

**DATED**

**26<sup>th</sup> January 2024**



**Framework Agreement for the provision of PAVA spray**

between

**BlueLight Commercial Limited**

and

**Civil Defence Supply Limited**

**REF: BLC0090**

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## Framework Agreement

This Agreement made the 26<sup>th</sup> day of January 2024

### Between:

- (1) **BlueLight Commercial Limited** (a company registered in England and Wales under company registration number 12517649) whose registered office is at Lower Ground, 5-8 The Sanctuary, Westminster, London, SW1P 3JS (the **Framework Authority**); and
- (2) Civil Defence Supply Limited (a company registered in England and Wales under company registration number 034542902) whose registered office is at Units B5-B6 Paving Way, Lincoln, LN6 3QW (the **Supplier**)

each a “**Party**” and together the “**Parties**”.

### Whereas:

- (A) The Framework Authority issued a contract notice in Find a Tender e-notification and Contracts Finder (Reference BLC0090) to prospective suppliers (including the Supplier) in relation to the procurement of a multi-supplier framework for the provision of the supply of Goods to the Contracting Authorities identified in the Contract Notice.
- (B) In response to the Invitation to Tender, the Supplier submitted a tender to the Framework Authority on 08/12/2023 through which it represented to the Framework Authority that it is capable of delivering the Goods in accordance with the Framework Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Framework Authority in the Tender in relation to its competence, professionalism and ability to provide the Goods in accordance with Good Industry Practice and in an efficient and cost effective manner.
- (C) On the basis of the Supplier's Tender, the Framework Authority selected the Supplier to enter into a framework agreement to provide goods to those Contracting Authorities who Order Goods from the Supplier in accordance with the terms and conditions set out in this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for Ordering Goods, the main terms and conditions for the provision of the Goods and the obligations of the Supplier under this Framework Agreement.
- (E) It is the Parties' intention that the Contracting Authorities have no obligation to request Goods from the Supplier under this Framework Agreement or at all.

Now it is hereby agreed as follows:

### 1 Definitions and interpretation

- 1.1 In this Framework Agreement, unless the context requires otherwise, the following terms shall have the following meanings:-

<b>ADR Notice</b>	has the meaning given in clause 27.1.1;
<b>Affiliate</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>Approval</b>	means the prior written approval of the Framework Authority;
<b>Audit</b>	means an audit carried out pursuant to clause 16 (Records and Audit Access);

<b>Audit Report</b>	means a report summarising the testing completed and the actions arising following an Audit;
<b>Auditor</b>	means the Framework Authority, and/or Contracting Authority who is a party to a Call Off Contract, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
<b>Authorised Person</b>	means the persons respectively designated as contract managers by the Framework Authority and the Supplier, the first such persons being set out in clause 42.3 of this Framework Agreement;
<b>Business Day</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Call-Off Contract</b>	means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Goods made between a Contracting Authority and the Supplier comprising the Call-Off Order Form, its appendices, and the Call-off Terms and Conditions;
<b>Call-Off Order</b>	means an order for Goods sent by any Contracting Authority to the Supplier in accordance with the award procedure in clause 5.1, and "Ordering" shall be construed accordingly;
<b>Call-Off Order Form</b>	means the document setting out details of an Order in the form set out in Schedule 2 of this Framework Agreement;
<b>Call-Off Contract Year</b>	means a consecutive period of twelve (12) months commencing on the commencement date of the Call-Off Contract or each anniversary thereof;
<b>Call-off Terms and Conditions</b>	means the terms and conditions in Schedule 3 of this Framework Agreement;
<b>Central Government Body</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>Change of Control</b>	means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.
<b>Charges</b>	means the charges raised under or in connection with a Call Off Contract from time to time;
<b>Chief Constable</b>	means the Chief Constable or Commissioner of the same relevant policing area as the Contracting Authority
<b>Combined Authority</b>	means Combined Authority referred to in the Find a Tender Notice

**Commercially Sensitive Information**

means the Supplier's Confidential Information comprised of commercially sensitive information:

- (a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Framework Authority that, if disclosed by the Framework Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and
- (b) that constitutes a trade secret;

**Complaint**

means any formal complaint raised by a Contracting Authority in relation to the performance under the Framework Agreement or any Call Off Contract in accordance with clause 13.

**Confidential Information**

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Framework Agreement that relates to:
  - (i) the Disclosing Party Group; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; or
  - (iii) all police operational matters, processes or initiatives which are of a confidential nature.
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Framework Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Framework Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Framework Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
  - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
  - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
  - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a

	breach of this Framework Agreement or breach of a duty of confidentiality;
	(iv) was independently developed without access to the Confidential Information; or
	(v) relates to the Supplier's:
	(1) performance under this Framework Agreement; or
	(2) failure to pay any Sub-contractor as required pursuant to the Call-off Contract;
<b>Contract Notice</b>	means the contract notice Find a Tender e-notification and Contracts Finder BLC0090
<b>Contracting Authorities</b>	means all Authorities except the Framework Authority as identified in the Contract Notice;
<b>Control</b>	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " <b>Controlled</b> " shall be construed accordingly;
<b>Controller</b>	has the meaning set out in the UK GDPR;
<b>Data Protection Legislation</b>	(i) all applicable Laws in the UK relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;
<b>Default</b>	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors in connection with or in relation to the subject-matter of this Framework Agreement and or a Call-Off Contract and in respect of which such Party is liable to the other;
<b>Disclosing Party</b>	a Party which discloses or makes available directly or indirectly its Confidential Information;
<b>Disclosing Party Group</b>	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Framework Authority, the Framework Authority and any Contracting Authority with which the Framework Authority or the Supplier interacts in connection with this Framework Agreement;
<b>Dispute</b>	has the meaning given in clause 27.1;
<b>Dispute Notice</b>	has the meaning given in clause 27.1.1;
<b>DOTAS</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits



	as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>Due Diligence Information</b>	means any information supplied to the Supplier by or on behalf of the Framework Authority prior to the Framework Commencement Date;
<b>EIR</b>	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issues by the Information Commissioner in relation to such Regulations;
<b>Equivalent Goods</b>	means goods which the Supplier can supply which are the same or similar to the Goods;
<b>Expiry Date</b>	means the fourth (4 <sup>th</sup> ) anniversary of the Framework Commencement Date, subject to any earlier termination in accordance with the terms of this Framework Agreement];
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Act;
<b>Framework Agreement</b>	means this agreement and all Schedules to this agreement;
<b>Framework Agreement Year</b>	each complete period of twelve (12) months commencing on the Framework Commencement Date (or any anniversary of the Framework Commencement Date) during the Term;
<b>Framework Commencement Date</b>	Means 26/01/2024
<b>Framework Providers</b>	means the Supplier and other suppliers appointed as framework providers under this Framework Agreement;
<b>General Anti-Abuse Rule</b>	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>Good Industry Practice</b>	means standards, practices, methods and procedures conforming to all laws, regulatory policies, mandatory guidance or codes of practice or requirements with which the Supplier is bound to comply, and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>Goods</b>	means the Goods described in Schedule 1 to this Framework Agreement;
<b>Goods Prices</b>	means the prices set out in the Pricing Schedule subject to any adjustment agreed by the Framework Authority in accordance with clause 8 of this Framework Agreement;



<b>Government</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>Guidance</b>	means any guidance issued or updated by the UK government from time to time in relation to the Regulations.
<b>Halifax Abuse Principle</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>Information</b>	has the meaning given under section 84 of the FOIA.;
<b>Invitation to Tender</b>	has the meaning given to it in the recitals to this Framework Agreement;
<b>Key Sub-contract</b>	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 the sub-contractor) all or any part of the Goods or goods which are material for the provision of the Goods or any part thereof;
<b>Key Sub-contractor</b>	any third party who is identified as being key to the performance and with whom: <ul style="list-style-type: none"> <li>(a) the Supplier enters into a sub-contract; or</li> <li>(b) a third party under (a) above enters into a sub- contract, or the servants or agents of that third party;</li> </ul>
<b>Laws</b>	means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body with which the contractor is bound to comply;
<b>Management Information</b>	means the management information specified in paragraph 3 of Schedule 6 of this Framework Agreement;
<b>Mini Competition</b>	means any mini competition conducted by a Contracting Authority for its Goods requirements in accordance with the awards procedure set out in clause 5 of this Framework Agreement;
<b>Mini Tender</b>	means the Supplier's tender response submitted to a Contracting Authority as part of any Mini-Competition;
<b>Mini-Tender criteria</b>	means the criteria applied by any Contracting Authorities to the Framework Suppliers' compliant Mini-Tenders as set out in clause 5.8 of this Framework Agreement;
<b>MOPAC</b>	means the mayor's office for policing and crime;
<b>Occasion of Tax Non-Compliance</b>	means where:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;
  - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;

**Parent Company**

means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. Holding Company shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;

**Police Commissioner**

means the Police and Crime Commissioner(s) and/or Police, Fire and Crime Commissioner referred to in the Find a Tender Notice;

**Personal Data**

has the meaning set out in the UK GDPR;

**Process**

has the meaning set out in the UK GDPR;

**Pricing Schedule**

means the prices set out in Schedule 5

**Prohibited Act**

the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Framework Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (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 Framework Agreement;
- (c) committing any offence:

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	<ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Framework Authority; or</li> </ul>
	(d) defrauding, attempting to defraud or conspiring to defraud the Framework Authority;
<b>Purchase Order</b>	means an order for the provision of the Goods placed by the Contracting Authority with the Supplier in accordance with this Framework Agreement and the Call-Off Contract.
<b>Recipient</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>Rectification Plan Process</b>	the process set out in the Call-Off Contract;
<b>Regulations</b>	the Public Contracts Regulations 2015 (SI 2015/102) as amended or updated from time to time;
<b>Regulatory Bodies</b>	means those Government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Framework Authority;
<b>Relevant Goods</b>	means all or part of the Goods which the Contracting Authority wishes to procure from the Supplier from time to time in accordance with the awards procedure in clause 5 of this Agreement;
<b>Relevant Tax Authority</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>Requests for Information</b>	means a request for information or an apparent request under the FOIA or the EIRs;
<b>Schedules</b>	the schedules to this Framework Agreement;
<b>Specification</b>	means the specification as set out in Schedule 1 of this Framework Agreement;
<b>Staff</b>	means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement or Call-Off Contracts.
<b>Standards</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of</li> </ul>

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	industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
	(b) any certifications and standards detailed in the Specification and/or relevant Call-Off Contract;
	(c) any relevant Government codes of practice and guidance applicable from time to time as the Supplier would reasonably and ordinarily be expected to comply with;
<b>Subcontract</b>	any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Goods from that third party;
<b>Subcontractor</b>	the contractors or goods providers that enter into a Subcontract with the Supplier;
<b>Tender</b>	means the Supplier's tender response and clarification responses (including where applicable the SQ response) as set out in Schedule 4 of this Framework Agreement which details the manner in which the Goods will be supplied and delivered;
<b>Term</b>	the period commencing on the Framework Commencement Date and ending on the Expiry Date or on the earlier termination of this Framework Agreement;
<b>UK GDPR</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
1.2	The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:
1.2.1	The definitions "Delivery Date", "Delivery Location", "Losses", "Contracting Authorities' System", "Purchase Orders", "Purchase Order Form" and "Purchase Order Number" in the Call-Off Contract shall be incorporated into this Framework Agreement;
1.2.2	References to the "Bidder" or the "Contractor" will be a reference to the "Supplier";
1.2.3	words importing the singular meaning include where the context so admits the plural meaning and vice versa;
1.2.4	words importing the masculine include the feminine and the neuter;
1.2.5	the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
1.2.6	references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
1.2.7	references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
1.2.8	headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

- 1.2.9 the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- 1.2.10 references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- 1.2.11 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- 1.2.12 reference to a clause is a reference to the whole of that clause unless stated otherwise.

## **2 Due Diligence**

### **2.1 The Supplier acknowledges that:**

- 2.1.1 the Framework Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Framework Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Framework Authority before the Framework Commencement Date) of all relevant details and has entered into this Framework Agreement in reliance on its own due diligence alone.
- 2.1.4 it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
  - (a) misrepresentation of the requirements of the Framework Authority in the Invitation to Tender or elsewhere; and/or
  - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information ; and/or
  - (c) failure by the Supplier to undertake its own due diligence.

### **2.2 No representations warranties or conditions are given or assumed by the Framework Authority in respect of any information which is provided to the Supplier by the Framework Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.**

### **3 Term of Framework Agreement**

- 3.1 The Framework Agreement shall take effect on the Framework Commencement Date and shall expire at 23:59 on the Expiry Date unless terminated earlier in accordance with the terms of this Framework Agreement.
- 3.2 The Parties acknowledge and agree that the duration of any Call-Off Contract may continue following the Term and the expiry of the Framework Agreement shall not affect the continuance of any Call-Off Contracts then in force.

### **4 Scope of Framework Agreement**

- 4.1 This Framework Agreement governs the relationship between the Framework Authority and the Supplier in respect of the provision of the Goods by the Supplier to the Contracting Authorities.
- 4.2 The Framework Authority appoints the Supplier as a Framework Provider of the Goods and the Supplier shall be eligible to receive Call-Off Orders for such Goods from the Contracting Authorities during the Term.
- 4.3 The Contracting Authorities may at their absolute discretion order Goods from the Supplier in accordance with the ordering procedure set out in clause 5 during the Term. The Parties acknowledge and agree that the Contracting Authorities have the right to order Goods pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in clause 5. If there is a conflict between clause 5 and the Regulations, the Regulations shall take precedence.
- 4.4 If and to the extent that any Goods under this Framework Agreement are required each and every Contracting Authority shall:
  - 4.4.1 enter into a Call-Off Contract with the Supplier for the Goods materially in accordance with the terms of the Call-Off Contract; and
  - 4.4.2 comply with the ordering procedure in clause 5.
- 4.5 The Supplier acknowledges that where the Contracting Authority is a Police Commissioner, MOPAC, a Combined Authority or any other future bodies that are responsible for the police and crime commissioner functions, then it shall be entering into any Call-Off Contract with the Supplier on behalf of itself and the Chief Constable and the terms laid down by this Framework Agreement shall apply to both legal entities.
- 4.6 The Framework Authority shall not in any circumstances be liable to the Supplier or any Contracting Authority for payment or otherwise in respect of any Goods provided by the Supplier to any Contracting Authority.
- 4.7 In the event that any Contracting Authority makes an approach to the Supplier with a request for the supply of Equivalent Goods, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Contracting Authority, and before any supply of Equivalent Goods is made, inform such Contracting Authority of the existence of this Framework Agreement and the Contracting Authority's ability to award Call-Off Contracts for Goods pursuant to this Framework Agreement.



## **5 Award Procedures**

### **Awards under the Framework Agreement**

- 5.1 If a Contracting Authority decides to source Relevant Goods through the Framework Agreement then it may:
- (a) satisfy its requirements for the Relevant Goods by awarding a Contract in accordance with the terms laid down in clauses 5.2 and 5.3 of this Framework Agreement without re-opening competition; or
  - (b) satisfy its requirements for the Relevant Goods by awarding a Contract following a mini-competition conducted in accordance with clauses 5.4 to 5.9 of this Framework Agreement.

### **Awards without re-opening competition**

- 5.2 Any Contracting Authority ordering Relevant Goods under the Framework Agreement shall in consultation with the Framework Authority:
- 5.2.1 send a Call-Off Order to the Framework Provider which the Contracting Authority ranks the highest based on its own specific requirements;
  - 5.2.2 if the Framework Provider who was ranked highest by the Contracting Authority is not able to supply the Relevant Goods, then send a Call-Off Order to the Framework Provider ranked next highest, and repeat this process until the Call-Off Order is fulfilled or there are no further Framework Providers qualified to fulfil it;
  - 5.2.3 send a Call-Off Order to the Supplier and may (where deemed necessary) consult in writing with the Supplier and invite it within a specified time limit to supplement its Tender in accordance with the requirements of the Regulations.
- 5.3 Notwithstanding the fact that the Contracting Authority has followed the procedure set out above for the Relevant Goods, the Contracting Authority may cancel, postpone, delay or end the procedure without placing an Order for the Relevant Goods or awarding a Call-Off Contract without incurring any liability whatsoever. Nothing in this Framework Agreement shall oblige any Contracting Authority to place any Call-Off Order for Goods.

### **Competed Goods**

- 5.4 Any Contracting Authority ordering Relevant Goods under the Framework Agreement shall in consultation with the Framework Authority:
- 5.4.1 identify the Framework Providers capable of delivering the Call-Off Contract for the Relevant Goods;
  - 5.4.2 supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
  - 5.4.3 invite tenders by conducting a Mini-Competition for its Relevant Goods in accordance with the Regulations and Guidance and in particular:
    - (a) consult in writing the Framework Providers capable of delivering the Call-Off Contract for the Relevant Goods and invite them within a specified time limit to submit a Mini-Tender;
    - (b) set a time limit for the receipt by it of the Mini-Tenders; and



- (c) keep each Mini-Tender confidential until the expiry of the time limit for the receipt by it of the Mini-Tenders;
- 5.4.4 apply the Mini-Tender Criteria to any compliant Mini-Tenders submitted through the Mini-Competition; and
- 5.4.5 subject to clause 5.9 place a Call-Off Order with the successful Framework Provider.
- 5.5 Upon receipt of an invitation to participate in a Mini-Competition, the Supplier shall within three (3) Business Days confirm to the Contracting Authority whether:
  - 5.5.1 it intends to participate in the Mini-Competition and submit a Mini-Tender; or
  - 5.5.2 it does not wish to participate in the Mini-Competition and its reasons for its refusal.
- 5.6 Where the Supplier has indicated to the Contracting Authority that it intends to participate in the Mini-Competition, it shall submit its Mini-Tender in response to the invitation to participate as described in clause 5.4 within the prescribed timescale.
- 5.7 The Supplier agrees that all Mini-Tenders submitted by the Supplier in relation to a Mini-Competition shall remain open for acceptance for 90 days (or such other period specified in the invitation to tender issued by the relevant Contracting Authority in accordance with this clause 5).
- 5.8 The Contracting Authorities shall determine its own Mini-Tender Criteria by setting the percentage weightings based on the criterion set out in the Invitation to Treat in accordance with its own specific requirements for the Relevant Goods.
- 5.9 Notwithstanding the fact that the Contracting Authority has followed the procedure set out above for the Relevant Goods, the Contracting Authority may cancel, postpone, delay or end the procedure without placing an Order for the Relevant Goods or awarding a Call-Off Contract without incurring any liability whatsoever. Nothing in this Framework Agreement shall oblige any Contracting Authority to place any Call-Off Order for Goods.

