

WESTWAY CANALSIDE

Public Art Wall Mural Commission

February 2025

City of Westminster

0.0 TABLE OF CONTENTS

1.0	Introduction	3
2.0	Site Information	4-5
3.0	The Future Project Vision	6-7
4.0	Objectives	8
5.0	Requirements	9
6.0	Scope & Deliverables	10-12
7.0	Programme	13
8.0	How to Apply and Award Criteria	14-15
9.0	Artist Design and Delivery Fee	16
	Appendix	17-43

1.0 INTRODUCTION

TENDER OPPORTUNITY

Public art mural commission at the ‘space under the Westway’

Westminster City Council are looking for interested creative practitioners to **co-design** and **co-deliver** an inspiring public art mural on the Network Rail boundary under the Westway, alongside the Grand Union Canal towpath in W2/W9. The mural aims to enhance the canal towpath and will help to celebrate and define the character of this place for years to come. The work should help support increased community cohesion and local pride.

The approximate wall length is circa 120m. The painted wall mural is anticipated to cover both the entire length and height of the wall. This is to ensure maximum visual impact of the commission.

We anticipate engaging a public art group or individual artist with experience in co-creation processes, collaborative community engagement and a track record of delivering high quality art, ideally in a public setting.

We look forward to working with the successful practitioner(s) to develop an approach that is responsive to the site’s social, historical and cultural context.

PROJECT BACKGROUND

This commission is part of the Council’s commitments in North Paddington to support improved health & wellbeing outcomes for its residents.

The Place Shaping team launched the North Paddington Canalside Programme in March 2024 as part of the Council’s wider North Paddington Programme. A multi-disciplinary design team developed proposals to concept level for five sites in the project area. Improvements to the space under the Westway ranked as a priority.

The overall site vision has been ratified by public engagement that took place over ten weeks this summer, where RIBA Stage 2+ concept designs were presented. There was overwhelming local support for the proposals.

2.0 SITE INFORMATION

The site is located underneath the Westway, alongside the Grand Union Canal towpath. The site is between the Westbourne Park Bus Garage, W9 and the Great Western Studios, W2, a creative and commercial rental studio.

The towpath under and adjacent to the Westway currently feels unsafe and unwelcoming to any activity. The Council does not own any land in this project area, the spaces between the towpath and brick walls are owned by the Trust and on a long lease to a private entity. The brick wall mural site is owned by Network Rail.

The canal is an important local asset for health and social benefits, biodiversity, and mitigating the effects of climate change.

The area has reports of anti-social behaviour, including graffiti and tagging.

The towpath moorings are general visitor 14 day moorings. The area under the Westway is used informally by boaters for repairs, utilising the Westway as a covered, sheltered area.

HV cables and other utilities are located under the concrete covers running the length of the towpath.

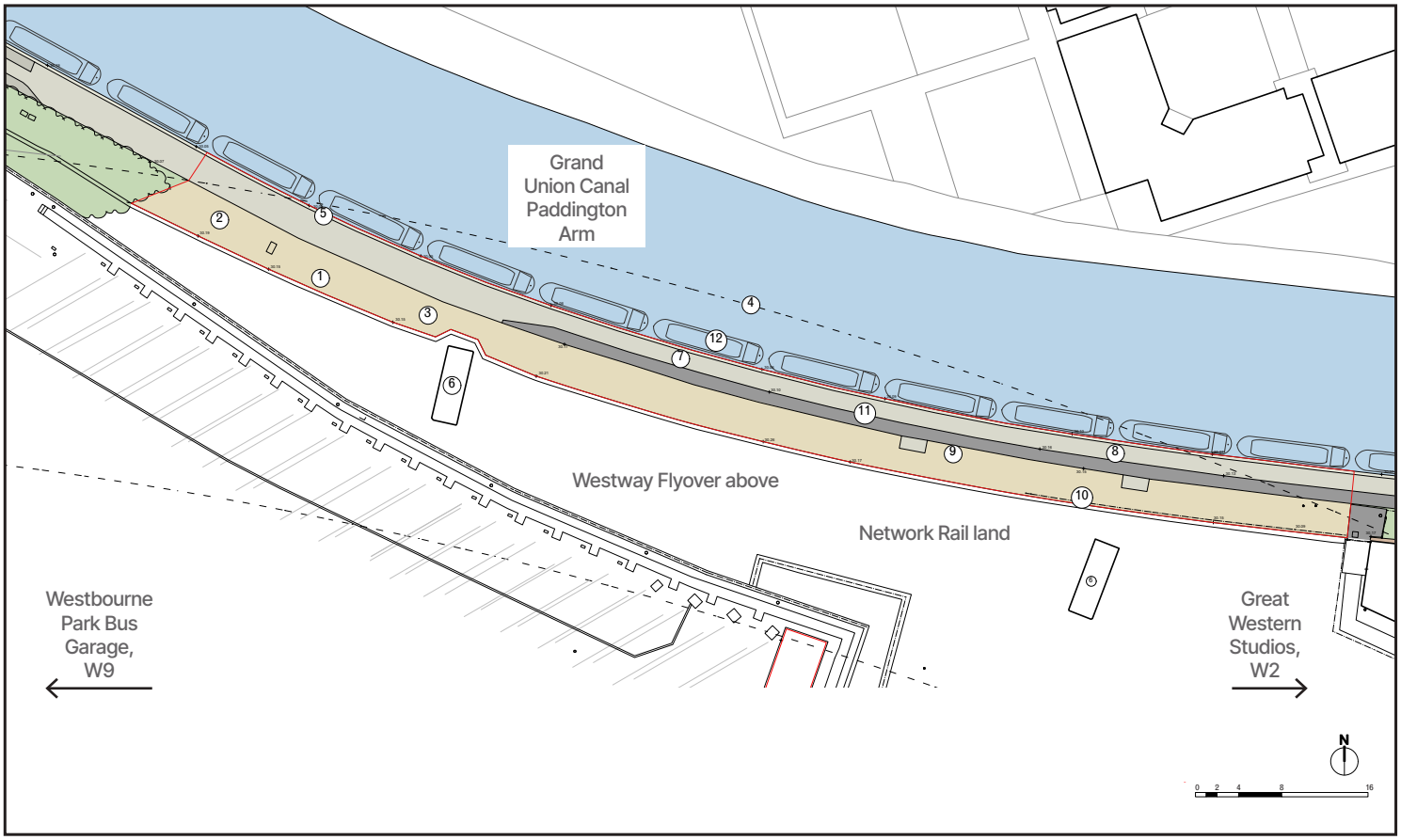


Fig. 1 Existing site plan, see site photos on opposite page.



