

SCHEDULE 1 CALL-OFF TERMS AND CONDITIONS

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PART A OPERATIVE PROVISIONS

A1 DEFINITIONS

The terms and expressions used in these Call-Off Terms and Conditions shall have the meanings set out below:

"Authorised Officer"	the person duly appointed by the Contracting Authority and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Call-Off Contract in the Contract Particulars or as amended from time to time and in default of such notification the Contracting Authority's head of procurement or similar responsible officer.
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England.
"Calculation Trigger Date"	For any undisputed Invoiced Debt, the date the relevant invoice is received by the Contracting Authority, such date

	being the date recorded in the Contracting Authority's accounts payable system as the registration date. For any disputed Invoiced Debt, the Calculation Trigger Date shall be the date on which the dispute has been resolved to the mutual satisfaction of the parties;
"Change in Law"	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Call-Off Contract.
"Commencement Date"	the commencement date stated in the Order Form.
'Commercially Sensitive Information'	the information used in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to either NEPO or the Contracting Authority that, if disclosed by either NEPO or the Contracting Authority, would cause the Contractor significant commercial disadvantage or material financial loss.
"Confidential Information"	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Goods, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA and UK GDPR).
"Call-Off Contract"	<p>the agreement (made pursuant to the provisions of the Framework Agreement) in respect of the provision of the Goods consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ol style="list-style-type: none"> 1. the Order Form; 2. any Special Terms and Conditions; 3. the Call-Off Terms and Conditions; 4. the Mini-Competition Tender.
"Contract Particulars"	the document detailing the specific core terms of the Call-Off Contract which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and the Specification and relevant contract specific details of the Mini-Competition Invitation to Tender included in the document.
"Call-Off Terms and"	The terms and conditions set out in this document;

Conditions”	
“Contracting Authority”	the contracting authority named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Contracting Authority (whether in part or totally) or which is controlled by or is under common control with the Contracting Authority (and the expression ‘control’ shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“Contractor”	the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.
“Contract Manager”	the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.
“Contract Particulars”	the document detailing the specific core terms of the Framework Agreement which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and the Specification and relevant contract specific details of the Tender included in the document.
“Contract Period”	the period of the Call-Off Contract as stated in the Order Form (and any extension in accordance with clause B1).
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Data Controller”	has the meaning set out in the Data Protection Legislation.
“Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract.
“Data Processor”	has the meaning set out in the Data Protection Legislation
“Data Protection Legislation or DPL”	Means (i) UK GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act and / or any other successor legislation to the UK GDPR or DPA 2018 and (iii) all applicable Law about the processing of personal data and privacy
“Data Protection Impact Assessment”	means an assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Sharing Agreement”	means a formal agreement that documents what data is being shared and how the data can be used between the Parties.
“Data Sharing Code of Practice”	the code of practice issued by the Information Commissioner in respect to the sharing of personal data.
“Data Subject Access Request”	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.
“Delivery Instructions”	the instructions provided in the Order Form and any other information that the Contracting Authority considers appropriate to the provision of the Goods.
“Early Payment Scheme”	an optional scheme whereby the Contracting Authority is entitled to deduct and retain a rebate on sums invoiced to it by the Contractor, in consideration for early payment of such invoiced sums.
“Employee”	any person employed by the Contractor to perform the Call-Off Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives.
“EIR”	The Environmental Information Regulations 2004.
“EPS Rebate”	In respect of any Invoiced Debt, such percentage of that Invoiced Debt that the Contracting Authority is entitled to deduct and retain under clause C1.11 and calculated in accordance with Schedule 1.
“Framework Agreement”	The framework agreement for Goods between NEPO and the Contractor included within the Invitation to Tender;
“FOIA”	The Freedom of Information Act 2000
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Call-Off Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor 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”	the goods described in the Specification to be supplied by the Contractor in accordance with the Call-Off Contract and any associated services provided by the Contractor in relation to

	those Goods.
“HRA”	The Human Rights Act 1998.
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Invitation to Tender”	NEPO’s invitation to tender
“Invoiced Debt”	the Price payable by the Contracting Authority for the Services (including, without limitation, all fees, charges, expenses and other sums invoiced, including any applicable VAT and other taxes), that has been invoiced to the Contracting Authority by the Contractor;
“Invoice Payment Date”	The date on which the Contracting Authority executes its payment run in respect of the relevant Invoiced Debt;
“Joint Data Controllers”	has the meaning set out in the Data Protection Legislation.
“Law”	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, any saved enforceable community rights under European Communities Act 1972 provided in withdrawal legislation, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or applicable directives or requirements of any regulatory body of which the Contractor is bound to comply.
“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“LED”	means the Law Enforcement Directive (Regulation (EU) 2016/679)
“Mini-Competition Invitation to Tender”	The invitation to tender issued by the Contracting Authority in accordance with the mini-competition procedure set out at clause 6.2 of the terms and conditions to the Framework Agreement.
“Mini-Competition Tender”	The tender response submitted by the Contractor in accordance with the mini-competition procedure set out at clause 6.2 of the terms and conditions to the Framework Agreement.