### **Responsibility for awards**

- 5.10 The Supplier acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Framework Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
  - 5.10.1 the conduct of Contracting Authorities in relation to the Framework Agreement; or
  - 5.10.2 the performance and non-performance of any Call-Off Contracts between the Supplier and Contracting Authorities entered into pursuant to the Framework Agreement.

### **Form of Order**

- 5.11 Subject to the clauses above, each Contracting Authority may place a Call-Off Order with the Supplier by serving a Call-Off Order Form in writing in substantially the form set out in Schedule 2 or such similar or analogous form agreed with the Supplier in writing, any such completed Call-Off Order Form or similar form to be first approved by the Framework Authority. For the avoidance of doubt, any Call-off Order Form placed by a Contracting Authority shall set out that Contracting Authority's specific requirements for the Relevant Goods; that is any requirements in addition to those set out in the Specification.

- 5.12 The prices offered by the Supplier for Call-Off Contracts to Contracting Authorities for the Relevant Goods shall be the Goods Prices and such prices shall not be subject to any increase whatsoever by the Supplier other than in accordance with clause 8 of this Framework Agreement.
- 5.13 The term of any Call-Off Order can be no longer than 7 years and must be completed at least 12 months prior to the end of this Framework Agreement.

### **Accepting and Declining Call-off Orders**

- 5.14 The parties acknowledge and agree that the placement of the Call-Off Order is an “invitation to treat” by the Contracting Authority. Accordingly, following receipt of a Call-Off Order Form, the Supplier shall within ten (10) Business Days notify the relevant Contracting Authority that it is either:
- 5.14.1 able to fulfil the Call-Off Order by signing and returning the Call-Off Order Form and this shall constitute its offer to the Contracting Authority; or
  - 5.14.2 it is unable to fulfil the Call-Off Order by writing to the Contracting Authority and giving detailed reasons why this is the case.
- 5.15 The Supplier shall not propose and the Contracting Authority shall not consider any amendments to the terms of this Framework Agreement, the Call-Off Order Form and Call Off Terms and Conditions including all information previously submitted by the Supplier during the Mini-Competition about the Relevant Goods or the Mini-Tender if applicable. The Contracting Authority shall signal its acceptance of the Supplier’s offer and the formation of the Call-Off Contract by counter-signing the Call-Off Order and notifying the Supplier of such acceptance.
- 5.16 If the time limit referred to above has expired or the Supplier has notified the Contracting Authority that it cannot fulfil the Call-Off Order, then the Call-Off Order shall lapse and the relevant Contracting Authority may then at its discretion source the Relevant Goods from another Framework Provider by following the award procedure above and excluding the Supplier.
- 5.17 Notwithstanding any failure by the Supplier or the Contracting Authority to sign the Call-Off Order Form or any delay in doing so, in the event that the Supplier commences the provision or delivery of the Relevant Goods, the Supplier agrees that the terms of this Framework Agreement, the Call-Off Order Form and the Call-Off Terms and Conditions shall apply to any work so provided or delivered.

## **6 No Exclusivity**

- 6.1 The Supplier acknowledges and agrees that:
- 6.1.1 the supply of the Goods is not granted to the Supplier on an exclusive basis;
  - 6.1.2 a Contracting Authority has the right to refer orders for the supply of the same or similar goods to the Goods to other suppliers or to manufacture the same or similar goods to the Goods itself; and
  - 6.1.3 no minimum purchase, minimum volume or minimum aggregate value of Goods or Orders is guaranteed or committed to by a Contracting Authority. Any forecasts which may be provided by a Contracting Authority are indicative only and are not a contractual commitment.
- 6.2 The Framework Authority shall not be liable for any Losses incurred or suffered by the Supplier or for any lost profit, lost overhead, employee costs or other compensation or payments as a result of:

- 6.2.1 a Contracting Authority ordering Goods from any other supplier; or
- 6.2.2 the volume or value of the Goods ordered under this Framework Agreement being less than the volume or value anticipated by the Supplier (including without limitation where this is less than any forecasted volume or value provided by a Contracting Authority to the Supplier).

## **7 Contract performance and precedence of documents**

- 7.1 The Supplier shall perform all Call-Off Contracts entered into with a Contracting Authority in accordance with:
  - 7.1.1 Good Industry Practice;
  - 7.1.2 all applicable Standards
  - 7.1.3 the requirements of this Framework Agreement; and
  - 7.1.4 the terms and conditions of the respective Call-Off Contracts.
- 7.2 The Supplier shall bring to the attention of the Framework Authority any conflict between any of the requirements of clause 7.1 and shall comply with the Framework Authority's decision on the resolution of any such conflict.
- 7.3 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 7.3.1 the Call-Off Contract;
  - 7.3.2 the Call-Off Order Form (except the Supplier's Tender to the Call-Off Order Form);
  - 7.3.3 the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Call-Off Order Form (except the Supplier's Tender);
  - 7.3.4 any other document referred to in the clauses of the Call-Off Contract;
  - 7.3.5 the Supplier's Tender; and
  - 7.3.6 the Supplier's Mini-Tender.

## **8 Charges for Goods**

- 8.1 The Charges offered by the Supplier for any Call-Off Contracts to the Contracting Authorities shall be equivalent to the Goods Prices and shall include the itemised charges referred to in the Pricing Schedule for delivery and collection and other services in accordance with the requirements specified or referred to in the Call-Off Contract and/or Call-Off Order Form.
- 8.2 Unless otherwise stated in the Call-Off Terms and Conditions, the Supplier acknowledges and agrees that the Charges (and each of them) are not based upon any minimum volume, minimum value or minimum purchasing commitment and as such the Supplier shall not be entitled to vary the Charges (or any of them) as a result of the volume or value of the Goods (or any of them) ordered by the Contracting Authority being less than the volume or value anticipated by the Supplier (including without limitation where this is less than any forecasted volume or value provided by the Contracting Authority to the Supplier).
- 8.3 Subject to clause 8.4 below, the Goods Prices will not be linked to any indices and shall remain constant for the Term of the Framework Agreement.

- 8.4 In exceptional circumstances where there has been a sudden substantial change in market conditions, the Supplier may submit a price increase to the Goods Prices in writing to the Framework Authority on 3 months' notice to the Framework Authority no more than once in any 12 month period with detailed evidence to justify the change for the Framework Authority's approval prior to being submitted to any Contracting Authority.
- 8.5 When agreeing any cost increase in accordance with clause 8.4 above, the Parties shall have regard to the following factors:
- 8.5.1 changes to the Supplier's costs of manufacturing and distributing the Goods; and
  - 8.5.2 the prices at which comparable goods are supplied by other suppliers in the open market.
- 8.6 In addition, the Supplier shall, on request, allow the Framework Authority to inspect and take copies of (or extracts from) all relevant records and materials of the Supplier relating to the supply of the Goods as may be reasonably required in order to verify such matters.
- 8.7 Where an adjustment in the Goods Prices has been agreed by the Framework Authority, the Supplier may also adjust any Charges by the same percentage provided it gives the relevant Contracting Authority 3 months' notice of its intention. under this Framework Agreement by the agreed percentage.
- 8.8 All disputes concerning any adjustment to the Goods Prices shall be resolved in accordance with Clause 27 (Dispute Resolution Procedure).

## **9 Warranties and representations**

- 9.1 The Supplier warrants and represents to the Framework Authority and to each of the Contracting Authorities that:
- 9.1.1 it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
  - 9.1.2 it has full capacity and authority and all necessary licences, permits and necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
  - 9.1.3 this Framework Agreement is executed by a duly authorised signatory for the Supplier;
  - 9.1.4 in entering into this Framework Agreement or any Call-Off Contract it has not committed any Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Framework Authority before the Framework Commencement Date;
  - 9.1.5 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
  - 9.1.6 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any law or obligation

applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;

- 9.1.7 as at the Framework Commencement Date, all information, statements and representations contained in the Supplier's Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Framework Authority before the execution of this Framework Agreement and it will promptly advise the Framework Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading. The Supplier shall not be entitled to recover any additional costs or charges from the Framework Authority arising as a result of, nor be relieved from any of its obligations under this agreement on the ground of, any matters or inaccuracies notified to the Framework Authority by the Supplier in accordance with this clause 9.1.7;
- 9.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Contracting Authorities;
- 9.1.9 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any contract;
- 9.1.10 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 9.1.11 as at the Framework Commencement Date, it has notified the Framework Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 9.1.12 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Framework Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Framework Authority and/or Contracting Authorities;
- 9.1.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 9.1.14 in performing its obligations under this Framework Agreement and any Call-Off Contract, the Supplier shall not (to the extent possible in the circumstances) discriminate between the Contracting Authorities on the basis of their respective sizes;

and the Framework Authority and the Contracting Authorities rely upon such warranties and representations.

- 9.2 Each of the representations and warranties set out in clause 9.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 9.3 If at any time the Supplier becomes aware that a representation or warranty given by it under clause 9.1 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 9.4 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Framework Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.
- 9.5 Each time that a Call-Off Contract is entered into, the warranties and representations in clauses 9.1 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## **10 Supply pre-requisites**

The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

## **11 Purchase Orders of Goods**

- 11.1 Where stated in the Specification, the Contracting Authorities intend to notify the Supplier where it is able to forecast Goods which it intends to Order. Any such forecast is not a contractual commitment to purchase by the Contracting Authorities and the Contracting Authorities shall not be liable for any Losses suffered by the Supplier in connection with any forecast, including where this is relied upon by the Supplier in any way.
- 11.2 The Supplier acknowledges that forecasting will not be possible for all Purchase Orders, for example where Goods are needed for responsive repairs, and as detailed in the Specification and that the Supplier shall be required to maintain appropriate stock levels of Goods to enable Purchase Orders to be met without any forecasting in accordance with the requirements of the Specification
- 11.3 Where a Contracting Authority has completed the award procedure set out in clause 5 of this Framework Agreement and wishes to place a Purchase Order, it shall either send a Purchase Order Form to the Supplier via its system or an alternative method which has been pre-approved in writing by a Contracting Authority.
- 11.4 The Supplier shall supply Goods in accordance with each of the Contracting Authorities' Purchase Orders.
- 11.5 Each Purchase Order Form shall:
- 11.5.1 specify the item number and quantity of Goods ordered;
  - 11.5.2 assign a Contracting Authority's Official Purchase Order Number to the Purchase Order;
  - 11.5.3 state the agreed Charges for the Relevant Goods; and
  - 11.5.4 specify the Delivery Date by or on which the Goods ordered are to be delivered, and the Delivery Location. If no Delivery Date is stated in the Purchase Order



Form, the timescale for delivery shall be in accordance with the requirements of the Specification.

- 11.6 Each Party shall use the relevant Contracting Authority's Official Purchase Order Number in all subsequent correspondence relating to the Purchase Order.
- 11.7 A Contracting Authority may amend or cancel a Purchase Order by written notice to the Supplier. If a Contracting Authority amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Purchase Order up until the date of amendment or cancellation, except that, where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this Agreement, a Contracting Authority shall have no liability to the Supplier in respect of it.
- 11.8 A Contracting Authority may at its discretion request a quotation from the Supplier in relation to any Goods before placing a Purchase Order under this clause. A request for quotation does not constitute a Purchase Order and no Purchase Order is placed by a Contracting Authority in relation to any Goods to which a request for quotation or a quotation relates, until such time as a Purchase Order is placed in accordance with this clause 11.
- 11.9 A Contracting Authority shall submit a request for a quotation in writing and the Supplier shall respond to such request within five Business Days of such request confirming the applicable Charges. A Contracting Authority may then at its complete discretion place a Purchase Order in respect of such Goods or choose not to order the Goods.
- 11.10 Where a Contracting Authority has an agent acting on its behalf in regard to procurement and contract management or has contracted with a third party distributor to act on its behalf to distribute the Relevant Goods to the Chief Constable's employees or police officers in accordance with the relevant police force's internal ordering process, the Supplier shall deal with such agent or deliver the Relevant Goods to such distributor as set out in the Call-Off Order Form or as notified in writing to the Supplier from time to time.

## **12 Reporting and Meetings**

- 12.1 Each Party shall appoint and retain an Authorised Person who shall be the primary point of contact for the other Party in relation to matters arising under this Framework Agreement. Should the Authorised Person be replaced, the Party replacing the Authorised Person shall promptly inform the other Party in writing of the name and contact details for the new Authorised Person. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authorised Person. The Supplier shall submit to the Framework Authority on the first Monday of each month Management Information relating to the Framework Agreement in the form set out in Schedule 6 throughout the Term.
- 12.2 The Authorised Persons or other persons agreed in writing by the Parties shall meet quarterly in accordance with the details set out in Schedule 6 of this Framework Agreement and the Supplier shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule. For the avoidance of doubt, the Management Information shall include any information requested by the Framework Authority in relation to a Call-Off Contract with a Contracting Authority.
- 12.3 The Framework Authority may share the Management Information supplied by the Supplier with any Contracting Authority.
- 12.4 The Framework Authority may make changes to the nature of the Management Information that the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes.



- 12.5 The Framework Authority's Authorised Person shall take minutes of each meeting and shall circulate draft minutes to the Supplier's Authorised Person within a reasonable time following such review meeting. The Supplier's Authorised Person shall inform the Framework Authority's Authorised Person in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Framework Authority's Authorised Person within such five (5) Business Days, the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in clause 27 of this Framework Agreement.
- 12.6 The Parties note and agree that the Framework Authority reserves the right to manage the Supplier's contract performance under any Call-Off Contract, including any reports on service credits if applicable, and the Supplier shall provide such information upon request.

### **13 Complaints handling and resolution**

- 13.1 The Supplier shall notify the Framework Authority of any Complaint made by a Contracting Authority within two Business Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint. The Supplier confirms and agrees that the Contracting Authority's reserve the right to contact the Framework Authority directly in relation to escalation of any issues.
- 13.2 Without prejudice to any rights and remedies that a complainant may have under Legislation, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten Business Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- 29.3 The Supplier notes and agrees that the Framework Authority reserves the right to assess the satisfaction of the Contracting Authorities in relation to the Supplier's performance under a Call-Off Contract.

### **14 Framework Authority's obligations**

- 14.1 The Framework Authority shall be responsible for:
- 14.1.1 overseeing and supporting onboarding and supporting the Contracting Authorities with any required implementation plans in a Call-Off Contract;
  - 14.1.2 provide strategic oversight and governance to any Contracting Authorities who wish to purchase Goods from the Supplier under a Call-Off Contract;
  - 14.1.3 provide strategic relationship management to any Contracting Authorities who enter into a Call-Off Contract with the Supplier;
  - 14.1.4 assist the Contracting Authorities with agreeing any rectification plans with the Supplier, including any tailored continuous improvement plans;
  - 14.1.5 conduct benchmarking and savings reporting in relation to the Framework Agreement and any Call-Off Contract; and
  - 14.1.6 provide authorisation of change management where required.

## **15 Contract Specific Quality Management Systems**

- 15.1 The Supplier will deliver the Goods to the relevant Contracting Authority commensurate to the accredited quality management system (the 'System') set out in the Specification.
- 15.2 The Supplier shall ensure the System will develop and improve over the term of this Framework Agreement.
- 15.3 The Supplier will inform the Framework Authority of any material information that may reduce the level of quality or delivery of the Goods:-
  - 15.3.1 as soon as reasonably practicable; and
  - 15.3.2 within 10 days of the information becoming known to the Supplier.
- 15.4 The Supplier will comply with the performance obligations specified in the Call-Off Order Form in relation to each Call-Off Contract.

## **16 Records and audit access**

- 16.1 The Supplier shall keep and maintain, until the later of:
  - 16.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or
  - 16.1.2 seven (7) years after the date of termination or expiry of the last Call-Off Contract to expire or terminate; or
  - 16.1.3 such other date as may be agreed between the Parties,
 full and accurate records and accounts of the operation of this Framework Agreement, including the Call-Off Contracts entered into with the Contracting Authorities, the Goods provided pursuant to the Call-Off Contracts, and the amounts paid by each Contracting Authority under the Call-Off Contracts and those supporting tests and evidence that underpin the provision of the Audit Report.
- 16.2 The Supplier shall keep the records and accounts referred to in clause 16.1 in accordance with Good Industry Practice and all applicable laws and regulatory requirements.
- 16.3 The Supplier shall afford any Auditor access to the records and accounts referred to in clause 16.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its subcontractors of any of the Supplier's obligations under this Framework Agreement, including for the following purposes to:
  - 16.3.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Call-Off Contract (including proposed or actual variations to them in accordance with this Framework Agreement);
  - 16.3.2 verify the costs of the Supplier (including the costs of all subcontractors and any third party suppliers) in connection with the provision of the Goods;
  - 16.3.3 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
  - 16.3.4 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Framework Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

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- 16.3.5 obtain such information as is necessary to fulfil the Framework Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the comptroller and auditor general;
  - 16.3.6 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
  - 16.3.7 carry out the Framework Authority's internal and statutory audits and to prepare, examine and/or certify the Framework Authority's annual and interim reports and accounts;
  - 16.3.8 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Framework Authority has used its resources;
  - 16.3.9 review any records relating to the Supplier's performance of the Goods and to verify that these reflect the Supplier's own internal reports and records;
  - 16.3.10 review the integrity, confidentiality and security of the Framework Authority's Personal Data; and/or
  - 16.3.11 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
  - 16.4 The Framework Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods pursuant to the Call-Off Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Framework Authority.
  - 16.5 Subject to the Framework Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
    - 16.5.1 all information within the scope of the Audit requested by the Auditor;
    - 16.5.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods; and
    - 16.5.3 access to the Supplier's personnel.
  - 16.6 If an Audit reveals that a Contracting Authority has overpaid any Charges due in respect of any one Call-Off Contract Year then, without prejudice to the Framework Authority's other rights under this Framework Agreement, the Supplier shall reimburse the Framework Authority such overpaid Charges and its reasonable costs incurred in relation to the Audit.
  - 16.7 If an Audit reveals that a material Default has been committed by the Supplier, the Framework Authority shall be entitled to terminate this Framework Agreement.
  - 16.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, save as specified in clause 16.6.

## **17 Promoting Tax Compliance**

- 17.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 17.1.1 notify the Framework Authority in writing of such fact within five (5) Business Days of its occurrence; and
  - 17.1.2 promptly provide to the Framework Authority:
    - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Framework Authority may reasonably require.
- 17.2 In the event that the Supplier fails to comply with this clause 17 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Framework Authority are acceptable, then the Framework Authority reserves the right to terminate this Framework Agreement for material Default.