View looking towards Westbourne Park Bus Garage, W9, with Trellick Tower in the distance



View looking towards Great Western Studios, W2



View of the wall and the gravel area between the wall and towpath



View of the wall looking towards Westbourne Park Bus Garage, W9

Fig. 2-4 Site photos, see further site photos in appendix

3.0 THE FUTURE PROJECT VISION

Note this commission is only for the public art wall mural.
The information on the wider project vision is included for context on the proposed future site transformation, which will be progressed separately. The public art mural is the first phase of delivery, prior to the delivery of the wider vision.

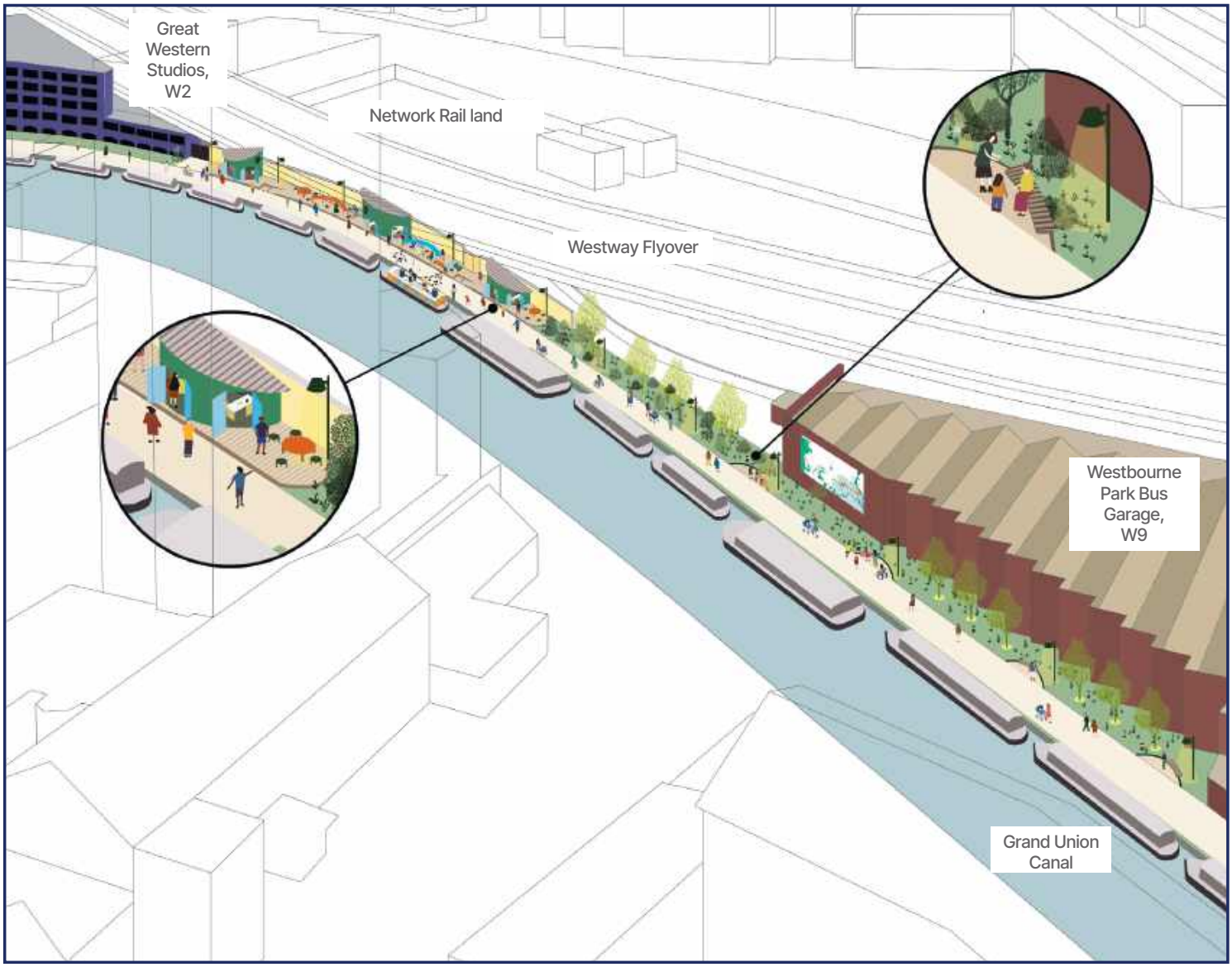
The wider project vision beyond this commission is to create a new destination under the Westway Flyover, transforming a dark, unwelcoming space into an inviting place where all are welcome. New structures could host children and families for play and socialising, maker spaces for creative and collaborative projects, or exercise classes – these are just some of the activities that could enliven this space. A new linear park with fruit trees and ground level planting will turn a lawn into a biodiverse green space, with a new art commissioned backdrop.

This project has been prioritised for further design development. As work progresses, a key focus will be on exploring the feasibility of installing lighting at this location, considering technical constraints such as access to power and ongoing management needs. Additionally, we will undertake a process to identify local operators or organisations interested in partnering with us to activate, manage, and maintain facilities under the Westway. This will include bringing forward new public art opportunities in collaboration with local schools.



Visual developed as part of the Stage 2 Concept Designs - showing how the space under the Westway could be transformed with a number of outbuildings that would service the site, storing equipment that can be brought out into the public space for events, play and creative activities

3.0 THE FUTURE PROJECT VISION



Visual developed as part of the Stage 2 Concept Designs - showing how the space under the Westway could be transformed with a number of outbuildings that would service the site, storing equipment that can be brought out into the public space for events, play and creative activities

RIBA Stage 2+ concept designs have been developed informed by public and stakeholder engagement since March 2024. The above illustration shows the opportunities of the site and should form the baseline for development of the detailed and technical design stages.

Key stakeholders include Canal & River Trust, Westminster City Council, Network Rail, Great Western Studios and residents in North Paddington, including the boating community.

