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SCHEDULE 4 - CALL OFF TERMS AND CONDITIONS

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1. Interpretation

1.1 The following definitions and rules of interpretation in this clause apply in these Call Off Terms and Conditions.

Affected Party: has the meaning given in clause 23.2.

Authority: Bournemouth Christchurch and Poole Council

Business Day: a day, other than a Saturday, Sunday, or public holiday in England,

Call Off Procedure: means the Framework direct award call off process set out in clause 4 of the Framework Agreement and used for ordering Goods from Framework Suppliers.

Call Off Terms: these call off terms and conditions

Call Off Contract: any legally binding agreement pursuant to a Call Off Procedure made between the Authority and the Framework Supplier comprising the Specification, a Purchase Order, its appendices, these Call-off Terms and the Framework Schedule 5 template (if required).

Call Off Contract Period means the period from the Commencement Date to:

a) the date of expiry set out in clause 2 of these Call Off Terms and Conditions; or

b) such earlier date of termination or partial termination of any Call Off Contract in accordance with the Law or the provisions of such Call Off Contract.

Call Off Contract Year means a period of 12 months, commencing on the Commencement Date

Change in Law: any change in Law which comes into force after the Commencement Date and impacts on the supply of the Goods and the performance of any Call Off Contract.

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

Claim: has the meaning given in clause 15.2.

Commencement Date: means the commencement date set out in any Purchase Order or Call Off Contract.

Confidential Information: has the meaning given in clause 18.1.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of

the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Data Subject means as set out in the Data Protection Legislation.

Delivery: completion of delivery of Goods specified in a Purchase Order in accordance with clause 6.2 of these Call Off Terms.

Delivery Date: the date specified for delivery of Goods as set out in a Purchase Order.

Delivery Location: the location specified for delivery of Goods as set out in a Purchase Order.

Dispute: has the meaning given in Clause 26.1.

Dispute Notice: has the meaning given in clause 26.3.

Framework Agreement: the framework agreement for the supply of the Goods between the Parties commencing/dated (insert)

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: has the meaning given in clause 23.1.

Framework Manager means the designated officer(s) nominated to oversee the implementation of the Framework on behalf of the Authority

Framework Supplier/s means the tenderers the Authority selected as the successful suppliers on Framework Number DN (insert) to provide the Goods to the Authority in accordance with the Framework Agreement.

Good Industry Practice means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Goods: means the items set out in the Specification and, where the context requires, the Goods ordered by and supplied to the Authority.

Goods Prices: the Framework prices submitted by the Framework Suppliers as part of their Tender and incorporated into these Call Off Terms as Schedule 1.

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

holding company: has the meaning given in clause 1.6.

Information means has the meaning given under section 84 of the FOIA.

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

Management Information means the management information specified in the Specification and referred to in the Framework Agreement.

month: a calendar month.

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

Party means the Framework Supplier, or the Authority and Parties shall mean both

the Framework Supplier and the Authority

Prohibited Act means the following:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

  (i) induce that person to perform improperly a relevant function or activity; or
  (ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Framework Agreement;

(c) committing any offence:

  (i) under the Bribery Act 2010;
  (ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to the Framework Agreement or any other contract with the Authority; or

(d) defrauding, attempting to defraud or conspiring to defraud the Authority.

Supplier/Framework Supplier: means the successful Suppliers appointed to any of the lots on the Framework.

Purchase Order: an approved Purchase Requisition sent to the Supplier by the Authority in accordance with the Call Off Procedure via the Authority's official Purchase to Pay(P2P) purchase order system or other ordering system embedded within the Authority's system. If accepted by the Supplier, this signals the formation of the Call Off Contract between the parties pursuant to the Framework Agreement

Purchase Order Number: the reference number of the Purchase Order issued and sent to the Supplier by the Authority.

Purchase Requisition: an unapproved requirement issued to the Supplier by the Authority for the sake of consultation to confirm price and programme prior to the Authority seeking internal authority to proceed. A Purchase Requisition will describe an in-scope service or supply at a price or prices defined within the Pricing Schedule.

Quality Standards means any quality standards set out in the Specification.

