Contracting Authority shall be entitled at all times to decline to make an award. Nothing in this Approved Provider List Agreement shall oblige the Council or any Contracting Authority to place any Order.

#### **Form of Order**

6.5 Subject to Clause 6 above, a Contracting Authority may place an Order with the Concessionaire by serving an Order Form in writing in such form agreed with the Concessionaire including systems of ordering involving facsimile, electronic mail or other on-line solutions.

6.6 The Order constitutes an offer by a Contracting Authority to appoint the Concessionaire to provide the Concession subject to the Call-Off Terms and Conditions.

#### **Accepting and Declining Orders**

6.7 Following receipt of an Order, the Concessionaire shall promptly, and in any event within 14 days of receipt, acknowledge receipt of the Order and either:-

6.7.1 notify the Nominated Representative in writing that it declines to accept the Order; or

6.7.2 notify the Nominated Representative in writing that it accepts the Order.

6.8 If the Concessionaire:-

6.8.1 notifies the Nominated Representative that it declines to accept an Order; or

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

then the offer from the Contracting Authority to the Concessionaire shall lapse and the Contracting Authority may offer that Order to the

Concessionaire that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria or, if there is only one Concessionaire appointed under the Approved Provider List Agreement, or there is no other capable Concessionaire, the Contracting Authority may make alternative arrangements for the provision of the Concession.

- 6.9 The Concessionaire 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 Concession 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 Concessionaire (or such similar or analogous form agreed with the Concessionaire) pursuant to Clause 6.7.2.

## **7. CALL-OFF CONTRACT PERFORMANCE**

- 7.1 The Concessionaire shall perform all Call-Off Contracts entered into with a Contracting Authority in accordance with:-

- 7.1.1 the requirements of this Approved Provider List 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 Approved Provider List 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. Approved Provider List Agreement.

## **8. MANAGEMENT FEE**

- 8.1 The Concessionaire will pay the Council a management fee calculated as a percentage of the total business turnover generated from the Contract as set out in the Contract Particulars.

## **9. TERMINATION BY THE COUNCIL**

- 9.1 The Council shall have the right to terminate this Approved Provider List Agreement, or to terminate the provision of any part of the Approved Provider List Agreement at any time by giving one month's written notice to the Concessionaire.
- 9.2 The Council may suspend or terminate the Approved Provider List Agreement with immediate effect by notice in writing to the Concessionaire on or at any time if:

- 9.2.1 the Concessionaire becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
- 9.2.2 the Concessionaire is convicted of a criminal offence; or
- 9.2.3 the Concessionaire ceases or threatens to cease to carry on its business; or
- 9.2.4 the Concessionaire has a change in Control which the Council believes will have a substantial impact on the performance of any Call-Off Contracts; or
- 9.2.5 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Approved Provider List Agreement with the Concessionaire continuing; or
- 9.2.6 the Concessionaire is in material or substantial breach of any of its obligations under one or more Call-Off Contracts that is incapable of remedy, or if capable of remedy has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
- 9.2.7 the Concessionaire commits persistent minor breaches under one or more Call-Off Contracts whether remedied or not.

## **10. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 10.1 Notwithstanding the service of a notice to terminate the Approved Provider List Agreement under clause 8, the Concessionaire shall continue to fulfil its obligations under the Approved Provider List Agreement until the date of expiry or termination of the Approved Provider List Agreement or such other date as required under this Clause 9.
- 10.2 Termination or expiry of the Approved Provider List Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 10.3 Termination or expiry of this Approved Provider List Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Approved Provider List Agreement prior to termination or expiry.

## **11. TRANSFER AND SUB-CONTRACTING**

- 11.1 The Approved Provider List Agreement is personal to the Concessionaire and the Concessionaire shall not assign novate or otherwise dispose of the Approved Provider List Agreement or any part thereof without the previous

consent in writing of the Council. The Concessionaire shall not be entitled to sub-contract any of its rights or obligations under this Approved Provider List Agreement.