## **18 Publicity**

- 18.1 Unless otherwise directed by the Framework Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement or use the Framework Authority's intellectual property rights, branding or logo in any way on any websites or marketing documents without the Framework Authority's prior written consent.
- 18.2 The Framework Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Framework Authority, including any examination of this Framework Agreement by the Auditor or otherwise.
- 18.3 The Supplier shall not do anything that may damage the reputation of the Framework Authority or bring the Framework Authority into disrepute.

## **19 Data Protection**

It is not envisaged that any sharing of Personal Data will be required under this Framework Agreement or that either Party shall Process Personal Data on behalf of the other Party under this Framework Agreement. In the event that either shall become necessary, the Supplier shall provide all reasonable assistance to the Framework Authority in the preparation of a Data Protection Impact Assessment prior to commencing any such sharing or Processing and shall enter into an appropriate data sharing or data processing agreement as reasonably required by the Framework Authority.

## **20 Confidentiality**

- 20.1 Subject to clause 20.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 20.2 Clause 20.1 shall not apply to any disclosure of information:
- 20.2.1 required by any applicable law, including any disclosures required under the FOIA or the EIR;
  - 20.2.2 required as a result of the examination and certification of the Framework Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of

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- the economy, efficiency and effectiveness with which the Framework Authority is making use of its resources;
- 20.2.3 required where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
- 20.2.4 to any persons where such information is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
- 20.2.5 the Framework Authority to any Contracting Authorities where such information is reasonably required by a Contracting Authority;
- 20.2.6 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 20.1;
- 20.2.7 by the Framework Authority of any document to which it is a Party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
- 20.2.8 which is already lawfully in the possession of the Recipient, prior to its disclosure by the Disclosing Party, and the Disclosing Party is not under any obligation of confidence in respect of that information;
- 20.2.9 by the Framework Authority to any other department, office or agency of the government, provided that the Framework Authority informs the recipient of any duty of confidence owed in respect of the information;
- 20.2.10 by the Framework Authority relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 20.3 If the Recipient is required by applicable law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by applicable laws notify the Disclosing Party of the full circumstances of the required disclosure including the relevant law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 20.4 Where the Supplier discloses the Confidential Information of the Framework Authority pursuant to clause 20.2 it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.
- 20.5 The Framework Authority may disclose the Confidential Information of the Supplier:
- 20.5.1 to any Central Government Body or Contracting Authority on the basis that the information may only be further disclosed to Central Government Bodies or Contracting Authority;
- 20.5.2 to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- 20.5.3 to the extent that the Framework Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 20.5.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 20.5.1 (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
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20.5.5 on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement;

20.5.6 to the Chief Constable; or

20.5.7 to a proposed transferee, assignee or novatee of, or successor in title to the Framework Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Framework Authority under this clause 20.5.

20.6 The Supplier shall not make use of any Confidential Information issued or provided by or on behalf of the Framework Authority in connection with this Framework Agreement otherwise than for the purposes of this Framework Agreement, except with the prior written consent of the Framework Authority which shall be at the Framework Authority's absolute discretion.

20.7 The Supplier shall delete or return any Confidential Information (and any copies of it) at the written direction of the Framework Authority on expiry or termination of this Framework Agreement unless the Supplier is required by Law to retain it.

20.8 In the event that the Supplier fails to comply with its obligations in this clause 20, the Framework Authority reserves the right to terminate this Framework Agreement for material Default.

## **21 Freedom of Information**

21.1 The Supplier acknowledges that the Framework Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

21.1.1 provide all necessary assistance and cooperation as reasonably requested by the Framework Authority to enable the Framework Authority to comply with its Information disclosure obligations under the FOIA and EIRs;

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

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

21.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Framework Authority.

21.2 The Supplier acknowledges that the Framework Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Framework Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Framework Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.



## **22 Official Secrets Act**

- 22.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
- 22.1.1 the Official Secrets Acts 1911 to 1989; and
  - 22.1.2 section 182 of the Finance Act 1989.
- 22.2 In the event that the Supplier or its Staff fail to comply with this clause 22, the Framework Authority reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Supplier.

## **23 Termination of the Framework Agreement**

- 23.1 This Framework Agreement may be terminated immediately on written notice to the Supplier by the Framework Authority and without compensation to the Supplier:
- 23.1.1 if the Supplier commits a material Default of this Framework Agreement capable of remedy which is not remedied within thirty (30) days after written receipt of notice of the material Default requiring the material Default to be remedied from the Framework Authority to the Supplier;
  - 23.1.2 if the Supplier commits a material Default of this Framework Agreement which is not capable of being remedied;
  - 23.1.3 if an Audit reveals that a material Default has been committed by the Supplier and this Default cannot be remedied in accordance with clause 23.1.1;
  - 23.1.4 if there are persistent minor breaches, and the Supplier has been served with 4 written notices of a minor breach within a 12 month period by the Framework Authority.
  - 23.1.5 in accordance with any of the provisions of this Framework Agreement;
  - 23.1.6 the Supplier commits a material Default under a Call-Off Contract which is either not capable of remedy or which is not remedied in accordance with the Rectification Plan Process and, in both cases:
    - (a) the Default is such that the Framework Authority can reasonably have no further confidence in the Supplier to deliver the Goods to the Contracting Authorities; and
    - (b) the Supplier has, at the time of the material Default referred to in clause 23.1.1, already committed one or more material Defaults under two different Call-Off Contracts which are either not capable of remedy or have not been remedied in accordance with the Rectification Plan Process;
  - 23.1.7 the Framework Authority reasonably believes that the Supplier or any of its directors or officers has been involved in any fraudulent activities or misapplication of funds (whether involving the Goods or not);
  - 23.1.8 the Supplier being a company shall pass a resolution for winding up (other than for the purposes of a bona fide reconstruction or amalgamation) or a court shall make a winding up order or a receiver, administrative receiver, manager or administrator is appointed in respect of all or any part of the Supplier's assets;
  - 23.1.9 the Supplier being a partnership shall be dissolved or, being an individual, shall have a bankruptcy petition presented or shall die;



23.1.10 the Supplier shall cease or threaten to cease to carry on its business or be unable to pay its debts or become insolvent (within the meaning of the Insolvency Act 1986) or make or propose to make an arrangement or composition with its creditors;

23.1.11 the Supplier commits any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 in relation to this Framework Agreement or any contract with the Framework Authority. In this event the Framework Authority shall be entitled to recover from the Supplier any resulting losses; or

23.1.12 the Supplier is found to be producing the Goods in contravention of Legislation or operating any service that is not registered as required by statute, Legislation or Schedule 1 generally.

23.2 The Supplier may not terminate this Framework Agreement without the express permission of the Framework Authority.

23.3 Following service of a notice to terminate this Framework Agreement the Supplier shall comply with all reasonable requirements of the Framework Authority in connection with this Framework Agreement and the Goods. This clause shall survive termination of this Framework Agreement.

23.4 The Framework Authority shall not be liable for any costs or expenses incurred by the Supplier under this clause.

## **24 Suspension of Supplier's Appointment**

Without prejudice to the Framework Authority's rights to terminate the Framework Agreement in clause 23 above, if a right to terminate this Framework Agreement arises in accordance with clause 23, the Framework Authority may suspend the Supplier's right to receive Call-Off Orders from Contracting Authorities by giving notice in writing to the Supplier. If the Framework Authority provides notice to the Supplier in accordance with this clause 24, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Framework Authority in writing from time to time.

## **25 Consequences of Termination and Expiry**

25.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement until the date of termination of the Framework Agreement in accordance with the termination notice, or such other date as required under this clause 25.

25.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Call-Off Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

25.3 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.

25.4 The provisions of clause 7 (Contract performance and precedence of documents), clause 8 (Charges for Goods), clause 16 (Records and Audit access), clause 19 (Data Protection), clause 20 (Confidentiality), clause 27 (Dispute Resolution), and clause 38 (Severance) shall

survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## **26 Conflicts of interest**

- 26.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier's Staff or personnel are placed in a position where (in the reasonable opinion of the Framework Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier's Staff or personnel and the duties owed to the Framework Authority and Contracting Authorities under the provisions of this Framework Agreement or any Call-Off Contract.
- 26.2 The Supplier shall promptly notify and provide full particulars to the Framework Authority or the relevant Contracting Authority if such conflict referred to in clause 26.1 arises or may reasonably be foreseen as arising.
- 26.3 The Framework Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Framework Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Framework Authority under the provisions of this Framework Agreement or any Call-Off Contract. The action of the Framework Authority pursuant to this clause 26 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Framework Authority.

## **27 Dispute Resolution**

- 27.1 If a dispute arises out of or in connection with this Framework Agreement or the performance, validity or enforceability of it ("**Dispute**") then the Parties shall follow the procedure set out in this clause:
  - 27.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Persons for the Framework Authority and Supplier shall attempt in good faith to resolve the Dispute;
  - 27.1.2 if the Authorised Persons for the Framework Authority and Supplier are for any reason unable to resolve the Dispute within 20 Business Days of service of the Dispute Notice, the Dispute shall be referred to the senior representatives of the Framework Authority and Supplier who shall attempt in good faith to resolve it, such senior representatives being those named in clause 42.3 or as notified in writing by either party to the other from time to time; and
  - 27.1.3 if the suitably senior representatives of the Framework Authority and the Supplier are for any reason unable to resolve the Dispute within 20 Business Days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("**ADR Notice**") to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 30 Business Days after the date of the ADR Notice.

## **28 Limitation of liability**

- 28.1 Neither Party excludes or limits liability to the other Party for death or personal injury or any breach of any obligations implied by Section 12 of the Sales of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.
- 28.2 Nothing in this clause 28 shall be taken as limiting the liability of the Supplier in respect of clause 19 (Data Protection) and clause 20 (Confidentiality).
- 28.3 Subject always to clauses 28.1, 28.2 and 28.4, in no event shall either Party be liable to the other for:
- 28.3.1 indirect or consequential loss or damage; and/or
- 28.3.2 loss of profits, business, revenue or goodwill.
- 28.4 Subject always to the provisions of clauses 28.1 and 28.2, the provisions of clause 28.3 shall not be taken as limiting the right of either Party to claim from the other Party for additional operational and administrative costs and expenses.
- 28.5 Subject always to clauses 28.1 and 28.2, the aggregate liability of the Framework Authority or Contracting Authority for each Framework Agreement Year for all Defaults whether arising under contract, tort (including negligence) or otherwise in connection with this Framework Agreement (but excluding any liability governed by any Call-Off Contracts, which shall be subject to the limitation of liability set out in the Call-Off Contracts) shall in no event exceed fifty thousand pounds [ (£50,000)].
- 28.6 Subject always to clauses 28.1 and 28.2, the aggregate liability of the Supplier for each Framework Agreement Year for all Defaults whether arising under contract, tort (including negligence) or otherwise in connection with this Framework Agreement (but excluding any liability governed by any Call-Off Contracts, which shall be subject to the limitation of liability set out in the Call-Off Contracts) shall in no event exceed fifty thousand pounds [ (£50,000)].

## **29 Appointment of Key Sub-contractors and sub-contracting**

- 29.1 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the relevant Contracting Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the relevant Contracting Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- 29.1.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Goods or may be contrary to the interests of any of the Contracting Authorities; and/or
- 29.1.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable goods to its other customers; and/or
- 29.1.3 the proposed Key Sub-contractor employs unfit persons.
- 29.2 Except where the relevant Contracting Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- 29.2.1 provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;

- 29.2.2 a right under the Contracts (Rights of Third Parties Act 1999 for the Contracting Authorities to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Contracting Authority;
- 29.2.3 a provision enabling the relevant Contracting Authorities to enforce the Key Sub-contract as if it were the Supplier;
- 29.2.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the relevant Contracting Authorities or any replacement supplier without restriction (including any need to obtain any consent or approval) or payment by the relevant Contracting Authority;
- 29.2.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
  - (a) data protection requirements set out in the Call Off Contract or any Data Processing Agreement;
  - (b) FOIA requirements set out in clause 21;
  - (c) the obligation not to embarrass the Contracting Authority or otherwise bring the Contracting Authority into disrepute; and
  - (d) the keeping of records in respect of the goods being provided under the Key Sub-contract.

29.3 The Supplier shall not subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Framework Authority.

### **30 Assignment**

- 30.1 Subject to clause 30.2 neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other Party.
- 30.2 The Framework Authority shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this the Framework Agreement to any other Authority or any other body which substantially performs any of the functions that previously had been performed by the Framework Authority.

### **31 Prevention of bribery**

- 31.1 The Supplier:
  - 31.1.1 shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Call-Off Contract made under it commit a Prohibited Act; and
  - 31.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Framework Authority, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Framework Authority before execution of this Framework Agreement.
- 31.2 The Supplier shall:
  - 31.2.1 if requested, provide the Framework Authority with any reasonable assistance, at the Framework Authority's reasonable cost, to enable the Framework Authority to

perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

- 31.2.2 within 20 Business Days of the Commencement Date, and annually thereafter, certify to the Framework Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 31 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Framework Authority may reasonably request.
- 31.3 The Supplier shall ensure that it has a process in place to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 31.4 If any breach of clause 31.1 is suspected or known, the Supplier must notify the Framework Authority immediately.
- 31.5 If the Supplier notifies the Framework Authority that it suspects or knows that there may be a breach of this clause 31, the Supplier must respond promptly to the Framework Authority's enquiries, co-operate with any investigation, and allow the Framework Authority to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Framework Agreement.
- 31.6 The Framework Authority may terminate this Framework Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 31.1. In determining whether to exercise the right of termination under this clause 31, the Framework Authority shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
  - 31.6.1 with the Framework Authority or with the actual knowledge of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or
  - 31.6.2 in circumstances where any one or more of the directors of the Supplier ought reasonably to have had such knowledge.
- 31.7 Any notice of termination under clause 31 must specify:
  - 31.7.1 the nature of the Prohibited Act;
  - 31.7.2 the identity of the party whom the Framework Authority believes has committed the Prohibited Act; and
  - 31.7.3 the date on which this Framework Agreement will terminate.
- 31.8 Despite clause 27, any dispute relating to:
  - 31.8.1 the interpretation of this clause 31; or
  - 31.8.2 the amount or value of any gift, consideration or commission,
 shall be determined by the Framework Authority and its decision shall be final and conclusive.
- 31.9 Any termination under this clause 31 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Framework Authority.

## **32 Interest**

- 32.1 Each Party shall pay interest of any sum due under this Framework Agreement calculated in accordance with the statutory rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 from when the overdue sum became due, until it is paid.

## **33 Variations and Change of Control**

- 33.1 The Goods shall operate as detailed in Schedule 1 and shall only be subject to variation if agreed in writing by the Framework Authority.
- 33.2 No variation of the clauses of this Framework Agreement shall be valid or of any effect unless agreed in writing and signed by a duly authorised signatory of the Parties.
- 33.3 The Supplier shall at its own expense and at all times conform with Legislation or any statutory rules or orders, rules and guidance affecting the whole or part of the Goods or any work to be done in relation thereto. Any such changes shall not constitute a variation for the purposes of this Framework Agreement.
- 33.4 The Supplier shall notify the Framework Authority immediately if the Supplier undergoes a Change of Control. The Framework Authority may terminate the Framework Agreement by giving notice in writing to the Supplier with immediate effect within six (6) months of:
- 33.4.1 being notified that a Change of Control has occurred; or
- 33.4.2 where no notification has been made, the date that the Framework Authority becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

## **34 Non-solicitation**

- 34.1 Subject to clause 34.2, for the duration of the Framework Agreement and any Call-Off Contracts and for a period of twelve (12) months after the termination or expiry of this Framework Agreement or, if later, any Call-Off Contracts, the Supplier shall not employ or offer employment to any staff of the Framework Authority or the staff of any Contracting Authority who has been associated with the procurement and/or provision of the Goods without Approval or the prior written consent of the relevant Contracting Authority which shall not be unreasonably withheld.
- 34.2 Clause 34.1 shall not preclude the Supplier's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Framework Authority who approaches the Supplier on an unsolicited basis; or (iii) solicit for employment or hire any such employee who ceases to be employed by the Framework Authority.

## **35 Not used**

## **36 Rights of Third Parties**

Save as provided in Clauses 4, 5 and 9 of the Framework Agreement and the rights specified in the Framework Agreement for the benefit of Contracting Authorities, a person who is not party to this Framework Agreement ("Third Party") has no right to enforce any term of this Framework Agreement under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties terminate this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement), such termination or variation will not require the consent of any Third Party.



### **37 Further assurances**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Framework Agreement.

### **38 Severance**

38.1 If any provision or part-provision of this Framework Agreement 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 shall not affect the validity and enforceability of the rest of this Framework Agreement.

38.2 If any provision or part-provision of this Framework Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **39 Rights and remedies**

The rights and remedies provided under this Framework Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **40 Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Framework Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **41 Entire Agreement**

41.1 This Framework Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

41.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Framework Agreement.

### **42 Notices**

42.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

42.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by e-mail (confirmed by letter). Such letters or email shall be addressed to the other Party in the manner referred to in clause 42.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given



two Working Days after the day on which the letter was posted, or four hours in the case of e-mail, or sooner where the other Party acknowledges receipt of such letters or e-mail.

42.3 For the purposes of clause 42.2, the address of each Party shall be:

42.3.1 For the Framework Authority:

BlueLight Commercial Limited

Lower Ground, 5-8 The  
Sanctuary, Westminster, London,  
SW1P 3JS

(redacted)

42.3.2 For the Supplier:

Civil Defence  
Supply Limited

Units B5-B6  
Paving Way  
Lincoln

LN6 3QW

(redacted)

42.4 Either Party may change its address for service by serving written notice in accordance with this clause.

#### **43 Governing law and jurisdiction**

This Framework Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

**In witness** of which this Framework Agreement has been duly executed by the Parties. This Framework Agreement has been entered into on the date stated at the beginning of it.

**Signed** for and on behalf of the )  
BLUELIGHT COMMERCIAL LIMITED )  
(redacted)

**Signed** for and on behalf of )  
CIVIL DEFENCE SUPPLY LIMITED )  
(redacted)

**Schedule 1  
Specification  
(redacted)**

## Schedule 2 Call-Off Order Form

- A. This Call-Off Order Form is issued as per the Framework Award Procedure, set out within the Framework Agreement referred to below, for provision of PAVA spray and to deliver a value adding service to those Authorities described in the Find a Tender Notice attached to the Framework Agreement.
- B. The Authority wishes the Goods specified below to be supplied by the Supplier in accordance with the terms set out in the Call Off Terms and Conditions as set out in Schedule 3 of the Framework Agreement.
- C. **BY SIGNING AND RETURNING THIS CALL-OFF ORDER FORM THE SUPPLIER AGREES** to enter a legally binding contract with the Authority to provide to the Authority the Goods specified below on and subject to the terms of this Call-Off Order Form and subject to the Call Off Terms and Conditions, both of which shall constitute the Contract between the Supplier and the Authority.