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Call Off Contract or any other affairs of the Authority.

Replacement Supplier means any third-party service Supplier appointed by the Authority to supply any Goods that are substantially the same as or similar to any of the Goods and which the Authority receives in substitution for any of the Goods following the expiry, termination or partial termination of the Call Off Contract.

Request for Information shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Specification: the specification of the Goods attached as Schedule 2

Supplier/Framework Supplier/s: means the successful tenderers appointed to any of the lots on the Framework

subsidiary: has the meaning given in clause 1.6.

Term: the term of any Call Off Contract as determined in accordance with Clause 2**.**

VAT: value added tax chargeable in the UK or elsewhere.

Working Day: means Monday to Friday 09.00am to 5.00pm.

year: 1 January to the following 31 December.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of these call off terms.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of these call off terms and shall have effect as if set out in full in the body of these call off terms and any reference to these call off terms includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

1.7 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.9 These call off terms shall be binding on, and enure to the benefit of, the Parties and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.10 In these Call Off Terms, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time in these Call Off Terms

1.11 In these Call Off Terms, reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provisions.

1.12 A reference to **writing** or **written** includes fax but not email.

1.13 Any obligation in these Call Off Terms on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.14 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by or on their behalf for identification.

1.15 A reference to these Call Off Terms or to any Call Off Contract is a reference to these Call Off Terms or such other Call Off Contract or document, in each case as varied from time to time.

1.16 References to clauses and Schedules are to the clauses and Schedules of these Call Off Terms; references to paragraphs are to paragraphs of the relevant Schedule.

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

2. Commencement Date and Term

2.1 These Call Off Terms shall commence on the Commencement Date and shall expire automatically on the date set out in the Purchase Order or Call Off Contract unless otherwise terminated on an earlier date in accordance with the provisions of clause 20 or any Call Off Contract.

3. Supply of the Goods

3.1 In consideration of the Authority's agreement to pay the Goods Prices, the Supplier shall supply the Goods to the Authority subject to and in accordance with these Call Off Terms or any Call Off Contract.

3.2 In supplying the Goods, the Supplier shall:

3.2.1 cooperate with the Authority in all matters relating to the supply of the Goods;

3.2.2 comply with all instructions provided by the Authority; and

3.2.3 comply with all applicable Law.

3.2.4 provide the Goods in accordance with the Specification (Schedule 2).

3.2.5 warrant, represent, undertake and guarantee that the Goods supplied shall:

- be free of defects in materials and workmanship

- conform to any professional standards which might reasonably be expected;
- comply with any applicable British Standard Specification, British Standard Code of Practice or other recognised standard laid down by a regulatory body for the industry concerned in respect of the materials used or supplied and that the workmanship is at minimum to such standards required;
- be fit for the purpose held out by the Supplier or made known to the Supplier by the Authority.

4. Framework Direct Award Call Off Procedure

4.1 If the Authority decides to source the Goods through the Framework Agreement or call off from the Framework, it shall satisfy its requirements for the Goods by awarding all Call Off Contracts without re-opening competition and following the Call Off procedure set out in clauses 4.2 to 4.8 below:

4.2 When ordering Goods under the Framework Agreement via the direct award call off process, there are two Direct Award call-off decision-making options for selecting the best value supplier and receiving the Goods ordered:

Option 1 - Delivery from the Supplier to the Authority's depot/offices or project site
Option 2 - Collection by the Authority's representatives from the Supplier's depot/store

Basic principles
4.2.1 Option 1 - Suppliers will be ranked on a line-by-line basis under each Lot solely based on the price per line item they submitted without considering their priced basket of goods.

In other words, the Authority will make its Direct Award decision concerning each specific item at line-level (i.e., specific product level) in favour of the Supplier who submitted the lowest price for that specific line item. For the purposes of the direct award, this Supplier will be selected as the highest price-ranked Supplier and shall be approached first followed by the next highest price-ranked Suppliers in line and so on irrespective of their quality ranking.