“NEPO”	The Association of North East Councils Limited trading as North East Procurement Organisation which is a purchasing and contracting consortium.
“Order”	an order for Goods served by the Contracting Authority on a Contractor in accordance with the procedures set out in the Framework Agreement;
“Order Form”	the document setting out details of an Order in a form to be specified by the Contracting Authority;
“Personal Data”	has the meaning set out in the Data Protection Legislation.
“PCR 2015”	The Public Contracts Regulations 2015 as amended and updated by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1319);
“Price”	the price of the Goods calculated in accordance with the Pricing Schedule and specified, in relation to the Call-Off Contract, in the Order Form. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	the schedule from the Mini-Competition Tender detailing the pricing as detailed in the Contract Particulars.
“Protective Measures”	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
“Replacement Contractor”	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract.
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.
“Specification”	the specification included in the Mini-Competition Invitation to Tender setting out the Contracting Authority's detailed requirements in relation to the Goods.
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Contractor related to this Call-Off Contract
“Tender”	the Contractor's tender for the Goods in response to NEPO's Invitation to Tender.
‘VAT’	Value added tax

- A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
- A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A2 HEADINGS

- A2.1 The index and headings to the clauses and appendices to and schedules of this Call-Off Contract are for convenience only and will not affect its construction or interpretation.

A3 NOTICES

- A3.1 Any notice required by this Call-Off Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.
- A3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

A4 ENTIRE AGREEMENT

- A4.1 The Call-Off Contract constitutes the entire agreement between the parties relating to the subject matter of the Call-Off Contract. The Call-Off Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B PROVISION OF GOODS

B1 CALL-OFF CONTRACT PERIOD

- B1.1 The Call-Off Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- B1.2 If the Contract Period includes an option to extend and the Contracting Authority intends to take up the option, the Contractor shall be notified in writing within the

period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Call-Off Contract shall automatically expire after the initial Contract Period.

B2 PERFORMANCE

- B2.1 The Goods shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Goods shall be delivered between 9a.m. and 5p.m. on a Business Day.
- B2.2 The time of the delivery of the Goods is of essence to the Call-Off Contract.
- B2.3 Where the Goods are delivered by the Contractor, the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by the Contracting Authority from the Contractor, the point of delivery shall be when they are loaded onto the Contracting Authority's vehicle.
- B2.4 Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by the Contractor at such places the Contracting Authority may direct in the Contract.
- B2.5 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 until it has had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent.
- B2.6 All Goods must be properly packaged to survive transit 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 Goods are supplied.
- B2.7 The Contracting Authority shall not be obliged to accept delivery by instalments, unless expressly agreed to the contrary. If the Contracting Authority does specify or agree to delivery by instalments, delivery of any one instalment not in accordance with the Delivery Instructions shall, without prejudice to any other rights or remedies of the Contracting Authority, entitle the Contracting Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Contractor.
- B2.8 Without prejudice to the Contracting Authority's other remedies if the Goods or any portion of them are not delivered in accordance with the Delivery Instructions the Contracting Authority shall be entitled to recover from the Contractor, as liquidated damages and not by way of penalty, the amount, if any, for the period during which such failure continues the amount, if any as set out in the Special Terms and Conditions.

- B2.9 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Contracting Authority which prevents or hinders, or may prevent or hinder the Contractor from supplying the Goods in accordance with the Call-Off Contract, the Contractor shall inform the Contracting Authority.
- B2.10 If the Contractor has a change in Control, the Contractor shall inform the Contracting Authority as soon as reasonably practicable.
- B2.11 The Contracting Authority retains the Contractor for the supply of the Goods on a non exclusive basis.

B3 CONTRACT MANAGER

- B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Framework Agreement.
- B3.2 The Contractor shall forthwith give notice in writing to the Contracting Authority of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Contracting Authority before changing its Contract Manager.