4.0 OBJECTIVES

The following objectives should be achieved through this commission:

- → Create striking and inspiring artwork that is celebratory, culturally resonant and contemporary.
- → Embrace participatory design and delivery methods. The process should encourage a sense of pride over the space.
- → Create a lively and inviting space that enhances community cohesion, sense of pride and engagement with the canal side surroundings.
- → The artwork should transcend cultural differences and be accessible and engaging for a wide range of audiences. An adept control of colour and pattern is expected.
- → Celebrate the unique character specific to the place, including the canal side settings, local current and historic contributions to arts & culture and the range of backgrounds of the residents and visitors to the area.
- → Support increased connections between the canal and the community.
- → Preserve and, if possible, enhance biodiversity including the canal's night-time bat corridor.
- → Facilitate activation and encourage increased use of public open spaces.
- → Foster an open, collaborative and transparent process throughout the design and delivery phases.
- → Factor in management and maintenance requirements, including the use of anti-graffiti paint.

5.0 REQUIREMENTS

→ Enter into the Supply of Services Agreement with the Council. Compliance with the Council's Terms and Conditions set out in the agreement (refer to appendix)

Artist essential requirements:
Insurance:
→ Public Liability Insurance levels minimum cover of £10m
→ Employers Liability Insurance minimum cover of £5m
→ Professional Indemnity minimum cover of £2m

Artwork essential requirements:
→ Site specific artwork that addresses the brief requirements and objectives
→ Requirement to work to Network Rail and the Canal & River Trust (CRT) standards and requirements
→ Artwork must be developed and delivered collaboratively with local people (see 'Engagement' heading on p.11 for further details)
→ Designed for life of over 20 years
→ Durable with minimal maintenance requirements. Use of anti-graffiti paint or coating suitable for external use.
→ Use of materials where feasible, which align with the Council's environmental policies
→ The artwork must not pose a safety hazard or restrict the typical usage of the site (risk assessment required)
→ Compliance with all relevant health and safety standards
→ Artwork must align with the council's accessibility requirements
→ Artwork must align with the council's environmental and sustainability policies
→ Artist must obtain all statutory consents, including Advertisement Consent Planning Permission prior to installation
→ Artwork must not be likely to cause offence
→ Artwork must not be of a political or controversial nature
→ Artwork must be accessible to residents
→ Artwork should create a sense of cultural or community pride
→ Must refer to the Council's Guidance for the Erection of New Monuments Supplementary Planning Document published on the council's website - https://www.westminster.gov.uk/leisure-libraries-and-community/arts-and-culture/urban-design-public-realm-and-public-art)

Ownership and copyright of the submitted ideas remain with the artists.

6.0 SCOPE & DELIVERABLES

The **co-design** and **co-delivery** of an inspiring painted public art mural to renew and revitalise the identity of the Westway canalside:

Health and Safety
Comply with the duties set out under the Health and Safety, Construction (Design and Management) Regulations 2015 for Designers. This brief is written on the assumption, given the scale and scope, that the submitted tenders will be for artists who will deliver both the design and painting of the mural i.e. take on the CDM role of the Designer' and the Contractor. If the tender submission proposal involves more than one contractor, then this tender is to act as the appointment of the selected design team as the Principal Designer and Principal Contractor.

In addition, this brief is written on the assumption that the mural painting works are **not notifiable** given the small scale and scope. The appointed artist must notify the client immediately if the works based on the duration and number of workers are expected to be notifiable.

ARTIST / DESIGNER RESPONSIBILITIES:

Design

→ Research and design development, from concept design to technical design.
→ Prepare technical drawings and specification for delivery.
→ Risk management including preparation of Risk Assessment Method Statement (RAMS).
→ Coordination and liaison with Network Rail and the Canal & River Trust (CRT) as required. Requirement to work to Network Rail and CRT's standards and requirements.
→ Prepare a delivery and site logistics plan.

Designer mandatory statutory CDM responsibilities:

→ All duties and actions as required by the Construction Design and Management Regulations 2015
→ Make sure the client is aware of the client duties under CDM 2015 before starting any design work
→ When preparing or modifying designs:
- *Take account of any pre-construction information provided by the client (and principal designer, if one is involved)*
- *Eliminate foreseeable health and safety risks to anyone affected by the project (if possible)*
- *Take steps to reduce or control any risks that cannot be eliminated*

→ Provide design information to:
- *The principal designer (if involved), for inclusion in the pre-construction information and the health and safety file*
- *The client and principal contractor (or the contractor for single contractor projects) to help them comply with their duties, such as ensuring a construction phase plan (PDF) is prepared*

→ Communicate, cooperate and coordinate with:

- *Any other designers (including the principal designer) so that all designs are compatible and ensure health and safety, both during the project and beyond*
- *All contractors (including the principal contractor), to take account of their knowledge and experience of building designs*

Engagement

→ Prepare an engagement plan and publicity strategy in partnership with Council officers.

→ Council officers will lead stakeholder mapping, outreach and participant recruitment to ensure broad participant representation and continuity of communication beyond this phase of engagement, whilst the artist team will lead on the planning and delivery of the co-design and co-delivery workshops.

→ Desirable (but not mandatory requirement) to consider how the co-design and co-delivery process for the artwork could creatively upskill and educate local people, ensuring that there is an exchange of skills, knowledge and clear benefits.

→ Preparation and production of collaborative materials for co-design workshops.

→ Delivery of a minimum of 6 hours of creative co-design workshops with local groups (identified by WCC officers and the artist) to explore both the concept and design of the artwork. It is expected that the co-design and co-delivery workshops will take place over a series of weekdays and weekends to cater to a range of participant needs. Detailed scheduling to be agreed with Council officers upon appointment.

→ Co-delivery of the mural (note, the split between the professional painting vs engagement painting is to be informed by the artists professional recommendation to ensure a high quality output)

→ Monitoring of engagement activities throughout the design and delivery stages to capture social impact, public reach and process of creating the conceptual and physical output. A a short public-facing PDF summary should be produced to capture participatory methods used, including but not limited to: photography of workshops and events, statistical analysis of participants involved and vignettes/quotes from activities.