4.2.2 Option 2 - The Council will make its Direct Award decision for items primarily in favour of the Supplier that can provide maximum route-optimisation based on its geographical location in order to minimise the Authority's time and fuel costs. The Authority's representatives shall visit the depot/store of the best suited Supplier based on route optimisation to collect the required items armed with the following:

- the Authority's relevant cost code which will be provided at the time of collection by the Authority's representative

- The Authority's representative's staff identity badge and the registration details of the collecting vehicle.

4.2.3 The relevant procedures for each of the above-mentioned options are set out below:

Procedure for Option 1- Delivery from the supplier to the Authority's depot/offices or project site

4.3 Option 1

4.3.1 The Authority shall approach the highest price-ranked Supplier by telephone requesting them to confirm whether they are able to supply and deliver the required quantity of items by the required delivery date for each item.

4.3.2 If the highest price-ranked Supplier cannot deliver the required quantity by the required delivery date, the Authority shall approach the next highest price-ranked Supplier with the same request to confirm whether they can supply and deliver the required quantity of items by the required delivery date.

4.3.3 The Authority's request shall progress down the price ranking until a Supplier is identified who can meet the required quantity and delivery date requirements.

4.3.4 The Supplier who can meet the Authority's requirements shall in turn confirm this to the Authority by telephone.

4.3.5 Once the Authority receives the above telephone confirmation from the Supplier, the Authority shall follow the procedure set out in Schedule 3 to issue a Purchase Order and enter into a Call-Off Contract with the highest price-ranked Supplier in the relevant Lot.

4.3.6 Following receipt of the Purchase Order, the Supplier shall promptly and in any event within a reasonable period determined by the Authority and notified to the Supplier in writing at the same time as the submission of the Purchase Order (which in any event shall not exceed one Working Day) acknowledge receipt of the Purchase Order and notify the Authority that it can fulfil the Purchase Order by email to the Authority's Representative quoting the Purchase Order number.

4.3.7 In relation to every call off, the Supplier shall ensure that any and all Delivery costs for fulfilling the Purchase Order shall be at cost price and exclude any profit margin

Procedure for Option 2 – Collection by the Authority's representatives from the Supplier's depot

4.4 Option 2

4.4.1 When the Authority decides to call off pursuant to this option 2, the Authority's representatives shall visit the depot/store of the best suited Supplier based on route optimisation to collect the Goods required.

4.4.2 On arrival at the Supplier's depot, the Authority's representatives shall present the following before the Goods can be released by the Supplier:

4.4.2.1 the Authority's relevant cost code which will be provided at the time of collection by the Authority's representative

4.4.2.2 The Authority's representative's staff identity badge and the registration details of the collecting vehicle.

Collection options shall consider:

Either:

i. The location of the relevant Authority's depot

ii. The location of the Supplier's nearest stocked depot

iii. The location of the work site where the Goods are required

iv.

Or:

i. The location of the relevant Authority's depot

ii. The location of the work site where the Goods are required

iii. The location of the Supplier's nearest stocked depot

iv. The location of the work site where the Goods are required

4.5 For the avoidance of doubt, the above options shall not necessarily favour the Supplier who bid the lowest price(s) for the specific Good(s) required.

4.6 The Parties acknowledge and agree that:

4.6.1 The Authority will select the Goods Prices for the Purchase Order from the Framework prices submitted by the Supplier and set out in Schedule 1 of these Call Off Terms and Conditions.

4.6.2 The Authority shall signal the formation of the Call Off Contract pursuant to the Framework Agreement by sending a Purchase Order to the Supplier.

4.6.3 On receipt and acceptance of the Purchase Order by the Supplier, a Call Off Contract for the supply of the Goods shall be created between the parties.

4.7 Even though this Framework was executed as a deed, the Authority shall determine on a case-by-case basis whether any resulting Call Off Contract between the parties shall be executed as a deed. Schedule 5 of the Framework Agreement sets out the template wording to be used for execution as a deed where appropriate.

4.8 Notwithstanding the fact that the Authority has followed the Call Off Procedure set out above, the Authority may cancel, postpone delay or end the procedure without placing a Purchase Order for Goods or awarding a Call Off Contract. Nothing in the Framework Agreement shall oblige the Authority to place any Purchase Order for Goods.