### Signatures

Signature of the Authority	
Authorised to sign for and on behalf of the Authority	(redacted)
Signature	(redacted)
Date	(redacted)
Name in capitals	(redacted)

Signature of the Supplier	
Authorised to sign for and on behalf of the Supplier	(redacted)
Signature	(redacted)
Date	(redacted)
Name in capitals	(redacted)

## Order

<b>Order information</b>		
Framework title		Provision of PAVA Spray
Framework Agreement Reference Number		BLC0090
Call-Off Order Date		1 <sup>st</sup> January 2025
Call-Off Order No		Con_22542
<b>Party details</b>		
Contracting Authority		The Secretary of State for Justice
Address		5 Wellington Place, Leeds, LS1 4AP
Invoice address		
Notice details	Name	(redacted)
	Address	5 Wellington Place, Leeds, LS1 4AP
	Email	(redacted)
	Phone no	(redacted)
	Notice permissible by email?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Authorised Representative	Name	(redacted)
	Phone no	(redacted)
	Email address	(redacted)
Contract manager	Name	(redacted)
	Phone no	(redacted)
	Email address	(redacted)

<b>Supplier name and company number</b>		Civil Defence Supply Limited	
Address		Units B5 & B6 Paving Way Off Whisby Road Noth Hykeham	
Authorised Representative	Name	(redacted)	
	Phone no	(redacted)	
	Email address	(redacted)	
Contract manager	Name		
	Phone no		
	Email address		
Notice details	Name		
	Address		
	Email		
	Phone no		
	Notice permissible by email?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Contract details</b>			
Contract Period	5 Years		
Commencement date	1 <sup>st</sup> January 2025		
Supply Commencement Date	22 <sup>nd</sup> January 2025		
Expiry date	31st December 2029		
Option to Extend?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Extension Period	N/A		
Extension Notice Period	N/A		



Goods and Charges		
Description of goods including any special requests		PAVA Spray and Accessories
Payment profile	Charges	(redacted)
	Payment frequency	(redacted)
	Minimum Purchase Amount	Not Applicable.
Spares or replacement parts to be provided when required?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Training or ancillary services?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If training or ancillary services are required, please provide details.		
Price Review		Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>
Benchmarking		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Authority has agent/third party distributor		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Name and address of agent/distributor:
Delivery address for goods		As per order
Delivery dates		(redacted)
Performance Levels and Credits		
Service Levels	Yes <input checked="" type="checkbox"/> The appendix attached to the Call-Off Terms and Conditions is incorporated into this Call-Off Contract	No <input type="checkbox"/>
Credits	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Insurance	
Product Liability	(redacted)
Public Liability	(redacted)
Employer Liability	(redacted)
Contracting Authority's Total liability cap	(redacted)
Supplier's total liability cap	(redacted)

**Schedule 3**  
**Call-Off Terms and Conditions**

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## SECTION A: PRELIMINARIES AND GENERAL PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In the Call-Off Contract, the following words shall have the following meanings unless the context requires otherwise:

**"Acceptance"** means that an Authorised Representative has accepted the Goods as meeting the requirements of the Call-Off Contract and "Accepted" shall be construed accordingly.

**"Acceptance Date"** means the date on which the Authorised Representative has accepted the Goods.

**"Affected Party"** means the Party seeking to claim relief in respect of a Force Majeure Event.

**"Authorised Representative"** means (a) the Contracting Authority's employee or the Chief Constable's employee or a police officer if applicable, authorised either generally or specifically by the Contracting Authority to act on behalf of the Contracting Authority in relation to the Call Off Contract and (b) the person respectively designated as such by the Supplier to act on behalf of the Supplier in relation to the Call-Off Contract, in either case as set out in the Call-Off Order Form.

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**"Call-Off Contract"** means the Call-Off Order Form, the Call-Off Terms and Conditions and the applicable provisions of the Framework Agreement.

**"Call-Off Contract Period"** means the period commencing on the Supply Commencement Date and ending on the Expiry Date or on the expiry of any Extension Period or on earlier termination of the Call-Off Contract in accordance with clause 41.6 (Termination for breach or insolvency).

**"Call-Off Order"** means an order for Goods sent by the Contracting Authority to the Supplier in accordance with the award procedure in clause 5 of the Framework Agreement;

**"Call-Off Order Form"** means the form for the Goods, taking the form of the template Order Form attached at Schedule 2 of the Framework Agreement, issued by the Contracting Authority in accordance with the Framework Agreement;

**"Call-Off Terms and Conditions"** means these terms and conditions (including any attached appendices) set out in Schedule 3 of the Framework Agreement.

**"CEDR"** means the Centre for Effective Dispute Resolution.

**"Change"** means an amendment to (a) the scope, nature, volume or delivery of the Goods or (b) any other term or schedule of the Call-Off Contract.

**"Change Control Note"** means the written record of any Change agreed or to be agreed by the Parties pursuant to Clause 54 (Contract Variation).

**"Change of Control"** means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010

**"Charges"** means the prices of the Goods raised under or in connection with this Call-Off Contract.

**“Chief Constable”** means the Chief Constable or Commissioner of the same relevant policing area as the Contracting Authority.

**“Commencement Date”** means the date that the Call-Off Contract starts as set out in the Call-Off Order Form.

**“Confidential Information”** means any and all:

- (a) information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of the Call-Off Contract that relates to:
  - (i) the Disclosing Party; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party; or
  - (iii) all police operational matters, processes or initiatives which are of a confidential nature
- (b) other information provided by the Disclosing Party pursuant to or in anticipation of the Call-off Contract that is clearly designated as being confidential or equivalent (whether or not it is so marked) or that ought reasonably to be considered to be confidential which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with the Call-Off Contract;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with the Call-Off Contract and all matters arising therefrom; and
- (d) information derived from any of the above, but not including any information which:
  - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
  - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
  - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
  - (iv) was independently developed without access to the Confidential Information.

**“Contracting Authority”** means the Contracting Authority referred to in the Call-Off Order Form or any successor organisation responsible for the tendering, award and overall management (including the issue of any variations and modifications to Call-Off Contract) of the Call-Off Contract on behalf of that contracting Authority and where that Authority is a Police Commissioner, MOPAC, a Combined Authority (or any other future bodies that are responsible for the police and crime commissioner functions) then it is entering into this Call-Off Contract on behalf of itself and the Chief Constable and all the Call-Off Terms and Conditions will apply to both legal entities.

**“Contracting Authority Assets”** means any assets, equipment or other property which is owned by the Contracting Authority and which is or may be used in connection with the provision or receipt of the Goods.



**"Contract Manager"** means for the Contracting Authority and the Supplier the individuals set out in the Call-Off Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time.

**"Contracts Finder"** means the Government's publishing portal for public sector procurement opportunities.

**"Controller"** has the meaning set out in the UK GDPR.

**"Data Processing Agreement"** means any document of that name as provided to the Supplier by the Contracting Authority (as amended from time to time in accordance with its terms) which shall include, without limitation, any such document in Appendix 5 of these Call-Off Terms and Conditions.

**"Data Protection Impact Assessment"** means an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.

**"Data Protection Legislation"** means (i) all applicable Laws in the UK relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;

**"Default"** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Call-off Contract and in respect of which such Party is liable to the other.

**"Deliverables"** means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data specification and reports.

**"Delivery"** means as set out in clause 7 and shall include the uses of the term "Delivers".

**"Delivery Date"** means the date(s) set out in the Purchase Order.

**"Delivery Instructions"** means the instructions set out in the Call-Off Order Form for the provision of the Goods and including any other information as notified to the Supplier by the Contracting Authority from time to time.

**"Delivery Location"** means the location specified for delivery of Goods specified in the Call-Off Order Form.

**"Dispute"** has the meaning given in clause 27.1.

**"Dispute Notice"** has the meaning given in clause 27.1(a).

**"DPA 2018"** means the Data Protection Act 2018

**"Due Date"** has the meaning set out in Clause 19.6.

**"EIR"** means the Environmental Information Regulations 2004.

**"Expiry Date"** means the end date of the Call-Off Contract as set out in the Call-Off Order Form or, if this Call-Off Contract is terminated before the date specified in the Call-Off Order Form, the earlier date of termination of the Call-Off Contract.

**"Extension Notice Period"** means the notice period to be given in relation to any extension of the Contract Period as set out in the Call-Off Order Form.

**"Extension Period"** means any agreed extension period as set out in the Call-Off Order Form.

**"FOIA"** means the Freedom of Information Act 2000.

**"Force Majeure Event"** means any event outside the reasonable control of either Party affecting its performance of its obligations under this Call-Off Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the supplier personnel or any other failure in the Supplier's or a Sub-contractor's supply chain. For the avoidance of doubt, a Force Majeure Event shall not extend to SARS-CoV-2.

**"Force Majeure Notice"** means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

**"Framework Agreement"** means the framework agreement between the Framework Authority and the Supplier referred to in the Call-Off Order Form.

**"Framework Authority"** means BlueLight Commercial Limited (a company registered in England and Wales under company registration number 12517649) whose registered office is at Lower Ground, 5-8 The Sanctuary, Westminster, London SW1P 3JS.

**"Goods"** means the goods, materials or items that the Supplier is required to supply to the Authority (or any part of them) as set out in the Call-Off Contract.

**"Good Industry Practice"** means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of goods similar to the Goods under the same or similar circumstances as those applicable to the Call-Off Contract.

**"Goods Prices"** means the prices of the Goods set out in the Pricing Schedule subject to any adjustment agreed with the Framework Authority in accordance with clause 8 of the Framework Agreement.

**"Information"** has the meaning given in section 84 of FOIA.

**"Installation"** means the installation of the Goods in the designated location and into the operating environment specified by the Contracting Authority at the site and "Install" shall be interpreted accordingly.

**"Intellectual Property Rights"** means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and Confidential Information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

**"Laws"** means any law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body or any approval of any local authority or statutory undertaker having jurisdiction in relation to the Goods or with whose systems the Goods are, or are to be, connected.

**"Losses"** means all losses, liabilities, damages, demands, charges, costs, and expenses (including legal and other professional charges and expenses) litigation, settlement, judgement interest, fines and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term "Loss" shall be construed accordingly.

**"Material Breach"** means a breach or an anticipatory breach that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

- (a) a substantial portion of this Call-Off Contract; or
  - (b) any of the obligations or warranties set out in this Call-Off Contract,
- for the remainder of the Call-Off Contract.

**"Party/Parties"** means the Supplier and relevant Contracting Authority as set out in the Call-Off Order Form.

**"Persistent Breach"** means repeated breaches of any of the terms of this Call-Off Contract in such a manner as to reasonably justify the Contracting Authority's opinion that the Supplier's conduct is inconsistent with it having the intention or ability to give effect to the terms of this Call-Off Contract.

**"Personal Data"** has the meaning set out in the UK GDPR.

**"Premises"** means any of the Contracting Authority's location(s) or premises made available for use by the Supplier for the provision of the Goods on the terms of the Call-Off Contract.

**"Pricing Schedule"** means the prices set out in Schedule 5 of the Framework Agreement.

**"Process"** has the meaning set out in the UK GDPR.

**"Prohibited Act"** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority or its members, a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (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 the Call-Off Contract;
- (c) an offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Contracting Authority; or

- (e) 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;

**"Purchase Order"** means an official purchase order raised against the Call-Off Contract by the Authority.

**"Records"** has the meaning given in clause 25.2.

**"Rectification Notice"** has the meaning given in clause 22.1.

**"Rectification Plan"** means a plan agreed in accordance with clause 22 for the resolution of a Performance Failure.

**"Relevant Requirements"** means all applicable Laws 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"** has the meaning set out in the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

**"Service Levels"** means in any measurement period, the standards to be achieved by the Supplier in the performance of its obligations under the Call-off Contract in the measurement period in question, set out in the appendix attached to these Call-Off Terms and Conditions.

**"Service Level Failure"** means a failure by the Supplier to meet the Service Levels.

**"Services"** means the services set out in the Specification and/or the Call-Off Order Form, which are ancillary to the supply of Goods pursuant to the Call-Off Contract.

**"SME"** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

**"Social Value Outcomes"** means the outcomes incorporating the economic, social and environmental considerations as set out in the Supplier's Tender (as defined in the Framework Agreement).

**"Specification"** means any specification for the Goods, including any related plans and drawings that are set out in Schedule 1 of the Framework Agreement and the Call-Off Order Form.

**"Sub-Contract"** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide:

- (a) the Goods or any part thereof; or
- (b) facilities and/or, services necessary for the provision of the Goods or any part thereof; or
- (c) is responsible for the management, direction or control of the provision of the Goods or any part thereof.

**"Sub-contractor"** means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person.

**"Supplier"** means the supplier referred to in the Call-Off Order Form.

**"Supply Commencement Date"** means the date the Supplier starts the supply of the Goods under this Call-Off Contract as set out in the Call-Off Order Form.

**“Third party distributor”** means a distributor that the Contracting Authority has contracted to act on its behalf to distribute the Goods to a Chief Constable’s employees or police officers in accordance with the relevant police force’s internal ordering process.

**“VCSE”** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

- 1.2 If a capitalised expression does not have an interpretation in clause 1 (Definitions), it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In these Call-Off Terms and Conditions, unless the context otherwise requires:
  - (a) the masculine gender includes the feminine and neuter and vice versa;
  - (b) the singular includes the plural and vice versa;
  - (c) references to persons include an individual, Supplier, bodies corporate, unincorporated associations, firm, partnerships or other legal entity;
  - (d) the appendices form part of this Call-Off Contract and shall have effect as if set out in full in the body of this Call-Off Contract. Any reference to this Call-Off Contract includes the appendices;
  - (e) references to clauses and appendices are to clauses and appendices of this Call-Off Contract;
  - (f) the headings of clauses are for convenience only and shall be disregarded in construing this Call-Off Contract;
  - (g) any reference to a statute or statutory provision includes a reference to any modification, consolidation or re-enactment of the provision for in force from time to time and all and any subordinate legislation in force from time to time made under it;
  - (h) any obligation in this Call-Off Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done;
  - (i) general words shall not be given a restrictive interpretation by reasons of their being preceded or followed by words indicating a particular class of acts, matters or thing.
- 1.4 If there is any conflict between any parts of the Call-Off Contract the conflict shall be resolved in accordance with the following order of precedence:
  - (a) the Call-Off Order Form;
  - (b) the applicable provisions of the Framework Agreement other than the Specification;
  - (c) the Specification;
  - (d) the provisions of these Call-Off Contract Terms and Conditions and its appendices; and

- (e) any other documentation forming part of the Call-Off Contract in the date order in which such documentation was created with the more recent documentation taking precedence over older documentation to the extent only of any conflict.

## **2. CONTRACT PERIOD**

- 2.1 The Call-Off Contract shall commence on the Commencement Date and the term of the Call-Off Contract shall be the Call-Off Contract Period.
- 2.2 If stated to be applicable in the Call-Off Order Form, the Contracting Authority may extend the Call-Off Contract Period by an Extension Period. If the Contracting Authority wishes to exercise its right to extend the Call-off Contract Period it shall give notice in writing to the Supplier of not less than the Extension Notice Period.

## **3. REPRESENTATIONS AND WARRANTIES**

- 3.1 The Supplier acknowledges that the Contracting Authority has entered into the Call-Off Contract in reliance upon the Supplier's expertise in selecting and supplying the Specification fit to meet the Contracting Authority's business requirements.
- 3.2 Each Party represents and warrants that:
  - (a) it has full capacity and authority to enter into and to perform the Call-Off Contract;
  - (b) the Call-Off Contract is executed by an authorised signatory;
  - (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under the Call-Off Contract; and
  - (d) its obligations under the Call-Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.3 The Supplier represents and warrants that:
  - (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - (b) it has all necessary consents and regulatory approvals to enter into the Call-Off Contract;
  - (c) the Goods will conform in all material aspects to the Specification and be free from defects;
  - (d) its execution, delivery and performance of its obligations under the Call-Off Contract does not and will not constitute a breach of any Laws or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;



- (e) it has and shall continue to have all necessary Intellectual Property Rights which are necessary for the performance of the Supplier's obligations under the Call-Off Contract including the delivery of the Goods;
  - (f) it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into systems, data, software or the Contracting Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Contracting Authority;
  - (g) it is not subject to any contractual obligation, compliance with which it is likely to have a material adverse effect on its ability to perform its obligations under this Call-Off Contract; and
  - (h) it is not affected by any proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 3.4 Each of the representations and warranties set out in clauses 3.2 and 3.3 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in the Call-Off Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under clauses 3.2 and 3.3 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within the Call-Off Contract is expressed as a warranty shall not preclude any right of termination the Contracting Authority may have in respect of breach of that provision by the Supplier which constitutes a Material Breach.

## **SECTION B: THE GOODS**

### **4. SUPPLY OF THE GOODS**

- 4.1 From the Supply Commencement Date, the Supplier shall supply, and the Contracting Authority shall purchase, such quantities of Goods as the Contracting Authority may order under clause 5 of the Framework Agreement in accordance with the Call-Off Terms and Conditions.
- 4.2 For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of a Purchase Order covering the relevant Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Goods covered by a valid Purchase Order.

### **5. SUPPLIER STANDARDS AND OBLIGATIONS**

- 5.1 The Supplier warrants to the Contracting Authority that the Goods will be provided:

- (a) in a proper, skilful and workmanlike manner;
- (b) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
- (c) in accordance with the Call-Off Contract and the Specification; and
- (d) to the reasonable satisfaction of the Contracting Authority's Authorised Representative.

5.2 The Supplier warrants that to the extent that associated or additional services are performed, they shall be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.

5.3 The Supplier will, to the extent it is legally able to do so, hold on trust for the sole benefit of the Contracting Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Goods and, where any warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Contracting Authority may notify from time to time to the Supplier.

5.4 The Supplier will, unless it is unable to do so, assign to the Contracting Authority on Contracting Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in clause 5.3 above.

5.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Call-Off Contract or in the Delivery of the Goods.

5.6 Repairs or replacements necessary due to any breaches of this clause 5 will themselves be covered by this Call-Off Contract for a period of 12 months from Acceptance of such repairs or replacements by the Contracting Authority, including in accordance with clause 9 (Remedies).