B4 ORDERING PROCESS

- B4.1 Orders shall be placed by the Contracting Authority and be accepted by the Contractor in accordance with the provisions of the Framework Agreement.

B5 RISK IN AND TITLE TO GOODS

- B5.1 Risk in any goods provided as part of the Goods shall pass to the Contracting Authority upon delivery without prejudice to any rights of rejection which may accrue to the Contracting Authority under the Call-Off Contract or otherwise.
- B5.2 Title in any goods provided as part of the Goods shall pass to the Contracting Authority upon delivery or earlier payment.

B6 WARRANTY

- B6.1 The Contractor warrants to the Contracting Authority that the Goods will be:
- B6.1.1 of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as required by the Specification or held out by the Contractor; and
 - B6.1.2 free from defects in design, material and workmanship; and
 - B6.1.3 provided in accordance with the Contract, correspond with the Specification and any drawings, samples or descriptions provided by the Contractor; and

- B6.1.4 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- B6.2 The Contractor warrants to the Contracting Authority that to the extent that associated services are performed, they will 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.
- B6.3 Without prejudice to the Contracting Authority's rights to terminate under [clause D1](#) (Termination), if any of the Goods supplied are not in accordance with the Call-Off Contract, the Contracting Authority shall be entitled to:
- B6.3.1 require the Contractor to repair the Goods or provide replacement Goods in accordance with the Call-Off Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
- B6.3.2 require repayment of the proportion of the Price which has been paid in respect of such Goods together with payment of any additional expenditure over and above the Price reasonably incurred by the Contracting Authority in obtaining replacement Goods.

B7 CONTRACTOR'S EMPLOYEES

- B7.1 The Contracting Authority reserves the right under the Call-Off Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Contracting Authority:
- B7.1.1 any member of the Contractor's Employees; and/or
- B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor whose admission or continued presence would be, in the reasonable opinion of the Contracting Authority, undesirable.
- B7.2 When directed by the Contracting Authority, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Call-Off Contract to any premises occupied by or on behalf of the Contracting Authority, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Contracting Authority may reasonably desire.
- B7.3 The decision of the Contracting Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Contracting Authority shall be final and conclusive.
- B7.4 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Contracting Authority under this clause.

PART C PRICE AND PAYMENT

C1 PRICE AND PAYMENT

- C1.1 The Contracting Authority shall pay the Price for the Goods to the Contractor.
- C1.2 The Price shall be fixed for the duration of the Contract Period.
- C1.3 The Contractor shall submit a single VAT invoice to the Contracting Authority no later than seven (7) days after the end of each calendar month detailing the Goods provided during the calendar month and the amount payable. The Contracting Authority will consider and verify all invoices in a timely fashion.
- C1.4 The Contractor must be capable of implementing, managing and supporting PCards if requested by a Contracting Authority. Payment by PCards will be made as agreed between the Contractor and their PCard provider. The Contractor will be liable to pay any merchant fee levied for using PCard's and must not recover this charge from the Contracting Authority.
- C1.5 Payment of any undisputed invoice will be made no later than thirty (30) days from the date on which the Contracting Authority has determined that the invoice is valid and undisputed.
- C1.6 Where the Contracting Authority fails to comply with clause [C1.3](#) 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 [C1.3](#) after a reasonable time has passed.
- C1.7 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- (a) Provisions having the same effect as clauses [C1.3](#) – [6](#) above; and
 - (b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses [C1.3](#) – [C1.6](#) above. In clause 1.7, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Contracting Authority 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 Contract.
- C1.8 The Contracting Authority reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Goods at all or has provided the Goods inadequately and any invoice relating to such Goods will not be paid unless or until the Goods have been performed to the Contracting Authority's satisfaction.
- C1.9 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Bank of England base rate from time to time. The Contractor is not entitled to suspend provision of the Goods as a result of any overdue sums.
- C1.10 The Contracting Authority will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Contracting Authority to the Contractor against any liability of the Contractor to the Contracting Authority (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in

which the obligations of the Contracting Authority are payable under this Call-off Contract. The Contracting Authority's rights under this clause will be without prejudice to any other rights or remedies available to the Contracting Authority under this Contract or otherwise.

C1.11 Where the Contracting Authority has offered participation in an Early Payment Scheme and the Contractor has indicated in its Mini-Competition Tender that it wishes to participate, then the following provisions will apply:

C1.11.1 the Contractor acknowledges and agrees that in consideration of the Contracting Authority paying an Invoiced Debt owed to the Contractor under this Call-Off Contract prior to the date by which such payment would otherwise be required to be made under C1.5 above, the Contracting Authority shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, the EPS Rebate.