Call Off Invoicing Process: Requisition to Payment

4.9 Clauses 4.1 to 4.8 above describe options for Delivery and Collection.

4.9.1 Option 1 – Delivery requires a Purchase Order (PO) to be issued to the Supplier
4.9.2 Option 2 – Collection does not feature a PO

4.10 For the avoidance of doubt, unless otherwise instructed:
4.10.1 Deliveries against POs will be invoiced individually against the PO number
4.10.2 Collections will be invoiced monthly against the contract reference and the Authority's relevant cost code provided at the time of collection and the name of the Authority's representative and the registration details of the collecting vehicle.

4.11 In respect of this Framework, the Authority reserves the right to change invoicing requirements in pursuit of process efficiency.

4.11.1 The standard options will be either:

- Ad hoc invoice frequency with invoice(s) cross-referencing no more than one PO number

OR

- Monthly invoice frequency with invoices cross-referencing multiple PO numbers and/or multiple collections.

4.11.2 For the avoidance of doubt, this Framework will be used by multiple Departments and invoices must not include Goods delivered to or collected by more than one Department. Each Purchase Order shall:

- specify the type and quantity of Goods ordered and
- specify the Delivery Date on which the Goods ordered are to be delivered and the Delivery Location
- Include the relevant Purchase Order number which must be included or incorporated by the Supplier on all future correspondence relating to the Goods supplied.

5 Supplier Stock

5.1 The Supplier shall at all times maintain sufficient stocks of Goods to enable it to meet the Authority's requirements

5.2 The Supplier shall supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.

5.3 The Goods supplied to the Authority by the Supplier under these Call Off Terms or any Call Off Contract shall:

5.3.1 conform to the Specification;

5.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Authority;

5.3.3 comply with all applicable statutory and regulatory requirements.

5.4 The Supplier shall ensure that the Goods are properly secured in such manner as to enable them to reach their destination in good condition.

5.5 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with these Call Off Terms or any Call Off Contract.

5.6 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the supply, and delivery of the Goods.

6 Delivery

6.1 The Supplier shall deliver the Goods specified in each Purchase Order to the Delivery Location on the Delivery Date.

6.2 Delivery of the Goods shall be completed once arrived and unloaded at the designated Delivery Location.

6.3 If the Goods are not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Authority may have, the Authority may:

6.3.1 work with the Supplier to reschedule a missed Delivery Date if project time scales permit

6.3.2 refuse to take any subsequent attempted delivery of the Goods;

6.3.3 terminate the Call Off Contract with immediate effect;

6.3.4 obtain substitute Goods from another Supplier and recover from the Supplier any costs and expenses reasonably incurred by the Authority in obtaining such substitute Goods.

6.3.5 subject to clause 16, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Authority's failure to comply with its obligations under these Call Off Terms or any Call Off Contract.

6.4 If the Authority fails to accept delivery of the Goods on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Call Off Contract

6.4.1 the Goods shall be deemed to have been delivered on the Delivery Date as per the Purchase Order raised;

6.5 Each delivery of Goods shall be accompanied by a delivery note from the Supplier showing the Purchase Order Number, the date of the order, the type and quantity of Goods, including the code numbers of the Goods (if relevant) and, in the case of Goods being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

6.6 Time shall be of the essence in performance of the Delivery of the Goods. The Supplier shall Deliver the Goods to the Authority on or by the Delivery Date.

6.7 Unless agreed in writing otherwise, Delivery shall be on the Delivery Date and to the address set out in the Specification (Schedule 2).

6.8 Delivery shall be completed once completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Authority has signed for Delivery.

6.9 Unless otherwise stated in the Specification (Schedule 2), Deliveries shall only be accepted by the Authority on Working Days.

6.10 The Supplier must notify and obtain written consent from the Authority in respect of any change to the Delivery Date. The Authority is not bound to agree to any request for change to the Delivery Date. Any agreed change shall be subject to a formal written variation.

6.11 The Goods shall be appropriately packaged and clearly labelled. The packaging and labelling shall comply with the Authority's instructions, any statutory requirements and any requirements of the carriers. In particular, the Goods shall be marked with the relevant Purchase Order number, the details of the contents shall be clearly marked on each container and all containers of hazardous goods (and all relating documents) shall bear prominent and adequate warnings.