## **6. GOODS QUALITY, INSPECTION AND PACKAGING**

6.1 The Supplier shall ensure that the Goods shall:

- (a) be new (unless otherwise specified in the Specification) and free from defects in design, material and workmanship and remain so for such period as is required in the Specification (and any warranty or guarantee referred to therein). In the absence of any requirement in the Specification this period shall be twelve (12) months after Delivery;
- (b) conform with the Deliverables set out in the Specification and be fit for any purpose expressly or impliedly made known to the Supplier by the Contracting Authority;
- (c) be fully compatible with any other equipment with which they are intended to be used or interfaced with, to the extent specified in the Specification;
- (d) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Contracting Authority expressly or by implication, and in this respect the Contracting Authority relies on the Supplier's skill and judgement;
- (e) comply with all applicable Laws relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and

- 
- (f) comply with relevant rules, codes, policies, procedures and standards of the Contracting Authority which may be referred to in the Specification or supplied by the Contracting Authority to the Supplier from time to time.
- 6.2 The Supplier shall at its expense provide any programmes for the provision of the Goods delivery that the Contracting Authority may reasonably require. Such programmes shall be agreed with the Contracting Authority.
  - 6.3 The Supplier shall notify the Contracting Authority, in writing, without delay if manufacturing or production progress falls behind or may fall behind any of the programmes referred to in clause 6.2.
  - 6.4 The Contracting Authority shall have the right to, at any time before Delivery:
    - (a) inspect the manufacturing facilities and the equipment used by the Supplier or a Sub-contractor in the manufacture of the Goods (where applicable);
    - (b) inspect, test and take samples of the raw materials, the packaging and the Goods; and
    - (c) inspect stock levels of Goods.
  - 6.5 The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Call-Off Contract.
  - 6.6 If following such inspection or testing the Contracting Authority considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings, the Contracting Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
  - 6.7 The Contracting Authority may conduct further inspections and tests after the Supplier has carried out its remedial actions.
  - 6.8 The Supplier shall ensure that:
    - (a) the Goods are properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed. The Contracting Authority will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that the Supplier requires returning will be done so at the Supplier's cost and risk;
    - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Contracting Authority's official purchase order number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
    - (c) if the Supplier requires the Contracting Authority to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

## **7. DELIVERY OF THE GOODS**

- 7.1 The Supplier shall deliver the Goods:
- (a) on the Delivery Date;
  - (b) to the Delivery Location stated in the Purchase Order; and
  - (c) during the Contracting Authority's normal business hours, or as instructed by the Contracting Authority.
- 7.2 The costs of Delivery are to be included in the Goods Prices and no additional costs or expenses shall be charged in relation to Delivery (including where multiple deliveries are required) unless this is explicitly agreed in writing by the Contracting Authority.
- 7.3 Where the Goods are delivered by the Supplier to the Contracting Authority or a Third Party Distributor, delivery shall occur when the Goods are removed from the transporting vehicle, delivered in accordance with the Delivery Instructions and upon the signature by a representative of the Contracting Authority or the Third Party Distributor to whom the Supplier has been instructed to effect delivery.
- 7.4 Where the Goods are collected by the Contracting Authority, delivery shall occur when they are loaded onto the Contracting Authority's vehicle and signed for by a representative of the Contracting Authority.
- 7.5 The Supplier shall not deliver the Goods in instalments without the Contracting Authority's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Contracting Authority to the remedies set out in clause 9.1.
- 7.6 If the Supplier fails to perform its obligations under clause 7.1 and this failure is attributable to the sole Default of the Supplier, then the Contracting Authority can give the Supplier a written notice specifying the times or the date(s) by which the Goods must be delivered, such times and date(s) to be reasonable in all the circumstances and, for this purpose, time is of an essence to the Call-Off Contract.
- 7.7 If the Supplier does not deliver the Goods within the times or on the date(s) set out in the notice, the Contracting Authority shall have the right to:
- (a) refuse to take any subsequent attempted delivery of the Goods; and/or
  - (b) terminate the Call-Off Contract immediately without compensation to the Supplier. (However the Contracting Authority shall not exercise its right of termination unreasonably or vexatiously);
  - (c) purchase other goods of the same or similar description and the Contracting Authority will be entitled to recover from the Supplier the difference between the cost of the alternative goods purchased (subject to any limitation of liability clause as set out in the Call-Off Contract) and the cost which would have been payable to the Supplier for the Goods which should have been provided by the Supplier. This shall be without prejudice to any other remedies set out in clause 9;

- (d) claim damages for any Losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering Goods to the extent that such failure or delay is caused by the Contracting Authority's failure to comply with its obligations under the Call-Off Contract.

- 7.8 If the Contracting Authority or the Third Party Distributor fails to accept delivery of the Goods on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Call-Off Contract, the Supplier shall store the Goods until delivery takes place, and may charge the Contracting Authority for all reasonable, direct costs and expenses (including insurance).
- 7.9 Except where otherwise provided in the Call-Off Contract, delivery shall include the uploading or stacking of the Goods by the Supplier at such places as the Contracting Authority may reasonably direct.
- 7.10 The issue by the Contracting Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Contracting Authority shall not be deemed to have accepted any Goods other than in accordance with clause 8.
- 7.11 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the Contracting Authority or the Third Party Distributor, which prevents or hinders, or may prevent or hinder the Supplier from supplying the Goods in accordance with the Call-Off Contract, the Supplier shall inform, in writing, the Contracting Authority as soon as reasonably practicable.

## **8. ACCEPTANCE AND DEFECTIVE GOODS**

- 8.1 Where delivery has been made to the Contracting Authority, the Contracting Authority shall not be deemed to have Accepted any Goods until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent, unless the Contracting Authority's Authorised Representative notifies the Supplier in writing of the rejection of the Goods. Where delivery has been made to a Third Party Distributor, the Contracting Authority shall not be deemed to have Accepted the Goods until that Third Party Distributor has distributed them and the relevant Chief Constable's employees or police officers have had a reasonable time to inspect them.
- 8.2 If the Goods delivered do not conform to the requirements of the Call-Off Contract, the Contracting Authority shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery (notwithstanding the commencement by the Contracting Authority using the Goods) and:
  - (a) require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within ten (10) Business Days of being requested to do so; or
  - (b) require the Supplier to repay the price of the rejected Goods in full (whether or not the Contracting Authority has previously required the Supplier to repair or replace the rejected Goods); and
  - (c) claim damages for any other Losses resulting from the Supplier's delivery of Goods that do not conform with the terms of this Call-Off Contract.

- 8.3 The Contracting Authority's rights and remedies under this clause 8 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Call-Off Contract by the Sale of Goods Act 1979.
- 8.4 The terms of this Call-Off Contract shall apply to any repaired or replacement Goods supplied by the Supplier.
- 8.5 If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 8.2(a) the Contracting Authority may, without affecting its rights under clause 8.2(c), obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Contracting Authority for the costs it incurs in doing so.

## **9. REMEDIES**

- 9.1 If the Supplier fails to deliver the Goods on the Delivery Date or if the Goods do not comply with the undertakings set out in clause 6 of these Call-Off Terms and Conditions, then, without limiting any of its other rights or remedies, the Contracting Authority shall have the right to any one or more of the following remedies:
- (a) to terminate or suspend the Call-Off Contract in whole or in part in accordance with clause 41 (Termination);
  - (b) to reject the Goods (in whole or in part) and require the Supplier to arrange collection of them at the Supplier's own risk and expense;
  - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) to refuse to accept any subsequent delivery or attempted delivery of all or some of the Goods from the Supplier;
  - (e) to recover from the Supplier any reasonable costs properly incurred by the Contracting Authority in obtaining substitute goods from a third party; and/or
  - (f) to claim damages for any other costs, loss or expenses incurred by the Contracting Authority which are in any way attributable to the Supplier's failure to carry out its obligations under the Call-Off Contract.
- 9.2 The Contracting Authority's rights and remedies under the Call-Off Contract are in addition to its rights and remedies implied by statute and common law and any equitable remedy.

## **10. TITLE AND RISK**

- 10.1 The risk in Goods delivered to the Contracting Authority shall pass to the Contracting Authority on Delivery.
- 10.2 Title to Goods delivered to the Contracting Authority shall pass to the Contracting Authority on Delivery.
- 10.3 The Supplier warrants that:
- (a) it has full, clear and unencumbered title to all the Goods; and



- (b) at the Delivery Date of any of the Goods it shall have full and unrestricted right, power and Contracting Authority to sell, transfer and Deliver all of the Goods to the Contracting Authority. On Delivery the Contracting Authority shall acquire a valid and unencumbered title to the Goods.

## **11. CONSUMABLES**

- 11.1 The Contracting Authority reserves the right to procure consumables to be used on or with the Goods from the Supplier or such other source as the Contracting Authority deems appropriate. Such procurement of consumables from a source other than Supplier shall not invalidate the Contracting Authority's rights under the Call-Off Contract and in no way affect the provisions of clauses 5.1 and 6.1(a) or otherwise provided that the consumables utilised meet the minimum standards as published by the Supplier or the manufacturer of the Goods, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods concerned.
- 11.2 In the event that the Supplier shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to the Supplier of meeting its obligations to provide repair or maintain the Goods it shall be for the Supplier to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Supplier's costs. If the Supplier shall prove that the consumables do not meet the requisite minimum standards the Contracting Authority shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

## **12. SPARES**

- 12.1 If stated to be applicable in the Call-Off Order Form, the Supplier shall make available to the Contracting Authority, or any nominated third party maintenance provider, on request, with reasonable dispatch and at reasonable prices, all spares and replacement parts for the Goods as the Contracting Authority shall require.
- 12.2 The Supplier shall maintain a supply of such spares or replacement parts for such period as is agreed with the Contracting Authority from the date of Delivery or the Acceptance Date, whichever is the latest.
- 12.3 Such spares or replacement parts shall be fully compatible with, and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items.
- 12.4 If during the period set out in clause 12.2 the Supplier or the Supplier's Sub-contractor intends to discontinue the manufacture of spares or replacement parts for the Goods, the Supplier shall forthwith give notice to the Contracting Authority of such intention and supply where possible to the Contracting Authority at no extra cost a perpetual, royalty free, worldwide non-exclusive license to use all of the relevant Intellectual Property Rights in all designs, tools, drawings or other items necessary for the Contracting Authority to procure replacement spares from any third party.

## **13. OPERATING MANUALS AND AS-FITTED DRAWINGS**

The Supplier shall supply to the Contracting Authority all operating manuals and other documentation necessary for the satisfactory operation of the Goods at no extra cost and in the

media format in which they are available at the appropriate time. If after the Acceptance Date the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the Contracting Authority of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of written instructions.

#### **14. ATTACHMENT TO THE GOODS**

14.1 Without prejudice to clause 11 (Consumables), the Contracting Authority shall have the right to attach to, or install into or onto the Goods any other items or goods (including but not limited to software) which the Contracting Authority considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Contracting Authority. If the Contracting Authority attaches or installs such items or goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve the Supplier from meeting its obligations under the Call-Off Contract provided that:

- (a) the goods attached or installed are not specified in any of the Supplier's and/or the manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Contracting Authority's rights under the Call-Off Contract;
- (b) the Supplier has not otherwise notified the Contracting Authority in writing that the attachment or Installation of specific goods will degrade the standards of performance or invalidate the Contracting Authority's rights under the Call-Off Contract; and
- (c) the goods have been attached or installed in accordance with the published instructions of the Supplier.

14.2 Subject to clause 14.1, in the event that the attachments and/or Installation is made by the Contracting Authority and the Supplier can prove that such attachment or Installation is adversely affecting the standard of performance of the Goods then the Supplier shall be entitled to be reimbursed any associated direct costs which the Supplier can demonstrate as being reasonably and necessarily incurred in returning the Goods to the normal standards of performance in accordance with this Call-Off Contract as a direct result of the attachment or Installation made by the Contracting Authority (other than where such attachment or Installation has been with the approval of the Supplier).

#### **15. TECHNOLOGY REFRESH AND ANCILLARY SERVICES**

15.1 The Supplier shall, at its own cost, submit and promptly inform the Contracting Authority of any new and evolving relevant technologies and processes which could improve the Goods. Such report shall be provided in sufficient detail to enable the Contracting Authority to evaluate properly the benefits of the new technology or process and, at the Contracting Authority's request, the Supplier shall make available to the Contracting Authority the new Goods on the terms on which they are generally made available to the Supplier's customers by the Supplier.

15.2 If the Contracting Authority wishes to incorporate any improvement identified by the Supplier pursuant to clause 15.1, the Parties shall discuss the implementation of the associated change provided always that if the Supplier's costs in providing the Goods as a result of any such change implemented by the Contracting Authority are reduced, a reasonable proportion as agreed of the cost savings shall be passed on to the Contracting Authority by way of a consequential reduction in the Charges, as soon as is reasonably practicable.

- 15.3 The Supplier shall provide relevant Services relating to the Call-off Contract to the Contracting Authority on the use of the Goods in accordance with the requirements set out in the Specification.

## **16. PREMISES AND ASSETS**

- 16.1 Where the Supplier (and its Sub-contractor(s)) is required by the Contracting Authority to access parts of the Premises, for the purposes only of properly supplying and delivering the Goods, then the Contracting Authority shall provide such necessary access to the Premises to the Supplier for this purpose.
- 16.2 In the event of the expiry or termination of the Call-Off Contract, the Contracting Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Premises to remove any of the Supplier's plant, equipment and materials. All such plant, equipment and material shall be promptly removed by the Supplier at its cost.
- 16.3 The Supplier shall ensure that:
- (a) where using the Premises and any Contracting Authority Assets they are kept properly secure and it will comply and cooperate with the Contracting Authority's representative's reasonable directions regarding the security of the same;
  - (b) only those of the Supplier's personnel that are duly authorised to enter upon the Premises for the purposes of supplying and delivering the Goods, do so; and
  - (c) any Contracting Authority Assets used by the Supplier are maintained (or restored at the end of the Call-Off Contract Period) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Premises unless expressly permitted under the Call-Off Contract or by the Contracting Authority's representative.
- 16.4 The Contracting Authority shall maintain and repair the Contracting Authority Assets, however, where such maintenance or repair arises directly from the act, omission, Default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Contracting Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 16.5 The Supplier shall notify the Contracting Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Subcontractors to any property of the Contracting Authority, to any of the Premises or to any property of any other recipient of the Goods in the course of supplying the Goods.

## **SECTION C: CHARGES AND PAYMENT**

### **17. CHARGES**

- 17.1 The Charges shall be set out in the Order Form and shall be equivalent to the Goods Prices. The Charges shall be the full and exclusive remuneration of the Supplier in respect of the supply of

the Goods and, except as expressly provided for in the Framework Agreement, no variations shall be made to Goods Prices at any time during the Call-Off Contract Period.

- 17.2 Unless itemised in the Pricing Schedule, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods.
- 17.3 If any import or similar duty is payable where the Goods are imported into the United Kingdom from abroad, the Supplier will be responsible for paying it notwithstanding that the duty may subsequently be recoverable from the United Kingdom authorities. The Contracting Authority will lend reasonable co-operation to the Supplier in applying to recover duty from the United Kingdom authorities so far as it is reasonable for a Contracting Authority to do so. Any duty recovered will be retained by the Supplier if the Charges excludes import duty. Any duty recovered by the Supplier will be paid to the Contracting Authority if the Charges includes import duty. If the Supplier is unable to recover the import duty from the United Kingdom authorities in no circumstances will this be recoverable from the Contracting Authority.
- 17.4 The Supplier agrees that if at any time during the Call-Off Contract Period it sells any Goods to a comparable Contracting Authority for less than the Charges then in force for those Goods, it shall reduce the relevant Charges to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Contracting Authority the difference between the Charges and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this clause, "comparable" means a Contracting Authority that purchases Goods in substantially similar volumes as the Contracting Authority on broadly similar terms and conditions.
- 17.5 Except as otherwise provided in this Call-Off Contract, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Call-Off Contract.

## **18. CHARGES REVIEW**

- 18.1 The Supplier may only adjust the Goods Prices in accordance with the terms and conditions set out in the Framework Agreement. Where an adjustment in the Goods Prices has been agreed by the Framework Authority, the Supplier may also adjust the Charges under this Agreement by the agreed percentage provided that the Supplier shall give the Contracting Authority not less than three months' prior notice in writing of any changes that have been agreed with the Framework Authority.
- 18.2 All disputes concerning the Charges shall be resolved in accordance with Clause 27 (Dispute Resolution Procedure).

## **19. INVOICING AND PAYMENT**

- 19.1 In consideration of the provision of the Goods by the Supplier in accordance with the Call-Off Contract, the Contracting Authority shall pay the Charges to the Supplier.
- 19.2 The Supplier shall invoice the Contracting Authority as agreed in writing between the Parties. Each invoice shall include such supporting information required by the Contracting Authority to verify the accuracy of the invoice, including but not limited to the relevant official Purchase Order number.

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- 19.3 Invoices to the Contracting Authority must be sent or emailed to the contact details given in the relevant Call-Off Order Form and must be correctly addressed with the full official Purchase Order number quoted.
- 19.4 The Contracting Authority shall accept for processing any electronic invoice submitted by the Supplier that complies with the standard on electronic invoicing provided that it is valid and 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.
- 19.5 Where the Supplier submits an invoice to the Authority in accordance with clause 19.2, the Contracting Authority will consider and verify that invoice in a timely fashion. Where the Contracting 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 19.2 after a reasonable time has passed.
- 19.6 The Contracting Authority shall pay correctly rendered and undisputed invoices within 30 days of receipt of the invoice (the "Due Date"). Payment shall be made to the UK bank account held in the name of the Supplier and nominated in writing by the Supplier, such payment system to support or interact electronic security payment systems if any.
- 19.7 All amounts payable by the Contracting Authority under the Call-Off Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Call-Off Contract by the Supplier to the Contracting Authority, the Contracting Authority shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 19.8 If a Party fails to make any payment due to the other under the Call-Off Contract by the Due Date for payment, then the defaulting Party shall pay interest on the overdue amount from the Due Date until payment of the overdue sum, whether before or after judgement. Interest under this clause 19.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The defaulting Party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting Party disputes in good faith.
- 19.9 If the Contracting Authority disputes any invoice or other statement of monies due, the Contracting Authority shall immediately notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within 30 days of the Contracting Authority giving notice to the Supplier, the dispute shall be resolved in accordance with Clause 27 (Dispute Resolution). Where only part of an invoice is disputed, the undisputed amount shall be paid on the Due Date. The Supplier's obligations to supply the Goods shall not be affected by any payment dispute.
- 19.10 The Contracting Authority may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier
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under the Call-Off Contract providing that the Contracting Authority shall give the Supplier not less than 30 days' notice in writing of any such set off.