C1.11.2 for the avoidance of doubt, nothing in this Call-Off Contract shall:

C1.11.2.1 affect the date by which payment of an Invoiced Debt is required to be made by the Contracting Authority;

C1.11.2.2 require the Contracting Authority to make early payment to the Contractor in respect of any Invoiced Debt; or

C1.11.2.3 affect the Contractor's obligation to pay any contract rebate due to NEPO under the terms of the Framework Agreement.

C1.11.3 In the event the Contractor, acting reasonably, considers that the Contracting Authority has incorrectly applied an EPS Rebate it shall raise a query in respect of that EPS Rebate with Contracting Authority's accounts payable team (whose details will be provided to the Contractor by the Contracting Authority, as updated from time to time) within seven (7) days of the relevant payment being received by the Contractor.

C1.11.4 If the Contractor does not raise a genuine query under clause C1.11.3 within seven (7) days of the relevant EPS Rebate being applied, the Contracting Authority shall be deemed to have applied the EPS Rebate correctly in that instance and shall be entitled to retain that EPS Rebate.

C1.11.5 The parties shall use reasonable endeavours to resolve any query raised in accordance with clause C1.11.3 in a timely manner, including making relevant personnel available for the purpose.

C1.12 Further details of payment, if any, are set out in the Pricing Schedule.

PART D

AND CONSEQUENCES OF TERMINATION

D1 TERMINATION

- D1.1 Subject to the provisions of [clause H6](#) (Force Majeure) the Contracting Authority may terminate the Call-Off Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
 - D1.1.2 the Contractor is convicted of a criminal offence; or
 - D1.1.3 the Contractor ceases or threatens to cease to carry on its business; or
 - D1.1.4 the Contractor has a change in Control which the Contracting Authority believes will have a substantial impact on the performance of the Call-Off Contract; or
 - D1.1.5 there is a risk or a genuine belief that reputational damage to the Contracting Authority will occur as a result of the Call-Off Contract continuing; or
 - D1.1.6 the Contractor is in breach of any of its obligations under this Call-Off Contract that is capable of remedy and which has not been remedied to the satisfaction of the Contracting Authority within 14 days, or such other reasonable period as may be specified by the Contracting Authority after issue of a written notice specifying the breach and requesting it to be remedied; or
 - D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Call-Off Contract which is incapable of remedy; or
 - D1.1.8 the Contractor commits persistent minor breaches of this Call-Off Contract whether remedied or not.
 - D1.1.9 the Call-Off Contract has been subject to a substantial modification which would have required the Contracting Authority to carry out a new procurement procedure in accordance with Regulation 72(9) of the PCR 2015;
 - D1.1.10 the Contractor has, at the time of the Framework award, been in one of the situations referred to in Regulation 57(1) or (2) of the PCR 2015 (grounds for mandatory exclusion), and should therefore have been excluded from the procurement procedure; or
 - D1.1.11 the Call-Off Contract should not have been awarded to the Contractor who has been found guilty of having failed to discharge his obligations under any applicable UK law.

- D1.2 The Contracting Authority reserves the right to terminate the Call-Off Contract in part in the case of termination under clauses [D1.1.6](#), [D1.1.7](#) and [D1.1.8](#).
- D1.3 The Contracting Authority reserves the right to terminate the Call-Off Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.
- D1.4 Termination of the Call-Off Contract under this [clause D1](#) shall not cause the Framework Agreement to terminate automatically. For the avoidance of doubt, the Framework Agreement shall remain in force unless and until it is terminated or expires by its own terms.
- D1.5 Termination of this Call-Off Contract under this [clause D1](#) shall not cause other Call-Off Contracts, which may have been entered into separately by the Parties under the Framework Agreement, to terminate automatically.