- 11.2 The Council shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Approved Provider List 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 Concessionaire's obligations under the Approved Provider List Agreement.

## **12. DATA PROTECTION**

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

## **13. FREEDOM OF INFORMATION**

- 13.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Call-Off Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- 13.2 The Concessionaire shall assist and cooperate with the Council (at the Concessionaire's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
- 13.3 If the Concessionaire considers that any of the information provided by the Concessionaire under the Contract or as part of the procurement process is commercially sensitive (meaning it could reasonably cause prejudice to the organisation if disclosed to a third party) then it shall notify the Council and provide valid reasons in support of the information being exempt from disclosure under the Act and the EIR.
- 13.4 The Council will have regard to any such notification and reasons given by the Concessionaire before it releases any information to a third party under the Act or the EIR. However the Council shall be entitled to determine in its absolute discretion whether any information is exempt from the Act and/or the EIR, or is to be disclosed in response to a request of information. The Council must make its decision on disclosure in accordance with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under the Act or the EIR.
- 13.5 The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:

- 13.5.1 has not been notified to the Council as being commercially sensitive with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible); or
- 13.5.2 does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or
- 13.5.3 in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.

#### **14. VARIATIONS TO THE APPROVED PROVIDER LIST AGREEMENT**

- 14.1 Any variations to the Approved Provider List Agreement must be made in writing and agreed by the Council and all Concessionaires on the Approved Provider List.
- 14.2 Any variation to the Approved Provider List Agreement must not amount to a material change in the Approved Provider List Agreement or the Concessions.

#### **15. LAW AND JURISDICTION**

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

#### **16. ENTIRE AGREEMENT**

- 16.1 This Approved Provider List 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 Approved Provider List 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 Approved Provider List 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 Approved Provider List Agreement.
- 16.3 Nothing in this Clause 16 shall operate to exclude Fraud or fraudulent misrepresentation

### **SCHEDULE 1**

## **CALL-OFF TERMS AND CONDITIONS**

### **CONTENTS**

<b>Clause</b>	<b>Heading</b>
---------------	----------------

	<b>PART A - OPERATIVE PROVISIONS</b>
--	--------------------------------------

A1	DEFINITIONS
----	-------------

A2	HEADINGS
----	----------

A3	NOTICES
----	---------

A4	ENTIRE AGREEMENT
----	------------------

	<b>PART B - PROVISION OF CONCESSIONS</b>
--	--

B1	CALL OFF CONTRACT PERIOD
----	--------------------------

B2	PERFORMANCE
----	-------------

B3	CONTRACT MANAGER
----	------------------

B4	ORDERING PROCESS
----	------------------

B5	RISK IN AND TITLE TO GOODS
----	----------------------------

B6	WARRANTY
----	----------

B7	CONCESSIONAIRE'S EMPLOYEES
----	----------------------------

	<b>PART C - PRICE AND PAYMENT</b>
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C1	PRICE AND PAYMENT
----	-------------------

	<b>PART D - TERMINATION AND CONSEQUENCES OF TERMINATION</b>
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D1	TERMINATION
----	-------------

D2	CONSEQUENCES OF TERMINATION
----	-----------------------------

D3	DISPUTE RESOLUTION PROCEDURE
----	------------------------------

D4	SURVIVAL
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	<b>PART E - INSURANCE AND LIABILITIES</b>
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E1	INSURANCE
----	-----------