- 19.11 Whenever, under the Call-Off Contract any sums of money shall be recoverable from or payable by the Supplier the same may be deducted from any sums then due, or which at any time, thereafter may become due to the Supplier under this Call-Off Contract or under any other agreement or contract with the Contracting Authority or with any other department within the Contracting Authority.

## **SECTION D: CONTRACT GOVERNANCE**

### **20. CONTRACT MANAGER**

- 20.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Call-Off Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager.
- 20.2 The Supplier's Contract Manager shall have sufficient authority to ensure that required Service Levels are met, to ensure sufficient resources are allocated to the Call-Off Contract and any Purchase Order, and to maintain performance to the Specification, to pro-actively co-ordinate and communicate relevant orders and to provide comprehensive support and links between the Contracting Authority and the Supplier, including sales support, information and advice on all of the Goods.
- 20.3 Any communication, information or instruction given or made to or by the Contract Managers shall be deemed given to or received by the Supplier and the Contracting Authority respectively. It shall be the responsibility of the Contract Managers to ensure all staff involved in the Call-Off Contract or any Purchase Order are fully aware of their obligations.

### **21. SERVICE LEVELS**

- 21.1 The Supplier shall ensure that the Goods meet or exceed the Service Levels at all times.
- 21.2 The Supplier shall provide both the Contracting Authority and the Framework Authority with a monthly report detailing its performance in respect of each of the Service Levels.
- 21.3 If there is a Service Level Failure, the Supplier shall:
- (a) notify the Contracting Authority and the Framework Authority immediately of the Service Level Failure;
  - (b) where requested provide the Contracting Authority with a Rectification Plan in accordance with clause 22;
  - (c) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Level Failure from recurring; and
  - (d) carry out the actions identified in the Rectification Plan in accordance with its terms.

21.4 The Contracting Authority and the Supplier shall review the Service Levels with the Framework Authority every 3 months throughout the duration of the Call-Off Contract and make any changes in accordance with any agreed variation to the Call-Off Contract in accordance with clause 54 (Contract Variation) to reflect changes in the Service Levels.

## **22. RECTIFICATION PLAN**

22.1 Subject to clause 22.2. if the Supplier is in default in complying with any of its obligations under the Call-Off Contract (including if the Supplier commits a Service Level Failure), the Contracting Authority may serve a Rectification notice to the Supplier which shall specify the Default in outline and the actions the Supplier needs to take with respect to remedying the Default ("Rectification Notice").

22.2 The Contracting Authority shall be under no obligation to initiate this rectification process if it has issued a notice of termination pursuant to clause 41.4 or clause 41.6.

22.3 Within the time frame specified in the Rectification Notice, the Supplier shall either:

- (a) submit a draft Rectification Plan, even if it disputes that it is responsible for the matters which are the subject of the Rectification Notice; or
- (b) inform the Contracting Authority that it does not intend to submit a Rectification Plan, in which event the Contracting Authority shall be entitled to terminate the Call-Off Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Contracting Authority.

22.4 The Contracting Authority shall either approve the draft Rectification Plan within 10 Business Days of its receipt or as soon as reasonably practicable, or it shall inform the Supplier why it cannot accept the draft Rectification Plan. In such circumstances, the Supplier shall address all such concerns in a revised Rectification Plan, which it shall submit to the Contracting Authority within 5 Business Days of its receipt of the Contracting Authority's comments or by such date as stipulated by the Contracting Authority.

22.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

22.6 If, despite the measures taken under clause 22.4, the revised Rectification Plan cannot be agreed within 10 Business Days or as soon as reasonably practicable then the Contracting Authority may elect to end the Rectification Plan process set out above and terminate the Call-Off Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Contracting Authority.

22.7 If a Rectification Plan is agreed between the Parties, but the Supplier fails to implement or successfully complete the Rectification Plan by the required Rectification Plan completion date, the Contracting Authority may:

- (a) terminate the Call-Off Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Contracting Authority; or
- (b) give the Supplier a further opportunity to resume full implementation of the Rectification Plan; or



- (c) escalate any issues arising out of the failure to implement the Rectification Plan under the dispute resolution procedure set out in clause 27.

22.8 If, despite the measures taken under clause 22.7(b), the Supplier fails to implement the Rectification Plan in accordance with its terms, the Contracting Authority may elect to end the rectification plan process and refer the matter for resolution by the dispute resolution procedure set out in clause 27 or terminate the Call-Off Contract immediately or upon the expiry of a notice period specified in the termination notice.

22.9 The Contracting Authority shall not be obliged to follow this Rectification process if there is a repetition of substantially the same Service Level Failure or Default as had previously been addressed in a Rectification Plan within a reasonable period following the conclusion of such previous Rectification Plan. In such event, the Contracting Authority may terminate the Call-Off Contract upon the expiry of a notice period specified in the termination notice served on the Supplier by the Contracting Authority.

## **23. SUPPLIER PERSONNEL**

23.1 The Supplier shall at all times ensure that, in respect of the Supplier personnel engaged in the supply and delivery of the Goods:

- (a) each of such Supplier personnel is suitably qualified, adequately trained (including without limitation in relation to health and safety requirements in relation to the storage, handling and delivery of the Goods);
- (b) there is an adequate number of the Supplier personnel to supply and deliver the Goods; and
- (c) all of the Supplier personnel who require access to the Premises in connection with the supply and delivery of the Goods comply with the relevant Contracting Authority policies relating to access and/or use of the Premises, provided always that such policies (including any updates thereto) are brought to the attention of the Supplier and the Supplier is provided with copies of such policies.

23.2 The Contracting Authority reserves the right to refuse to admit (acting reasonably) to the Premises any person employed or engaged by the Supplier (including any Sub-contractor) where admission would, in the reasonable opinion of the Contracting Authority:

- (a) present a risk to the Contracting Authority; or
- (b) would be a threat to the security or operations of the Contracting Authority.

23.3 Where the Contracting Authority exercises its right to refuse admission to any person employed or engaged by the Supplier pursuant to Clause 23.2, the Contracting Authority shall notify the Supplier in writing of such refusal without delay, including the identity of the person who has been refused such admission and the Contracting Authority's reasons for refusing admission to such persons.

## **24. VETTING**

24.1 The Contracting Authority may request any such employees of the Supplier or any Sub-contractor, who are involved in the supply of the Goods, that it deems necessary to undergo a

security vetting procedure or have the Contracting Authority's approval and secure vetting to the appropriate level prior to commencing any work on the Call-Off Contract.

- 24.2 To facilitate the relevant vetting when so requested by the Contracting Authority, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected will be engaged in the provision of the Goods, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Contracting Authority may reasonably require to permit appropriate security checking. This may include the requirement for the individuals concerned to provide personal details about family members and financial circumstances and make a personal declaration as to the accuracy of the information provided.
- 24.3 For the avoidance of doubt, where the Contracting Authority has requested employees to undergo security vetting, only employees who have completed the vetting process and/or received written confirmation of their successful application can work on the Call-Off Contract.
- 24.4 If requested by the Contracting Authority, the Supplier will be responsible for the vetting costs of all employees, or any Sub-contractor, who are required to be vetted under clause 24.1 above.
- 24.5 The Contracting Authority does not accept liability for delays relating to the period between vetting forms being submitted to the Contracting Authority and confirmation to the Supplier of the vetting application outcome.
- 24.6 The outcome of vetting and the decision from the Contracting Authority is final and binding. Employees who have not received vetting clearance by the Contracting Authority are not permitted to work on the Call-Off Contract and the Supplier shall replace any of its employees who, the Contracting Authority shall have decided in its absolute discretion, have failed the appropriate security checking. The Contracting Authority shall not have to disclose why an employee has failed security checking. Following the removal of any of the Supplier's employees for failing vetting, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Call-Off Contract.
- 24.7 The Supplier is responsible for ensuring all personnel supporting the Call-Off Contract, including but not limited to, Sub-contractor's employees are successfully vetted in line with any vetting requested by the Contracting Authority and shall ensure throughout the Call-Off Contract Period that they are at all times compliant with the vetting requirements of the Contracting Authority.
- 24.8 It is the Supplier's responsibility to ensure all staff working, who need to be vetted in accordance with clause 24.1 above, submit completed forms and supply any information required by the Contracting Authority's vetting unit and any changes in circumstances that occur after vetting has taken place during the Call-Off Contract Period are notified to the Contracting Authority. Any delay in the performance of the Call-Off Contract resulting from the Supplier's employees or Sub-contractor employees not submitting fully and accurately completed forms and submitting any further information required or from declined vetting applications shall be the responsibility of the Supplier.
- 24.9 The Supplier shall keep an accurate and up to date record of their vetted employees and Sub-contractor's employees and must ensure that vetting remains current for any individual involved in the delivery of the Call-Off Contract.

## **25. RECORDS AND INSPECTION**

- 25.1 During the Call-Off Contract Period the Supplier shall retain and maintain at its own expense all Records within the United Kingdom in accordance with Good Industry Practice in a form that is capable of audit and such Records shall be retained by the Supplier for a period of at least six years from the end of the Call-Off Contract Period or for such longer period as may be required by any applicable Laws.
- 25.2 The records that shall be retained and maintained by the Supplier pursuant to clause 25.1 are:
- (a) the Call-Off Contract, its Schedules and all amendments to such documents;
  - (b) invoices (including any VAT invoices) prepared by the Supplier and submitted to the Contracting Authority in respect of claims for the Charges under the Call-Off Contract;
  - (c) records required to be retained by the Supplier by Laws, including records of incidents relating to health and safety;
  - (d) personnel records on the supplier personnel engaged in the provision of the Goods; and
  - (e) all documents relating to the required insurances and any claims in respect of them, together the "Records".
- 25.3 The Supplier shall at reasonable times and within normal working hours:
- (a) make the relevant Records available for inspection by the Contracting Authority; and
  - (b) provide or procure access to such facilities to enable the Contracting Authority to visit any place where the Records are held for the purposes of such inspection,
- provided always that the Contracting Authority shall give the Supplier reasonable notice of such inspection and afford the Supplier a reasonable period of time to collate any relevant information and/or Records where this is required for the purposes of the inspection.
- 25.4 All information and Records referred to in this clause 25 are subject to the provisions of clause 32 (Data Protection), clause 33 (Confidential Information) clause 34 (Transparency) and clause 35 (Freedom of Information).

## **26. AUDIT**

- 26.1 Subject always to Clauses 32 (Data Protection), Clause 33 (Confidential Information) and Clause 34 (Transparency) of the Call-Off Contract, the Supplier shall at all reasonable times during the Call-Off Contract Period and during normal working hours, afford to or procure for any audit agent appointed by the Contracting Authority access to and permission to copy and remove any copies of any books records information and data in the possession or control of the Supplier which relate to or have been used in connection with the provision of the Goods.
- 26.2 The Contracting Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods or adversely affect the performance by the Supplier of its obligations under the Call-Off Contract.
- 26.3 Subject to the Supplier's obligations of confidentiality, the Supplier shall provide the Contracting Authority (and its audit agents) with all reasonable co-operation, access and assistance in relation to each audit.

- 26.4 The Contracting Authority shall provide at least ten (10) Business Days' notice of any audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 26.5 If an audit reveals that the Contracting Authority has overpaid any Charges or other amounts due in respect of any one year then, without prejudice to the Contracting Authority's other rights under this Call-Off Contract, the Supplier shall reimburse the Contracting Authority such overpaid charges and its reasonable costs incurred in relation to the audit.
- 26.6 If an audit reveals that a Material Breach has been committed by the Supplier, the Contracting Authority shall be entitled to terminate this Call-Off Contract in accordance with Clause 41.6 (Termination).
- 26.7 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 reveals a Default by the Supplier in which case the Supplier shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the audit.

## **27. DISPUTE RESOLUTION PROCEDURE**

- 27.1 If a dispute arises out of or in connection with this Call-Off Contract or the performance, validity or enforceability of it ("Dispute") then except as expressly provided in the Call-Off Contract, the Parties shall follow the procedure set out in this clause:
- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the Contract Managers shall attempt in good faith to resolve the Dispute;
  - (b) if the Contract Managers are for any reason unable to resolve the Dispute within the reasonable timescale set out in the Dispute Notice, the Dispute shall be referred to the Authorised Representatives who shall attempt in good faith to resolve it;
  - (c) if the Authorised Representatives are for any reason unable to resolve the Dispute within a reasonable time of it being referred to them, the Dispute shall be referred to the appropriate senior member of procurement staff of the Contracting Authority and a similarly suitable employee of the Supplier who shall attempt in good faith to resolve it; and
  - (d) if the appropriate employees referred to in clause 27.1(b) are for any reason unable to resolve the Dispute within, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("ADR Notice") to the other Party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than the date set out in the ADR Notice.
- 27.2 Subject to clause 27.3 below, no Party may commence any court proceedings in relation to the whole or part of the Dispute until the mediation has taken place, provided that the right to issue proceedings is not prejudiced by a delay.

- 27.3 If the Dispute is not resolved at mediation or either Party fails to participate or to continue to participate in the mediation, the Dispute may be finally resolved by the courts of England and Wales in accordance with clause 62 (Governing Law and Jurisdiction) in the Call-Off Contract.
- 27.4 The Parties shall continue to perform their obligations under the Call-Off Contract in accordance with its terms until any Dispute has been resolved.

## **28. FORCE MAJEURE**

- 28.1 Subject to the remaining provisions of this clause 28, a Party may claim relief under this clause 28 from liability for failure to meet its obligations under this Call-Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call-Off Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 28.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 28.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 28 to the extent that consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent supplier of goods similar to the Goods, operating to the standards required by the Call-Off Contract.
- 28.4 Subject to clause 28.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods affected by the Force Majeure Event.
- 28.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 28.6 Provided the Affected Party has complied with the clauses above, it shall not be in breach of the Call-Off Contract or otherwise liable for any such failure or delay in the performance of such obligations which is as a result of a Force Majeure Event and the time for performance of such obligations shall be extended accordingly.
- 28.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Call-Off Contract.
- 28.8 Relief from liability for the Affected Party under this clause 28 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Call-Off Contract and shall not be dependent on the serving of notice under clause 28.7.

28.9 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate this Call-Off Contract by giving 4 weeks' written notice to the Affected Party.

## **29. INDEPENDENT OFFICE OF POLICE CONDUCT**

The Supplier must ensure that its staff are made aware of the ability of the Independent Office of Police Conduct to investigate any matters reported to them under the Independent Police Complaints Director General (Complaints and Misconduct) (Contractors) Regulations 2015 including but not limited to the conduct of the Supplier and their staff.

## **30. REPUTATION**

30.1 The Supplier shall not, and shall procure that its employees and Sub-contractors shall not:

- (a) do any act or make any omission that has or could reasonably be expected to have an adverse impact upon the security of the business, operations, systems or properties or Premises of the Contracting Authority;
- (b) take any action which might or shall:
  - (i) harm or be prejudicial to the public confidence in the Contracting Authority and the Chief Constable if applicable or to its public image(s); or
  - (ii) bring the Contracting Authority and the Chief Constable if applicable into disrepute.

30.2 Without limiting clause 30.1, the Supplier shall comply with the provisions of the reasonable standards, policies, procedures and regulations provided from time to time to the Supplier by the Contracting Authority.

# **SECTION E: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

## **31. INTELLECTUAL PROPERTY**

31.1 All Intellectual Property Rights in the Specification, Deliverables, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) provided to the Supplier by the Contracting Authority and/or Chief Constable if applicable shall remain the Contracting Authority's property absolutely and the Contracting Authority hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Call-Off Contract for the sole purpose of enabling the Supplier to perform its obligations under the Call-Off Contract;
- (b) created by the Supplier or any employee, agent or Sub-contractor of the Supplier, in the course of performing its obligations under the Call-Off or exclusively for the purpose of performing its obligations under the Call-Off Contract shall vest in the Contracting Authority on creation;

- (c) pre-existing at the Commencement Date and owned or licensed by the Supplier shall be licensed to the Contracting Authority insofar as it is necessary for the Contracting Authority to exercise its other rights under the Call-Off Contract. Such a license shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.

## **32. DATA PROTECTION**

- 32.1 The Parties acknowledge the application of the Data Protection Legislation and each warrants that it will duly observe all its respective obligations under the Data Protection Legislation which arise in connection with the Call-Off Contract.
- 32.2 Neither Party shall disclose or allow access to any Personal Data provided by the other Party or which it acquires during the course of its performance of the Call-Off Contract, other than to a person employed or engaged by that Party or that Party's agents and in accordance with the Data Protection Legislation.
- 32.3 Any disclosure of, or access to, Personal Data allowed under clause 32.2, shall be made in confidence and shall extend only so far as that which is specifically necessary for the purposes of the Call-Off Contract.
- 32.4 It is not envisaged that any sharing of Personal Data will be required under this Call-Off Contract or that either Party shall Process Personal Data on behalf of the other Party under this Call-Off Contract. In the event that either shall become necessary, the Supplier shall provide all reasonable assistance to the Contracting Authority in the preparation of a Data Protection Impact Assessment prior to commencing any such sharing or Processing and shall enter into an appropriate data sharing or data processing agreement as reasonably required by the Contracting Authority.

## **33. CONFIDENTIAL INFORMATION**

- 33.1 If the Contracting Authority has required the Supplier or its Sub-contractors to sign a mutual confidentiality agreement with it or the Chief Constable if applicable prior to signing or during the Call-Off Contract Period, the Supplier shall comply at all times with its obligations under that mutual confidentiality agreement.
- 33.2 The Supplier shall upon the reasonable request at any time by the Contracting Authority, obtain signed individual confidentiality undertakings from any employees or Sub-contractors in a form approved by the Contracting Authority.
- 33.3 A Party is entitled to disclose the whole or any part of the other's Confidential Information:
  - (a) to its directors, officers, employees, servants, Sub-contractors, agents or professional advisers to the extent necessary to enable the performance or enforcement of its rights or obligations under the Call-Off Contract subject to any such persons signing confidentiality undertakings in a form approved by the Contracting Authority if requested to do so;
  - (b) when (and to the extent) required to do so by Laws or pursuant to the rules or any order having the force of law of any court, association or agency of competent jurisdiction or any governmental agency;



- (c) to the extent that the Confidential Information has, except as a result of breach of obligations of confidentiality, become publicly available or generally known to the public at the time of such disclosure (provided that no Confidential Information shall be deemed to be so publicly available or generally known only because such information is within or part of more general information, or (in the case of a complex body of such information) because one or more elements of it separately comprise publicly available information or information generally known to the public);
- (d) in the case of disclosure by the Contracting Authority:
  - (i) to the extent required for the purpose of the continued provision of the Goods (or similar replacement goods) in the event of suspension, expiry or termination of provision of particular Goods;
  - (ii) to any department, office or agency of the Government or other entity where required for its proper departmental, parliamentary, governmental, statutory or judicial purposes;
  - (iii) to any consultant, contractor or other person engaged by the Contracting Authority in connection with the performance of the Supplier's obligations under the Call-Off Contract, to the extent reasonably necessary to enable that consultant, contractor or other person to carry out their engagement with the Contracting Authority;
  - (iv) to the extent the Contracting Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions in accordance with the applicable Laws; or
  - (v) subject to clause 35, to the extent the Contracting Authority (acting reasonably) deems disclosure necessary or appropriate in order to comply with its obligations and responsibilities under the FOIA or the EIR.