D2 CONSEQUENCES OF TERMINATION

- D2.1 If this Call-Off Contract is terminated in whole or in part the Contracting Authority shall:
- D2.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Call-Off Contract or the affected part of the Call-Off Contract up to the time of the termination; and/or
 - D2.1.2 except for termination under clause [D1.3](#), be entitled to deduct from any sum or sums which would have been due from the Contracting Authority to the Contractor under this Call-Off Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Contracting Authority resulting from or arising out of the termination of this Call-Off Contract. Such loss or damage shall include the reasonable cost to the Contracting Authority of the time spent by its officers in terminating the Call-Off Contract and in making alternative arrangements for the supply of the Goods or any parts of them; and/or
 - D2.1.3 where termination arises under clause [D1.3](#), pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination; and/or
 - D2.1.4 in the event that any sum of money owed by the Contractor to the Contracting Authority (the Contractor's debt) exceeds any sum of money owed by the Contracting Authority to the Contractor (the Contracting Authority's debt) under this Call-Off Contract then the Contracting Authority shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Contracting Authority's debt or to recover the Contractor's debt as a civil debt.
- D2.2 Upon the termination of the Call-Off Contract for any reason, subject as otherwise provided in this Call-Off Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Call-Off Contract.

D3 DISPUTE RESOLUTION PROCEDURE

- D3.1 If a dispute arises between the Contracting Authority and the Contractor in connection with the Call-Off Contract, the parties shall each use reasonable

endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

- D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause [D3.1](#) then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses [D3.1](#) and [D3.2](#), shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

D4 SURVIVAL

- D4.1 The following clauses will survive termination or expiry of the Call-Off Contract: [Clause B5](#) (Risk in and Title to the Goods), Clause C1.11 (Early Payment Scheme), [Clause D2](#) (Consequences of Termination), [Clause F1](#) (Intellectual Property), [Clause F2](#) (Data Protection), [Clause F3](#) (Freedom of Information), [Clause F4](#) (Confidentiality), [Clause F5](#) (Record Keeping and Monitoring), [Clause F6](#) (Transparency), [Clause H4](#) (Severance), [Clause H10](#) (Non Solicitation and Offers of Employment) and [Clause H12](#) (Law and Jurisdiction).

PART E INSURANCE AND LIABILITIES

E1 INSURANCE

- E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Call-Off Contract as set out in the Contract Particulars.
- E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- E1.3 If the Contractor does not maintain the necessary insurances under the Call-Off Contract the Contracting Authority may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

E2 INDEMNITY AND LIABILITY

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

Property Rights) which results in Liabilities awarded against or costs incurred by the Indemnified parties.

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

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

E2.2.2 fraudulent misrepresentation; or

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

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

PART F PROTECTION OF INFORMATION

F1 INTELLECTUAL PROPERTY

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

F1.1.1 provided to the Contractor by the Contracting Authority shall remain the property of the Contracting Authority;

F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Call-Off Contract shall belong to the Contracting Authority subject to any exceptions set out in the Contract Particulars.

F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Call-Off Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Contracting Authority a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Contracting Authority an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other contracting authorities, the Replacement Contractor or to any other third party providing Goods to the Contracting Authority, and shall be granted at no cost to the Contracting Authority.

F1.3 It is a condition of the Call-Off Contract that the Goods will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Contracting Authority against all Liabilities which the Contracting Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Contracting Authority.

- F1.4 At the termination of the Call-Off Contract the Contractor shall at the request of the Contracting Authority immediately return to the Contracting Authority all materials, work or records held in relation to the Goods, including any back-up media.

F2 DATA PROTECTION

- F2.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Goods) comply with any requirements under the DPL.
- F2.2 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor is acting as Data Controller within the meaning of the DPL for any data provided to the Contractor by the Contracting Authority or vice versa under this contract then the following provisions shall apply:
- F2.2.1 The Contractor and the Contracting Authority shall comply with the Data Sharing Code of Practice produced by the Information Commissioner and as amended from time to time
- F2.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably and without good reason refuse to enter into a Data Sharing Agreement.
- F2.3 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor and the Contracting Authority are acting as Joint Data Controllers within the meaning of the DPL for any data collected by or provided to either party under this contract then the following provisions shall apply:
- F2.3.1 The Parties shall designate between them a contact point for data subjects in relation to any personal data under the joint control of the parties.
- F2.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the data protection legislation and the preparation of any Data Protection Impact Assessment
- F2.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:
- a) nature of the data to be protected;
 - b) harm that might result from a Data Loss Event;
 - c) state of technological development; and
 - d) cost of implementing any measures;
- F2.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Personnel or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data; and

F2.3.5 Each Party shall notify the other immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to any data under the joint control of the Parties;
- b) receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
- d) receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;
- e) receives a request from any third Party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties;.

F2.4.5 Each Party shall designate a data protection officer if required by the Data Protection Legislation

F2.4.6 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

F2.4.7 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.