6.12 Safety data sheets required by Law must be provided (in a form suitable for photocopying).

7 Acceptance and defective Goods

7.1 Without prejudice to any of the rights or remedies of the Authority, title to and risk in any Goods to be supplied pursuant to these Call off Terms or any Call Off Contract shall pass to the Authority on Delivery or when the Authority notifies Acceptance in writing.

7.2 The Supplier warrants that:

7.2.1 it has full clear and unencumbered title to all the Goods; and

7.2.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Authority. On Delivery or on notification of Acceptance (whichever is the later), the Authority shall acquire valid and unencumbered title to the Goods.

7.3 The Authority shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery

7.4 Access to the Authority's premises, facilities or storage by the Supplier shall comply with the reasonable requirements of the Authority and shall be at the Supplier's risk. The Supplier shall indemnify the Authority in respect of any actions, claims, demands, losses, charges, costs and expenses, which the Authority may suffer or incur as a result of or in connection with any damage or injury 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

7.5 If any Goods delivered to the Authority do not comply with clause 5.3, or are otherwise not in conformity with the terms of these Call Off Terms or any Call Off Contract, then, without limiting any other right or remedy that the Authority may have, the Authority may reject those Goods and:

7.5.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five Business Days of being requested to do so; or

7.5.2 require the Supplier to repay the price of the rejected Goods in full (whether or not the Authority has previously required the Supplier to repair or replace the rejected Goods); and

7.5.3 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that do not conform with the terms of these Call Off Terms or any Call Off Contract.

7.6 The Authority's rights and remedies under this clause 7 are in addition to the rights and remedies available under the Sale of Goods Act 1979.

7.7 The terms of these Call Off Terms shall apply to any repaired or replacement Goods supplied by the Supplier.

8 Title and risk

8.1 The risk in Goods delivered to the Authority shall pass to the Authority on Delivery.

8.2 Title to Goods delivered to the Authority shall pass to the Authority on Delivery.

9 Goods Prices

9.1 The Goods Prices for the framework period from the Commencement Date shall be the prices set out in 0.

9.2 The Goods Prices are exclusive of amounts in respect of VAT. The Authority shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of Goods.

10 Cancellation

10.1 The Authority may at any time up to 24 hours prior to the despatch of the Goods and Delivery of purchased Goods amend or cancel a Purchase order by written notice to the Supplier.

10.2 If the Supplier receives the written notice in accordance with Clause 10.1 at any time up to 24 hours prior to despatch of the Goods and Delivery of the Goods, the Supplier shall not be entitled to recover any costs from the Authority in relation to an amendment or cancellation of a Purchase Order.

10.3 If the Authority amends or cancels the Purchase Order less than 24 hours prior to the despatch and Delivery of the Goods, the Supplier shall be entitled to reimbursement as set out in clause 10.4 below:

10.4 . The Authority's liability to the Supplier for amending or cancelling a Purchase Order when the Goods have been dispatched and are en route for Delivery shall be strictly limited to the Delivery costs incurred by the Supplier which are only payable at cost price (excluding any profit margin).

10.5 For the avoidance of doubt, where the amendment or cancellation of the Purchase Order is directly or indirectly due to the Supplier's failure to comply with its obligations under these Call Off Terms or any Call Off Contract., the Authority shall have no liability to the Supplier in respect of such amendment or cancellation.

11 Price and Payment

The rates/prices payable and due to the Supplier for the supply of the Goods (**Goods Prices**) shall be as set out in Schedule 1. These rates exclude Delivery costs which are only payable at cost price (excluding any profit margin) if the Option 1 call off procedure is selected by the Authority.

11.1 The amounts stated are exclusive of VAT which shall be charged at the prevailing rate.

11.2 Following Delivery of the Goods, the Supplier shall produce a valid written invoice and provide it to the Authority. The invoice must clearly state the relevant Purchase Order number. The invoice must also contain any supporting evidence requested by the Authority

in order to verify the accuracy of the invoice to include a breakdown of the Goods supplied in the invoice period.

