



The Planning
Inspectorate

Non Salaried Inspectors 2018

Annex A Conditions of Contract

Contract reference: PINS 17/2/857

31 May 2019

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1 CALL-OFF CONTRACT

- 1.1 The Call-Off Contract for Non Salaried Inspectors, Contract number PINS 17/2/857 is subject to the Terms and Conditions of contract below and will be signed by all involved parties at the commencement of the contract.

2 DEFINITIONS AND INTERPRETATIONS

- 2.1 For the purposes of this Call-Off Contract the following shall apply;

- 2.1.1 'Contract' refers to this Call-Off Contract
- 2.1.2 'Inspectorate' means the Planning Inspectorate acting as an Executive Agency on behalf of the Ministry of Housing, Communities and Local Government.
- 2.1.3 'Contractor' is the company or individual with whom the Call-Off Contract is with.
- 2.1.4 'NSI' is the registered Named Individual who can undertake the services required of the Call-Off Contract.
- 2.1.5 'Services' shall be as detailed in the Invitation to Tender.
- 2.1.6 'Day' means a 24 Hour period.
- 2.1.7 'Working day' means any day excluding weekends and Bank Holidays.
- 2.1.8 Save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation, as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.

- 2.2 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Inspectorate and the Contractor or the NSI.

3 DURATION OF THIS CALL-OFF CONTRACT

- 3.1 Subject to the terms of termination under the Conditions, this Contract shall be in force from the Award Date until the Expiry Date or, where there is no Expiry Date, until the Contractor has completed the services in accordance with this Contract.

4 TRADING TERMS

- 4.1 The Named individual shall operate either as
- 4.1.1 A sole trader or partnership
- 4.1.2 An employee of a limited company or PLC
- 4.2 Any casework placed under this Contract shall not constitute, actual or implied a contract of employment of the named individual and / or the Contractor.
- 4.3 The Contractor shall notify the Inspectorate of any change in their trading status.
- 4.4 The Inspectorate reserves the right at any time during the Contract period to seek confirmation from the Contractor of the trading status requirements at Condition 2 above.

5 CONTRACTOR PERSONNEL

- 5.1 Only the Named Individual selected at time of award shall perform the services relating to this Contract. The Contractor shall not substitute any other person to undertake the whole or any part of this Contract.
- 5.2 Where a Named Individual ceases to be employed by the Contractor this Contract shall be terminated.
- 5.3 The Contractor shall notify the Inspectorate in writing of any change in employment status of the Named Individual immediately on becoming aware of a change. The Contractor shall ensure all services relating to this Contract are completed in accordance with the Conditions of Contract and associated Schedules.

6 COMPANY CHANGE CONTROL, OWNERSHIP OR MERGER

- 6.1 The Contractor shall obtain the Inspectorate's written consent to changing the provider of this Contract within 7 days of any Change of Control, Ownership or Merger of the contractor. For the purposes of this Condition change of control or ownership shall be direct or indirect legal or beneficial ownership or a change of more than 3% of the limited company.
- 6.2 Where the Contractor is;
- 6.2.1 a Sole trader at the time of the commencement of the Contract and later becomes a limited company (a personal services company) the Inspectorate may at its discretion, subject to Condition 4 above, transfer the Contract to the new company as Contractor, where the Named Individual will remain unaffected.
- 6.2.2 subject to a change of Ownership or merger where the trading name of the company continues and the named individual is unaffected, the Contract shall be unaffected subject to Condition 4 above.
- 6.2.3 Subject to a name change as a result of a change of control, ownership or merger the Inspectorate may at its discretion transfer the Contract of named individual subject to Condition 4 above or the Contract shall be terminated.
- 6.2.4 a Limited company or sole trader and that company or sole trader ceases to trade the Contract shall be terminated.
- 6.3 Where the Contract is terminated in accordance with Condition 6.2.4 above the Contractor shall ensure all services are performed to completion prior to any change. Failure to perform the services required under the Contract shall result in non-payment. The Inspectorate reserves the right to claim costs incurred in non-performance of the Contractor including but not limited to the cost of administration, completion by another Contractor or Planning Inspector.

7 TAX STATUS

- 7.1 In providing the services, the Contractor is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Contractor to avoid liability for taxation in the United Kingdom.
- 7.2 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 7.3 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security

Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

- 7.4 The Inspectorate may, at any time during the term of this contract, request that the Contractor provides information which demonstrates how the Contractor complies with Conditions 7.2 and 7.3 above or why those Conditions do not apply to it.
- 7.5 A request under Condition 7.4 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 7.6 The Inspectorate may terminate this Contract if –
- 7.6.1 in the case of a request mentioned in Condition 7.4 above
 - 7.6.1.1 the Contractor fails to provide information in response to the request within the specified period, or
 - 7.6.1.2 the Contractor provides information which is inadequate to demonstrate either how the Contractor complies with Conditions 7.2 and 7.3 above or why those Conditions do not apply to it;
 - 7.6.2 in the case of a request mentioned in Condition 7.5 above, the Contractor fails to provide the specified information, or
 - 7.6.3 it receives information which demonstrates that, at any time when Conditions 7.2 and 7.3 apply to the Contractor, the Contractor is not complying with those Conditions.
- 7.7 The Inspectorate may supply any information which it receives under Condition 7.4 and 7.5 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

8 INSOLVENCY OF THE CONTRACTOR

- 8.1 If the Contractor:
- 8.1.1 being an individual (or if the Contractor is a partnership any individual being a partner of such partnership) has a bankruptcy order made against him; applies to court for an interim order or makes an arrangement or composition with his creditors; is subject to any distress, execution or other similar process in relation to his assets; takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; takes any step or any step is taken towards any of the matters referred to in this Condition: or
 - 8.1.2 being a company, a limited liability partnership or a partnership has an order made or a resolution passed for the winding up of the Contractor or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order; is subject to an order made by a court of competent jurisdiction or a resolution passed for the administration of the Contractor or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined by Paragraph 14 of Schedule B1 to the Insolvency Act 1986); has a receiver, administrative receiver or manager appointed (or any step is taken to make such appointment) in respect of the whole or any part of the assets and undertaking of the Contractor; is subject to any distress, execution or other similar process in relation to any of its assets; makes any arrangement or composition with its creditors; or
 - 8.1.3 takes or is subject to any similar or analogous action to any of the matters referred to in Conditions 8.1.1 and 8.1.2 above in any other jurisdiction; then without prejudice to any other rights available to it, the Inspectorate may give notice in writing at any time to the Contractor terminating this Contract with immediate effect.

8.2 The Contractor shall give notice in writing to the Inspectorate of the occurrence of any of the events referred to in Conditions 8.1.1 to 8.1.3 above immediately on becoming aware of the same.

9 TERMS OF ENGAGEMENT FOR THE SERVICES REQUIRED

9.1 No work is guaranteed as a result of this Contract.

9.2 The Inspectorate shall request the Contractor periodically provides the availability of the Named Individual to undertake casework opportunities. Subject to business needs and availability of the Named Individual, the Inspectorate will inform the Contractor of opportunities and invite the Contractor to submit confirmation they will conduct the work under the terms of this contract.

9.3 The Inspectorate will offer casework for a cluster of cases, where the Contractor shall confirm acceptance within 5 days of the Offer formally in writing creating the Contract between the Inspectorate and the Contractor.

9.4 Failure to respond to the offer within 5 days may result in the work being offered to another contractor.

9.5 Contract opportunities will normally be offered in clusters four (4) to eight (8) cases. For each cluster the Contractor shall complete the work simultaneously within the contracted timescales and shall undertake all site visits on the same day where possible / practical.

10 CONTRACTOR'S PERFORMANCE

10.1 The Contractor will only use the named individual as agreed to undertake the services of the contract, who shall act as a Non-Salaried Inspector (NSI).

10.2 The Contractor shall inform the Inspectorate of any intended, planned or actual change in employment status of the registered Named Individual. The Contractor shall ensure that all contracted work has been completed before any change to employment status takes place, failure to do so will result in payment for partial work undertaken being withheld.

10.3 The Contractor shall provide all the necessary facilities, materials and any other equipment, to undertake the services.

