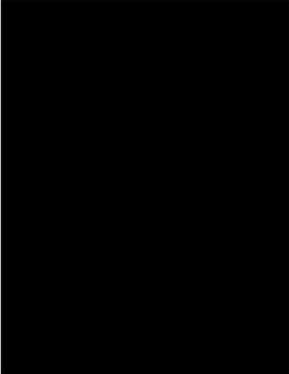




Department
for Environment
Food & Rural Affairs



Your ref:
Our ref: 30773
Date: 07/10/2020

Award of contract for the supply of Trailers.

Following your tender/proposal for the supply of Trailers to the Environment Agency / Defra we are pleased to award this contract to you.

This letter (Award Letter) and its Annexes set out the terms of the Agreement between the Environment Agency / Defra as the Authority and Platts Harris Ltd as the Supplier for the provision of the Goods. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 2 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by the Authority and may delay conclusion of the Agreement.

For the purposes of the Agreement, the Authority and the Supplier agree as follows:

1. The Goods shall be Delivered in accordance with the following instructions:

Delivery Address

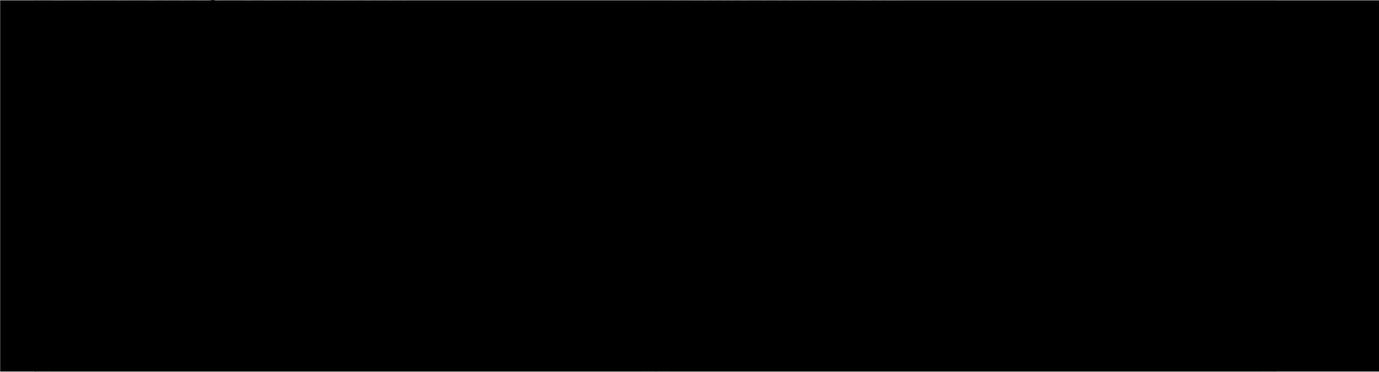
Annex 1 (various listed)

Additional Delivery Instructions:

Time of Delivery if to be made within normal business hours and to be arranged upon receipt of order.

2. The charges for the Goods shall be as set out in Annex 1 the Supplier's tender.
3. The specification of the Goods to be Delivered is as set out in Annex 1 the Supplier's tender.
4. The address for notices of the Parties are:

Authority	Supplier
Defra Group Commercial	Platts Harris Ltd



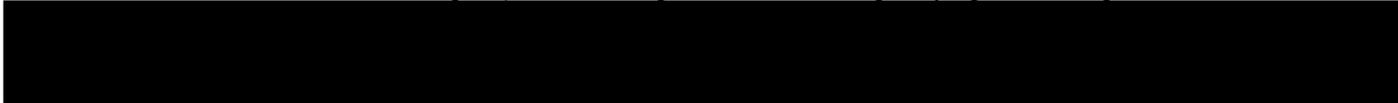
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5. The Authority may require the Supplier to ensure that any person employed in the supply of the Goods has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Agreement, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Goods.

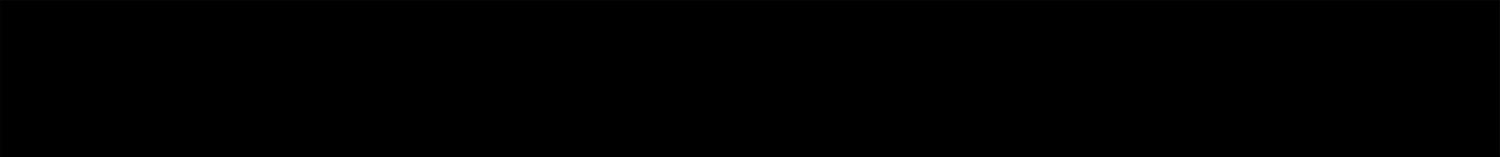
Payment



valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a



Liaison



working relationship resulting in a smooth and successful supply of the Goods. The Environment Agency / Defra would be grateful if you could arrange the contract to be executed, by way of electronic signature, on behalf of Platts Harris Ltd.

Yours faithfully,



Execution of this award notification letter is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract will be formed on the date on which both Parties communicate acceptance of its terms on the Authorities eSourcing System.

Annex 1 – Suppliers tender

Environment Agency



Call Off for Equipment Purchase

North East Procurement Organisation

Grounds Maintenance & Plant Equipment Framework – Lot 1 & 2

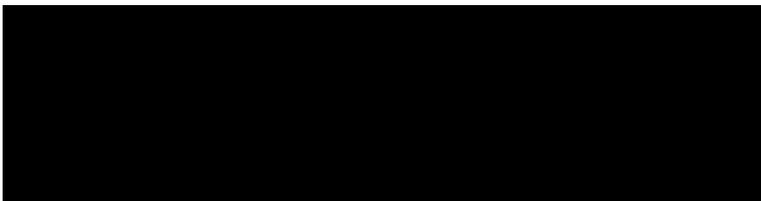




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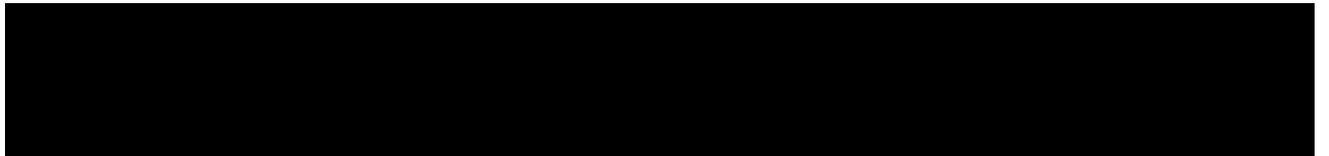
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About the Member