→ Deliver short talk at a celebratory opening event to mark the completion of the public art mural (event duration approx. 1 hour)

PAINTER / CONTRACTOR RESPONSIBILITIES:

Delivery responsibilities:

→ Deliver the wall mural to a high standard, ensuring it meets the Council's expectations

→ Complete the mural within the Council's programme

requirements
→ Risk management
→ Coordination and liaison with Network Rail and the Canal & River Trust (CRT) as required. Requirement to work to Network Rail and CRT's standards and requirements.
→ Comply with all statutory requirements
→ Provision (hire) of suitable site welfare facilities for painters. This may be a welfare boat or pontoon. (No existing facilities available on site)

Contractor mandatory statutory CDM responsibilities:

→ All duties and actions as required by the Construction Design and Management Regulations 2015
→ Make sure the client is aware of the client duties under CDM 2015 before any work starts
→ Plan, manage and monitor all work carried out by themselves and their workers, taking into account the risks to anyone who might be affected by it (including members of the public) and the measures needed to protect them
→ Check that all workers they employ or appoint have the skills, knowledge, training and experience to carry out the work, or are in the process of obtaining them
→ Make sure that all workers under their control have a suitable, site-specific induction, unless this has already been provided by the principal contractor
→ Provide appropriate supervision, information and instructions to workers under their control
→ Ensure they do not start work on site unless reasonable steps have been taken to prevent unauthorised access
→ Ensure suitable welfare facilities are provided from the start for workers under their control, and maintain them throughout the work

In addition to the above responsibilities, contractors working on projects involving more than one contractor must:

→ Coordinate their work with the work of others in the project team
→ Comply with directions given by the principal designer or principal contractor
→ Comply with parts of the construction phase plan relevant to their work

Where a contractor is the only contractor working on a project, they must ensure a construction phase plan is drawn up before setting up the site.

7.0 PROGRAMME

Note the provisional programme dates are dependent on receiving formal landowner approval from Network Rail. This process has started and Network Rail have confirmed a BAPA is not required.

Project milestone	Programme notes	Duration	Start	End
Tender brief live		3 weeks	21/02/25	16/03/25
All clarification questions due		2 weeks	21/02/25	09/03/25
Tender response deadline			16/03/25 midnight	
Evaluation period		2 weeks	17/03/25	28/03/25
Appointment and contract award		1 week	31/03/25	04/04/25
Artist mobilisation		2 weeks	07/04/25	18/04/25
Design development	- Council preference for the design development timeframes to be compressed if feasible - Time allowance includes submission of Advertisement Consent Application (anticipated 8 week response timeframe from WCC Planning) - Time allowance includes mobilisation period	12 weeks	21/04/25	11/07/25
Submission of Advertisement Consent by artist	- Time allowance includes submission of Advertisement Consent Application (anticipated 8 week response timeframe from WCC Planning) - At the latest submission 4 weeks from design work		21/04/25	26/05/25
Delivery	Council preference for the works to commence earlier in July if feasible	Up to 3 weeks	14/07/25	01/08/25
Launch event		Circa 1 hour	August 2025, post completion of mural	August 2025, post completion of mural

8.0 HOW TO APPLY & AWARD CRITERIA

QUALIFICATION QUESTIONS
All of the following qualification questions will be required in order for your proposal to be accepted for review:

→ Confirmation that all requirements will be met
→ Confirmation that you can work to the Council's programme
→ Confirmation that you will seek approval from the copyright holder for any copyright material that you plan to integrate into the project (if applicable)
→ Evidence of public liability, employer's liability and professional indemnity insurances to the Councils requirements (3x insurance certificates to be submitted)

AWARD CRITERIA
1. Design approach and methodology – 20%
A. Present your site-specific idea and artwork theme in outline, including a description of the artistic approach.
B. Outline the methodology
(max. x2 A4 pages. Can include sketches, images, references and diagrams)

2. Suitability, experience and resource – 40%
A. Please provide a brief overview of the individual/team that will be involved in the day-to-day delivery of this work. (Full CVs can be included in an appendix.) Emphasise relevant experience and skills.
B. Provide at least 3 examples of your work: demonstrating high quality and track record of producing successful public art mural commissions to expectations, time and budget. Examples to demonstrate examples of working on Network Rail assets (or a similar equivalent), as well as examples of co-design and co-delivery with community groups.
C. Present a programme, identifying key tasks and assign time allocation per key task per team member.
(max. x6 A4 pages, font size 12. Can include sketches, images and diagrams)

3. Social value & EDI – 10%
Please demonstrate your approach to participation and embedding social value in this commission. You can do this through examples of how you've achieved this in the past.
(max. x1 A4 page, font size 12)

4. Cost – 30%
Please provide:
A. A fixed fee, broken down per project stage is required.
B. Please share hourly rates that can be drawn down for any additional work should the need arise.
The quotation with the lowest total fee will automatically be awarded

8.0 HOW TO APPLY & AWARD CRITERIA

30%.
Thereafter each other quotation is compared against the lowest priced quotation in accordance with the following formula:
(A÷B) x C = X
Where:
A = the lowest submitted price of all quotations
B = the total price submitted by the candidate
C = the maximum percentage score i.e. 30%
X = the score for Price

All fees to exclude VAT.

This is an open tender opportunity.

Alongside a fixed quote for services to cover all stages, please share day rates that can be applied for any additional work should the need present.

SUBMISSION
Please submit tender returns by email titled ‘‘Westway Art Tender - ARTIST NAME’ to: npcanalside@westminster.gov.uk
Maximum file size 20MB (PDF format)

Recommendation that artists make a site visit prior to submitting their proposal to ensure it is achievable and meets the requirements.

EVALUATION
The Council will review and evaluate the tender returns. The artist with the highest evaluation score based on the award criteria will be appointed by the Council.

Officers will advise applicants on the final decision but given the potential for a high volume of submissions, cannot provide individual feedback to unsuccessful applicants.

DATA PROTECTION
The personal information provided in your submission will only be used by the Council for the purpose of assessing for proposal for commissioning, and to communicate with applicants regarding the submission.

The council will ask for consent to use your information for any other purpose.

https://www.westminster.gov.uk/data-protection

9.0 ARTIST DESIGN AND DELIVERY FEE

The maximum available project budget is £24,999 excluding VAT. WCC expect to receive competitive responses that are capable of delivering high quality proposals whilst demonstrating value for the local authority.

The fee must cover all costs including:

- → Project management, including client meeting attendance
- → All design costs
- → All engagement costs including workshop materials
- → All delivery costs - material, equipment (including PPE) and other mural delivery costs
- → Provision (hire) of suitable site welfare facilities for painters. This may be a welfare boat or pontoon. (No existing facilities available on site)
- → Compliance with the Construction (Design and Management) Regulations 2015 and all other relevant statutory health and safety requirements
- → Cost to submit the WCC Planning Advertisement Consent Application Fee and time required to prepare and submit the application on behalf of the Council
- → Suitable insurance cover to meet the levels set out in the requirements section
- → All expenses, such as travel

A retention fee of 2.5% of the value of the delivery costs 2.5% will be held for 12 months post completion of the works. After the defects liability period ends and the artist rectifies any defects the retention fee will be paid.