33.4 Notwithstanding clause 33.3, the Supplier shall give the Contracting Authority prompt advance notice of any disclosure of the Contracting Authority's Confidential Information and shall consult and give the Contracting Authority reasonable opportunity to comment on the nature and extent of disclosure, and shall take account of any reasonable comment made by the Contracting Authority. Notwithstanding the permitted disclosures under clause 33.3, the Contracting Authority shall have the right to prohibit disclosure of the Contracting Authority's Confidential Information to any person and the Supplier shall not make such disclosure to any such person so prohibited by the Contracting Authority unless subject to a court order or permitted under FOIA.

33.5 The Supplier shall:

- (a) use the Contracting Authority's and the Chief Constable's (if applicable) Confidential Information solely for the purpose of complying with the Call-Off Contract;
- (b) take all necessary precautions to ensure that all of the Contracting Authority's and the Chief Constable's (if applicable) Confidential Information is held in confidence and treated as proprietary;

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- (c) comply with all instructions and/or guidelines produced by the Contracting Authority from time to time for the handling and storage of its and the Chief Constable's (if applicable) Confidential Information generally or for specific items;
  - (d) if requested to do so by the Contracting Authority, either hold Cyber Essentials or have a minimum of core membership (free of charge) with the local Cyber Resilience Centre;
  - (e) inform all staff and Sub-contractors and agents that breach of any of its confidentiality obligations shall result in contractual and/or disciplinary action (and the Supplier shall ensure that such contractual and/or disciplinary actions and proceedings are reported to the Contracting Authority and instituted and enforced as required); and
  - (f) forthwith report to the Contracting Authority all failures to comply with the obligations set out in this clause 33.5 of which the Supplier is or becomes aware.
- 33.6 Without prejudice to any other rights and remedies that the other Party would have, each Party agrees that damages would not be an adequate remedy for any breach of this clause 33 and that the other Party shall be entitled to the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual breach of this clause 33.
- 33.7 The Contracting Authority's and the Supplier's obligations under the Call-Off Contract with respect to Confidential Information shall survive its expiry or termination and shall continue for as long as such information remains confidential.
- 33.8 Nothing in this clause 33 limits, diminishes, waives or releases either Party's obligations and responsibilities under the Official Secrets Acts 1911 to 1989 or in regard to Personal Data in accordance with the Data Protection Legislation.
- 33.9 The Supplier shall at all times (including after termination or expiry of this Call-Off Contract) comply with the obligations imposed by the Official Secrets Acts 1911 to 1989.
- 33.10 The Supplier shall:
- (a) take all reasonable steps, including by display of notices or by other appropriate means, to ensure that all persons engaged on any work in connection with the Call-Off Contract have notice that the Official Secrets Acts 1911 to 1989 applies to them and shall continue so to apply; and
  - (b) where requested by the Contracting Authority at any time, procure (within 10 Business Days of the request) the signature by all such persons specified by the Contracting Authority of an Official Secrets undertaking in a form specified by the Contracting Authority.
- 33.11 The Supplier shall ensure that a similar obligation to this clause 33 is included in all contracts or agreements the Supplier entered into with a Sub-contractor or agent in connection with the supply of the Goods.
- 33.12 The Contracting Authority may terminate this Call-Off Contract immediately in the event that the Supplier fails to comply with any requirement of this clause 33, including the failure to procure the signature of an Official Secrets undertaking for any person specified by the Contracting Authority or any disclosure of the Contracting Authority's Confidential Information in breach of this clause 33.

### **34. TRANSPARENCY**

- 34.1 Following the publication of The Elected Local Policing Bodies (Specified Information) Order 2011 (as amended), all Police Forces of England and Wales have an obligation to make publicly available a copy of each contract with a value exceeding £10,000 to which (i) the elected local policing body, or (ii) the chief officer of the police force maintained by the body, is or is to be a party.
- 34.2 As part of the transparency agenda, Government has made the following commitments with regard to procurement and contracting:
- (a) all new contracts over the value of £10,000 to be published in full online; and
  - (b) all items of spending over £500 per month to be published online.
- 34.3 To meet this requirement the Contracting Authority intends to publish all contracts over a value exceeding £10,000 on the Freedom of Information (FOI) page of the Bluelight Procurement Database ([www.blpd.gov.uk](http://www.blpd.gov.uk)).
- 34.4 The full list of criteria for which redactions may be permitted as set out as follows:
- (a) exemptions (absolute or qualified) provided for by the Freedom of Information Act 2000, regarding the disclosure of information;
  - (b) provisions provided for in the Public Contracts Regulations 2015, regarding the disclosure of Confidential Information;
  - (c) protection of personal privacy as required under the Data Protection Legislation;
  - (d) the protection of Intellectual Property Rights; and
  - (e) third party Confidential Information e.g. contracts with foster carers and child minders.
- 34.5 Information and guidance on understanding exemptions and other FOI matters can be accessed from the Information Commissioner's Office [www.ico.gov.uk](http://www.ico.gov.uk).

### **35. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

- 35.1 The Supplier acknowledges that the Contracting Authority and the Chief Constable if applicable are subject to the requirements of FOIA and EIR and the Supplier agrees to assist and cooperate with the Contracting Authority and the Chief Constable if applicable (at the Supplier's expense) as mandated by the Contracting Authority or the Chief Constable if applicable in relation to these laws.
- 35.2 The Supplier shall and shall procure that its Sub-contractors shall:
- (a) transfer to the Contracting Authority or the Chief Constable if applicable all Requests for Information that it receives immediately and in any event within 2 Business Days of receiving the Request for Information;
  - (b) provide the Contracting Authority with a copy of all Information in its possession, or power in the form that the Contracting Authority requires within 5 Business Days (or such other period as the Contracting Authority may specify) of the Contracting Authority's request; and

- (c) provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 35.3 The Supplier shall not and shall procure that its Sub-contracts shall not respond directly to a Request for Information unless expressly authorised to do so by the Contracting Authority.
- 35.4 The Contracting Authority shall be responsible for determining in its absolute discretion whether Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR, but shall (subject to clause 35.5) use all reasonable endeavours to advise the Supplier of such Request for Information as soon as reasonably possible and take any representations the Suppliers may make into account when determining whether Supplier's information should be disclosed.
- 35.5 The Supplier acknowledges that the Contracting Authority and the Chief Constable if applicable may, acting in accordance with the FOIA or the EIR be obliged to disclose information relating to the Call-Off Contract without consulting or obtaining consent from the Supplier or despite having taken the Supplier's views into account.
- 35.6 The Supplier shall observe the Contracting Authority's Retention and Destruction Policy (details of which shall be provided by the Contracting Authority to the Supplier upon request) and shall not destroy information other than in accordance with this policy. If the Contracting Authority notifies the Supplier of a Request for Information held by the Supplier, which is due for destruction the Supplier shall immediately suspend destruction of that Information to allow disclosure to take place. Upon the termination of the Call-Off Contract the Parties shall agree which Party has the control of the retained information. Should the Supplier retain control of the information this clause 35 shall remain in force beyond the termination or expiry of this Call-Off Contract.
- 35.7 The Supplier shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.
- 35.8 The Supplier shall indemnify the Contracting Authority against all claims, demands, actions, costs, proceedings and liabilities that the Contracting Authority directly incurs due to the Supplier's or any Sub-contractor's breach of this clause 35 or any part of it.

### **36. PUBLICITY**

- 36.1 Unless expressly permitted in writing by the Contracting Authority, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with the Call-Off Contract.
- 36.2 This Call-Off Contract shall not entitle the Supplier or any of their Sub-contractors, agents or employees to endorse its goods or services with any reference to the Contracting Authority, the relevant police force or Chief Constable if applicable and the Supplier shall not exhibit for advertising or any other reason any goods or services or equipment supplied under the Call-Off Contract which can be identified with the Contracting Authority without the prior written consent of the Contracting Authority.
- 36.3 Clause 36 includes any such reference made in any form of written, pictorial or audible advertising campaign, marketing, sales or promotion campaign.

## SECTION F: INDEMNITIES, LIABILITIES AND INSURANCE

### 37. INDEMNITIES

- 37.1 The Supplier shall indemnify each the Contracting Authority and the Chief Constable against all Losses suffered or incurred by the Contracting Authority or the Chief Constable arising out of or in connection with:
- (a) any claim made against the Contracting Authority and/or the Chief Constable if applicable for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods;
  - (b) any claim made against the Contracting Authority and/or the Chief Constable if applicable by a third party arising out of, or in connection with, the supply of the Goods to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Call-Off Contract by the Supplier, its employees, agents or Sub-contractors, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other Loss which is caused directly or indirectly by any act or omission of the Supplier;
  - (c) the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Call-Off Contract;
  - (d) any claim made against the Contracting Authority and/or the Chief Constable if applicable by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or Sub-contractors;
  - (e) the provision of the Goods, including advice and recommendations made and accepted by the Contracting Authority and/or the Chief Constable if applicable, not being in accordance with the Specification;
  - (f) any Installation and/or any advice given or anything done or omitted to be done under, or in connection with the Call-Off Contract by the Supplier; and
  - (g) any damage by the Supplier to the Contracting Authority's property or Premises (including any materials, tools or patterns sent to the Supplier for any purpose).

This clause 37.1 shall survive termination of the Call-Off Contract.

- 37.2 Nothing in this clause shall restrict or limit the Contracting Authority's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this clause 37.

### 38. LIABILITY

- 38.1 References to liability in this clause 38 include every kind of liability arising under or in connection with the Call-Off Contract including liability:

- (a) in contract, tort (including negligence), misrepresentation, restitution or otherwise; and
- (b) arising out of any use made or resale of the Goods by the Contracting Authority, or of any product incorporating any of the Goods.

38.2 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees; or
- (c) breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

38.3 Nothing in the Call-Off Contract shall limit any liability under Clause 37.1(a) (Intellectual Property Rights Indemnities), Clause 48 (Human Rights) and Clause 32 (Data Protection) and no amounts awarded or agreed to be paid under those clauses shall count towards the cap on the Supplier's liability.

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

38.5 Subject to clause 38.2, clause 38.3 and clause 38.4, neither Party will be liable to the other Party for:

- (a) indirect loss or damage;
- (b) special loss or damage;
- (c) consequential loss or damage;
- (d) loss of profits (whether direct or indirect);
- (e) loss of turnover (whether direct or indirect);
- (f) loss of business opportunity (whether direct or indirect); and/or
- (g) damage to goodwill (whether direct or indirect),

and in each case, even if that Party was aware of the possibility of such loss or damage to the other.

38.6 Subject to clause 38.2, clause 38.3 and clause 38.4, the provisions of clause 38.6 shall not be taken as limiting the right of the Contracting Authority to, amongst other things, recover from the Supplier as a direct loss:

- (a) any additional operational and/or administrative costs and expenses; and/or
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Authority; and/or
- (c) damage due to the loss of data if any, but only to the extent that such losses relate to the costs of working around any loss of data and the direct costs of recovering or reconstructing such data,

resulting directly from any act or omission of the Supplier.

- 38.7 If any limitation or provision contained or expressly referred to in this clause 38 is held to be invalid under any Laws, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 38.
- 38.8 Subject to clause 38.2 and clause 38.3, the Supplier's total liability to the Contracting Authority shall be as set out in the Call-Off Order Form.
- 38.9 Subject to clause 38.2, the Contracting Authority's total liability to the Supplier shall be as set out in the Call-Off Order Form.
- 38.10 Nothing in this clause 38 shall affect a Party's general duty to mitigate its loss.

### **39. INSURANCE**

- 39.1 Without prejudice to clause 38 (Liability), the Supplier must at its own cost take out and maintain insurance adequate to cover the risks set out in the Call-Off Contract and in any event shall take out and maintain the types of insurance coverages set out in the Call-Off Order Form and to the limits set out in the Call-Off Order Form.
- 39.2 The Supplier will take out and maintain such insurances referred to in clause 39.1 with a reputable insurance company and shall at the Contracting Authority's request provide evidence of the insurance policy or policies and of payment of the premiums. The Supplier's failure to maintain such insurances or satisfy the Contracting Authority, acting reasonably, that such insurances have been maintained, shall be treated as a Material Breach and shall give the Contracting Authority the right to terminate the Call-Off Contract in accordance with clause 41.6 (Termination).
- 39.3 If the Supplier fails or is unable to maintain insurance in accordance with clause 39.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 39.2, the Contracting Authority may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all costs and expenses it incurs in doing so from the Supplier.

## **SECTION G: SUSPENSION AND TERMINATION**

### **40. SUSPENSION**

- 40.1 Without limiting its other rights or remedies the Contracting Authority may suspend the Call-Off Contract in whole or in part by giving written notice of such suspension to the Supplier if the Supplier or any of their employees or agents are or become:
  - (a) subject to a criminal investigation in respect of allegations arising out of or relating to their professional practice whether in respect of work undertaken in performance of the Call-Off Contract or otherwise;
  - (b) subject to a criminal investigation relating to an allegation, which if substantiated, would constitute a breach of the terms of this Call-Off Contract;



- (c) subject to any allegation of professional negligence;
- (d) in the reasonable opinion of the Contracting Authority, involved in any fraudulent activities or misapplication of funds (whether involving the Call-Off Contract or not); or
- (e) subject to investigation by a relevant regulatory body in respect of any alleged breach of a relevant code of practice.

- 40.2 The Supplier must inform the Contracting Authority immediately upon becoming aware of any of the matters set out above.
- 40.3 The Contracting Authority shall have no liability to accept delivery of any Goods during the period of suspension or make any payment to the Supplier of any sums withheld during the period of suspension.
- 40.4 For the avoidance of doubt, the Contracting Authority will be entitled during any period of suspension to engage other suppliers to provide the Goods, which the Supplier is unable to provide by reason of the suspension.
- 40.5 Following a suspension pursuant to clause 40.1 above the Contracting Authority shall keep the matter under review and should the reasons for the suspension be resolved to the satisfaction of the Contracting Authority then the Contracting Authority may give written notice lifting suspension of the Call-Off Contract.
- 40.6 For the avoidance of doubt, if the investigations or allegations at clause 40.1 are substantiated this will constitute a Material Breach for which the Contracting Authority reserves the right to terminate the Call-Off Contract under clause 41 below.

## **41. TERMINATION**

- 41.1 The Call-Off Contract shall terminate automatically on the Expiry Date unless it is terminated earlier in accordance with this Call-Off Contract Terms and Conditions. For the avoidance of doubt the Supplier shall not be entitled to any compensation on termination or expiry.

### No fault termination

- 41.2 Without limiting its other rights or remedies, the Contracting Authority may terminate the Call-Off Contract in respect of the supply of the Goods or part of such supply by giving the Supplier 6 months' written notice.
- 41.3 If the Call-Off Contract is terminated by the Contracting Authority under clause 41.1, the Supplier shall have no claim against the Contracting Authority for any compensation payment, damages, costs, expenses, loss of profit, loss of goodwill or other loss (including as to any effect or harm on its reputation) suffered or incurred or to be suffered or incurred by the Supplier as a result of or in connection with such termination.
- 41.4 The Contracting Authority may terminate this Call-Off Contract in the circumstances provided for under clauses 22.3, 22.8 or 22.9 (Rectification Plan).
- 41.5 The Contracting Authority may immediately terminate this Call-Off Contract where:
- (a) the Call-Off Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9); or

- (b) the Supplier has, at the time of contract award, been in one of the situations referred to in Regulation 57(1), including as a result of the application of Regulation 57(2), and should therefore have been excluded from the procurement procedure.

#### Termination for breach or insolvency

41.6 The Contracting Authority may immediately terminate this Call-Off Contract, either in whole or in part to the extent that it relates to any part of the Goods which are materially affected by the relevant circumstances, where:

- (a) the Supplier commits a Material Breach or Persistent Breach of the Call-Off Contract and (if such breach is remediable) fails to remedy that breach to the satisfaction of the Contracting Authority within the reasonable timescale as specified by the Contracting Authority, after issue of a written notice specifying the breach and requesting it to be remedied;
- (b) a representation and warranty given by the Supplier pursuant to clause 3 (Representations and Warranties) being materially untrue or misleading;
- (c) subject to clause 50 (Anti-Bribery and Fraud) the Supplier commits a Prohibited Act;
- (d) in the reasonable opinion of the Contracting Authority there is a material detrimental change in the financial standing and/or credit rating of the Supplier which adversely impacts on the Supplier's ability to supply the Goods under the Call-Off Contract or could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Goods under the Call-Off Contract;
- (e) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (f) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (g) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (h) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (i) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- (j) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- (k) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (l) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (m) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 41.6(e) to clause 41.6(k) inclusive;
- (n) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (o) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation; or
- (p) Subject to clause 55, the Supplier undergoes a Change of Control.

41.7 Where the Contracting Authority terminates (in whole or in part) the Call-Off Contract for any reason (except for under clause 41.1) then makes other arrangements for the supply of the Goods, the Contracting Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Call-Off Contract Period provided that Contracting Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Contracting Authority to the Supplier until the Contracting Authority has established the final cost of making those other arrangements.

#### Termination of Sub-contracts

41.8 The Contracting Authority may require the Supplier to terminate a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Contracting Authority's right of termination pursuant to clause 41 (Termination);
- (b) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; or
- (c) there is a Change of Control of the relevant Sub-contractor, unless:
  - (i) the Contracting Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Contracting Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Contracting Authority was given notice of the Change of Control.