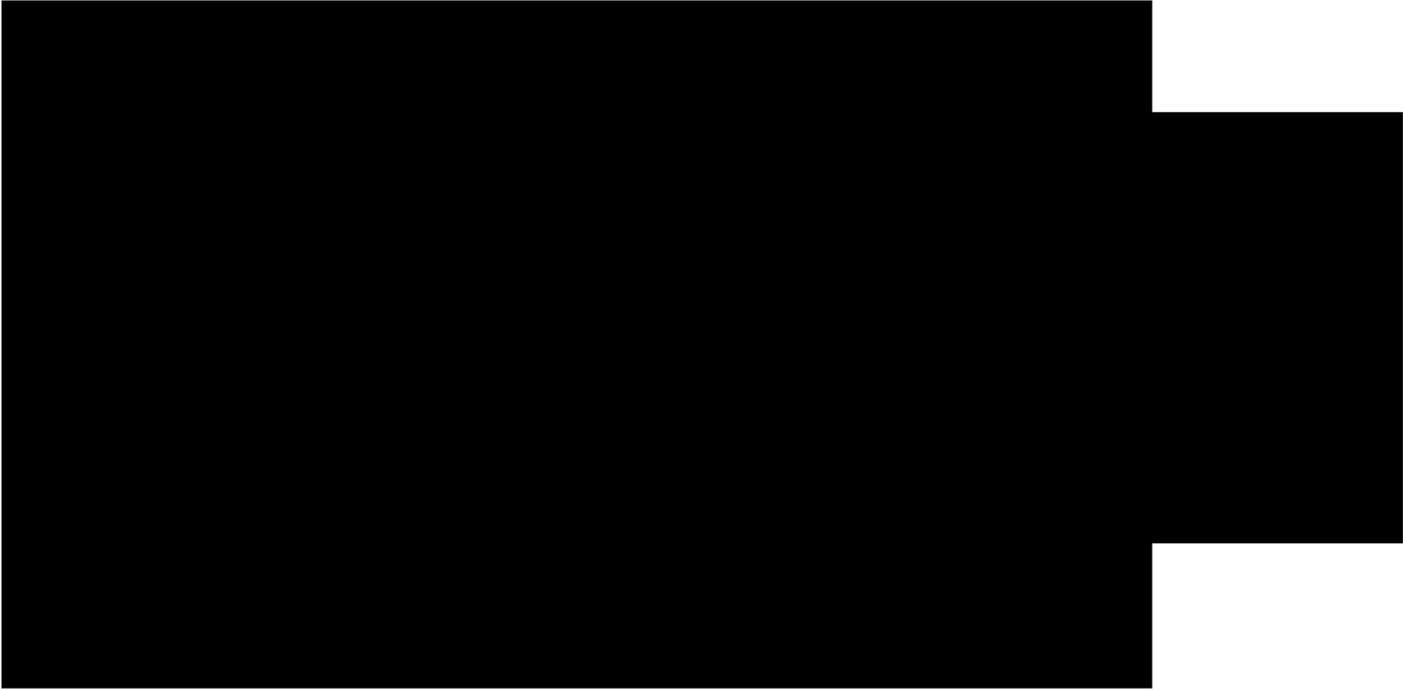
The Environment Agency (hereinafter referred to as 'the Member') is a non-departmental public body, established in 1996 and sponsored by the United Kingdom government's Department for Environment, Food and Rural Affairs (DEFRA), with responsibilities relating to the protection and enhancement of the environment in England (and until 2013 also Wales).

Requirement

The Member has a requirement for the following vehicles under Lot 1 & 2 of the North East Procurement Organisation Grounds Maintenance & Plant Equipment Framework: -



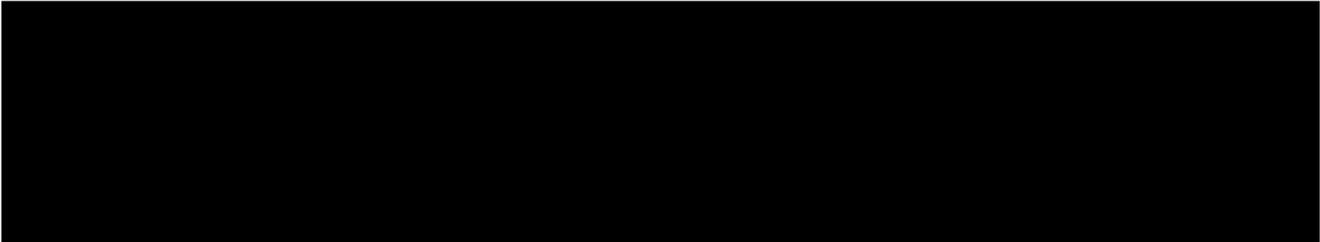
Please note that the Member gives no guarantee that any agreement or contract will be awarded in relation to this Call Off, and will at its sole discretion determine if it awards all, some, or none of its requirements under this Call Off.

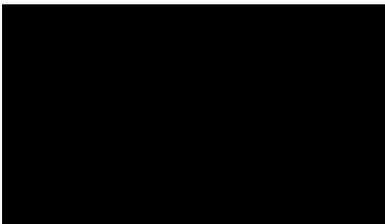
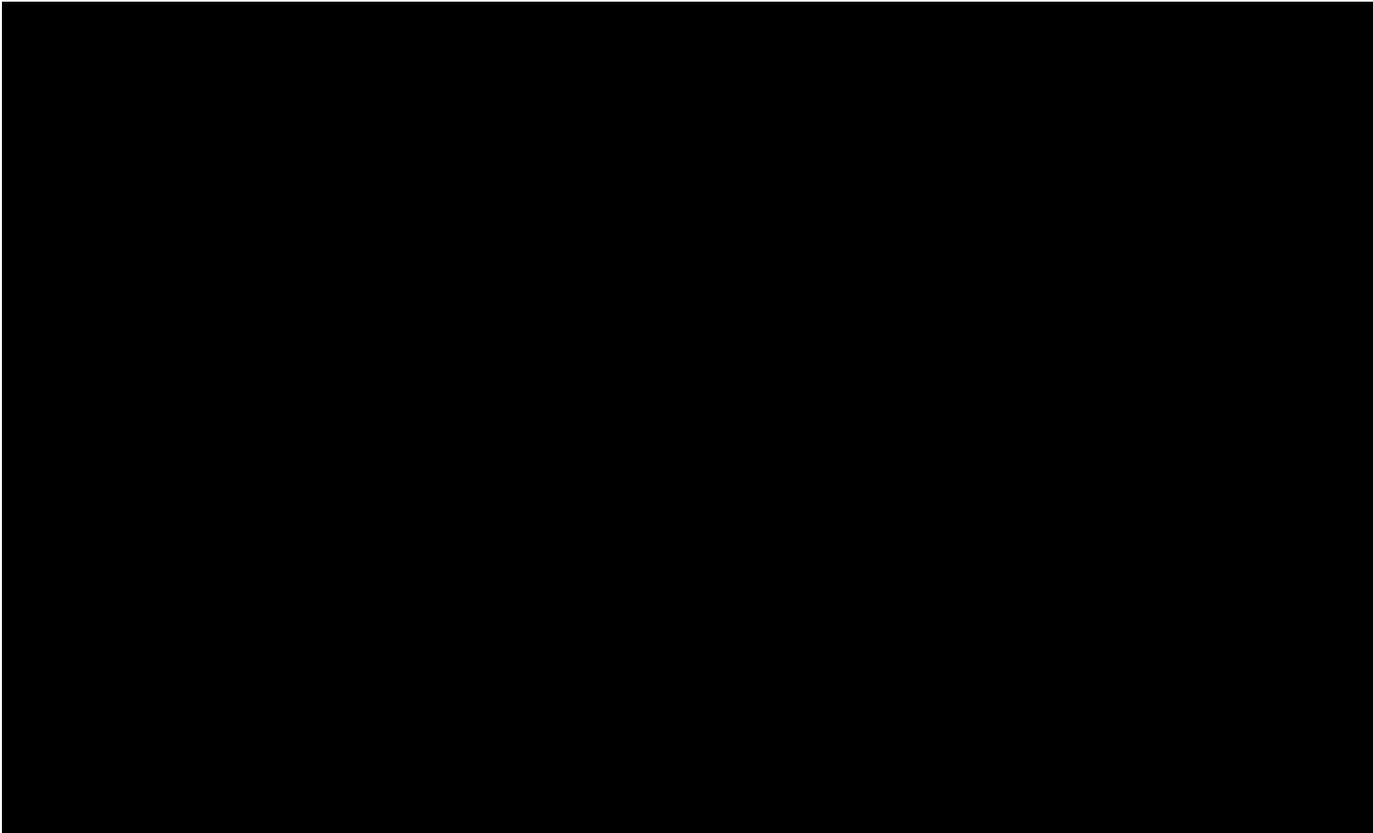


The Procurement Partnership will notify the tenderers via the portal if they have been awarded the contract. The dates above are subject to change at the discretion of the Member. Clarification meetings may be required prior to the contract award.

Enquiries

All enquiries regarding the process, including specification and technical clarifications, **must be** submitted via the Delta e-sourcing portal Message Centre. Any communications submitted outside the Delta esourcing portal will be ignored and deemed non-compliant.





Evaluation of the costs submitted will be as advised by the Chartered Institute of Purchasing and Supply (CIPS) formula as follows:

Tendered Score = $\frac{\text{Lowest Tendered Price}}{\text{Tendered Price}} * \text{Weighting}$

Please provide your pricing in accordance with the terms of the North East Procurement Organisation Grounds Maintenance & Plant Equipment – Lot 1 & 2.