If there are any additional costs associated with the commission that arise such as site surveys or additional engagement costs (such as space hire for engagement events), this should be flagged to the client at the earliest opportunity and are subject to review and approval by the client.

A fee payment schedule will be agreed with the artist upon the award. This is expected to be drawn down at monthly intervals, triggered by the successful full completion of outputs.

APPENDIX

SUPPLY OF SERVICES

PART 1 - CONTRACT PARTICULARS

Contract No.	[TITLE]
Date:	[DATE]
Authority:	Westminster City Council
Authority's address:	64 Victoria Street, Westminster, London, SW1E 6QP
Authority's Authorised Representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Supplier:	[COMPANY NAME] LIMITED (No. [NUMBER])
Supplier's address:	[ADDRESS]
Supplier's VAT number:	[NUMBER]
Supplier's Authorised Representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Duration:	[DRAFT]
Start Date:	[DRAFT]
Authority Premises:	[DRAFT]
Services:	As set out in Schedule 2
Deliverables:	[DRAFT]
Fees:	As set out in Schedule 1
Invoicing Arrangements;	The Supplier shall submit invoices to the Authority's Authorised Representative at the end of each deliverable in line with the payment schedule set out in the pricing schedule. The Authority may refuse to pay any invoices if the relevant purchase order number is not provided.
Personal Data:	NOT APPLICABLE
Mandatory Policies:	[The Mandatory Policies are: • [Modern Slavery and Human Trafficking]. • [Corporate and Social Responsibility Policy]. • [Anti-bribery and Anti-corruption Policy]. • [Ethics Policy]. • [Data and Privacy Policy].] **OR** [NOT APPLICABLE]
Special Terms:	NOT APPLICABLE

This Contract is made up of the following:
(a) Part 1 - The Contract Particulars.
(b) Part 2 - The Conditions.

If there is any conflict or ambiguity between the terms of the documents listed above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Contract has been entered into on the date stated at the beginning of it.

For and on behalf of
THE LORD MAYOR AND CITIZENS
OF THE CITY OF WESTMINSTER

……
Duly Authorised Officer

Signed by [AUTHORISED SIGNATORY] for and on behalf of
[SUPPLIER]

……
[Director]

PART 2 - TERMS AND CONDITIONS

1. Interpretation

1.1 **Definitions**:

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, being set out in the Contract Particulars.

Authority Materials: all materials, equipment and tools, drawings, specifications and data owned or held by the Authority and supplied by the Authority to the Supplier.

Authority Premises: the buildings and premises specified in the Contract Particulars, or as otherwise agreed between the parties.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the term of the Contract, the pricing structure and any other relevant factors.

Business Continuity Plan: the business continuity plan for the supply of Services to minimise the effect of any unplanned interruption or event that would impact on the ability of the Supplier to supply the Services, in whole or in part, in accordance with the terms of this Contract.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Calculating Body: the Resolution Foundation on behalf of the Living Wage Foundation (or any replacement or successor body) carrying out the relevant calculation.

Conditions: these terms and conditions.

Contract: the contract between the Authority and the Supplier for the supply of Services in accordance with the Contract Particulars, the Mandatory Policies and these Conditions.

control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Deliverables: all documents, products and materials developed by the Supplier or its agents, Sub-Contractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), including those deliverables set out in the Contract Particulars.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Fees: the fees payable by the Authority for the Services, as set out in the Contract Particulars and Schedule 1.

FOIA: the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or

relevant government department in relation to such legislation.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Living Wage: either the London Living Wage or the UK Living Wage as the context requires.

London Living Wage: the basic current hourly wage of £13.85 (before tax and other deductions and any increases for overtime) stipulated to be the London Living Wage by the Calculating Body as such wage as may be amended from time to time.

Mandatory Policies: the Authority's mandatory policies and codes the details of which are set out in the Contract Particulars as amended by notification to the Supplier from time to time.

Prevent Duty: the duty under section 26 of the Counter Terrorism and Security Act 2015 (as amended from time to time) to have due regard to the need to prevent individuals from being drawn into terrorism.

Prohibited Act: means

a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity;
b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
c) an offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017);
d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance

issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier as described in the Contract Particulars, and Schedule 2.

Start Date: the date set out in the Contract Particulars.

Supplier IPRs: all Intellectual Property Rights either subsisting in the Deliverables (excluding any Authority Materials incorporated in them) or otherwise necessary or desirable to enable a Authority to receive and use the Services.

Supplier Personnel: all directors, officers, employees, other workers, agents, consultants and contractors of the Supplier and of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Contract.

Sub-Contract: any contract or agreement, or proposed contract or agreement between the Supplier (or a Sub-Contractor) and any third party whereby that third party agrees to provide to the Supplier (or a Sub-Contractor) the Services or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.

Sub-Contractor: the third parties that enter into a Sub-Contract with the Supplier.

UK Living Wage: the basic current hourly wage of £12.60 (before tax and other deductions and any increases for overtime) stipulated to be the UK Living Wage by the Calculating Body as such wage as may be amended from time to time.

1.2 **Interpretation**:

(a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time; and shall include all subordinate legislation made from time to time.

(b) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to **writing** or **written** includes fax but not email.

2. Commencement and term

Duration: As set out in the Contract Particulars

3. Supply of Services

3.1 The Supplier shall supply the Services to the Authority from the Start Date in accordance with the Contract.

3.2 In performing the Services the Supplier shall meet, and time is of the essence as to, any performance dates specified in the Contract Particulars.

3.3 In supplying the Services, the Supplier shall:

(a) perform the Services with the highest level of care, skill and diligence in accordance with Best Industry Practice;

(b) co-operate with the Authority in all matters relating to the Services, and comply with all instructions of the Authority;

(c) only use Supplier Personnel who are suitably skilled and experienced to perform the tasks assigned to them,

and in sufficient number to ensure that the Supplier's obligations are fulfilled;

(d) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Contract;

(e) ensure that the Services and Deliverables shall conform in all respects with the Contract Particulars and that the Deliverables shall be fit for any purpose that the Authority expressly or impliedly makes known to the Supplier;

(f) provide all equipment, tools, vehicles and other items required to provide the Services;

(g) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;

(h) comply (and procure that the Supplier Personnel comply) with:

(i) all applicable laws, statutes, regulations and codes from time to time in force; and

(ii) the Mandatory Policies, and

the Supplier shall maintain such records as are necessary pursuant to applicable laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Authority (or its authorised representative);

(i) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Authority premises from time to time and are notified to the Supplier;

(j) hold all Authority Materials in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose of or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation;

(k) not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;

(l) notify the Authority in writing immediately upon the occurrence of a change of control of the Supplier;

(m) not do or omit to do anything which will cause reputational or political damage to the Authority;

(n) if specified in the Special Terms in Part 1, that this sub-clause (n) shall apply, comply with all applicable environmental laws and, where applicable, have in place a suitable environmental management system for managing environmental risks.