E2	INDEMNITY AND LIABILITY
----	-------------------------

	<b>PART F - PROTECTION OF INFORMATION</b>
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- 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 CONCESSIONAIRE'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 Concessionaire 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 Concessionaire wholly or mainly in the performance of the Concessions.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Call-Off Contract”	<p>the agreement (made pursuant to the provisions of the Approved Provider List Agreement) in respect of the provision of the Concessions consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none"><li>1. the Order Form;</li><li>2. the Contract Particulars;</li><li>3. any Special Terms and Conditions;</li><li>4. the Call-Off Terms and Conditions;</li><li>5. the Tender.</li></ol>
“Call-Off Terms and Conditions”	The terms and conditions set out in this

	document;
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Call-Off Contract.
‘Commercially Sensitive Information’	the information used in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Concessionaire, its Intellectual Property Rights or its business or which the Concessionaire has indicated to the Council that, if disclosed by the Council, would cause the Concessionaire 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 Concessions, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal (within the meaning of the Data Protection Legislation).
“Concessionaire”	the Concessionaire and where applicable this shall include the Concessionaire's Employees, sub-Concessionaires, agents, representatives, and permitted assigns and, if the Concessionaire 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 Approved Provider List

	Agreement which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and the Specification and relevant contract specific details of the Tender included in the document.
"Contract Period"	the period of the Call-Off Contract as stated in the Order Form (and any extension in accordance with clause B1).
"Control"	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
"Council"	the Council placing the Order and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression 'control' shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
"Data Protection Legislation"	Means (i) unless and until the GDPR is no longer directly applicable in the UK the GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act 2018 [subject to Royal Assent] and / or any other successor legislation to the GDPR or the Data Protection Act 1998 and (iii) all applicable Law about the processing of personal data and privacy;
"Delivery Instructions"	the instructions provided in the Order Form and any other information that the Council considers appropriate to the provision of the Concessions.
"Employee".	any person employed by the Concessionaire to perform the Call-Off Contract which will also include the Concessionaire's servants, agents, voluntary and unpaid workers and subConcessionaires and representatives or, in respect of clause G4 (TUPE and

	Re-Tendering) and any other TUPE obligation, an individual employed by the Concessionaire in the performance of the Concessions..
“EIR”	The Environmental Information Regulations 2004.
“Approved Provider List Agreement”	The Approved Provider List agreement for Concessions 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 Concessionaire engaged in the supply of Concessions similar to the Concessions 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, Concession 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 Concessionaire is bound to comply.
‘LED’	Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Order”	an order for Concessions served by the Council on a Concessionaire in accordance with the procedures set out in the Approved Provider List Agreement;
“Order Form”	the document setting out details of an Order in a form to be specified by the Council;
“Price”	the consideration to be paid to the Council for operating the Concession as set out in the Contract Particulars and specified, in relation to the Call-Off Contract, in the Order Form. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.

“Prohibited Act”	include any of the following (i) materially increase or decrease the number of employees employed in connection with the Contract; (ii) or vary or purport or promise to vary the terms and conditions of any Employees; (iii) or terminate the employment of any of the Employees assigned to the provision of the Concessions for any reason whatsoever save where termination is lawful; or (v) assign or redeploy any Employee employed in connection with the Concessions to other duties unconnected with the Contract.
“Replacement Concessionaire”	any company, organisation or person who replaces the Concessionaire following termination or expiry of all or part of this Call-Off Contract.
“Concessions”	the Concessions described in the Specification to be supplied by the Concessionaire in accordance with the Call-Off Contract together with all equipment required and any associated goods provided by the Concessionaire in relation to those Concessions.
“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 Concessions.
“Tender”	the Concessionaire's tender for the Concessions in response to the Council's Invitation to Tender.
‘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 CONCESSIONS**

### **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 Concessionaire 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 Concessions shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Concessions shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- B2.2 The time of the delivery of the Concessions is of essence to the Call-Off Contract.
- B2.3 The Council will have the right to observe the Concessionaire's performance of the Concessions if the Concessions are not being performed on the Council's premises.
- B2.4 If the Concessionaire 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 Concessionaire from performing the Concessions in accordance with the Call-Off Contract, the Concessionaire 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 Concessionaire at any time becomes aware of any material matter that could affect the performance of the Concessions in accordance with the Call-Off Contract, the Concessionaire shall inform the Council immediately.
- B2.6 If the Concessionaire has a change in Control, the Concessionaire shall inform the Council as soon as reasonably practicable.
- B2.7 The Council retains the Concessionaire for the provision of the Concession on a non exclusive basis.