F2.4 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor is acting as Data Processor on behalf of the Contracting Authority within the meaning of the DPL for any data provided to it by the Contracting Authority under this contract then the following provisions shall apply;

F2.4.1 Schedule 9 shall apply and the only processing that the Contractor is authorised to do is listed in Schedule 9 (as may be amended by the Contracting Authority) and may not be determined by the Contractor.

F2.4.2 The Contractor shall notify the Contracting Authority immediately if it considers that any of the Contracting Authority's instructions infringe the Data Protection Legislation.

F2.4.3 The Contractor shall provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority, 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 the Services;
- 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.

F2.5.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- a) process that Personal Data only in accordance with Schedule 9, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Contracting Authority 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 Contracting Authority as appropriate to protect the Personal Data 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 the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 9);
- d) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - i) are aware of and comply with the Contractor's duties under this clause;
 - ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - iii) 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 Contracting Authority or as otherwise permitted by this Agreement; and
 - iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- e) not transfer Personal Data outside of the UK unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled:
 - i) the Contracting Authority or the Contractor has

provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Contracting Authority;

- ii) the Data Subject has enforceable rights and effective legal remedies;
- iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Contracting Authority in meeting its obligations); and
- iv) the Contractor complies with any reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

F2.5.5 At the written direction of the Contracting Authority, delete or return Personal Data (and any copies of it) to the Contracting Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

F2.5.6 The Contractor shall notify the Contracting Authority 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 or any other regulatory authority in connection with Personal Data processed under this Contract
- 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.

F2.5.7 The Contractor's obligation to notify under clause F2.5.6 shall include the provision of further information to the Contracting Authority in phases as details become available.

F2.5.8 Taking into account the nature of the processing, the Contractor shall provide the Contracting Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Contracting Authority) including by promptly providing:

- a) the Contracting Authority with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to

- comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Contracting Authority , at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Contracting Authority following any Data Loss Event;
 - e) assistance as requested by the Contracting Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority with the Information Commissioner's Office.
- F2.5.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause F2.5.
- F2.5.10 The Contractor shall allow for audits of its Data Processing activity by the Contracting Authority or the Contracting Authority's designated auditor.
- F2.5.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- F2.5.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- a) notify the Contracting Authority in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Contracting Authority ;
 - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause F2.4 such that they apply to the Sub-processor; and
 - d) provide the Contracting Authority with such information regarding the Sub-processor as the Contracting Authority may reasonably require.
- F2.5.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- F2.5.14 The Contracting Authority may, at any time on not less than 30 Working Days' notice, revise any part of this clause F2.5 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 Contract).
- F2.5.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Contracting Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

F3 FREEDOM OF INFORMATION

- F3.1 The Contracting Authority is subject to the FOIA and the EIR ("the Acts"). As part of the Contracting Authority's duties under the Acts, it may be required to disclose information forming part of the Call-Off Contract to anyone who makes a reasonable request. The Contracting Authority has absolute discretion to apply or not to apply any exemptions under the Acts.
- F3.2 The Contractor shall assist and cooperate with the Contracting Authority (at the Contractor's expense) to enable the Contracting Authority to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Contracting Authority.

F4 CONFIDENTIALITY

- F4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall do each of the following:
- F4.1.1 Treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - F4.1.2 Not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- F4.2 [Clause F4.1](#) shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:
- F4.2.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to [clause F3](#) (Freedom of Information);
 - F4.2.2 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - F4.2.3 Such information was obtained from a third party without obligation of confidentiality;
 - F4.2.4 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Contract; and
 - F4.2.5 It is independently developed without access to the other party's Confidential Information.
- F4.3 The Contractor may only disclose the Contracting Authority's Confidential Information to the Contractor personnel who are directly involved in the provision of the Goods and who need to know the information, and shall make sure that such Contractor personnel are aware of and shall comply with these obligations as to confidentiality.
- F4.4 The Contractor shall not, and shall procure that the Contractor personnel do not, use any of the Contracting Authority's Confidential Information received other than for the purposes of this Call-Off Contract.

- F4.5 At the written request of the Contracting Authority and if reasonable in the circumstances to make that request, the Contractor shall procure that those members of the Contractor personnel identified in the Contract Particulars sign a confidentiality undertaking prior to commencing any work in accordance with this Call-Off Contract.
- F4.6 Nothing in this Call-Off Contract shall prevent the Contracting Authority from disclosing the Contractor's Confidential Information in any one or more of the following circumstances:
- F4.6.1 To any Crown body or any other contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Contracting Authority. All crown bodies or such contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;
 - F4.6.2 To any consultant, Contractor or other person engaged by the Contracting Authority
 - F4.6.3 For the purpose of the examination and certification of the Contracting Authority's accounts; and/or
 - F4.6.4 For any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.