4. Authority's obligations

4.1 The Authority shall:

(a) provide such access to the Authority Premises and data, and such office, accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Authority

in advance, for the purposes of providing the Services; and

(b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

4.2 A failure by the Authority to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the Authority of the Authority's failure and its effect or anticipated effect on the Services.

5. Use of Authority Premises

5.1 If specified in the Special Terms in Part 1, that this clause 5 shall apply, with effect from the Start Date, the Authority shall grant the Supplier a non-exclusive and revocable licence to enter the Authority Premises for the sole purpose of providing the Services to the Authority. The licence shall be subject to the conditions of this Contract, is personal to the Supplier and is not deemed to create a relationship of landlord and tenant between the parties.

5.2 The licence granted pursuant to clause 5.1 shall terminate immediately on the termination of this Contract.

5.3 The Supplier shall promptly vacate the Authority Premises upon the earlier of the completion of any Services or expiry or termination of the Contract and shall make good any damage caused by its occupation, use or vacation of the premises to the satisfaction of the Authority.

5.4 The Authority may refuse admission to or remove from the Authority Premises any person who the Authority deems unacceptable for whatsoever reason other than solely to frustrate the Contract. The Authority does not give any warranty or assurances as to the condition, safety or suitability of the Authority Premises for the provision of the Services and, to the extent permitted by law, access to and use of the Authority Premises is at the Supplier's risk and the Supplier shall be responsible for the health and safety of Supplier Personnel at the Authority Premises.

5.5 The Supplier shall ensure that when visiting or using the Authority Premises, the Supplier Personnel shall:

(a) keep the Authority Premises clean, tidy and properly secure;

(b) co-operate as far as may be reasonably necessary with the Authority's employees;

(c) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Authority;

(d) comply with all the rules and regulations that the Authority notifies to the Supplier from time to time relating to the use and security of the Authority Premises;

(e) use such Authority Premises only in connection with the proper performance of the Services; and

(f) ensure that any identity pass carried by, and any key issued to, any of the Supplier Personnel are returned to the Supplier forthwith upon such Supplier Personnel ceasing to be employed or engaged by the Supplier in connection with the provision of the Services.

5.6 The Supplier shall ensure that the Supplier Personnel shall not:

(a) obstruct access to the Authority Premises, or any part of them; or

(b) do or permit to be done on the Authority Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Authority or the occupiers of or visitors to the Authority Premises.

6. Supplier Materials and Equipment

6.1 The Supplier shall be responsible for the care, control, security and maintenance of any materials or equipment used to perform the Contract. The Authority may provide a storage area for any such equipment/materials but is under no obligation to do so. the Supplier shall ensure that such storage area is fit for the intended purpose and is used in a suitable, careful and secure manner at the Supplier's own risk and expense and the Authority accepts no liability for damage to equipment or material stored on its premises.

7. Data protection and security

7.1 Any references to "**personal data**", "**data subject**", "**processor**" and "**controller**" shall have the meanings given to such terms in Data Protection Legislation.

7.2 If any personal data is disclosed by the parties under this Contract, both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

7.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the controller and the Supplier is the processor.

7.4 Without prejudice to the generality of clause 7.2, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this Contract.

7.5 Without prejudice to the generality of clause 7.2, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Contract:

(a) process that personal data only on the documented written instructions of the Authority, unless the Supplier is required by law to otherwise process that personal data. Where the Supplier is relying on law as the basis for processing personal data, the Supplier shall promptly notify the Authority of this before performing the processing required by law unless the law prohibits the Supplier from so notifying the Authority;

(b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and

encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

(d) not transfer any personal data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the personal data;

(e) notify the Authority immediately if it receives:

(i) a request from a data subject to have access to that person's personal data;

(ii) a request to rectify, block or erase any personal data;

(iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

(iv) assist the Authority in responding to any request from a data subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Authority without undue delay on becoming aware of a personal data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of personal data in breach of this Contract;

(g) at the written direction of the Authority, delete or return personal data and copies thereof to the Authority on termination or expiry of

the Contract unless required by law to store the personal data;

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 23 and immediately inform the Authority if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

7.6 Where the Supplier wishes to appoint a sub-processor to process any personal data relating to this Contract, such sub-processor shall constitute a Sub-Contractor and the Supplier shall:

(a) notify the Authority in writing of the intended processing by the Sub-Contractor;

(b) obtain prior written consent from the Authority;

(c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 7.

7.7 The Supplier will keep Authority data secure from unauthorised access by using commercially reasonable endeavours and industry standard organisational, physical and technical safeguards and will comply with any Authority data security policies provided.

8. Title to Deliverables and Authority Materials

8.1 Title to any Deliverables that are goods or in any physical media on which Deliverables are stored and title to any goods or materials transferred to the Authority as part of the Services shall pass to the Authority on the earlier of their delivery to the Authority or payment of the Fees for them. The Supplier transfers the Deliverables and all such goods and materials to the Authority free from all liens, charges and encumbrances.

8.2 All Authority Materials are the exclusive property of the Authority.

9. Intellectual property

9.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Authority and its licensors shall retain ownership of all Intellectual Property Rights in the Authority Materials.

9.2 The Supplier grants the Authority, or shall procure the direct grant to the Authority of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services during the term of the Contract and for the duration of any exit assistance services provided under clause 14.

9.3 The Authority may sub-license the rights granted in clause 9.2 to any the Authority's Group and it.

9.4 The Authority grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Authority Materials for the term of the Contract for the purpose of providing the Services to the Authority in accordance with the Contract.

9.5 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any claim brought against the

Authority for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Authority and its licensees and sub-licensees. This clause 9.5 shall survive termination of the Contract.

10. Fees and payment

10.1 In consideration for the provision of the Services, the Authority shall pay the Supplier the Fees in accordance with the Contract Particulars.