10.4 The Contractor shall exercise due care and propriety when dealing with third parties in connection with this Contract and ensure that no commitments that might impose any obligations on the Inspectorate are entered into (unless expressly required under this Contract) without the Inspectorate's prior written consent.

10.5 Unless otherwise agreed by the Inspectorate, neither the Contractor nor any of his employees shall carry out any business or trading activity within or on the Premises and no advertisement, sign or notice of any description shall be exhibited indicating the Contractor is acting for the Inspectorate, without prior written approval from the Inspectorate.

10.6 The NSI shall perform the services required for the Contract with the standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with the Inspectorate's standards for quality and timeliness and the provisions of this Contract.

10.7 The Contractor shall inform the Contract Manager as soon as reasonably practicable if any of the requirements of this Contract are not being or cannot be performed in accordance with this Contract.

11 QUALITY STANDARDS

- 11.1 The NSI shall undertake the services of this Contract in a manner reflecting the high standards and reputation of the Inspectorate, and in accordance with the Franks Principles (openness, fairness and impartiality) and the Inspector Code of Conduct. The Key performance Indicators in Schedule 3 of these Conditions of Contract set out the quality standards required and how they will be measured/scored.
- 11.2 Quality standards shall apply to the conduct of site visits and the production of the reasoned decision. The Inspectorate will provide guidance which will help the NSI to apply these standards to the decision and in the conduct of site visits. The Inspectorate may revise and update this guidance at any time and it is the responsibility of the NSI to ensure that they remain updated and comply with the current guidance at the time of the site visit.
- 11.3 The NSI shall ensure the consideration of the evidence presented in the appeal, and production of the decision is in accordance with all relevant legislation and case law; local and national policies; and guidance provided by the Inspectorate that are current at the time the decision is issued by the Inspectorate.
- 11.4 It is the Contractor's responsibility to ensure that the NSI is up to date with current policies, legislation and guidance and ensure that this is applied appropriately during the delivery of services under this Contract.
- 11.5 All decisions must be drafted in a style consistent with the Inspectorate's drafting standards and in a standard format. The Inspectorate will supply decision templates which can be used for this purpose.
- 11.6 All decisions submitted by the NSI shall be subject to reading by the Inspectorate prior to issue until such time as the NSI reaches a consistent quality standard.
- 11.7 Once the NSI has satisfied Condition 11.6 above quality reviews shall be conducted on a periodic basis to ensure quality standards are maintained.
- 11.8 If the NSI does not meet the required quality standards no further casework will be allocated and a notice of termination of contract will be issued.

12 TIMELINESS STANDARDS

- 12.1 All decisions shall be submitted in accordance with the timelines and guidance that will be provided at the time the services relating to this Contract commence. The Key performance Indicators in Schedule 3 of these Conditions of Contract set out the timeliness standards required and how they will be measured/scored.
- 12.2 If a decision is not accepted by the Inspectorate, the target for submitting an amended decision will be confirmed in the notification that the decision has not been accepted.
- 12.3 Requests for information to assist the Inspectorate in dealing with a complaint or responding to a High Court Challenge must be replied to within 5 working days.
- 12.4 Repeated failure to meet timeliness standards may result in the contract being terminated.

13 FAILURE TO ACHIEVE AND/OR MAINTAIN STANDARD SERVICE REQUIREMENTS

- 13.1 Where in the opinion of the Inspectorate the Contractor has failed to perform the whole or any part of the services or falls short of the required quality standard in accordance with this Contract, other than as a result of default or negligence on the part of the Inspectorate, the Contractor shall at his own expense undertake to correct this to the satisfaction of the Inspectorate.

13.2 The Inspectorate will:

13.2.1 give the Contractor details specifying the way in which the performance falls short of the requirements of this Contract, or is otherwise unsatisfactory, and will give an opportunity to bring this to standard or

13.2.2 in the case where corrections have not been satisfactory, withhold or reduce payments to the Contractor, in such amount as the Inspectorate deems appropriate.

14 ALTERATION OF REQUIREMENT

14.1 The contractor shall not alter the Contract in any way. Once accepted, casework issued under the Contract is legally binding and cannot be terminated by the Contractor.

14.2 In exceptional circumstances consideration may be given to a request for additional time to complete the casework or a higher case fee for larger or more complex cases, however any such request must be agreed in advance with the Inspectorate and recorded in writing. The parties shall continue to act in accordance with this Contract until any such alteration has been agreed in writing.

14.3 If the Contractor or NSI becomes unable to complete the services required of this Contract through illness or other personal reasons the Inspectorate may agree at its discretion to reallocate the committed casework. The NSI shall provide a request to the Inspectorate. Any such request must be agreed between the Inspectorate and the Contractor and recorded in writing.

14.4 The Inspectorate may seek to alter the requirement on occasion where a case is withdrawn or where an actual or implied conflict of interest is identified.

14.5 During the course of the Contract, opportunities to undertake other types of casework may arise. The NSI will be offered this work and if accepted the Contract will be varied to include such work and additional briefings arranged as necessary.

15 INVOICES AND PAYMENT

15.1 Upon acceptance of the decision the Contractor shall submit an invoice to the Inspectorate within 28 days of the acceptance of the decision in accordance with Condition 15.2.

15.2 For the purposes of this contract acceptance means when the decision has been submitted or in the case of pre-issue quality checks when the decision is confirmed as suitable for issue.

15.3 The Contractor shall submit invoices in accordance with Schedule 1, Conditions 15.4 and 15.5 below and the invoicing instructions provided on award of contract.

15.4 The Contractor shall submit their invoice with related expenses for each allocation of casework. If a decision in an allocation is subject to pre-issue quality checks then a partial invoice may be submitted if the outstanding decision is not agreed within 28 days. Invoices for multiple allocations will not be accepted.

15.5 All invoices must include the following information:

15.5.1 Purchase order number (this will be issued once the contract is confirmed);

15.5.2 The case references included in the allocation with the fee claimed for each case;

15.5.3 A full breakdown of the associated expenses claimed. Receipts for expenses do not need to be submitted with the invoice, but should be retained for 7 years for audit purposes;

- 15.6 The Planning Inspectorate reserves the right to undertake periodic checks of claims for expenses in accordance with our internal and external audit requirements and will request copies of receipts to support such claims.
- 15.7 Failure to submit invoices in the correct format with all supporting detail in accordance with Condition 15.5 above shall result in the rejection of the invoice.
- 15.8 The Contractor shall provide the name and address of their bank, the account name and number, the bank sort code and any other details requested by the Inspectorate in any required format.
- 15.9 In the event of unsatisfactory performance, the Inspectorate shall be entitled to withhold payment for work undertaken until the decision has been completed in accordance with the Contract. If the Inspectorate is satisfied that the services to which an invoice relates have been performed fully in accordance with the Contract, the Inspectorate shall pay the Contractor the amount specified in a valid invoice.
- 15.10 The Inspectorate shall not accept liability for any expenditure beyond the fee per case or associated expenses in excess of the limits detailed in Schedule 1.
- 15.11 The Inspectorate is committed to prompt payment and shall pay the Contractor within 30 days of the receipt of a valid invoice.

16 VALUE ADDED TAX

The Inspectorate shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the services received.

17 CONFLICT OF INTEREST

- 17.1 Contractors and NSIs must not accept any casework where there might be something in their private, professional or financial life which could conflict with their duty to act fairly, openly and impartially. NSIs must not deal with casework where there could be a potential conflict of interest or a perception of bias. These are classified as 'preclusions' in the Planning Inspectorate.
- 17.2 It shall be the Contractor's responsibility to ensure that no conflict of interest arises in connection with the services to be carried out under this Contract. Should a contractor be offered work, any potential or actual conflict of interest with the case must be declared as soon as the contractor is aware, at any time during the delivery of the Contract.
- 17.3 The Inspectorate must be immediately consulted if there is any uncertainty about whether any such conflict of interest may exist or arise and its decision on the matter shall be final.
- 17.4 If an undeclared conflict of interest becomes apparent to the Inspectorate, payment for the services will be withheld and Inspectorate reserves the right to report this breach to the appropriate professional body.