### **B3. CONTRACT MANAGER**

- B3.1 The Concessionaire shall employ a competent and authorised Contract Manager empowered to act on behalf of the Concessionaire for all purposes connected with the Approved Provider List Agreement.
- B3.2 The Concessionaire 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 Concessionaire 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 Concessionaire in accordance with the provisions of the Approved Provider List Agreement.

**B5. RISK IN AND TITLE TO GOODS**

- B5.1 Risk in any goods provided as part of the Concession 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 Concession shall pass to the Council upon delivery or earlier payment.

**B6. WARRANTY**

- B6.1 The Concessionaire warrants to the Council that the Concession 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 Concessionaire;
  - 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 Concessions 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 Concessions 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 Concessions. The cost of effecting such replacement shall be borne by the Concessionaire; and
  - B6.1.6 in a way that the Concessionaire takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Concessionaire.

- B6.2 The Concessionaire warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Concessions 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 Concessions supplied are not in accordance with the Call-Off Contract, the Council shall be entitled to:
- B6.3.1 require the Concessionaire to provide a replacement Concession in accordance with the Call-Off Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
  - B6.3.2 require repayment of the proportion of the Price which has been paid in respect of such Concessions together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining a replacement Concession.

**B7. CONCESSIONAIRE'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 Concessionaire's Employees; and/or
  - B7.1.2 any person employed or engaged by a sub-Concessionaire, agent or servant of the Concessionaire
- whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- B7.2 When directed by the Council, the Concessionaire 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 Concessionaire'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 Concessionaire shall replace any of the Concessionaire'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 Concessionaire's Employees for any reason, the Concessionaire shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Concessions.
- B7.6 The Concessionaire shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

## **PART C - PRICE AND PAYMENT**

### **C1. PRICE AND PAYMENT**

- C1.1 The Concessionaire shall pay to the Council the Price.
- C1.2 The Price shall be fixed as detailed in the Invitation to Tender (Pricing Schedule).
- C1.3 The Council shall submit a single VAT invoice to the Concessionaire no later than seven (7) days after the end of each calendar month detailing the the amount payable.
- C1.4 Payment of any undisputed invoice shall be made by the Concessionaire no later than thirty (30) days from the date of the invoice.
- C1.5 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.
- C1.6 The Council will be entitled but not obliged at any time or times without notice to the Concessionaire to set off any liability of the Council to the Concessionaire against any liability of the Concessionaire to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Concessionaire into any other currency or currencies in which the obligations of the Council are payable under this Call-off Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
- C1.7 Further details of payment, if any, are set out in the Pricing Schedule.

## **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION**

- D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Call-Off Contract with immediate effect by notice in writing to the Concessionaire on or at any time if:
- D1.1.1 the Concessionaire 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 Concessionaire is convicted of a criminal offence; or
  - D1.1.3 the Concessionaire ceases or threatens to cease to carry on its business; or
  - D1.1.4 the Concessionaire 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 Concessionaire 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 Concessionaire of any of its obligations under this Call-Off Contract which is incapable of remedy; or
  - D1.1.8 the Concessionaire 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 Approved Provider List Agreement to terminate automatically. For the avoidance of doubt, the Approved Provider List 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 Approved Provider List 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 except for termination under clause D1.3, be entitled to recover any sum or sums which would have been due to the Council from the Concessionaire under this Call-Off Contract from the Concessionaire 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 Concessions or any parts of them; and/or

D2.1.2 where termination arises under clause D1.3, pay to the Concessionaire any reasonable, direct and quantifiable costs reasonably incurred by the Concessionaire due to early termination; and/or

D2.1.3 in the event that any sum of money owed by the Concessionaire to the Council (the Concessionaire's debt) exceeds any sum of money owed by the Council to the Concessionaire (the Council's debt) under this Call-Off Contract then the Council shall, at its sole discretion, be entitled to deduct the Concessionaire's debt from any future Council's debt or to recover the Concessionaire'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 Concessionaire in connection with the Call-Off Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