10.2 All amounts payable by the Authority exclude amounts in respect of value added tax (**VAT**) which the Authority shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

10.3 The Supplier shall submit invoices for the Fees plus VAT if applicable to the Authority in accordance with the Contract Particulars. Each invoice shall include all supporting information reasonably required by the Authority and the Authority will consider and verify each invoice in a timely fashion.

10.4 The Authority shall pay the Supplier by automated payment mechanism (BACS) or by any other payment mechanism agreed in advance in writing between the parties, any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed and includes the relevant purchase order number. The Authority shall accept and process an electronic invoice submitted by the Supplier, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.

10.5 Where the Supplier submits an invoice to the Authority in accordance with clause 10.3, the Authority will consider and verify that invoice in a timely fashion. Where the Authority fails to do so, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 10.4 after a reasonable time has passed.

10.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

(a) provisions having the same effect as clause 10.3 and clause 10.5 of this Contract; and

(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 10.3. clause 10.5 and clause 10.6 of this Contract.

10.7 The Authority reserves the right to withhold payment to the extent that the Services have not been provided in accordance with the Contract or if the Authority receives an invoice which it considers is not valid and/or properly due and the Authority shall notify the Supplier accordingly giving reasons for such withholding. The Authority shall only be entitled to withhold an amount equal to the sum which is in dispute.

10.8 The Authority shall pay interest on any sum due under this Contract, calculated at a rate of 2% a year above the Bank of England's base rate from

time to time but at 2% a year for any period when that base rate is below 0% from when the overdue sum became due, until it is paid.

10.9 The Authority shall not be liable to pay for the Services until the Contract has been executed by both parties.

11. Liability and indemnity

11.1 The Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

(a) the Supplier's breach or negligent performance or non-performance of this Contract;

(b) any claim made against the Authority arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier or Supplier Personnel.

11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

11.4 Nothing in the Contract shall limit the Supplier's liability under:

(a) clause 9.5 (IPR indemnity); and

(b) breach of clause 20 (Prevention of fraud and bribery).

11.5 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.6 Subject to clauses 11.4 and 11.5:

(a) the Supplier's total aggregate liability to the Authority:

(i) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 7 (Data protection) shall not exceed £1,000,000; and

(ii) for all other claims, losses or damages shall not exceed £500,000.

(b) the Authority's total aggregate liability in respect of all claims, losses or damages:

(i) for loss arising from the Authority's failure to comply with its data processing obligations under clause 7 (Data protection) shall not exceed in one year double the value of the annual Fees; and

(ii) for all other claims, losses or damages shall not exceed 100% of the total Fees paid by the Authority.

11.7 Subject to clauses 11.4 and 11.5, clause 11.7(b) identifies the kinds of loss that are not excluded.

Subject to that, clause 11.7(a) excludes specified types of loss.

(a) Types of loss wholly excluded:
  (i) loss of profits;
  (ii) loss of sales or business;
  (iii) loss of agreements or contracts;
  (iv) loss of anticipated savings;
  (v) loss of use or corruption of software, data or information;
  (vi) loss of or damage to goodwill; and
  (vii) indirect or consequential loss.

(b) Types of loss and specific losses not excluded:
  (i) wasted expenditure;
  (ii) additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
  (iii) losses incurred by the Authority arising out of or in connection with any third party claim against the Authority which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by Sub-Contractors, the Supplier's Personnel, regulators and customers of the Authority.

12. Insurance

12.1 During the term of the Contract, the Supplier shall maintain in force insurance policies with reputable insurance companies, against all risks associated with this Contract and that would normally be insured against by a prudent businessperson, experienced in providing goods and/or services of a similar price, type and nature as anticipated under this Contract (which shall include, but not limited to:
  (a) public liability insurance of a limit of no less than £5,000,000],
  (b) professional indemnity insurance of a limit of no less than £2,000,000, and
  (c) employers liability insurance of a limit of no less than £5,000,000,

and produce to the Authority on demand full particulars of that insurance and the receipt for the then current premium.

12.2 Where the Supplier engages a Sub-Contractor, the Supplier shall either ensure that the insurance requirements as specified in clause 12.1 extend to cover the legal liabilities of the Sub-Contractor or that the Sub-Contractor holds its own insurance which complies with clause 12.1.

13. Termination

13.1 The Authority may terminate the Contract for convenience at any time by giving the Supplier at least 30 days written notice.

13.2 Without affecting any other right or remedy available to it, the Authority may terminate the

Contract with immediate effect by giving written notice to the Supplier if:

(a) there is a change of control of the Supplier; or

(b) the Supplier's financial position deteriorates to such an extent that in the Authority's reasonable opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(c) the Supplier commits a breach of clause 3.3(h).

13.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

13.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13.5 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14. Exit arrangements

14.1 On termination of the Contract for whatever reason:

(a) the Supplier shall immediately deliver to the Authority all Deliverables whether or not they are complete and return all Authority Materials. If the Supplier fails to do so, then the Authority may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and

(b) If specified in the Special Terms in Part 1, that this clause 14.1(b) shall apply, the Supplier shall, if so requested by the Authority, provide all assistance reasonably required by the Authority to facilitate the smooth transition of the

Services to the Authority or any replacement supplier appointed by it (including the Supplier's full co-operation in respect to the Transfer of Undertakings Regulations 2006 (as amended)).

15. Freedom of Information Act and Environmental Information Regulations

15.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and EIR and shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Business Days of receipt;

(c) provide the Authority with a copy of all information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and

(d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

15.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose information (including confidential information) without consulting or obtaining consent from The Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Contract), the Authority shall be responsible for determining in its absolute discretion whether any confidential information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

16. Safeguarding Children and Vulnerable Adults

16.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

16.2 The Supplier shall:

(a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (**DBS**); and

(b) monitor the level and validity of the checks under this clause 16.2 for each member of staff.

(c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

16.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

16.4 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met.

16.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children or vulnerable adults as the case may be

17. Publicity

17.1 The Supplier shall not, without the prior written consent of the Authority, make any references to the Authority or its trade marks in any advertising, promotional or published material nor make any reference to the Authority or its trade marks in a way that may imply an endorsement of the Supplier or its Services or by making any reference to the Authority or its trade marks.

18. Health and Safety

18.1 The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this Contract (including those in relation to the Services) in accordance with:

(a) all applicable laws, statutes and regulations and codes from time to time in force regarding health and safety;

(b) all health and safety policies whilst at the Authority Premises; and

(c) any health and safety measures implemented by the Authority in relation to the Authority Premises.

18.2 Each party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

19. Recovery of Sums Due

19.1 The Authority may set off any amount owed by the Supplier to the Authority against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.