18 BRIEFINGS

- 18.1 The NSI will be expected to attend an initial 8 day briefing before being issued with any casework.
- 18.2 The NSI will be given reasonable notice to attend annual briefings for information and updates relating to the services provided under this Contract. Although attendance at the annual briefings is optional, it is encouraged.
- 18.3 A fee for attendance at briefings and reasonable expenses will be paid in accordance with Schedule 1.

19 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

19.1 The Contractor or NSI shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown.

19.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 19.1.

19.3 Any:

- (a) breach by the Contractor of NSI of this Condition; or
- (b) commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract with the Inspectorate, or any other government body or Inspectorate

shall entitle the Inspectorate to terminate this Contract and recover from the Contractor the amount of any loss resulting from such termination including but not limited to the costs of another supplier undertaking the contract and any resulting additional costs such as court costs.

19.4 The decision of the Inspectorate in relation to this Condition shall be final and conclusive.

20 CONFIDENTIALITY

20.1 The Contractor shall take all reasonable steps to ensure that all his employees employed by him in connection with this Contract are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any services under or in connection with this Contract.

20.2 In the interests of propriety and maintaining impartiality, the Contractor must not advertise that they or their named person has been appointed to determine the appeal covered by this Contract. The Contractor also must not advertise or promote their association with the Inspectorate for business purposes, e.g. to increase custom, or to give the impression of representing the Inspectorate at public events.

21 DISCLOSURE OF INFORMATION

21.1 The Contractor and the NSI shall not undertake to communicate or correspond directly with any party to a contracted case under this contract. All communications and correspondence relating to the contracted case must go through the Inspectorate.

21.2 The Inspectorate's communications relating to the appeal will include the only the last name and initial of the NSI and no contact details shall be provided to the parties.

21.3 The Contractor acknowledges that the Inspectorate may receive requests for information relating to this Contract ("disclosure requests") pursuant to the Freedom of Information Act 2000 ("the FOI Act"), the Environmental Information Regulations 2004 ("the EIRs") or otherwise.

21.4 The Contractor further acknowledges that the Inspectorate may be obliged (subject to the application of any relevant exemption(s) and, where applicable, the public interest test) to disclose information pursuant to such a request. Where the Inspectorate consults the Contractor in accordance with section IV (consultation with third parties) of the Code of Practice¹ issued under section 45 of the FOI Act (or, as the case may be, any Code of Practice issued under powers contained in the EIRs), the Contractor hereby agrees to respond to any such

¹ On the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000
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consultation promptly, within any deadline set by the Inspectorate and without charging any fee or expense to the Inspectorate. The Contractor acknowledges that it is for the Inspectorate to determine whether or not such information should be disclosed.

21.5 Subject to Conditions 21.6 and 21.7 below, the Contractor shall not disclose to any third party, publish, disseminate, or use other than for the purposes of this Contract:

- (a) any information relating to this Contract; or
- (b) any other information that has come into his possession during or as a result of his performance of this Contract relating to the business, affairs, properties, assets, operations, practices, policies, developments, trade secrets or know-how, of the Inspectorate, its personnel, customers and suppliers,

without the prior written consent of the Inspectorate, which shall not be unreasonably withheld.

21.6 Condition 21.5 above shall not apply to any information which:

- (a) is or becomes public knowledge (otherwise than by breach of this Contract);
- (b) is in the possession of the Contractor, without restriction as to its disclosure, before he receives it from the Inspectorate; or
- (c) is received by the Contractor from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

21.7 Condition 21.5 above shall not prevent the Contractor from disclosing, without the Inspectorate's consent, any information:

- (a) which is required to be disclosed by law or by any professional or regulatory obligation, provided that prior to disclosure the Contractor consults the Inspectorate and takes full account of the Inspectorate's views about whether (and, if so, the extent to which) the information should be disclosed;
- (b) to such persons and to such extent as may be necessary for the performance of this Contract;
- (c) for the purpose of complying with his obligations under Condition 21.7 of this Contract.

21.8 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Conditions 21.5 to 21.7 inclusive above by all his employees, office holders, workers and Sub-contractors.

22 PROCUREMENT TRANSPARENCY

22.1 The Contractor acknowledges that the Inspectorate may publish this contract in full as per Government's Transparency Agenda. Publication could include:

- Invitation to Tender
- Conditions of Contract
- Associated Schedules (which may include the winning tenderer's bid)
- Pricing – overall and/or breakdown

22.2 Details of the amounts paid to the Contractor in excess of £250 shall be published monthly in our spend data (as totals), as part of the Government's Transparency Agenda.

www.data.gov.uk/data

22.3 Confidential information

- (a) The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Inspectorate shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOI Act.
- (b) Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Inspectorate to publish the Contract in its entirety, including from time to time agreed changes to the Agreement, to the general public.

22.4 Consultation and assistance

- (a) The Contractor may consult with the Inspectorate to inform its decision regarding any redactions but the Inspectorate shall have the final decision in its absolute discretion.
- (b) The Contractor shall assist and co-operate with the Inspectorate to enable the Inspectorate to publish this Contract.

23 DISCRIMINATION

23.1 The Contractor shall not discriminate directly or indirectly or by way of victimisation or harassment against any person:

- (a) on grounds of colour, race, nationality, or ethnic or national origin contrary to the Race Relations Act 1976; or
- (b) on grounds of sex contrary to the Sex Discrimination Act 1975;
- (c) on grounds of disability contrary to the Disability Discrimination Act 1995,
- (d) on grounds of sexual orientation contrary to the Employment Equality (Sexual Orientation) Regulations 2003;
- (e) on grounds of religion or belief contrary to the Employment Equality (Religion or Belief) Regulations 2003;
- (f) on commencement of any age discrimination legislation, on grounds contrary to such legislation, and
- (g) shall comply with the Equal Pay Act 1970.

23.2 Where any employee or Sub-contractor employed by the Contractor is required to carry out any activity on the Premises or alongside the Inspectorate's employees on any other premises the Contractor shall ensure that the each such employee and Sub-contractor complies with the Inspectorate's employment policies and codes of practice relating to discrimination and equal opportunities.

23.3 The Contractor shall notify the Contract Manager and the Inspectorate in writing as soon as he becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with the Contractor's performance of this Contract. Where there is such an investigation or proceedings the Contractor shall free of charge:

- (a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;
- (b) attend, and permit a representative from the Inspectorate to attend, any associated meetings;

- (c) promptly allow access to any documents and information relevant to the investigation or proceedings;
 - (d) co-operate fully and promptly with the investigatory body, court or tribunal.
- 23.4 The Contractor shall indemnify the Inspectorate against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Inspectorate arising out of or in connection with any such investigation or proceedings.
- 23.5 The Contractor shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 23.1 to 23.4.

24 HEALTH AND SAFETY

- 24.1 The Contractor shall be responsible for the observance by himself, his employees and Sub-contractors of all safety precautions necessary for their protection and the protection of any other persons, including all precautions required to be taken by or under or pursuant to any Act of Parliament. For the avoidance of doubt this includes the Inspectorate's health and safety policies and any regulations or by-laws issued by the Inspectorate, any other government Inspectorate, local authority or other body. The Contractor shall co-operate fully with the Inspectorate to ensure the proper discharge of these services.
- 24.2 Accidents to the Contractor's servants or agents which require to be reported in accordance with relevant health and safety legislation shall be reported immediately to the Contract Manager or his authorised representative.
- 24.3 As at the commencement of this Contract, and throughout the life of this Contract, the Inspectorate shall notify the Contractor of any special health and safety hazards of which the Inspectorate becomes aware which may be involved or introduced on the Premises or the site and which may affect the Contractor. The Contractor shall throughout the life of this Contract notify the Inspectorate of any hazards which may affect the Inspectorate or his performance of the services.
- 24.4 If the Inspectorate notifies the Contractor of any special health and safety hazards pursuant to Condition 24.3, the Contractor shall immediately draw any such hazards to the attention of his employees and Sub-contractors or any other persons under his control engaged on the work being performed on the Premises. Arrangements shall be made by the Contractor so that such persons and other persons employed by or controlled by Sub-contractors and working on the Contractor's tasks on the Premises are adequately informed and instructed on the hazards and any necessary associated safety measures.

25 ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS

The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of this Contract or any part of it.