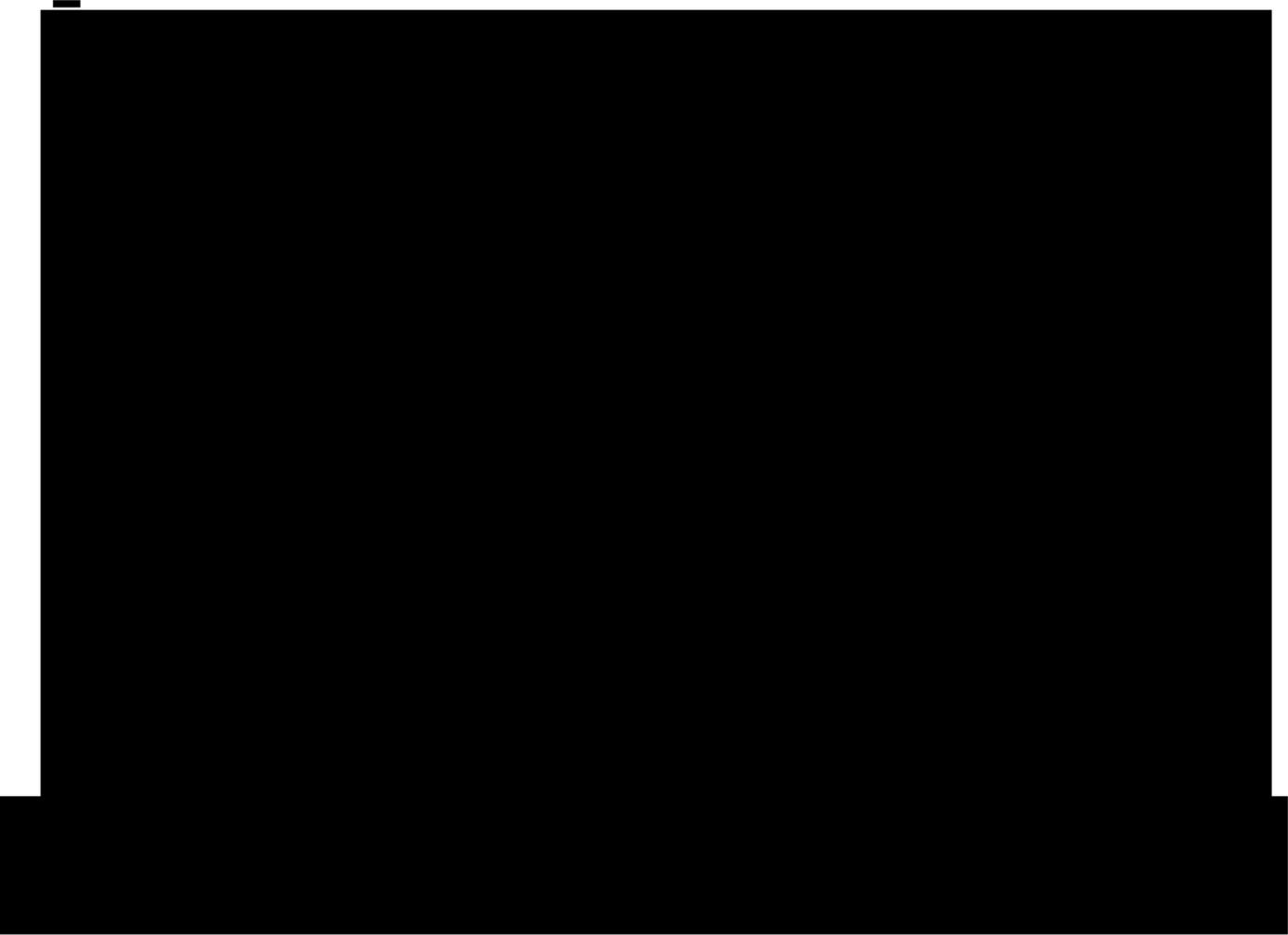
Please submit all pricing using the below or attached pricing matrix. Pricing submitted in any other format may be disregarded for evaluation purposes.

Quality

Compliance with Specification

Pass/Fail

Tenderers must indicate their compliance with the specification in the table below. Where their submission deviates from the required specification, tenderers should note the variance. If a specification item is marked as pass/fail, failure to comply with the specification will result in the submission being deemed non-compliant and excluded from the evaluation.



Submission

Please complete the sections below within the tables provided. However, if your submission is substantial, you may upload separate documents clearly named, to supplement this compliance table.

Please ensure that document file sizes are as small and file names as short as possible. Where possible please provide links to online brochures, rather than attaching large files to your response.

[REDACTED]

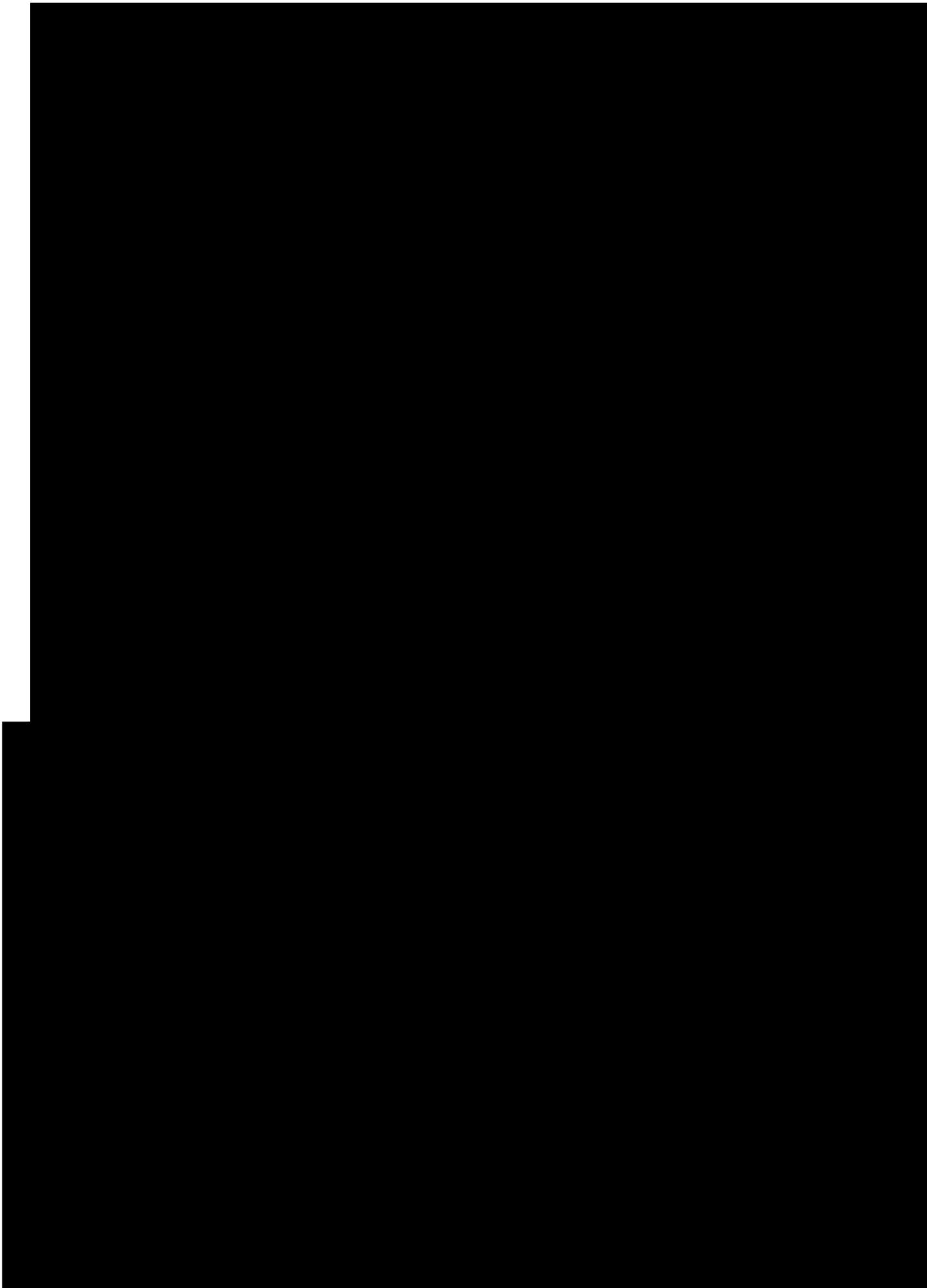
[REDACTED]