19.2 If the Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to clause 10.1 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Fees.

19.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Authority has a valid court order requiring an amount

equal to such deduction to be paid by the Authority to the Supplier.

20. Prevention of Fraud and Bribery

20.1 The Supplier represents and warrants that neither it, nor any Supplier Personnel:

(a) has committed a Prohibited Act;

(b) has been or is subject of any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

(c) has been or is listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts on the grounds of a Prohibited Act.

20.2 The Supplier shall promptly notify the Authority if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 20.1 at the relevant time.

20.3 The Supplier shall (and shall procure that its Supplier Personnel shall) during the term of this Contract:

(a) not commit a Prohibited Act;

(b) not do, suffer or omit to do anything that would cause the Authority or any of the Authority 's employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

(c) notify the Authority (in writing) if it becomes aware of any breach of clause 20.3(a) or clause 20.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Contract.

20.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Contract and the steps taken to comply with its obligations under clause 20.3.

20.5 The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 23.

20.6 If the Supplier is in breach of its obligations under this clause the Authority may by notice:

(a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the breach; or

(b) immediately terminate this Contract.

20.7 Any notice served by the Authority under clause 20.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

21. Anti-Slavery and Human Trafficking

21.1 In performing its obligations under the Contract, the Supplier shall:

(a) comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in

force (**Anti-Slavery Laws**) including the Modern Slavery Act 2015;

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;

(c) include in contracts with its sub-contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 21; and

(d) maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with this Contract; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 21.

21.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

21.3 Breach of this clause 21 shall be deemed a material breach under clause 13.3(a).

22. Human Rights

22.1 The Authority shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract.

22.2 The Supplier shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

23. Audit

23.1 The Supplier shall allow the Authority and/or its agents to access, inspect and audit the Supplier's records, accounts and other relevant information and premises (including allowing copying of documents) to the extent this is reasonably required for the purpose of verifying the Supplier's compliance with its obligations under this Contract. Where such access, inspection or audit is required by a regulatory body, the Supplier shall allow such inspection or audit at any time and there shall not be a limit to the number of such inspections or audits that can be undertaken.

23.2 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Supplier to perform its obligations under this Contract in any material manner in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

23.3 When conducting audits, the Authority shall comply with the Supplier's reasonable directions in order to minimise disruption to the Supplier's business and to safeguard the confidentiality of the Supplier's other confidential information.

24. Living Wage

24.1 Without prejudice to any other provision in this Contract, the Supplier shall (and will ensure that their Sub-Contractors shall):

(a) ensure that no employee engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than;

(i) the London Living Wage where an employee is based in Greater London; or,

(ii) the UK Living Wage where an employee is based outside Greater London;

(b) ensure that no employee engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment; and

(c) provide to the Authority such information concerning the Supplier's compliance with its obligations in this clause 24.1 including but not limited to the number of employees of its or any of its Sub-Contractors paid the relevant Living Wage that the Authority or its nominees may reasonably require from time to time.

24.2 For the purposes of this clause 24 an employee shall be based in Greater London where the premises at which or from which they are engaged in the provision of the Services is situated within a London Borough.

25. Prevent Duty

25.1 The Supplier shall ensure that it, the Supplier Personnel and Sub-Contractors comply with this clause 25 and assist the Authority to comply with the Prevent Duty applicable to the Authority and adhere to all guidance issued from time to time by the Secretary of State in relation to the Prevent Duty.

25.2 The Supplier shall ensure that the Supplier Personnel attend appropriate training in relation to the Prevent Duty within their own organisation and provided by the Authority.

25.3 The Supplier shall ensure that concerns are escalated and managed within the organisation, and, where appropriate, referred to the Authority.

25.4 Where so requested by the Authority, the Supplier shall within ten (10) Business Days provide to the Authority written evidence of its compliance with the Prevent Duty.

25.5 Failure to comply with this clause shall entitle the Authority to terminate in accordance with clause 13.3.

26. Business Continuity

26.1 The Supplier shall maintain, update and test its Business Continuity Plan and ensure it is able to implement the provisions at any time.

26.2 The Supplier shall provide a copy of the latest Business Continuity Plan to the Authority on request.

26.3 The Supplier shall continually review and update the Business Continuity Plan to ensure its procedures are accurate, effective and appropriate for minimising any disruption to the supply of the Services.

26.4 The Authority may at any time request, in writing, that the Supplier updates the Business Continuity Plan as may be necessary to address the Authority's reasonable requirements.

26.5 The Supplier shall test the Business Continuity Plan on a regular basis, and in any event, at least once every 12 months. Following each test, the Supplier shall send the Authority a written report summarising the results of the test and promptly implement any actions or remedial measures

necessary to address any failures or shortfalls identified by the test.

27. General

27.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 10 Business Days' written notice to the affected party.

27.2 **Sub-Contracting.** The Supplier may not Sub-Contract any or all of its rights or obligations under the Contract without the prior written consent of the Authority. If the Authority consents to any Sub-contracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.

27.3 **Confidentiality.**

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the Group to which the other party belongs, except as permitted by clause 27.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, contractors, Sub-Contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, Sub-Contractors or advisers to whom it discloses the other party's confidential information comply with this clause 27.3; and

(ii) as may be required by law (including under the FOIA or EIRs), a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

(c) Neither party shall use the other party's confidential information for any purpose other than to exercise or perform its rights and obligations under the Contract.

27.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. To the extent that any obligations under the Contract have already been performed prior to its execution, such obligations shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of this Contract.

27.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

27.6 **Waiver.**

(a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

(b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

27.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 27.7 shall not affect the validity and enforceability of the rest of the Contract.

27.8 **Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

(i) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the address specified in the Contract Particulars.

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or

(iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 27.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause 27.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27.9 **Third party rights.**

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of

Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

27.10 **No Fetter of Discretion.** Nothing (contained or implied) in this Contract shall fetter or restrict the Authority's statutory rights, powers, discretions and responsibilities.

27.11 **No Partnership or agency**. Nothing in the Contract shall be deemed to constitute either party as the agent of the other or create a partnership or joint venture between the parties and the Supplier shall have no power to bind the Authority or to contract in the name of or create a liability against the Authority in any manner whatsoever.

27.12 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales.

27.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

- **Schedule 1**

Supplier's Fees

Schedule 2

Services Specification

Schedule 3

2

81088037.3

Supplier Response


City of
Westminster