26 INSURANCE

- 26.1 The Inspectorate commits to indemnifying NSIs against any expenses or costs arising from legal challenges on the appeal decision in normal circumstances. However, the Inspectorate reserves the right to recover costs from the Contractor, where it considers that the NSI has acted unreasonably, unprofessionally or recklessly or has been negligent in his or her conduct of a case, causing the Inspectorate to incur such costs.
- 26.2 The Contractor and/or NSI shall ensure that they hold the appropriate professional indemnity insurance to cover their conduct of case work, from the commencement of the Contract until 6 years after the completion of the services, or the termination of the Contract, whichever is the earlier. The minimum level of cover recommended is £1,000,000.

- 26.3 It is the Contractors responsibility to satisfy themselves that they have the necessary personal and third party insurance to cover possible damage to a third party's property or personal injury whilst conducting a site visit.
- 26.4 The Inspectorate cannot provide insurance cover for NSIs where either a private or hired vehicle is used on Inspectorate business.

27 WARRANTIES AND REPRESENTATIONS

- 27.1 The Contractor warrants and represents that:
- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
 - (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
 - (c) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained staff with all due skill, care and diligence; and
 - (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial Condition or its ability to observe or perform its obligations under this Contract.

28 GENERAL DATA PROTECTION REGULATIONS

- 28.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Inspectorate is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 2 and may not be determined by the Contractor.
- 28.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 28.3 The Contractor shall provide all reasonable assistance to the Inspectorate in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Inspectorate, include:
- 28.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 28.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the services;
 - 28.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 28.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

28.4.1 process that Personal Data only in accordance with Schedule 2, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Inspectorate before processing the Personal Data unless prohibited by Law;

28.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Inspectorate as appropriate to protect against a Data Loss Event having taken account of the:

- i. nature of the data to be protected;
- ii. harm that might result from a Data Loss Event;
- iii. state of technological development; and
- iv. cost of implementing any measures.

28.4.3 ensure that :

- i. the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix B);
- ii. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Contractor's services under this Condition;
 - B. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Inspectorate or as otherwise permitted by this Agreement; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data;

28.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Inspectorate has been obtained and the following Conditions are fulfilled:

- i. the Inspectorate or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Inspectorate;
- ii. the Data Subject has enforceable rights and effective legal remedies;
- iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Inspectorate in meeting its obligations); and
- iv. the Contractor complies with any reasonable instructions notified to it in advance by the Inspectorate with respect to the processing of the Personal Data;

28.4.5 at the written direction of the Inspectorate, delete or return Personal Data (and any copies of it) to the Inspectorate on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

28.5 Subject to Condition 28.6, the Contractor shall notify the Inspectorate immediately if it:

28.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

28.5.2 receives a request to rectify, block or erase any Personal Data;

28.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 28.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 28.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 28.5.6 becomes aware of a Data Loss Event.
- 28.6 The Contractor's obligation to notify under Condition 28.5 shall include the provision of further information to the Inspectorate in phases, as details become available.
- 28.7 Taking into account the nature of the processing, the Contractor shall provide the Inspectorate with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 28.5 (and insofar as possible within the timescales reasonably required by the Inspectorate) including by promptly providing:
- 28.7.1 the Inspectorate with full details and copies of the complaint, communication or request;
 - 28.7.2 such assistance as is reasonably requested by the Inspectorate to enable the Inspectorate to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 28.7.3 the Inspectorate, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 28.7.4 assistance as requested by the Inspectorate following any Data Loss Event;
 - 28.7.5 assistance as requested by the Inspectorate with respect to any request from the Information Commissioner's Office, or any consultation by the Inspectorate with the Information Commissioner's Office.
- 28.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- 28.8.1 the Inspectorate determines that the processing is not occasional;
 - 28.8.2 the Inspectorate determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal:
 - 28.8.3 convictions and offences referred to in Article 10 of the GDPR; and
 - 28.8.4 the Inspectorate determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 28.9 The Contractor shall allow for audits of its Data Processing activity by the Inspectorate or the Inspectorate's designated auditor.
- 28.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 28.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 28.11.1 notify the Inspectorate in writing of the intended Sub-processor and processing;
 - 28.11.2 obtain the written consent of the Customer;
 - 28.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Condition 20 such that they apply to the Sub-processor; and

28.11.4 provide the Inspectorate with such information regarding the Sub-processor as the Inspectorate may reasonably require.

28.12 The Inspectorate shall remain fully liable for all acts or omissions of any Sub-processor.

28.13 The Inspectorate may, at any time on not less than 30 Working Days' notice, revise this Condition by replacing it with any applicable controller to processor standard Conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

28.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Inspectorate may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

29 GENERAL DATA PROTECTION REGULATIONS – PERSONAL DATA

29.1 The data controller in respect of such personal data as is held or acquired by the Inspectorate in relation to this Contract is the First Secretary of State.

29.2 The data controller's nominated representative for the purposes of the Data Protection Act 2008 General Data Protection Requirements 2018 is the Inspectorate's Data Protection Officer for the Ministry of Housing, Community and Local Government.

29.3 The Inspectorate shall use such personal data only for purposes relating directly to:

29.3.1 the management and performance of this Contract Agreement by the Contractor; and

29.3.2 the provision by the Inspectorate of references within the Inspectorate and to other government Inspectorates.

29.4 The Contractor hereby agrees and shall procure from any relevant individual agreement to the publication by the Inspectorate in any format of the following personal data: name and contact details. The Contractor shall provide a copy of any relevant individual's consent to the Inspectorate on request.

29.5 If, having regard to the circumstances in which the Inspectorate processes such personal data, the Inspectorate requires the Contractor or any relevant individual to provide additional information to enable the Inspectorate to process that personal data fairly it shall notify the Contractor in writing and the Contractor shall provide or procure the additional information within 7 days of receipt of the request.

30 GENERAL ENVIRONMENTAL REQUIREMENTS

The Inspectorate is committed to the reduction of any environmental impact. There possible the contractor shall conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.

31 TIMBER AND WOOD DERIVED PRODUCTS

31.1 The Contractor shall ensure that no Virgin Timber or Timber and Wood Derived Products he procures for supply or use in performance of the services shall have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that it has complied with the CITES requirements that permit trading in the particular species of tree so listed under CITES.

- 31.2 All Virgin Timber or Timber and Wood Derived Products procured by the Contractor for supply or use in performance of the services shall be Legal Timber, Sustainable Timber or Recycled Timber.
- (a) Before delivering any timber or wood under this Contract, the Contractor shall obtain documentary evidence that the timber or wood is either Legal Timber, Sustainable Timber or Recycled Timber. If requested in writing by the Inspectorate, the Contractor shall submit such documentary evidence to the Inspectorate either prior to delivery or at such other times as the Inspectorate may require. The Contractor shall identify, as part of the evidence submitted, a chain of custody from the forest source of the timber or wood product through to delivery of the final product (in respect of Legal Timber or Sustainable Timber) or, the previous use of the timber or wood product (in respect of Recycled Timber).
- 31.3 The Inspectorate reserves the right at any time during the performance of the services and for a period of 6 years from the date the Contractor has completed the services in accordance with the Contract to require the Contractor to produce the evidence required for the Inspectorate's inspection within 14 days of the Inspectorate's written request.
- 31.4 The Contractor shall maintain records of all Virgin Timber or Timber and Wood Derived Products delivered to and accepted by the Inspectorate. Such information shall be made available to the Inspectorate if requested at any time.
- 31.5 The Inspectorate reserves the right to decide whether the evidence submitted to demonstrate that Virgin Timber or Timber and Wood Derived Products constitutes either Legal Timber or Sustainable Timber is adequate to satisfy the Inspectorate. In the event that the Inspectorate is not so satisfied, the Contractor shall, on written request by the Inspectorate, commission and meet the costs of an Independent Verification and report that will:
- (a) verify the forest source of the Virgin Timber or Timber and Wood Derived Products; and
- (b) assess whether the Virgin Timber or Timber and Wood Derived Products constitutes Legal Timber or Sustainable Timber (as the case may be).
- 31.6 The Inspectorate reserves the right to decide whether the evidence submitted to demonstrate that timber or wood products constitute Recycled Timber. In the event that the Inspectorate is not so satisfied, the Contractor shall, on written request by the Inspectorate, commission and meet the costs of an Independent Verification and report that will:
- (a) verify the previous use of the timber or wood; and
- (b) assess whether the timber or wood constitutes Recycled Timber.
- 31.7 The Inspectorate reserves the right to reject any timber or wood derived products that do not comply with these provisions of these Conditions. Where the Inspectorate exercises its right to reject any timber, the Contractor shall supply alternative timber, which does so comply, at no additional cost to the Inspectorate and without causing delay to the performance of the services.