## **42. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 42.1 Upon expiry or earlier termination of the Call-Off Contract, the Contracting Authority agrees to pay the Supplier for the Goods and Services which have been supplied or provided by the Supplier and accepted by the Contracting Authority in accordance with this Call-Off Contract prior to expiry or earlier termination of the Call-Off Contract.
- 42.2 Upon termination of the Call-Off Contract whether by expiration of the Call-Off Contract Period or otherwise, the Supplier shall co-operate with the Contracting Authority and shall transfer to the Contracting Authority all relevant data held by the Supplier in respect of the Call-Off Contract which the Contracting Authority may reasonably need for future reference or to maintain performance of the contract internally or through another Supplier.
- 42.3 All items (other than Goods) shall be delivered to the Contracting Authority within 10 Business Days of termination of the Call-Off Contract or upon a request being made to the Supplier by the Contracting Authority. Any request by the Contracting Authority shall detail the reasonable location of delivery, method of delivery, format of any data or information and the medium to be used for its migration. Unless otherwise agreed, the language that any drawings, data, reports or information etc shall be written and presented in shall be modern British English.
- 42.4 All Contracting Authority Assets shall be returned to the Contracting Authority in the original condition they were in when presented to the Supplier. Samples should be in the condition or state they were in at the time of Acceptance or approval by the Contracting Authority as being in compliance with the Specification, subject to any subsequent agreed testing or reasonable wear and tear.
- 42.5 The accrued rights and remedies of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Call-Off Contract, which existed at or before the date of termination.
- 42.6 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 42.7 On the expiry or termination of the Call-Off Contract the Contracting Authority shall not be obliged to purchase any Goods which are not the subject of a Purchase Order which has been placed by the Contracting Authority. This includes (without limitation) where the Supplier has maintained a stock of Goods in order to meet its obligations under the Call-Off Contract and/or the Delivery targets or where it has purchased Goods in anticipation of Purchase Orders (including where forecasts were made by the Contracting Authority). Purchase of stock items by the Supplier is therefore at the Supplier's own risk and the Contracting Authority shall not be under any obligation to purchase such Goods or items.
- 42.8 Any Purchase Orders which have been placed and not cancelled by the Contracting Authority pursuant to the Framework Agreement shall be binding on both Parties even if the Delivery Date is after the date of expiry or termination and the terms of the Call-Off Contract shall apply to such Purchase Orders.
- 42.9 The expiry or earlier termination of the Framework Agreement shall not affect the Call-Off Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of the Call-Off Contract shall continue to apply for the purposes of the Call-Off Contract notwithstanding any termination of the Framework Agreement.

## **SECTION H: COMPLIANCE WITH LAWS**

### **43. COMPLIANCE WITH APPLICABLE LAWS**

- 43.1 The Supplier shall (at no additional cost to the Contracting Authority) at all times supply the Goods in compliance with all Laws. The Supplier shall maintain such records as are necessary pursuant to such Laws and shall promptly on request make them available for inspection by any relevant Contracting Authority that is entitled to inspect them and by the Contracting Authority (or its Authorised Representative).
- 43.2 The Supplier shall neither be relieved of its obligations to supply the Goods in accordance with the terms of the Call-Off Contract nor be entitled to an increase in the price as the result of any modifications to the Laws.
- 43.3 Without prejudice to clause 43.2, the Supplier shall monitor and shall keep the Contracting Authority informed in writing of any changes in the Laws which may impact the Goods and shall provide the Contracting Authority with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 43.4 The Supplier shall consult with the Contracting Authority (and wherever possible agree with the Contracting Authority) on the manner, form and timing of changes it proposes to make to meet any changes in Laws where they would impact the Goods. The Supplier shall not implement any change, without the Contracting Authority's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Goods in accordance with the Specification.
- 43.5 The Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 43.

### **44. HEALTH AND SAFETY**

- 44.1 The Supplier shall perform its obligations under the Call-Off Contract (including those in relation to the storage, handling and delivery of the Goods) in accordance with:
- (a) all applicable Laws regarding health and safety; and
  - (b) the Contracting Authority's Health and Safety Policy (where provided).
- 44.2 The Supplier shall notify the Contracting Authority as soon as practicable of any health and safety incidents or material health and safety hazards on any premises where the Goods are being store, handled or delivered of which it becomes aware and which relate to or arise in connection with the performance of the Call-Off Contract. Each Party shall instruct their personnel (as applicable) to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **45. ENVIRONMENTAL AND ETHICAL SOURCING**

### **45.1 The Supplier shall:**

- (a) perform the Call-Off Contract in accordance with the Contracting Authority's Environmental Policy (where provided or otherwise made available to the Supplier), which is committed to the prevention of pollution, reduction of CO2 emissions, minimise the environmental impacts associated with all activities, products and services of the Contracting Authority's business;
- (b) follow a sound environmental management policy so that its activities comply with all applicable environmental Laws and regulations and that the Goods are procured, disposed and delivered in ways that are appropriate from an environmental protection perspective;
- (c) ensure that all waste goods and other items used in the course of or in connection with the performance of the Supplier's obligations under the Call-Off Contract will be disposed of in an environmentally friendly manner and in accordance with all applicable EU and UK laws and regulations, including the Environmental Protection Act 1990; and
- (d) comply with all applicable environmental legislation and other requirements as appropriate to the supply of Goods, which may apply in the performance of the Call-Off Contract.

45.2 If and when requested to do so by the Contracting Authority at any time, the Supplier shall provide the Contracting Authority with such documents and/or permit representatives of the Contracting Authority to have such access to the Supplier's premises and personnel as the Contracting Authority may reasonably require for the purposes of verifying compliance on the part of the Supplier with its obligations under this clause 45.

45.3 The Supplier shall procure that each of its Sub-contractors (if any) comply with obligations substantially similar to those set out in clause 45.1 and 45.2 above.

## **46. SOCIAL VALUE**

### **46.1 The Contracting Authority is committed to the following social value principles:**

- (a) promotion of work force equality;
- (b) working towards increasing of skills development of supplier personnel and community outreach;
- (c) putting in place effective safeguards against modern slavery; and
- (d) increasing work opportunities and job creation within the UK.

46.2 If requested to do so during the Call-Off Contract Period by the Framework Authority, the Supplier shall deliver the Social Value Outcomes and report on them in accordance with the methodology specified by the Contracting Authority, which may be through a social value portal, or such other mechanism designated by the Contracting Authority.

46.3 The Supplier shall ensure that its Sub-contracts include delivery of social value commitments and this must be monitored and reported on as part of the report referred to in clause 46.2.

## **47. MODERN SLAVERY**

- 47.1 In performing its obligations under the Call-Off Contract, the Supplier shall:
- (a) comply with the Contracting Authority's Modern Slavery Policies where provided;
  - (b) comply with its own modern slavery policy which must comply with all Laws and in the event of any conflict between the Supplier's own policy and the Contracting Authority's policy, the Contracting Authority's policy shall prevail;
  - (c) comply with all applicable modern slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - (d) 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 were carried out in the UK;
  - (e) include in contracts with its direct Sub-contractors and supply-chain parties modern slavery and human trafficking provisions, which are at least as onerous as those set out in this clause 47;
  - (f) notify the Contracting Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Call-Off Contract; and
  - (g) maintain a complete set of records to trace the supply chain of all Goods provided to the Contracting Authority in connection with this Call-Off Contract; and permit the Contracting 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 47.
- 47.2 The Supplier represents and warrants that it not has been convicted of any offence involving slavery and human trafficking nor has it 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.
- 47.3 The Contracting Authority may terminate this Call-Off Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 47.

## **48. HUMAN RIGHTS ACT 1998**

The Supplier shall comply in all respects with the provision of the Human Rights Act 1998 and will indemnify the Contracting Authority against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Contracting Authority for a breach of statutory duty under the Human Rights Act 1998 attributable to the Supplier.

## **49. EQUALITY AND DIVERSITY**

- 49.1 The Supplier shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation and without prejudice to the generality of the foregoing the Supplier



shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

- 49.2 The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the performance of the Call-Off Contract.
- 49.3 The Supplier shall take all reasonable steps to secure the observance of clauses 49.1 and 49.2 by all employees, agents and Sub-contractors.
- 49.4 The Supplier shall demonstrate to the Contracting Authority that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 49.1 and 49.2.
- 49.5 If there should be any findings of unlawful discrimination made against the Supplier by any court or employment tribunal, or an adverse finding in a formal investigation by a commission, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 49.6 The Contracting Authority reserve the right to test the Supplier's equality performance through the life of the Call-Off Contract. The Supplier shall cooperate with the Contracting Authority regarding the provision of a date and/or access for site visits as reasonably required by the Contracting Authority.

## **50. ANTI-BRIBERY AND FRAUD**

- 50.1 The Supplier represents and warrants that as at the Commencement Date neither it, nor to the best of its knowledge any of the Supplier's personnel have at any time prior to the Commencement Date:
  - (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
- 50.2 The Supplier shall not during the Call-Off Contract Period of this Call-Off Contract:
  - (a) commit a Prohibited Act; or
  - (b) do or suffer anything to be done which would cause the Contracting Authority to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 50.3 The Supplier shall during the Call-Off Contract Period of this Call-Off Contract:
  - (a) comply with all Relevant Requirements;
  - (b) establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (c) keep appropriate records of its compliance with its obligations under Clause 50.3(a) and make such records available to the Contracting Authority on request.

- 50.4 The Supplier shall not engage in any activity practice or conduct which would constitute an offence under the Prevention of Corruption Acts 1889 to 1916 or Fraud Act 2006.
- 50.5 In the event of any breach of this clause 50 by the Supplier or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Supplier):
- (a) the Supplier shall immediately give the Contracting Authority full details of any such breach and shall co-operate fully with the Contracting Authority in disclosing information and documents which the Contracting Authority may request; and/or
  - (b) the Contracting Authority shall (without prejudice to any of its rights or remedies under this Call-Off Contract or otherwise) be entitled by notice in writing to terminate this Call-Off Contract immediately; and
  - (c) the Supplier shall be liable for and shall indemnify and keep the Contracting Authority and the Chief Constable if applicable indemnified in respect of any and all loss resulting from such termination.
- 50.6 In any dispute, difference or question arising in respect of:
- (a) the interpretation of this clause 50; or
  - (b) the right of the Contracting Authority to terminate this Call-Off Contract; or
  - (c) the amount or value of any gift, consideration or commission
- the decision of the Contracting Authority shall be final and conclusive.

## SECTION I: SUPPLY CHAIN AND SUB-CONTRACTING

### 51. IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSES IN THE SUPPLY CHAIN

- 51.1 Clause 51 and clause 52 shall apply to the Supplier if the Call-Off Contract is valued above £5 million per annum.
- 51.2 The Supplier shall:
- (a) subject to clause 51.4, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods above a minimum threshold of £25,000 that arise during the Call-Off Contract Period;
  - (b) within 90 days of awarding a subcontract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
  - (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Call-Off Contract Period;
  - (d) provide reports on the information at clause 51.2(c) to the Contracting Authority in the format and frequency as reasonably specified by the Contracting Authority; and

- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

51.3 Each advert referred to at clause 51.2(a) above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

51.4 The obligation at clause 51.2(a) shall only apply in respect of subcontract opportunities arising after the Commencement Date.

51.5 Notwithstanding clause 51.2, the Contracting Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

## **52. MANAGEMENT CHARGES AND INFORMATION**

52.1 In addition to any other management information requirements set out in this Call-Off Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Contracting Authority which incorporate the data described in the MI Reporting template which is:

- (a) the total contract revenue received directly on a specific contract;
- (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
- (c) the total value of sub-contracted revenues to SMEs and VCSEs.

52.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Contracting Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in the Annex to Public Procurement Policy Note 01/08: Supply Chain Visibility Action and which may be changed from time to time (including the data required and/or format) by the Contracting Authority by issuing a replacement version. The Contracting Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

52.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Contracting Authority.

## **53. SUPPLY CHAIN RIGHTS AND PROTECTIONS**

### **Appointment of Sub-contractors**

53.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Call-Off Contract in the supply of the Goods; and
- (c) assign, novate or otherwise transfer to the Contracting Authority or any replacement supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Call-Off Contract.

53.2 Prior to sub-contracting any of its obligations under this Call-Off Contract, the Supplier shall notify the Contracting Authority in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration number;
- (b) the scope of any Goods to be provided by the proposed Sub-contractor; and
- (c) where the proposed Sub-contractor is connected to the Supplier, evidence that demonstrates to the reasonable satisfaction of the Contracting Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.

53.3 If requested by the Contracting Authority within 10 Business Days of receipt of the Supplier's notice issued pursuant to clause 53.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Contracting Authority.

53.4 The Contracting Authority may, within 10 Business Days of receipt of the Supplier's notice issued pursuant to clause 53.2 (or, if later, receipt of any further information requested pursuant to clause 53.3), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Goods and/or may be contrary to the interests of the Contracting Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable goods and services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with clause 53.11;

in which case, the Supplier shall not proceed with the proposed appointment.

53.5 If:

- (a) the Contracting Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Business Days of receipt of:
  - (i) the Supplier's notice issued pursuant to clause 53.2; and
  - (ii) any further information requested by the Contracting Authority pursuant to clause 53.3; and
  - (iii) the proposed Sub-contract is not a key Sub-Contract which shall require the written consent of the Framework Authority in accordance with the Framework Agreement,

the Supplier may proceed with the proposed appointment.

53.6 Except where the Contracting Authority has given its prior written consent, the Supplier shall ensure that each Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Call-Off Contract;

- (b) a right under Contracts (Rights of Third Parties) Act 1999 for the Contracting Authority to enforce any provisions under the Sub-contract which are capable of conferring a benefit upon the Contracting Authority;
- (c) a provision enabling the Contracting Authority to enforce the Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Contracting Authority or any replacement supplier without restriction (including any need to obtain any consent or approval) or payment by the Contracting Authority;
- (e) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Call-Off Contract in respect of:
  - (i) data protection requirements set out in clause 32 (Data Protection);
  - (ii) FOIA requirements set out in clause 35 (Freedom of Information and environmental information regulations);
  - (iii) vetting requirements set out in clause 24 (Vetting); and
  - (iv) the keeping of records in respect of the goods being provided under the Sub-contract in accordance with clause 25 (Records and Inspection);
- (f) provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Contracting Authority under the Call-Off Contract;

53.7 The Supplier shall not terminate or materially amend the terms of any Sub-contract without the Contracting Authority's prior written consent, which shall not be unreasonably withheld or delayed.

### **Supply chain protection**

53.8 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the Call-Off Contract) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with clause 53.8(b), the invoice shall be regarded as valid and undisputed for the purpose of clause 53.8(d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed;

- (e) giving the Contracting Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this clause in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call-Off Contract.

53.9 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within 30 days of verifying that the invoice is valid and undisputed.

### **Retention of Legal Obligations**

53.10 Notwithstanding the Supplier's right to sub-contract pursuant to this clause 53, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Goods supplied by the Supplier and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under the Call-Off Contract, shall include an obligation on the Supplier to procure that employees of the Supplier and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Goods.

### **Exclusion of Sub-contractors**

53.11 Where the Contracting Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- (a) if the Contracting Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- (b) if the Contracting Authority finds there are non-compulsory grounds for exclusion, the Contracting Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

## **SECTION J: MISCELLANEOUS**

### **54. CONTRACT VARIATION**

54.1 The Supplier acknowledges to the Contracting Authority that the Contracting Authority's requirements for the Goods may change during the Call-Off Contract Period and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification, as may be requested by the Contracting Authority from time to time Provided Always that any such change has been notified to the Framework Agreement for its prior approval.

54.2 Any change to the Goods or other variation to this Call-Off Contract shall only be binding once it has been agreed in writing and signed by authorised signatories of each Party.

## **55. ASSIGNMENT, SUBCONTRACTING AND CHANGE OF CONTROL**

- 55.1 The Contracting Authority may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Call-Off Contract in the event of a change in the legal status of the Contracting Authority by reason of any statute.
- 55.2 The Supplier must not assign, transfer or sub-let the Call-Off Contract or any part, share or interest in it either directly or indirectly to any person and shall not sub-contract except in accordance with the terms of the Call-Off Contract.
- 55.3 The Contracting Authority consents to the appointment of the key Sub-contractors listed in the Call-Off Order Form.
- 55.4 The Supplier will be liable under this Call-Off Contract irrespective of any sub-contracting.
- 55.5 If there is a breach of the provisions of this clause 55, the Contracting Authority shall be entitled to terminate the Call-Off Contract immediately and clause 41 (Termination) will apply.
- 55.6 The Supplier shall notify the Contracting Authority immediately if the Supplier undergoes a Change of Control. The Contracting Authority may terminate the Framework Agreement by giving notice in writing to the Supplier with immediate effect within six (6) months of:
- (a) being notified that a Change of Control has occurred; or
  - (b) where no notification has been made, the date that the Contracting Authority becomes aware of the Change of Control;

but shall not be permitted to terminate where approval from the Contracting Authority was granted before the Change of Control.

## **56. NOTICES**

- 56.1 Any notice given to a Party under or in connection with the Call-Off Contract shall be in writing and shall be delivered:
- (a) by hand;
  - (b) by pre-paid first-class post; or
  - (c) where stated to be applicable in the Call-Off Order Form, sent by email to the email address specified in the Call-Off Order Form.
- 56.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first class post, next Business Day delivery service at 9.00am on the second Business Day after posting, and
  - (c) 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 56.2(b), 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.
- 56.3 This clause 56 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.



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## **57. SEVERANCE**

- 57.1 If any court or competent Contracting Authority finds that any provision of the Call-Off Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Call-Off Contract shall not be affected.
- 57.2 If any invalid, unenforceable or illegal provision of the Call-Off Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **58. WAIVER**

A waiver of any right or remedy under the Call-Off Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or Default. No failure or delay by a Party to exercise any right or remedy provided under the Call-Off Contract or by Laws shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **59. THIRD PARTY RIGHTS**

- 59.1 Except as expressly provided in clause 59.2 below, a person who is not party to this Call-Off Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Contract.
- 59.2 The Chief Constable also has the benefit of this Call-Off Contract and is able to enforce all the Supplier's obligations set out in the Call-Off Contract.
- 59.3 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Call-Off Contract are not subject to any other party.

## **60. ENTIRE AGREEMENT**

- 60.1 This Call-Off Contract, and any documents referred within it, 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.
- 60.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Call-Off Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Call-Off Contract.

## **61. STATUS**

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

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**62. GOVERNING LAW AND JURISDICTION**

The Call-Off Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Laws of England and Wales, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**APPENDIX**

**SERVICE LEVELS AND KEY PERFORMANCE INDICATORS**

**(redacted)**

**Schedule 4:  
Tender**

**(redacted)**

**Schedule 5:  
Pricing Schedule**

**(redacted)**

**Schedule 6:  
Contract Management  
(redacted)**



## BlueLight Commercial

Lloyd House,  
Colmore Circus Queensway,  
Birmingham,  
B4 6DG

[enquiries@bluelight.police.uk](mailto:enquiries@bluelight.police.uk)