[REDACTED]

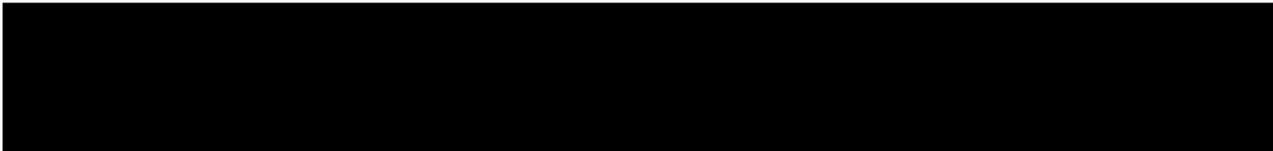
[REDACTED]

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[REDACTED]

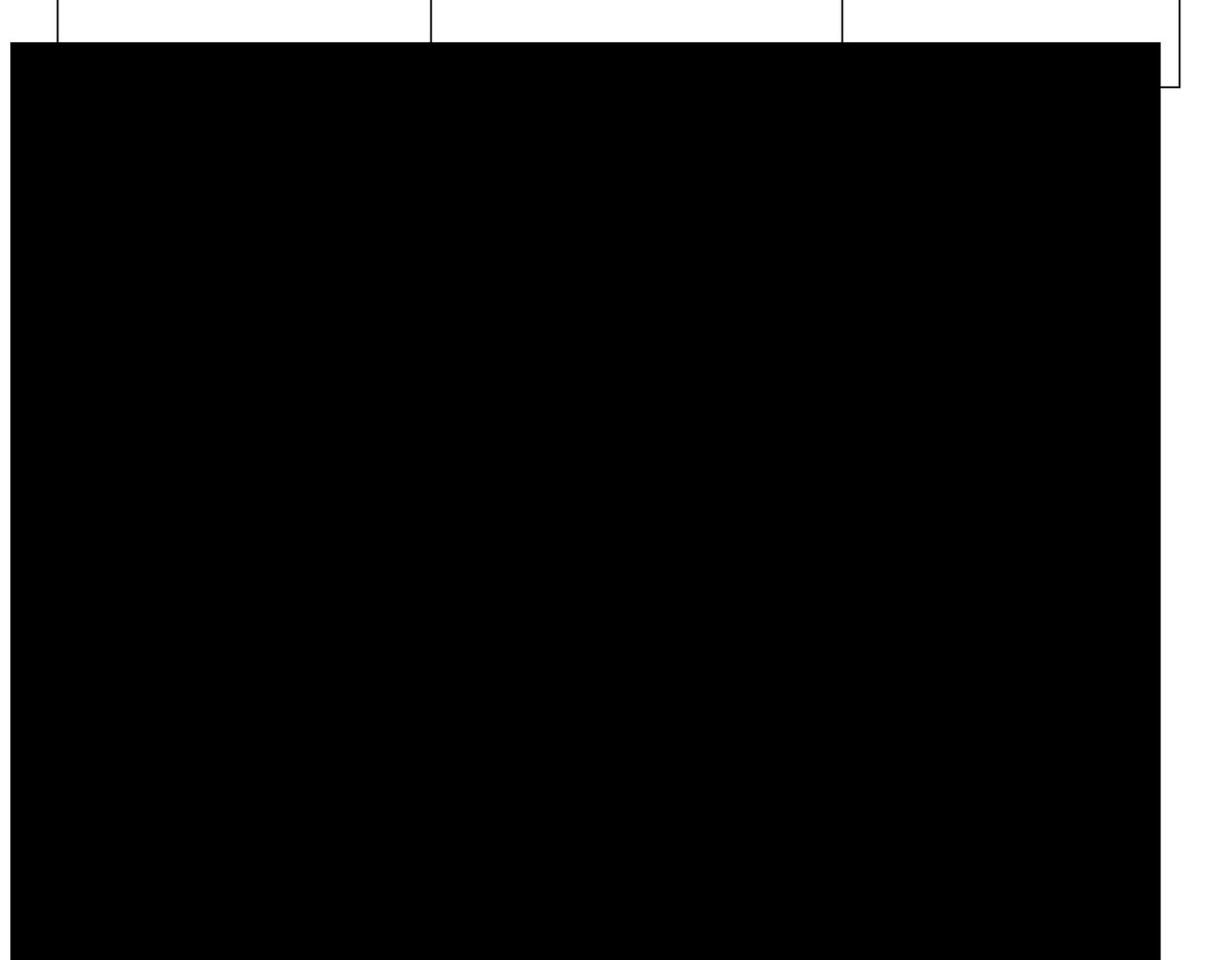
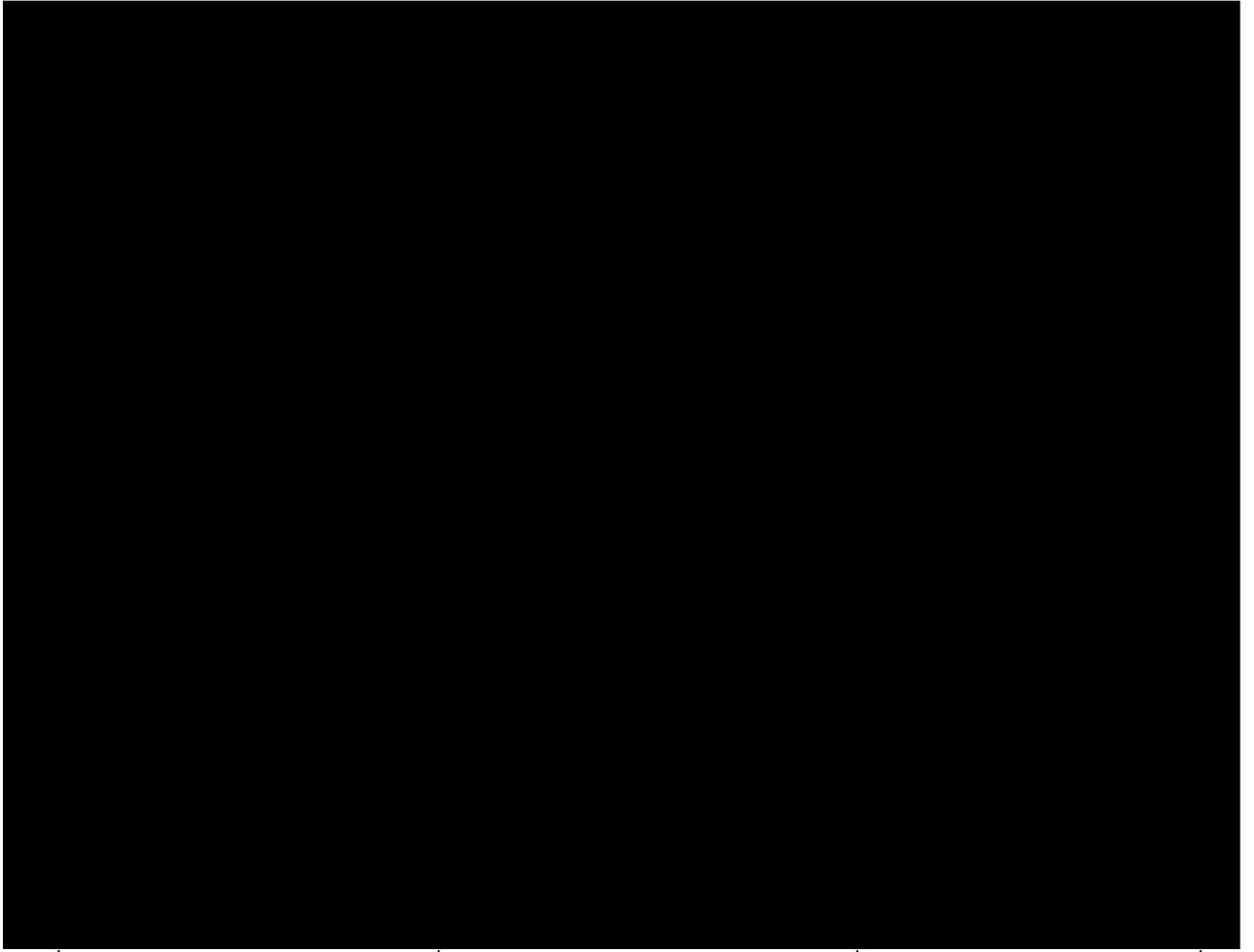