32 INTELLECTUAL PROPERTY, ROYALTIES AND LICENCE FEES

- 32.1 In the absence of any specific provision for the allocation of intellectual property rights between the parties elsewhere in this Contract and subject to the prior rights (if any) of the Contractor, the Crown or any third parties, such intellectual property rights as are derived from or arise as a result of the performance of the services by the Contractor shall vest in the Crown. The Contractor shall not use, supply, reproduce, publish, modify, adapt, enhance or otherwise deal with any materials in which such intellectual property rights exist without the Inspectorate's prior written approval.

- 32.2 In this Condition the term 'intellectual property rights' means all intellectual and industrial property rights of any nature whatsoever, including all of the following: patents, copyrights, database rights, design rights; all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, trade marks, designs and works; the right to apply for any form of protection for any of these, applications for and registrations of any of these and all resulting registrations. In each case it includes these rights and interests in every part of the world for their full terms, including any renewals and extensions, and the right to receive any income from them and any compensation in respect of their infringement.
- 32.3 The Contractor shall ensure that all royalties, licence fees and similar expenses in respect of all intellectual property or intellectual property rights used in connection with this Contract have been paid and are included in the Contract fee.

33 DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA

- 33.1 The final 'deliverable' version of any data, including written reports, calculations, software, designs, drawings, specifications, maps and photographs completed or provided in connection with this Contract (each a "Deliverable") shall be delivered up to the Inspectorate on completion (or, if sooner, termination) of the services, subject to the retention of proper professional records. The Deliverables shall be supplied by the Contractor in an agreed format.
- 33.2 If this Contract is terminated by the Inspectorate pursuant to the provisions of Conditions 13, 19, 37 or 38 shall apply to the working version of each Deliverable (a "Working Deliverable") that has not been completed as at the date of termination of this Contract. The Inspectorate acknowledges that Working Deliverables may contain information that is incomplete and agrees that should it choose to rely upon any Working Deliverable that reliance shall be at its own risk.

34 PRODUCTION AND RETENTION OF DOCUMENTATION

- 34.1 The Contractor is responsible for returning all documentation and records relating to the Contract once the decision is confirmed as accepted in line with the requirements of Schedule 2.

35 TRANSFER OF RESPONSIBILITY

In the event that a different organisation is required to take over the services at the expiry or termination of this Contract, the Contractor shall co-operate in the transfer, under arrangements notified to him by the Inspectorate.

36 FORCE MAJEURE

- 36.1 If, by any reason of any acts of terrorism, nature, war, hostilities, strikes, lock-outs, or of any fire at any of the Contractor's premises or those of his suppliers or any act or default of the Inspectorate the Contractor shall have been delayed in or prevented from performing all or part of the services, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give to the Inspectorate notice in writing of any claim for an extension of time for the performance of the services and the Inspectorate shall allow the Contractor an extension of time for such completion in respect of any delay caused by any of the circumstances before mentioned as shall be reasonable. Provided always that the Contractor shall not be entitled to any extension of time unless he shall at all times have used all reasonable endeavours to prevent any such delay and to minimise any such delay and to do all that may be reasonably required to the satisfaction of the Inspectorate to proceed with the work.
- 36.2 The Contractor shall not be in breach of this Contract by reason only of any delay in the performance of the services or any temporary inability to perform the Services as a result of force majeure. The Contractor shall not be entitled to any payment for that part of the Services he was unable to perform as a result of force majeure.

37 TERMINATION OF THIS CALL-OFF CONTRACT

- 37.1 Without prejudice to any other power of termination, the Inspectorate may by notice in writing terminate this Contract with immediate effect for any of the following reasons:
- 37.1.1 Any material breach of the contract
 - 37.1.2 Misconduct, unsatisfactory or poor performance of the NSI
 - 37.1.3 Poor performance shall be deemed
 - 37.1.3.1 as failure to achieve the required quality standard of the Contract of the date as required;
 - 37.1.3.2 failure to maintain the required quality and timeliness standards of the Contract.
 - 37.1.4 If the named individual leaves the employment of the Contractor
 - 37.1.5 The Contractor ceases or proposes to cease to carry on his business; or
 - 37.1.6 A Change of Control occurs without the appropriate notice being provided to the Inspectorate.
- 37.2 The Inspectorate reserves the right to terminate the Contract following a breach of the tax regime. See Condition 7 above.
- 37.3 In all circumstances the Inspectorate's decision is final.
- 37.4 The Contractor may terminate the contract by giving one month's written notice. During the notice period the Contractor is expected to perform all or any of the services committed in accordance with this Contract, and the Inspectorate shall pay the Contractor the agreed fee in accordance with Schedule 1.

38 BREAK

The Inspectorate shall in addition to its powers under any other of these Conditions have power to terminate this Contract at any time by giving to the Contractor one day's written notice.

39 CONSEQUENCES OF TERMINATION OR BREAK

- 39.1 Upon the expiry of any notice period, or immediately upon termination without notice, this Contract shall be terminated without prejudice to any right of action or remedy which shall have accrued or shall thereupon accrue to the parties. Termination shall not affect the continued operation of the contract.
- 39.2 Where this Contract is terminated under Condition 37 or 38, the following provisions shall apply:
- (a) Pending final ascertainment of such sums as are payable under this Contract any sum due or accruing from the Inspectorate to the Contractor may be withheld or reduced by such amount as the Inspectorate in either case considers reasonable and appropriate;
 - (b) The Inspectorate may make all arrangements which are in its view necessary to procure the orderly completion of the services, including the letting of another contract or contracts. In the event that a different organisation is required to take over the services the Contractor shall co-operate in the transfer and with any arrangements notified to him by the Inspectorate. The transfer shall be arranged between the Inspectorate and the Contractor so as to reduce to a minimum any interruption in the services;

- (c) Where the total costs reasonably and properly incurred by the Inspectorate by reason of any arrangements made under Condition 33.2(b) exceed the amount that would have been payable to the Contractor for the completion of the services, the excess shall be recoverable from the Contractor and the Inspectorate reserves the right to recover such excess by way of set-off as provided for under Condition 35.

39.3 Without prejudice to Condition 39.1, where this Contract is terminated under Condition 38, the Inspectorate shall pay to the Contractor all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the services, including any commitments, liabilities or expenditure which have been reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Contract. For the avoidance of doubt the Inspectorate shall not indemnify the Contractor against loss of profit or consequential losses. The Inspectorate shall in no case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under this Contract, exceeds the total Contract fee.

39.4 Where this Contract is terminated pursuant to Condition 38, during the notice period the Inspectorate may direct the Contractor to perform all or any of the services, or any part or component thereof in accordance with this Contract, and the Inspectorate shall pay the Contractor the agreed fee in accordance with Schedule 1 or, where no price has been agreed or is applicable to an element of work, a fair and reasonable price.

40 LIABILITY FOR LOSS OR DAMAGE

40.1 The Contractor shall indemnify the Inspectorate, its servants and agents against all actions, claims, demands, costs, expenses, charges, payments and liabilities incurred by or made against the Inspectorate, its servants or agents, in respect of any loss or damage which arises out of or in connection with this Contract which is caused directly or indirectly by any negligent act or omission of the Contractor or the NSI.

40.2 In this Condition loss or damage includes, without limitation:

- (a) Costs resulting from High Court Challenges, rulings and decisions
- (b) loss or damage to property;
- (c) personal injury and death;
- (d) loss of use; and
- (e) any other loss.