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

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

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

#### **D4. SURVIVAL**

D4.1 Any provision of this Call-Off Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Call-Off Contract including the following clauses will survive termination or expiry of the Call-Off Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Data Protection), Clause F3 (Freedom of Information), Clause F4 (Confidentiality), Clause F5 (Record Keeping and Monitoring), Clause F6 (Transparency), Clause 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 Concessionaire shall maintain insurance necessary to cover any liability arising under the Call-Off Contract as set out in the Contract Particulars.

E1.2 The Concessionaire 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 Concessionaire 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 Concessionaire the cost of such insurance together with a reasonable administration charge.

#### **E2. INDEMNITY AND LIABILITY**

E2.1 Either Party ("the Indemnifying Party") shall fully indemnify the other Parties ("the Indemnifying Parties) in full without limit of liability for any losses arising from the Indemnifying Party's breach of their obligations under this Contract, or the reckless, negligent or wilful default of the Indemnifying Party or their appointed agents, representatives or sub-contractors in the provision of the Concessions. For the avoidance of doubt, this indemnity shall include claims for damage or injury to the personal property of any third party (including any infringement of Intellectual Property Rights) which results in Liabilities awarded against or costs incurred by the Indemnified parties.

E2.2 Neither party seeks to exclude or limit its liability for:

E2.2.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);

E2.2.2 fraudulent misrepresentation; or

E2.2.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

E2.3 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

## **PART F - PROTECTION OF INFORMATION**

### **F1. INTELLECTUAL PROPERTY**

F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

F1.1.1 provided to the Concessionaire by the Council shall remain the property of the Council;

F1.1.2 prepared by or for the Concessionaire 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 Concessionaire 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 Concessionaire shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Concessionaire is itself a licensee of those rights, the Concessionaire 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 Concessionaire or to any other third party providing concessions 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 Concessions will not infringe any Intellectual Property Rights of any third party and the Concessionaire 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 Concessionaire shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Concessions, including any back-up media.

**F2. DATA PROTECTION**

- F2.1 The Concessionaire shall (and shall procure that any of its Employees involved in the provision of the Concessions) comply with any requirements under the Data Protection Legislation.

**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 Concessionaire shall assist and cooperate with the Council (at the Concessionaire's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
- F3.3 If the Concessionaire considers that any of the information provided by the Concessionaire under the Contract is commercially sensitive (meaning it could reasonably cause prejudice to the organisation if disclosed to a third party) then it shall notify the Council and provide valid reasons in support of the information being exempt from disclosure under the Act and the EIR.
- F3.4 The Council will have regard to any such notification and reasons given by the Concessionaire before it releases any information to a third party under the Act or the EIR. However the Council shall be entitled to determine in its absolute discretion whether any information is exempt from the Act and/or the EIR, or is to be disclosed in response to a request of information. The Council must make its decision on disclosure in accordance with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under the Act or the EIR.
- F3.5 The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:
- F3.5.1 has not been notified to the Council as being commercially sensitive with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible); or
  - F3.5.2 does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or
  - F3.5.3 in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.



**F4. CONFIDENTIALITY**

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

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

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

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

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

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

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

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

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

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

F4.4 The Concessionaire shall not, and shall procure that the Concessionaire 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 Concessionaire shall procure that those members of the Concessionaire 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 Concessionaire's Confidential Information in any one or more of the following circumstances:
- F4.6.1 To any Crown body or any other contracting authority other than the Council. All crown bodies or such contracting authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;
  - F4.6.2 To any consultant, contractor or other person engaged by the Council;
  - F4.6.3 For the purpose of the examination and certification of the Council's accounts; and/or
  - F4.6.4 For any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

**F5. RECORD KEEPING AND MONITORING**

- F5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Concessionaire 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 Concessions supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Concessionaire 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 Concessionaire 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.