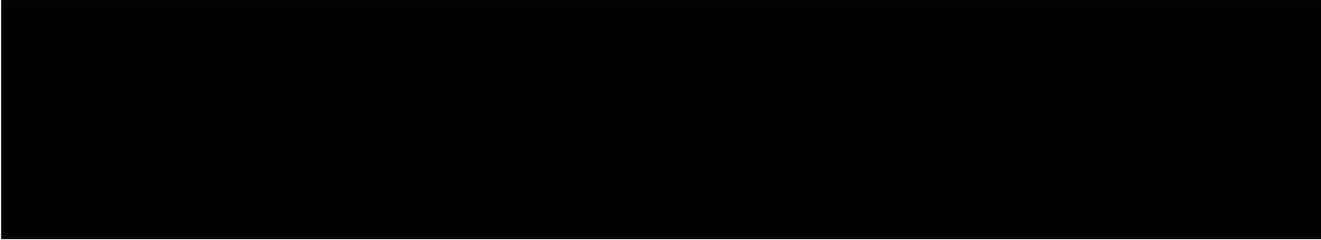
Trailer Models Required & Approximate Numbers



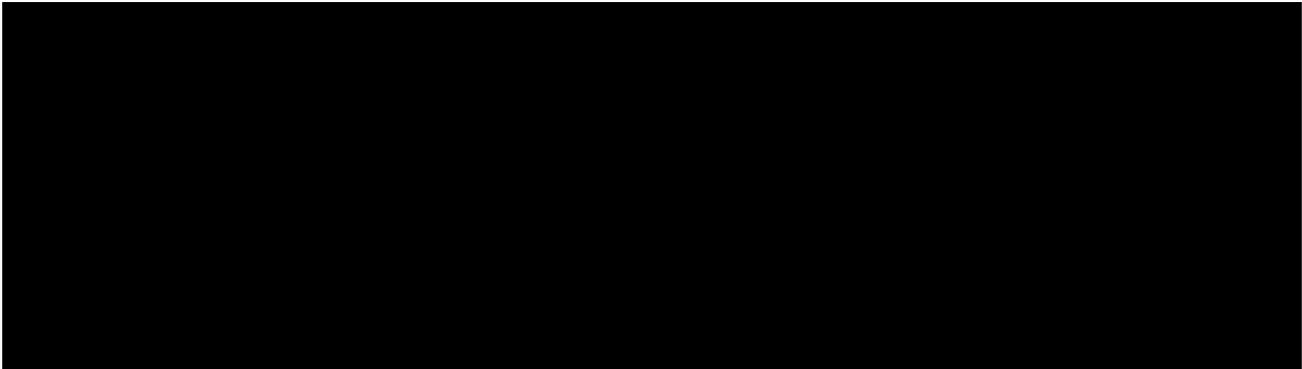
Delivery Locations

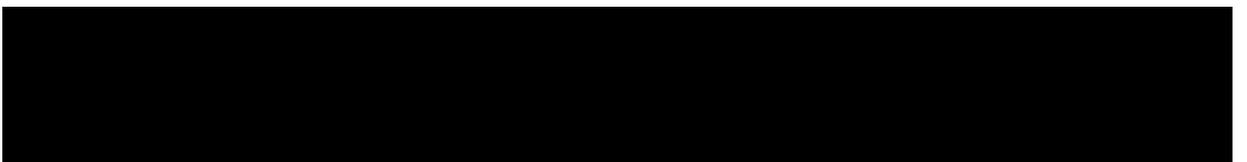
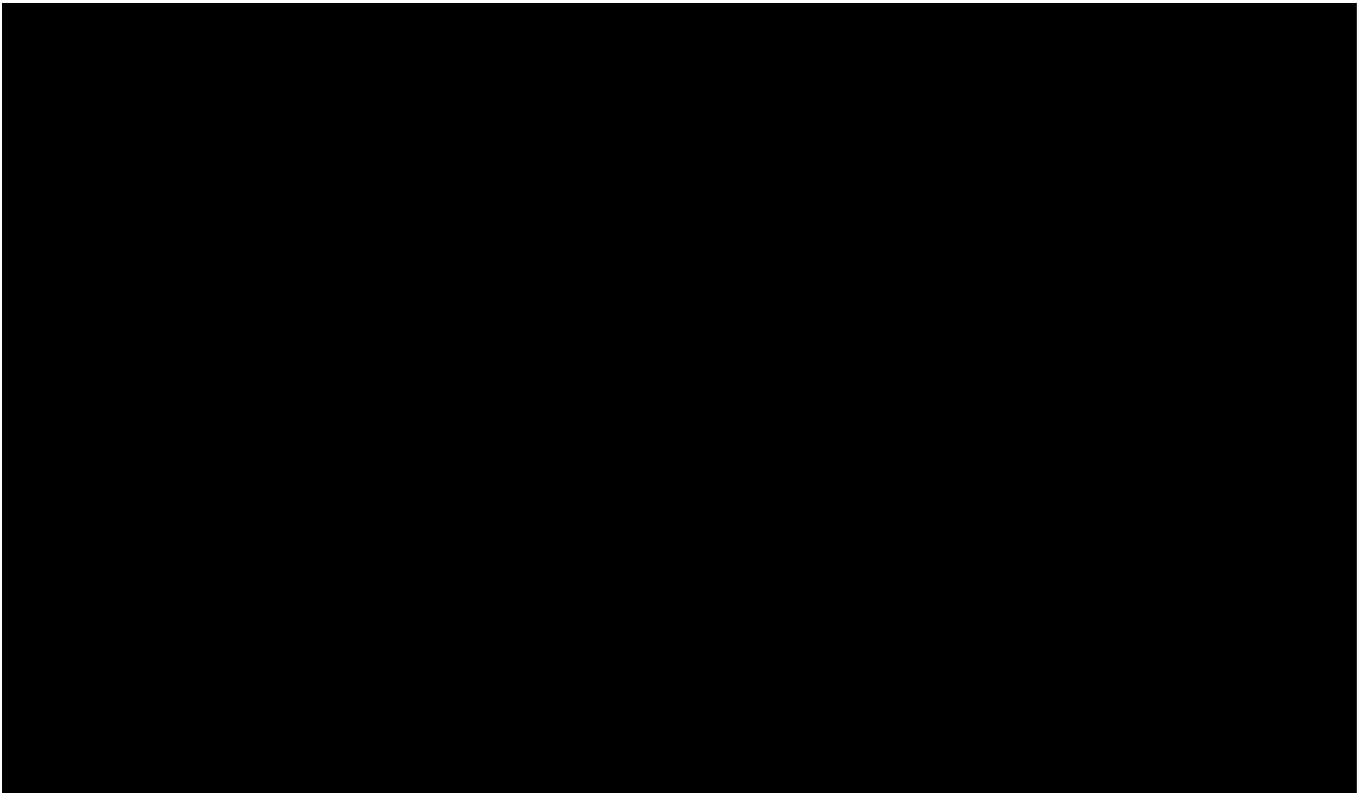
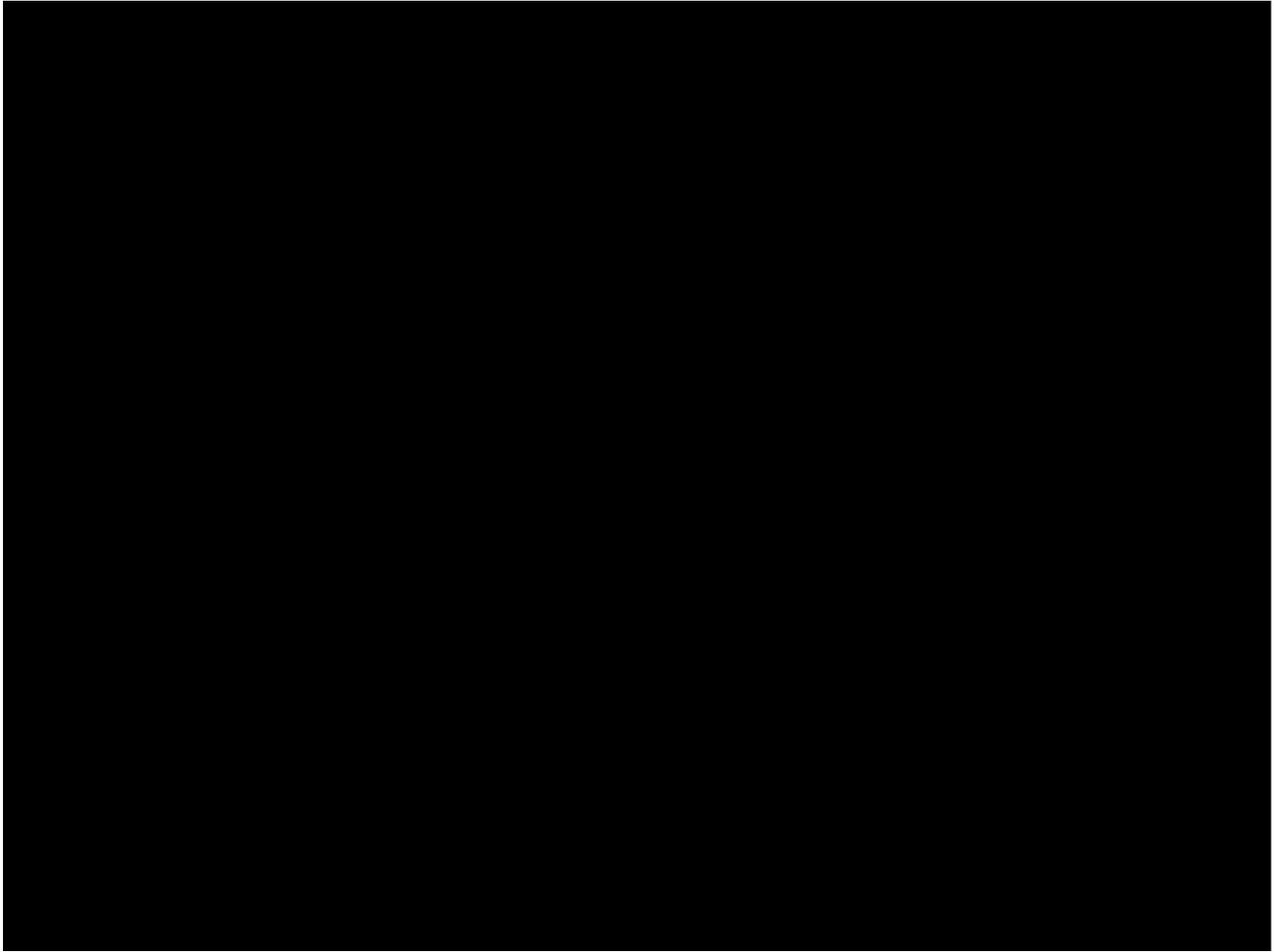