40.3 Without prejudice to any other exclusion or limitation of liability in this Contract, the liability of the Contractor for any claim or claims under this Contract shall be limited to such sums as it would be just and equitable for the Contractor to pay having regard to the extent of his responsibility for the loss or damage giving rise to such claim or claims ("the loss and damage") and on the assumptions that:

- (a) all other contractor or advisers engaged in connection with the performance of the services have provided contractual undertakings on terms no less onerous than those set out in these Conditions to the Inspectorate in respect of the carrying out of their obligations; and
- (b) there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Inspectorate and any other party referred to in this Condition and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Inspectorate for the loss and damage; and

- (c) all such other contractors, sub-contractors or advisers have paid to the Inspectorate such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.

41 RECOVERY OF SUMS DUE

Whenever under this Contract any sums of money shall be recoverable from or payable by the Contractor to the Inspectorate, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other contract with the Inspectorate or with any other government Inspectorate, agency or Office of Her Majesty's Government.

42 SERVICE OF NOTICES

42.1 Any notice required to be given or served under this Contract shall be in writing and shall be served by:

42.1.1 sending it to the Contractor or Inspectorate's Contract Manager by first-class post, when it shall be deemed served on the second working day after posting; or

42.1.2 Sending it to the Contractor or Inspectorate's Contract Manager by E-mail, it shall be deemed served after 4 hours of time of delivery; or

43 DISPUTE RESOLUTION

43.1 Where any dispute, difference or question ("Dispute") between the Inspectorate and the Contractor arising out of or in connection with this Contract cannot be resolved by the Contract Manager and Contractor, either may refer the Dispute to a senior representative of the Inspectorate (a member of the Senior Civil Service) and of the Contractor (a director or other senior office holder) ("the Senior Representatives").

43.2 Without prejudice to Condition 43.5, if any Dispute is not resolved within 14 days of the referral to the Senior Representatives then the parties will attempt to settle it by mediation. To initiate the mediation a party must give a notice in writing ("the Mediation Notice") to the other party requesting mediation. The Mediation Notice must propose in outline how the mediation is to be conducted, including provision as to timing, sharing of costs and volume of documentation, having regard to the sum in issue and the complexity of the Dispute. Subject to Condition 42.5, any mediation is to take place not later than 28 days after service of the Mediation Notice.

43.3 Without prejudice to Condition 43.5, if:

(a) there is any issue on the conduct of the mediation which the parties cannot agree within 14 days of service of the Mediation Notice; or

(b) the Dispute is not resolved within 42 days of service of the Mediation Notice,

then the parties may litigate the Dispute in accordance with Condition 43.

43.4 Except where required to preserve the legal rights of the Inspectorate or the Contractor, or to obtain interim relief, or where the Dispute concerns a matter upon which the Inspectorate's decision is final, neither the Inspectorate nor the Contractor shall commence Court proceedings unless the Dispute remains unresolved after having been referred to the Senior Representatives, to mediation or to any other alternative means of resolving the Dispute chosen by the parties pursuant to Condition 43.5.

43.5 After a failure of the Senior Representatives to resolve the Dispute the parties may by agreement in writing elect to pursue any means of alternative dispute resolution.

44 LAW

This Contract shall be governed by and interpreted in accordance with English law and, subject to Condition 43, any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

45 SEVERABILITY

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect. In the event that an invalid, illegal or unenforceable Condition is fundamental to the performance of this Contract, the Inspectorate and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

46 WAIVER

- 46.1 Any failure by the Inspectorate or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 46.2 No waiver shall be effective unless it is communicated to either the Inspectorate or the Contractor in writing.
- 46.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Contract.

47 RIGHTS OF THIRD PARTIES

Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of this Contract.

48 KEY PERSONNEL AND CONTACTS

All requests and correspondence regarding this Call-Off Contract should be addressed to

NSI Contract Management Unit

3rd Floor, Kite Wing, Temple Quay House

2 The Square, Temple Quay

Bristol BS1 6PN

Email: nsi.contractmanagement@planninginspectorate.gov.uk

Schedule 1: Fees and Expenses

49 FEES FOR CASEWORK

49.1 The table below represents the fees payable for conducting site visits and producing decisions for different casework types. The revised fees & expenses are with effect from 1 December 2018.

49.2 Information on the fees payable for other casework related activities is also provided.

Casework rates - Conducting site visits and producing decisions	Fee (excl VAT)
Lot 1 - S78 Planning Appeal General	£425
Lot 2 - Householder or Commercial Appeal Service	£350
Lot 3 - Enforcement & Lawful Development Certificate Appeal	£450
Lot 4 - S78 Planning Appeal Specialist	£530
Lot 5 - Heritage - S20 Listed Building Consent Appeal	£450
Lot 6 - Tree Preservation Order Appeals	£425
Lot 1 & 2 Linked cases	£175
Lot 3, 4, 5 & 6 Linked Cases	£215
Related costs cases	£175
Aborted / withdrawn case after decision submitted	Full fee
Aborted / withdrawn case after or during site visit	£215
Aborted / withdrawn case pre site visit (preparation only)	£105
Additional work relating to complaints	
Reimbursement for time spent in the provision of information following a complaint if this is found to be unjustified or where the decision is upheld following a High Court Challenge	Under 2 hours £65
	2-4 hours £125
	Over 4 hours £250
Additional time relating to casework	
Half day - must have prior approval - see note 1	£125
Full day - must have prior approval - see note 1	£250
Attendance at Briefings	
Daily rate	£250
Pre-Approved Travel time	
Up to 4 hours each way - must have prior approval, see note 2	£125
Over 4 hours each way - must have prior approval, see note 2	£250

NOTE 1 - Additional casework time

In exceptional circumstances casework may be deemed overly complex and it may be necessary for NSIs to spend significant additional time obtaining and analysing evidence through no fault of their own. In such cases NSIs may claim a fee for this. All claims for fees must be submitted by email to the NSI Contract Management Unit with clear reasons justifying why the NSI thinks an additional fee is payable for the Inspectorate's consideration.

NOTE 2 - Travel Time

Travel time is payable when the NSI is travelling the day before the Site Visits are scheduled, or, in exceptional circumstances, the day after.

Travel time is not payable for travel to and from and between site visits on the day they are scheduled. Normally travel time will be approved for journeys exceeding 3 hours, but if the NSI has a fuller programme, and / or is unable to complete the site visits in daylight hours, journeys of less than 3 hours will be considered.

All requests for travel time must be approved in advance without exception. Approval can only be given by the NSI Contract Management Unit.

50 EXPENSES

- 50.1 The Planning Inspectorate will reimburse actual expenses incurred in connection with the conduct of a site visit, or attendance at briefings arranged by the Inspectorate, subject to the limits below.
- 50.2 Expenses are not admissible in respect of travel between home and normal place of work for the purpose of the contract. Neither are expenses such as newspapers, gratuities or alcoholic drinks.
- 50.3 Invoices must clearly state the Call-off Contract appeal references to which the expenses relate with a full breakdown of expenditure. Copies of receipts supporting the expenditure must be retained for up to 7 years for audit purposes. The Planning Inspectorate reserves the right to periodically request copies of these invoices as part of a 10% finance check.

Travel		
Rail Travel	The actual cost of standard class rail travel	
Bus/Coach travel	The actual cost of bus/coach travel	
Road Travel	Car (private car, hire car*, or taxi**)	45p per mile
	Motorcycle	24p per mile
	Bicycle	20p per mile
Air Travel	All air travel requires the prior written approval of the Planning Inspectorate. The cost of air fares can only be invoiced when the use of air travel clearly represents effective value for money for the Planning Inspectorate with due regard to NSI time commitment and alternative travel costs.	
Ferry Travel	The actual cost of ferry travel within British Isles	
Car Parking/Tolls	The actual cost of necessary car parking and tolls	

* Where all of a journey is made using a hire car, **and** the total cost of the hire plus fuel is less than the amount that would be payable for the journey, at 45p per mile, then the actual cost of the car hire plus fuel shall be claimed.

Where the journey is made using a combination of public transport and taxi, **and the total cost of the fares is less than the amount that would be payable for the whole journey at 45p per mile, then the actual taxi fare shall be claimed along with the actual public transport costs.