F5 RECORD KEEPING AND MONITORING

- F5.1 In order to assist the Contracting Authority in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Call-Off Contract has been completed, full and accurate records of the Call-Off Contract including the Goods supplied under it, all expenditure reimbursed by the Contracting Authority, and all payments made by the Contracting Authority. The Contractor shall on request allow the Contracting Authority or the Contracting Authority's representatives such access to (and copies of) those records as may be required by the Contracting Authority in connection with the Call-Off Contract.
- F5.2 The Contractor will at its own cost, provide any information that may be required by the Contracting Authority to comply with the Contracting Authority's procedures for monitoring of the Call-Off Contract.

F6 TRANSPARENCY

- F6.1 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Contracting Authority 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 Contractor's details and the Price to be paid. The parties acknowledge that this

information is not Confidential Information or Commercially Sensitive Information.

- F6.2 The parties acknowledge that, except for any information which is exempt from disclosures in accordance with the provisions of the FOIA, the content of this Call-Off Contract is not Confidential Information or Commercially Sensitive Information. The Contracting Authority shall be responsible for determining at its absolute discretion whether any of the content of the Call-Off Contract is for disclosure in accordance with the FOIA. Notwithstanding any other term of this Call-Off Contract, the Contractor hereby gives his consent for the Contracting Authority to publish the Call-Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to the Call-Off Contract, to the general public.

PART G STATUTORY OBLIGATIONS

G1 HEALTH AND SAFETY

- G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Contracting Authority.
- G1.2 The Contractor shall provide, within 14 days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards of the Goods, received from any statutory body.
- G1.3 The Contractor shall make sure the Goods are labelled with details of any hazards they represent and shall, before delivery, provide to the Contracting Authority a written list of harmful or potentially harmful properties or ingredients in the Goods supplied together with details of any specialist training required to enable the Goods to be used safely. The Contracting Authority will rely on the supply of such Information from the Contractor in order to satisfy its own obligations under all health and safety legislation.

G2 CORPORATE REQUIREMENTS

- G2.1 The Contractor shall comply with all obligations under the HRA.
- G2.2 The Contractor shall comply with all Contracting Authority policies and rules, such as, but not limited to:
- G2.2.1 equality and diversity policies;
 - G2.2.2 Sustainability;
 - G2.2.3 information security rules;
 - G2.2.4 whistleblowing and/or confidential reporting policies; and
 - G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Goods.
- G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

- G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
- G2.5 If the Contractor has a finding against it relating to its obligations under clause [G2.4](#) it will provide the Contracting Authority with:
- G2.5.1 details of the finding; and
 - G2.5.2 the steps the Contractor has taken to remedy the situation.
- G2.6 The Contractor represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Contractor nor any of its officers, employees or other persons associated with it:
- G2.6.1 has been convicted of any offence involving slavery and human trafficking;
 - G2.6.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- G2.7 The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- G2.8 The Contractor shall use all reasonable endeavours to adhere to the principles of the 'Prevent' strategy under the Counter-Terrorism and Security Act 2015.
- G2.9 The Contractor shall ensure that its employees, agents and subcontractors are familiar with and have a good understanding of the 'Prevent' strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.

G3 LAW AND CHANGE IN LAW

- G3.1 The Contractor shall comply at all times with the Law in its performance of the Call-Off Contract.
- G3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Contracting Authority of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with [clause D3](#).
- G3.3 Any agreed additional sums payable as a result of the operation of clause [G3.2](#) shall be included in the Price. For the avoidance of doubt nothing in this Call-Off Contract is intended to allow the Contractor double recovery of any increase in costs.

PART H GENERAL PROVISIONS

H1 CONTRACT VARIATION

- H1.1 The parties may agree to modify the Call-Off Contract in any of the circumstances set out in Regulation 72 of the PCR 2015.
- H1.2 Subject to clause H1.3, no variation or modification to the Call-Off Contract is valid unless it is in writing and signed by the Contracting Authority and the Contractor.
- H1.3 Where the Contracting Authority intends to modify the Call-Off Contract it shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Contracting Authority confirms oral instructions in writing as soon as it is practicable), a variation order setting out the proposed modification or variation to the Call-Off Contract. As soon as practicable after receiving the variation order, the Contractor shall confirm whether it is able to comply with the modification or variation and if so confirm any change to the Price for the modification or variation. Where a mechanism for agreeing a price for the modification or variation has not been set out in the initial procurement documents, the Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

H2 THIRD PARTY RIGHTS

- H2.1 This Call-Off Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Call-Off Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

H3 NO WAIVER

- H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Call-Off Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Call-Off Contract nor affect the validity of the Call-Off Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- H3.2 No waiver of any of the provisions of this Call-Off Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with [clause A3](#) (Notices).