**PART G - STATUTORY OBLIGATIONS**

**G1. HEALTH AND SAFETY**

- G1.1 The Concessionaire 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 Concessionaire shall comply with all obligations under the HRA.

- G2.2 The Concessionaire 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 Concessionaire's obligations in the performance of the Concessions.
- G2.3 The Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire has taken to remedy the situation.
- G2.6 The Concessionaire represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Concessionaire nor any of its officers, employees or other persons associated with it:
- G2.6.1 has been convicted of any offence involving slavery and human trafficking;
  - G2.6.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- G2.7 The Concessionaire shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- G2.8 The Concessionaire shall use all reasonable endeavours to adhere to the principles of the 'Prevent' strategy under the Counter-Terrorism and Security Act 2015.

G2.9 The Concessionaire shall ensure that its employees, agents and subcontractors are familiar with and have a good understanding of the 'Prevent' strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.

### **G3. LAW AND CHANGE IN LAW**

G3.1 The Concessionaire 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 Concessionaire 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 Concessionaire. 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 Concessionaire double recovery of any increase in costs.

## **PART H - GENERAL PROVISIONS**

### **H1. THIRD PARTY RIGHTS**

H1.1 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.

### **H2. NO WAIVER**

H2.1 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.

H2.2 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).

### **H3. SEVERANCE**

- H3.1 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.

### **H4. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

- H4.1 Subject to any express provision of this Call-Off Contract, the Concessionaire 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 Concessions.
- H4.2 The Council shall be entitled to:
- H4.2.1 assign, novate or dispose of its rights and obligations under this Call-Off Contract either in whole or part to any contracting authority (as defined in The PCR 2015); or
  - H4.2.2 transfer, assign or novate its rights and obligations where required by Law.
- H4.3 The Concessionaire shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.
- H5.4 Where the Concessions are to be provided at a facility under the direct oversight of the Contracting Authority, the Concessionaire shall notify the Contracting Authority of the name, contact details and legal representatives of any sub-Concessionaires involved in delivering the Concessions.

### **H5. FORCE MAJEURE**

- H5.1 Neither party shall be liable for failure to perform its obligations under the Call-Off Contract if such failure results from Force Majeure.
- H5.2 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 Concessions until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Concessionaire against the Council nor entitle the Concessionaire to terminate the Call-Off Contract.
- H5.3 Industrial action by, or illness or shortage of the Concessionaire's Employees, agents or subcontractors, failure or delay by any of the Concessionaire's suppliers to supply goods, components, Concessions or materials and breach of the Concessionaire's warranties under clause B6 shall not be regarded as an event of Force Majeure.

- H5.4 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.
- H5.5 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.

## **H6. INDUCEMENTS**

- H6.1 The Concessionaire 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 Concessionaire is drawn to the criminal offences under the Bribery Act 2010.
- H6.2 The Concessionaire warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Council by the Concessionaire or on the Concessionaire's behalf.
- H6.3 Where the Concessionaire engages in conduct prohibited by clauses H6.1 and H6.2 in relation to this or any other contract with the Council, the Council has the right to:
- H6.3.1 terminate the Contract and recover from the Concessionaire 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
  - H6.3.2 recover in full from the Concessionaire any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

## **H7. COSTS AND EXPENSES**

- H7.1 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.

## **H8. NO AGENCY OR PARTNERSHIP**

- H8.1 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.

**H9. NON SOLICITATION AND OFFERS OF EMPLOYMENT**

H9.1 The Concessionaire 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:

H9.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Concessions 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

H9.1.2 attempt, or knowingly assist or procure any other person to do the above.

**H10. INSPECTION OF CONCESSIONAIRE'S PREMISES**

H10.1 The Concessionaire shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Concessionaire's premises in relation to the Call-Off Contract.

**H11. LAW AND JURISDICTION**

H11.1 This Call-Off Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.