Expenditure on refreshments when not staying away overnight	
Where expenditure for refreshments are necessarily incurred as a consequence of your work under the Call-off Contract, actuals may be claimed up to the limits shown below:	
More than 5 hours	Actual costs to a maximum of £6.00
More than 10 hours	Actual costs to a maximum of £12.00
More than 12 hours	Actual costs to a maximum of £23.00

Expenditure on accommodation and meals when staying away overnight All requests for overnight stays must have prior approval, without exception		
Bed and Breakfast Accommodation	In London (from the centre out to the M25 motorway ring road)	Actual costs up to £110
	All other towns and cities	Actual costs up to £85
Staying with friends or family	You may claim £35 per night when staying with friends or family to contribute to the cost of your stay. No other costs (other than travel) will be claimable.	
Meals when staying away overnight	Lunch, Evening Meal or snacks (you can decide how much you spend on each but must not exceed the limit)	Actual costs up to £31

	<p>If lunch is provided you must reduce your claim by £6.00 If an evening meal is provided you must reduce your claim by £25.00</p>	
	<p>Breakfast (if not included in hotel booking and not consumed in the hotel)</p>	<p>Actual costs up to £6.00</p>
	<p>If breakfast is not included in the room booking and is purchased at the hotel then actuals should be claimed.</p>	

Schedule 2: GDPR Schedule of Processing

51 SCHEDULE OF PROCESSING PERSONAL DATA AND DATA SUBJECTS

- 51.1 Whilst working for the Planning Inspectorate the Contractor shall comply with the schedule below and any further written instructions with respect to processing by the Customer.
- 51.2 Any such further instructions shall be incorporated into this Schedule.

Description Details

<p>Subject matter of the processing</p> <ul style="list-style-type: none"> · Details of all parties involved in the planning application to be assessed; · Representation information including location; · Appellants' personal details plus family member personal information; · The reasons for appeal and implications; · Other personal data relevant to the appeal.
<p>Duration of the processing</p> <ul style="list-style-type: none"> · Data must be kept only for the duration of the specific appeal only. · Once the assessment has been completed and the decision made follow the return / destruction plan below.
<p>Nature and purposes of the processing</p> <ul style="list-style-type: none"> · For the processing of planning appeals; · Complying with statutory obligations; · Recording, organising, structuring, storage, retrieval, consultation, use, updating; · Disclosure by transmission; · Dissemination or otherwise making available; · Alignment or combination; · Restriction; · Erasure or destruction of data (whether or not by automated means).
<p>Type of Personal Data</p> <p>This will include, but is not limited to:</p> <ul style="list-style-type: none"> · Appellants' name, address, phone number; · Details of dependants; · Personal health related information; · Personal disability information; · Property information and images of particular property and environment.
<p>Categories of Data Subject</p> <p>This will include, but is not limited to:</p> <ul style="list-style-type: none"> · Appellants and other interested parties; · Other Government Departments or Agencies; · The Planning Inspectorate's staff.
<p>Plan for return and destruction of the data once the processing is complete</p> <p>Data relating to an appeal must only be kept until the in line with the instructions below:</p> <ul style="list-style-type: none"> · The final decision: A word version of the decision is to be retained for 3 months from the date the decision is submitted to the Inspectorate. This is to allow correction by the slip rule. The decision must then be deleted; · NSI's own notes: all personal notes relating to the appeal should be retained for 3 months in case of challenge and then deleted / securely destroyed (eg: shredded) · All other electronic material: electronic material relating to the appeal is to be deleted from personal computers once the decision has been submitted to the Inspectorate; · Official Appeal files: files are to be returned to the Inspectorate; · Hard copies / paper versions: If there is no file, hard copy plans and other documentation including anything printed by the NSI is to be securely destroyed (eg shredded).

Other requirements

NSIs must ensure that when undertaking work for the Planning Inspectorate electronically, the devices used must have:

- Antivirus software which is regularly updated
- Operating software which is up to date and regularly updated

NSIs must ensure that all copies of appeal documentation is:

- Securely kept at all times;
- Not loaded onto pen drives or other mobile media.

Schedule 3: Key Performance Indicators

52 OVERVIEW

- 52.1 The service provided by NSIs shall be managed through a set of Key performance Indicators (KPIs).
- 52.2 The maximum weighted score available for each lot is 100.
- 52.3 Where a Pass/Fail score is present, the maximum score shall be given for a pass or 0 for a fail.
- 52.4 The availability score will be calculated at the point the NSI undertakes work and / or work becomes available.
- 52.5 Data shall be gathered by the Inspectorate to measure performance and reviewed monthly. Every 3-months, NSIs shall be provided with a copy but are able to request a copy at any time.
- 52.6 The Inspectorate reserves the right to alter the KPIs at any given time through the contract change process to meet the demands of the business.

53 KPIS

- 53.1 The tables below illustrate the KPIs for each lot.

Lot 1 – S78 Planning Appeals

Element	Performance measure	Score	Weight	Total weighted score (Max 100)
Quality				
Quality	99% of decisions are free from upheld complaint or successful legal challenge	Max 100	0.30	Max 30
Timeliness				
Timeliness	All decisions to be completed and submitted within the contracted target of calendar days unless extension is requested and agreed in advance by CMU	Max 100	0.30	Max 30
Availability				
Availability	Available to undertake approximately 4 cases per month - Lot 1 or combination of Lot 1 and 2 cases	Max 100	0.05	Max 5
	NSI undertakes all cases offered (unless there is a justified reason, agreed by CMU)	Max 100	0.05	Max 5
	Cases offered are only rejected for justified reasons and agreed by CMU	Max 100	0.05	Max 5
	NSI undertakes all cases once contracted unless there is a justified reason which is agreed by CMU	Max 100	0.05	Max 5

Data Protection				
Data protection	NSI uses the Inspectorate's portal to submit decisions	Pass/Fail	0.05	Max 5
	No reported GDPR data breaches	Pass/Fail	0.05	Max 5
Communication				
Reading – not cleared for issue	All decisions returned with readers comments should be amended and returned to NSI CMU within 2 working days if not cleared for issue.			
Reading – Cleared for issue	Decisions cleared for issue should be amended (if needed) and uploaded to the portal within 2 working days. The Case Officer and NSI CMU should also be notified by email.			
Response to queries	Information to assist with complaints or high court challenges is provided within 5 calendar days of the request	Pass/Fail	0.025	Max 2.5
Briefings	NSI attends any mandatory briefing sessions as requested by the Inspectorate	Pass/Fail	0.025	Max 2.5
Invoices	Invoices are submitted within 28 days of the submission of the appeal decision	Pass/Fail	0.025	Max 2.5
	Invoices are clear and include the information required including the purchase order number, case references and a breakdown of expenses	Pass/Fail	0.025	Max 2.5

Lot 2 – Householder and Commercial Appeals Service

Element	Performance measure	Score	Weight	Total weighted score (Max 100)
Quality				
Quality	99% of decisions are free from upheld complaint or successful legal challenge	Max 100	0.30	Max 30
Timeliness				
Timeliness	All decisions to be completed and submitted within 14 calendar days unless extension is requested and agreed in advance by CMU	Max 100	0.30	Max 30
Availability				
Availability	Available to undertake approximately 4 cases per month - Lot 2 or combination of Lot 1 and 2 cases	Max 100	0.05	Max 5
	NSI undertakes all cases offered (unless there is a	Max 100	0.05	Max 5

	justified reason, agreed by CMU)			
	Cases offered are only rejected for justified reasons and agreed by CMU	Max 100	0.05	Max 5
	NSI undertakes all cases once contracted unless there is a justified reason which is agreed by CMU	Max 100	0.05	Max 5
Data Protection				
Data protection	NSI uses the Inspectorate's portal to submit decisions	Pass/Fail	0.05	Max 5
	No reported GDPR data breaches	Pass/Fail	0.05	Max 5
Communication				
Response to queries	Information to assist with complaints or high court challenges is provided within 5 calendar days of the request	Pass/Fail	0.025	Max 2.5
Briefings	NSI attends any mandatory briefing sessions as requested by the Inspectorate	Pass/Fail	0.025	Max 2.5
Invoices	Invoices are submitted within 28 days of the submission of the appeal decision	Pass/Fail	0.025	Max 2.5
	Invoices are clear and include the information required including the purchase order number, case references and a breakdown of expenses	Pass/Fail	0.025	Max 2.5