H4 SEVERANCE

- H4.1 If any provision of the Call-Off Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H5 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

- H5.1 Subject to any express provision of this Call-Off Contract, the Contractor shall not without the prior written consent of the Contracting Authority, assign all or any

benefit, right or interest under this Call-Off Contract or sub-contract the provision of the Goods.

H5.2 The Contracting Authority shall be entitled to:

H5.2.1 assign, novate or dispose of its rights and obligations under this Call-Off Contract either in whole or part to any contracting authority (as defined in The PCR 2015); or

H5.2.2 transfer, assign or novate its rights and obligations where required by Law.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

H5.4 Notwithstanding Clauses [H5.1](#) and [H5.2](#) the Contractor may assign to a third party ("the Payment Assignee") the right to receive payment of the Price or any part thereof due to the Contractor under this Call-Off Contract. Any assignment under this Condition shall be subject to:

H5.4.1 Reduction of any sums in respect of which the Contracting Authority exercises its right of recovery;

H5.4.2 All related rights of the Contracting Authority under the Call-Off Contract in relation to the recovery of sums due but unpaid; and

H5.4.3 The Contracting Authority receiving notification both under Conditions [H5.1](#) and [H5.4](#)

H5.5 In the event the Contractor assigns the right to receive the Price under Condition [H5.4](#) the Contractor or the Payment Assignee shall notify the Contracting Authority in writing of the assignment and the date upon which the assignment becomes effective.

H5.6 The Contractor shall notify the Contracting Authority in writing of the Payment Assignee's contact information and bank account details to which the Contracting Authority shall make payment.

H5.7 The provisions of [C1](#) (Price and Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the approval of the Contracting Authority.

H6 FORCE MAJEURE

H6.1 Neither party shall be liable for failure to perform its obligations under the Call-Off Contract if such failure results from Force Majeure.

H6.2 If the Contracting Authority or the delivery location is affected by circumstance of Force Majeure, the Contracting Authority shall be entitled to, totally or partially, suspend the date or dates for delivery of the Goods until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Contracting Authority nor entitle the Contractor to terminate the Call-Off Contract.

- H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, Goods or materials and breach of the Contractor's warranties under [clause B6](#) shall not be regarded as an event of Force Majeure.
- H6.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Call-Off Contract immediately or on a set termination date.
- H6.5 If the Call-Off Contract is terminated in accordance with clause [H6.4](#) neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

H7 INDUCEMENTS

- H7.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Authority any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Contracting Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.
- H7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Contracting Authority by the Contractor or on the Contractor's behalf.
- H7.3 Where the Contractor engages in conduct prohibited by clauses [H7.1](#) and [H7.2](#) in relation to this or any other contract with the Contracting Authority, the Contracting Authority has the right to:
- H7.3.1 terminate the Call-Off Contract and recover from the Contractor the amount of any loss suffered by the Contracting Authority resulting from the termination, including the cost reasonably incurred by the Contracting Authority of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period; or
 - H7.3.2 recover in full from the Contractor any other loss sustained by the Contracting Authority in consequence of any breach of this clause whether or not the Call-Off Contract has been terminated.

H8 COSTS AND EXPENSES

- H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Call-Off Contract.

H9 NO AGENCY OR PARTNERSHIP

- H9.1 Nothing contained in this Call-Off Contract, and no action taken by the parties pursuant to this Call-Off Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H10 NON SOLICITATION AND OFFERS OF EMPLOYMENT

- H10.1 The Contractor agrees that it will not, without the prior written consent of the Contracting Authority, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Call-Off Contract:
- H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Contracting Authority, any person directly related to the Goods employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Contracting Authority at the date of the termination of this Call-Off Contract or at any time during the period of one month immediately preceding the date of termination; or
- H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

H11 INSPECTION OF CONTRACTOR'S PREMISES

- H11.1 The Contractor shall permit the Contracting Authority to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Call-Off Contract.

H12 LAW AND JURISDICTION

- H12.2 This Call-Off Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.