Quality





Annex 2
Schedule 4
Terms and Conditions of Contract for Purchase
(Call-Off Contract – Purchase: All Lots)

Guidance:

These Terms and Conditions represent the standard contract to be used for Call-Off Contracts under the Framework. However, Members can amend and/or more precisely formulate these as appropriate for their requirement.]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	means this call-off contract under the Framework between the Customer and the Supplier constituted by the Supplier's acceptance of any Purchase Order issued by the Customer and includes the Purchase Order in its entirety;
------------	---

[REDACTED]

<p>“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”</p>	<p>have the meaning given in the GDPR;</p>
<p>“Customer”</p>	<p>means the organisation identified as the Customer in 1.1. A Customer must be a member of The Procurement Partnership Limited’s buying club;</p>
<p>“Data Loss Event”</p>	<p>means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;</p>
<p>“Data Protection Impact Assessment”</p>	<p>means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;</p>
<p>“Data Protection Legislation”</p>	<p>means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.</p>
<p>“Data Subject Access Request”</p>	<p>means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;</p>
<p>“Date of Delivery”</p>	<p>means the date and time by which the Equipment must be Delivered to the Customer, as specified in the Purchase Order;</p>
<p>“Deliver”</p>	<p>means the handover of Equipment to the Customer at the location and on the date and time specified in the Purchase Order. This may also be used in the context of the Customer collecting from the Supplier’s location (if applicable). This shall include unloading and any other specific handover arrangements agreed in accordance within a Purchase Order. Delivered and Delivery shall be construed accordingly;</p>

“DPA”	means the Data Protection Act 2018;
“Equipment”	means grounds maintenance equipment, plant and handheld tools including electrical and mechanical items. It also means all other associated miscellaneous machinery, extra products, activities and services including spare parts/maintenance that are likely and reasonable to be required by Members or Contracting Authorities under a Call-off Contract pursuant to the nature of this Agreement.
“FOIA”	means the Freedom of Information Act 2000;
“GDPR”	Means the General Data Protection Regulation (Regulation (EU) 2016/679)
“Framework”	means the overarching NEPO and The Procurement Partnership framework agreement (reference: NEPO214) for supply of Grounds Maintenance Equipment and Plant under which this Agreement is awarded;
“Information”	has the meaning given under section 84 of the FOIA;
Information Commissioner’s Office	means the United Kingdom’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals (https://ico.org.uk/).
“Intellectual Property Rights”	<p>means</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;

<p>“Legislation or Law”</p>	<p>means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a UK court or the European Court of Justice, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply. Any reference to “Legislation” shall be construed accordingly;</p>
<p>“LED”</p>	<p>means the Law Enforcement Directive (Directive (EU) 2016/680);</p>
<p>“Mini-Competition”</p>	<p>means the process of reopening competition under the Framework for the purpose of identifying a Supplier with whom a Purchase Order is to be placed;</p>
<p>“Party”</p>	<p>means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;</p>
<p>“PCR 2015”</p>	<p>means the Public Contracts Regulations 2015 (as amended);</p>
<p>“Price”</p>	<p>means the cost of Purchase for Equipment from the Supplier, identifiable from the Price List or through Mini-Competition;</p>
<p>“Price List”</p>	<p>means the range of Equipment, complete with Prices, available for Purchase from the Supplier pursuant to Schedule 5 of the Framework or otherwise agreed with the Supplier through Mini-Competition;</p>
<p>“Protective Measures”</p>	<p>means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
<p>“Purchase”</p>	<p>means the Purchase of Equipment and any ancillary service from the Supplier;</p>

<p>“Purchase Order”</p>	<p>means a Customer’s notification to the Supplier of an order for the Purchase of Equipment. This may be issued by phone, email, facsimile or electronically via a system(s) based interface, this may be a bespoke web-based solution. For the purposes of this Agreement a Purchase Order shall include:</p> <ul style="list-style-type: none"> a) Customer details, including name, registered address and full contact details b) The required Delivery location; c) The date and time required for Delivery; d) The agreed invoicing schedule; e) The Equipment required and the volume. <p>The Purchase Order may include:</p> <ul style="list-style-type: none"> f) A Purchase Order Number or other unique customer reference; g) Any additional specification(s) or requirement(s) that the Customer may reasonably require from the Supplier pursuant to this Agreement; h) A long-term commitment to purchase Equipment, e.g. for 12 months or longer; <p>Any other necessary information, including additional terms and conditions supplementary to this Agreement;</p>
<p>“Purchase Order Number”</p>	<p>means the Customer’s unique number relating to an order for Equipment to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;</p>
<p>“Request for Information”</p>	<p>has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);</p>
<p>“Service Level”</p>	<p>means any minimum expected Service Levels associated with the supply of Equipment by the Supplier to the Customer. Typically it is expected that the minimum Service Levels shall be populated by the</p>