Lot 3 – S174 Enforcement and S195 Lawful Development Certificate Appeals

Element	Performance measure	Score	Weight	Total weighted score (Max 100)
Quality				
Quality	99% of decisions are free from upheld complaint or successful legal challenge	Max 100	0.30	Max 30
Timeliness				
Timeliness	All decisions to be completed and submitted within 28 calendar days unless extension is requested and agreed in advance by CMU	Max 100	0.30	Max 30
Availability				
Availability	Available to undertake approximately 4 cases per 2-months	Max 100	0.05	Max 5
	NSI undertakes all cases offered (unless there is a justified reason, agreed by CMU)	Max 100	0.05	Max 5
	Cases offered are only rejected for justified reasons and agreed by CMU	Max 100	0.05	Max 5

	NSI undertakes all cases once contracted unless there is a justified reason which is agreed by CMU	Max 100	0.05	Max 5
Data Protection				
Data protection	NSI uses the Inspectorate's portal to submit decisions	Pass/Fail	0.05	Max 5
	No reported GDPR data breaches	Pass/Fail	0.05	Max 5
Communication				
Response to queries	Information to assist with complaints or high court challenges is provided within 5 calendar days of the request	Pass/Fail	0.025	Max 2.5
Briefings	NSI attends any mandatory briefing sessions as requested by the Inspectorate	Pass/Fail	0.025	Max 2.5
Invoices	Invoices are submitted within 28 days of the submission of the appeal decision	Pass/Fail	0.025	Max 2.5
	Invoices are clear and include the information required including the purchase order number, case references and a breakdown of expenses	Pass/Fail	0.025	Max 2.5

Lot 4 – S78 Planning Appeals Specialist

Element	Performance measure	Score	Weight	Total weighted score (Max 100)
Quality				
Quality	99% of decisions are free from upheld complaint or successful legal challenge	Max 100	0.30	Max 30
Timeliness				
Timeliness	All decisions to be completed and submitted within the contracted target of calendar days unless extension is requested and agreed in advance by CMU	Max 100	0.30	Max 30
Availability				
Availability	Available to undertake approximately 4 cases per month - Lot 1 or combination of Lot 1 and 2 cases	Max 100	0.05	Max 5
	NSI undertakes all cases offered (unless there is a justified reason, agreed by CMU)	Max 100	0.05	Max 5
	Cases offered are only rejected for justified reasons and agreed by CMU	Max 100	0.05	Max 5
	NSI undertakes all cases once contracted unless there is a justified reason which is	Max 100	0.05	Max 5

	agreed by CMU			
Data Protection				
Data protection	NSI uses the Inspectorate's portal to submit decisions	Pass/Fail	0.05	Max 5
	No reported GDPR data breaches	Pass/Fail	0.05	Max 5
Communication				
Reading – not cleared for issue	All decisions returned with readers comments should be amended and returned to NSI CMU within 2 working days if not cleared for issue.			
Reading – Cleared for issue	Decisions cleared for issue should be amended (if needed) and uploaded to the portal within 2 working days. The Case Officer and NSI CMU should also be notified by email.			
Response to queries	Information to assist with complaints or high court challenges is provided within 5 calendar days of the request	Pass/Fail	0.025	Max 2.5
Briefings	NSI attends any mandatory briefing sessions as requested by the Inspectorate	Pass/Fail	0.025	Max 2.5
Invoices	Invoices are submitted within 28 days of the submission of the appeal decision	Pass/Fail	0.025	Max 2.5
	Invoices are clear and include the information required including the purchase order number, case references and a breakdown of expenses	Pass/Fail	0.025	Max 2.5

Lot 5 – Heritage – S20 Listed Building Consent Appeals

Element	Performance measure	Score	Weight	Total weighted score (Max 100)
Quality				
Quality	99% of decisions are free from upheld complaint or successful legal challenge	Max 100	0.30	Max 30
Timeliness				
Timeliness	All decisions to be completed and submitted within the contracted target of calendar days unless extension is requested and agreed in advance by CMU	Max 100	0.30	Max 30
Availability				
Availability	Available to undertake approximately 4 cases per month - Lot 1 or combination of Lot 1 and 2 cases	Max 100	0.05	Max 5

	NSI undertakes all cases offered (unless there is a justified reason, agreed by CMU)	Max 100	0.05	Max 5
	Cases offered are only rejected for justified reasons and agreed by CMU	Max 100	0.05	Max 5
	NSI undertakes all cases once contracted unless there is a justified reason which is agreed by CMU	Max 100	0.05	Max 5
Data Protection				
Data protection	NSI uses the Inspectorate's portal to submit decisions	Pass/Fail	0.05	Max 5
	No reported GDPR data breaches	Pass/Fail	0.05	Max 5
Communication				
Reading – not cleared for issue	All decisions returned with readers comments should be amended and returned to NSI CMU within 2 working days if not cleared for issue.			
Reading – Cleared for issue	Decisions cleared for issue should be amended (if needed) and uploaded to the portal within 2 working days. The Case Officer and NSI CMU should also be notified by email.			
Response to queries	Information to assist with complaints or high court challenges is provided within 5 calendar days of the request	Pass/Fail	0.025	Max 2.5
Briefings	NSI attends any mandatory briefing sessions as requested by the Inspectorate	Pass/Fail	0.025	Max 2.5
Invoices	Invoices are submitted within 28 days of the submission of the appeal decision	Pass/Fail	0.025	Max 2.5
	Invoices are clear and include the information required including the purchase order number, case references and a breakdown of expenses	Pass/Fail	0.025	Max 2.5

Lot 6 – Tree Preservation Order Appeals

Element	Performance measure	Score	Weight	Total weighted score (Max 100)
Quality				
Quality	99% of decisions are free from upheld complaint or successful legal challenge	Max 100	0.30	Max 30
Timeliness				

Timeliness	All decisions to be completed and submitted within the contracted target of calendar days unless extension is requested and agreed in advance by CMU	Max 100	0.30	Max 30
Availability				
Availability	Available to undertake approximately 4 cases per month - Lot 1 or combination of Lot 1 and 2 cases	Max 100	0.05	Max 5
	NSI undertakes all cases offered (unless there is a justified reason, agreed by CMU)	Max 100	0.05	Max 5
	Cases offered are only rejected for justified reasons and agreed by CMU	Max 100	0.05	Max 5
	NSI undertakes all cases once contracted unless there is a justified reason which is agreed by CMU	Max 100	0.05	Max 5
Data Protection				
Data protection	NSI uses the Inspectorate's portal to submit decisions	Pass/Fail	0.05	Max 5
	No reported GDPR data breaches	Pass/Fail	0.05	Max 5
Communication				
Reading – not cleared for issue	All decisions returned with readers comments should be amended and returned to NSI CMU within 2 working days if not cleared for issue.			
Reading – Cleared for issue	Decisions cleared for issue should be amended (if needed) and uploaded to the portal within 2 working days. The Case Officer and NSI CMU should also be notified by email.			
Response to queries	Information to assist with complaints or high court challenges is provided within 5 calendar days of the request	Pass/Fail	0.025	Max 2.5
Briefings	NSI attends any mandatory briefing sessions as requested by the Inspectorate	Pass/Fail	0.025	Max 2.5
Invoices	Invoices are submitted within 28 days of the submission of the appeal decision	Pass/Fail	0.025	Max 2.5
	Invoices are clear and include the information required including the purchase order number, case references and a breakdown of expenses	Pass/Fail	0.025	Max 2.5

Schedule 4: Security

54 SECURITY STANDARDS

- 54.1 The named individual who is selected to become a Non Salaried Inspector will be required to undertake a Basic Disclosure check via [Disclosure Scotland](#) and provide evidence of this before their contract is fully confirmed.
- 54.2 This level of clearance is required throughout the contract period.
- 54.3 The fee for a Basic Disclosure check will not be reimbursed by the Inspectorate.
- 54.4 Basic Disclosure checks normally take 14 days to complete.
- 54.5 If the Basic Disclosure check reveals any adverse information the Planning Inspectorate reserves the right to further consider the offer of contract.
- 54.6 Individuals who do not meet the security standard required will not be contracted by the Planning Inspectorate.