	Customer in the template provided in Schedule 3 from the Framework;
“Specification”	means the Specification of the Equipment to be Purchased under this Agreement by the Customer. Equipment supplied must meet and/or exceed any minimum Specification the Customer may choose to append to this Agreement as an additional Schedule. The Specification may be reasonably varied in writing by the Customer at any point of this Agreement;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided by the Supplier from time to time;
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
“Supplier”	means the person named as Supplier in clause 1.2 of this Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

3. Interpretation

3.1. In these terms and conditions, unless the context otherwise requires:

- 3.1.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns.
- 3.1.2. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 3.1.3. A reference to a party shall be to a party to this Agreement and the expression parties shall be construed accordingly.
- 3.1.4. Words in the singular shall include the plural and vice versa.
- 3.1.5. A reference to one gender shall include a reference to the other genders.
- 3.1.6. A reference to any statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.
- 3.1.7. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 3.1.8. A reference to writing or written includes e-mail.
- 3.1.9. A reference to a clause in any Part shall, unless otherwise expressly provided, be to a clause within that Part.
- 3.1.10. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

4. Duration

- 4.1. This Agreement begins on the Commencement Date and will continue for a period of 24 months, or until all Equipment is Delivered, unless otherwise terminated in accordance with the terms of this Agreement, specifically Clause 21.

5. Basis of Agreement

- 5.1. The Purchase Order constitutes an offer by the Customer to Purchase the Equipment subject to and in accordance with the terms and conditions of this Agreement, the Purchase Order and the Framework.
- 5.2. The Customer in accessing the Framework to place a Purchase Order acknowledges their responsibility to ensure no breach of PCR 2015 or any other relevant statutory obligations.
- 5.3. The Customer by issuing a Purchase Order pursuant to this Agreement agrees that should the Customer breach PCR 2015 or any other statutory obligations, whether by intent or otherwise, the Framework and any parties associated with it shall not be held accountable, responsible or liable in any way.
- 5.4. The offer comprised in the Purchase Order shall be deemed to be accepted by the Supplier on receipt by the Customer from the Supplier written notification of acceptance within two (2) working days of the date of the Purchase Order.

6. Purchase of Equipment

- 6.1. In consideration of the Customer's agreement to pay the Price, the Supplier shall Deliver the Equipment to the Customer subject to and in accordance with the terms and conditions of the Agreement.

- 6.2. In Delivering the Equipment, the Supplier shall co-operate with the Customer in all matters relating to the supply of the Equipment and comply with all reasonable Customer instructions.
- 6.3. The Supplier shall provide the Equipment in accordance with the Purchase Order. The Supplier warrants, represents, undertakes and guarantees that the Equipment supplied under the Agreement shall:
 - 6.3.1. be free from defects (manifest or latent), in materials and workmanship and remain so for a reasonable duration of use;
 - 6.3.2. be fit for any purpose held out by the Supplier; and
 - 6.3.3. and the Supplier itself shall, comply with all applicable laws.

7. Customer Responsibilities

- 7.1. The Customer must inspect upon Delivery the Equipment and any accessories provided before accepting the Equipment. If the condition of the Equipment does not meet agreed standards the Supplier must be immediately notified.
- 7.2. If the Supplier has agreed to Deliver the Equipment at an address provided by the Customer, the Customer will be responsible for the Equipment from the time the Supplier Delivers the Equipment, following any agreed inspections.

8. Price, Payment and Recovery of Sums Due

- 8.1. The Price for Equipment shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the Purchase of Equipment.
- 8.2. Unless otherwise agreed in writing by the Customer, the Price shall be calculated in accordance with the Framework or the result of a Mini-Competition conducted under the Framework.
- 8.3. Pricing for Equipment under this Agreement may only vary in accordance with any terms covering price variation stated on the Purchase Order or Mini-Competition documentation.
 - 8.3.1. For the avoidance of doubt if the Purchase Order, and/or any Mini-Competition documents are silent on the matters of price variation then the Price shall not be amended or varied by any terms issued by the Supplier unless agreed by the Customer in writing.
- 8.4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Equipment Purchased.
- 8.5. The Supplier shall invoice the Customer on the basis agreed in the Purchase Order. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number (if applicable) and a breakdown of the Equipment Purchased in the invoice period.
- 8.6. The Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and if necessary includes a valid Purchase Order Number.

- 8.7. If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 8.6 after a reasonable time has passed.
- 8.8. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of Equipment unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 21. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 25.
- 8.9. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10. Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 8.10.1. provisions having the same effects as clauses 8.5 to 8.9 of this Agreement; and
- 8.10.2. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 8.5 to 8.10 of this Agreement.
- 8.10.3. In this clause 8.10, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

9. Cancellation

- 9.1. The Customer shall have the right to cancel a Purchase Order for Equipment, or any part of a Purchase Order which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Price or that part of the Price for Equipment which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit and the reasonable costs the Supplier has incurred to fulfil the Purchase Order.
- 9.1.1. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

10. Delivery

- 10.1. The Supplier shall Deliver the Equipment to the Customer on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and time to the address specified in the Purchase Order. Delivery of the Equipment shall be completed once the completion of Delivery (including any unloading required) at the stated address has taken place and the Customer has signed for the Delivery following handover and inspection.
- 10.2. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Equipment shall be provided without acceptance by the Customer of any liability in respect of any

actions, claims, costs and expenses incurred by the Supplier or other third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of their sub-contractors.

- 10.3. Delivery of Equipment shall be accompanied by a delivery or collection note which shows the Purchase Order Number (if applicable) and the type and quantity of the Equipment and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 10.4. Unless otherwise stipulated by the Customer in the Purchase Order, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 10.5. Where (i) the Supplier fails to Deliver the Equipment or part of the Equipment or (ii) the Equipment or part of the Equipment do not comply with the requirements of the Purchase Order, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
 - 10.5.1. request the Supplier, free of charge, to deliver suitable substitute Equipment within the timescales specified by the Customer;
 - 10.5.2. to require the Supplier, replace the rejected Equipment, or to provide a full refund of the price of the rejected Equipment (if paid);
 - 10.5.3. to reject the Equipment (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those Equipment duly returned;
 - 10.5.4. to Purchase the same or similar Equipment from another supplier and to recover any reasonable expenses incurred in respect of Purchasing the Equipment from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

11. Ownership and Risk

- 11.1. The Supplier warrants that at the Date of Delivery of any Equipment it shall have full and unrestricted right, power and authority to supply and deliver that Equipment to the Customer.
- 11.2. Subject to Clause 11.3, risk in the Equipment shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer at the time of Delivery following inspection and acceptance by the Customer.
- 11.3. Ownership in the Equipment shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer at the time of final payment.

12. Staff

12.1. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

- 12.1.1. refuse admission to the relevant person(s) to the Customer's premises;
 - 12.1.2. direct the Supplier to end the involvement in the supply of Equipment of the relevant person(s); and/or
 - 12.1.3. require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Supplier shall comply with any such notice.

12.2. The Supplier shall:

- 12.2.1. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

13. Assignment and Sub-Contracting

13.1. The Supplier shall not without the written consent, which may not be unreasonably withheld, of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of the Agreement or any part of the Agreement, other than any elements necessary for the Delivery of Equipment. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

13.2. Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

13.3. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

14. Intellectual Property Rights and Indemnity

14.1. No Party to this Agreement shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

14.2. The Supplier shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Purchase or use of Equipment, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

- 14.3. The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any Equipment and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

15. Governance and Records

- 15.1. The Supplier shall if required by the Customer:
- 15.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 15.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.
 - 15.1.3. The Supplier shall keep and maintain until seven (7) years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Equipment Purchased under it, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

16. Confidentiality, Transparency and Publicity

- 16.1.1. Subject to clause 16.2, each Party shall:
 - 16.1.2. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 16.1.3. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 16.2. Notwithstanding clause 16.1, a Party may disclose Confidential Information which it receives from the other Party:
- 16.2.1. where disclosure is required by applicable law or by a court of competent jurisdiction;
 - 16.2.2. to its auditors or for the purposes of regulatory requirements;
 - 16.2.3. on a confidential basis, to its professional advisers;
 - 16.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 16.2.5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses

Confidential Information pursuant to this clause 16.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

- 16.2.6. where the receiving Party is the Customer:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - (d) in accordance with clause 17.

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 Customer under this clause 16.

16.3. The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

16.4. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

16.5. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Customer is required to publish information on its website detailing any item of expenditure over £500 and any contract with a value that exceeds £5,000. The information published will include the Supplier's details and the Price to be paid. The parties acknowledge that this information is not Confidential Information or commercially sensitive.

17. Freedom of Information

17.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 17.1.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

- 17.1.2. transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 17.1.3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 17.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 17.2. The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Equipment (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure
- 17.3. Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Equipment is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

18. Protection and Security of Data

- 18.1. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 18.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to by the Customer is for the purposes of ensuring Delivery. Changes to processing may not be determined by the Supplier.
- 18.3. The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe DPA.
- 18.4. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to this Agreement;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security

measures and mechanisms to ensure the protection of Personal Data.

18.5. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with ensuring Delivery unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the employees do not process Personal Data except in accordance with this Agreement (particularly for the purposes of Delivery);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any employees who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
- 18.6. Subject to clause 18.7 the Supplier shall notify the Customer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 18.7. The Supplier's obligation to notify under clause 18.6 shall include the provision of further information to the Customer in phases, as details become available.
- 18.8. Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under DPA and any complaint, communication or request made under clause 18.6 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following any Data Loss Event;

- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 18.9. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.10. The Supplier shall allow for audits of its data processing activity by the Customer or the Customer's designated auditor.
- 18.11. The Supplier shall designate a Data Protection Officer if required by DPA.
- 18.12. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in Clause 18.1 – 18.15 of this Agreement such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 18.13. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 18.14. The Supplier may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 18.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

19. Liability and Insurance

- 19.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the

negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

19.2. Subject always to clause 19.3

19.2.1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply the Equipment, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to £1,000,000; and

19.2.2. except in the case of claims arising under clauses 14.2 and 24.3, in no event shall either Party be liable to the other Party for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

19.3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

19.3.1. death or personal injury caused by its negligence or that of its Staff;

19.3.2. fraud or fraudulent misrepresentation by it or that of its Staff;

19.3.3. breach of any obligation 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; or

19.3.4. any other matter which, by law, may not be excluded or limited.

19.4. The Supplier's liability under the indemnity in clauses 14.2 and 24.3 shall be unlimited.

19.5. The Supplier shall at its own cost take out and maintain throughout the Agreement with a reputable insurance company or companies the following policies of insurance:

19.5.1. Employers liability insurance in accordance with the Employer's Liability (Compulsory Insurance Act) 1969 with a limit of indemnity of not less than ten million pounds (£10,000,000) per claim or series of claims arising out of any one incident;

19.5.2. Public liability with a limit of indemnity of not less than five million pounds (5,000,000) per claim or series of claims arising from one event;

19.5.3. [For Call-Off Contracts Awarded under Lots 1 & 2 only] (Product liability) with a limit of indemnity of not less than five million pounds (£5,000,000) per claim or series of claims arising from one event.

20. Force Majeure

20.1. If either Party is unable to perform any obligation under this Agreement because of an event of Force Majeure which is both beyond that Party's control and

is such that the Party with the application of all due diligence and foresight could not prevent which causes the cessation of or a substantial interference with the performance of the Agreement, the duty of the Party to perform the relevant obligation shall be suspended until such circumstances have ceased.

20.2. For the purposes of this Clause 20 the circumstances below are events of Force Majeure:

20.2.1. explosion;

20.2.2. war;

20.2.3. civil disorder;

20.2.4. fire or flood;

20.2.5. actual or threatened terrorist attack; or

20.2.6. acts or legislation passed by central Government that may impact the validity of any aspect of this Agreement.

21. Termination

21.1. The Customer reserves the right to terminate this Agreement immediately in the following circumstances:

21.1.1. the Supplier commits a material breach and/or persistent repeated breaches of any clause of this Agreement and, if such breach is or are remediable, fails to provide remedy within a period of ten (10) Working Days after being notified in writing to do so; or

21.1.2. The Customer becomes aware of a serious infringement of the obligations under PCR 2015, in particular:

21.1.2.1. This Agreement has been awarded following a substantial modification from the nature and intent of the Framework, to the extent that a new procurement procedure should have been conducted;

21.1.2.2. The Supplier has, at the time of award of this Agreement been in one of the situations referred to in the PCR 2015 regulation 57 and should have therefore been excluded from being awarded this Agreement, unless suitable evidence was provided in accordance with 'self-cleaning' (regulation 57 clauses 13 – 17)

21.1.3. the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

21.1.4. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or

21.1.5. the Supplier ceases, or threatens to cease, to carry on business; or

- 21.1.6. the Customer reasonably apprehends that any of the events in Clauses 21.1.3 to 21.1.5 inclusive is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
- 21.1.7. the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or to any other contract with the Customer; or
- 21.1.8. the Supplier or any of its employees shall have committed any offence under the Bribery Act 2010.

21.2. Either the Customer or the Supplier may terminate this Agreement without reason at any time provided at least twenty (20) Working Days' notice is given.

22. Consequences Of Termination

- 22.1. Termination shall be without prejudice to the rights and remedies of the Supplier and the Customer accrued before such termination and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding as at the date of such termination.
- 22.2. All provisions of this Agreement which are expressed to survive termination or expiry of this Agreement shall continue in force and effect in accordance with their terms.
- 22.3. Subject as otherwise provided in the Agreement neither Party shall have any further obligation to the other under the Agreement.
- 22.4. Notwithstanding the service of a notice to terminate the Agreement, the Supplier shall continue to fulfil its obligations under the Agreement until the date of termination or expiry of the Agreement or such other date as required.

23. Compliance

- 23.1. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 23.2. The Supplier shall:
 - 23.2.1. comply shall comply with all applicable health and safety Legislation in force;
 - 23.2.2. comply with the reasonable requirements of the Customer's security arrangements;
 - 23.2.3. comply with all the Customer's health and safety measures;
 - 23.2.4. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;

- 23.2.5. perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time;
 - 23.2.6. take all reasonable steps to secure the observance of clause 23.2.5 by all Staff; and
 - 23.2.7. provide Equipment in accordance with the Customer's environmental policy as provided from time to time.
- 23.3. The Equipment is to be provided in accordance with any instructions specified in the Purchase Order and in compliance with any and all relevant statutory requirements. The Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 23.

24. Prevention of Fraud and Corruption

- 24.1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 24.2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 24.3. If the Supplier or the Staff engages in conduct prohibited by clause 24.1 or commits fraud in relation to the Agreement or any other contract under the Framework (including the Customer) the Customer may:
- 24.3.1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of Equipment and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 24.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

25. Dispute Resolution

- 25.1. If there is a dispute between the Parties concerning the interpretation or operation of this Agreement it shall be referred to a senior officer of the Customer and a senior representative of the Supplier for resolution.
- 25.2. If any dispute is not resolved within twenty (20) Working Days of the referral under Clause 25.1 (or such longer period as the Customer and the Supplier may agree), then the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure 2001 (the "model Procedure") or such later edition as may be in force from time to time.

- 25.3. To initiate a mediation a Party must give notice in writing (the “ADR notice”) to the other Party requesting a mediation in accordance with this Clause 25. The mediation is to take place not later than twenty (20) Working Days after the date of the ADR notice. If there is any issue concerning the conduct of the mediation upon which the Parties cannot agree within ten (10) Working Days after the date of the ADR notice, then CEDR will, at the request of any Party, decide the issue for the Parties having consulted with them.
- 25.4. If the dispute is not resolved within ten (10) Working Days of the mediation then the Parties may litigate the matter.

26. General

- 26.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 26.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 26.3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 26.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 26.5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 26.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 26.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 26.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without

modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

27. Notices

- 27.1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 27.3, e-mail to the address of the relevant Party set out in the Purchase Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 27.2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 27.3. Notices under clauses 20 (Force Majeure) and 21 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 27.1.

28. Governing Law and Jurisdiction

- 28.1. The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