11.3 Where the Supplier submits an invoice to the Authority in accordance with the foregoing, the Authority shall verify that invoice within seven (7) Working Days of receipt.

11.4 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.

11.5 Where the Authority fails to comply with Clause 11.4, and there is an undue delay in verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 11.5 seven (7) Working Days after the date on which it is received by the Authority.

11.6 If the Supplier's invoice is or appears to be in error and has to be investigated, the date of receipt and consequently the date by which payment is due shall be calculated from the date on which such queries are satisfactorily resolved or, if applicable, the date on which a re-submitted correct invoice is received.

11.7 Without prejudice to any other right or remedy of the Authority, the Authority may make reductions in payment in respect of the whole or any part of the Goods which the Supplier has failed to provide or has provided inadequately.

11.8 In the event that the Supplier enters into a sub-contract, liability to pay the sub-contractor remains with the Supplier. The Supplier shall not invoice the Authority for the sub-contractor's charges as an expense.

11.9 The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under these Call Off Terms or any Call Off Contract or under any other agreement between the Supplier and the Authority.

11.10 The Supplier shall not make any payments due to the Authority with any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

12 Intellectual Property Rights

12.1 The supply of the Goods shall not infringe the Intellectual Property rights of any third party.

12.2 All Intellectual Property in any specifications, information, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Authority or obtained by the Supplier in connection with these Call Off Terms or any Call Off Contract shall remain vested solely in the Authority and shall be kept confidential.

12.3 This clause shall apply both during the term of any Call Off Contract and after its completion or its termination.

12.4 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property rights created by the Supplier or Supplier Personnel:

12.4.1 in the course of supplying the Goods; or

12.4.2 exclusively for the purpose of supplying the Goods,

shall vest in the Authority on creation.

12.5 The Supplier shall indemnify, and keep indemnified, the Authority in full against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property right by the availability of the Goods, except to the extent that they have been caused by the Authority's acts or omissions.

13 Insurance

13.1 In addition to the specific indemnities and liabilities set out in clause 15 below, the Framework Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

13.1.1 public and products liability insurance with a limit of indemnity of not less than £10,000,000 (Ten Million pounds) in relation to any one claim or series of claims;

13.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 (Ten Million pounds) **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

(**Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Framework Supplier, arising out of the Framework Supplier's performance of the Call Off Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Framework Supplier.

13.2 The Framework Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

13.3 If, for whatever reason, the Framework Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Framework Supplier.

13.4 The terms of any insurance or the amount of cover shall not relieve the Framework Supplier of any liabilities under the Call Off Contract.

13.5 The Framework Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Call Off Contract.

14 Health and Safety Compliance

14.1 The Supplier in providing the Goods shall have full regard to the health and safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and its subordinate regulatory framework, as well as any other applicable Laws regarding the health and safety of persons.

14.2 The Supplier shall operate a system of risk assessment, to comply with appropriate health and safety legislation. The Supplier shall provide copies of any risk assessments (or a summary of the said documents if they cannot be released for any justifiable reason) as and when required by the Authority.

14.3 The Supplier shall notify the Authority immediately of any incident occurring in the supply of the Goods on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to a personal injury.

14.4 Each Party shall promptly notify the other of any health and safety hazards which may arise in connection with the supply of the Goods including those which may exist or arise on the Authority's premises and which may affect the Supplier in the supply of the Goods.

14.5 While on the Authority's premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of employees and other persons working on such premises.

14.6 The Authority may suspend any Call Off Contract in whole or in part without paying compensation if the Authority is reasonably of the opinion that the Supplier is in breach of this Clause 14.

14.7 In performing its obligations under these Call Off Terms or any Call Off Contract, the Supplier shall comply with:

14.7.1 all applicable laws, statutes, Authority policies, regulations and codes from time to time in force; and

14.8 The Authority may terminate any Call Off Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 14.7.

15 Indemnity

15.1 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:

15.1.1 any claim made against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;

15.1.2 any claim made against the Authority by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of these Call Off Terms by the Supplier, its employees, agents or subcontractors; and

15.1.3 any claim made against the Authority by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

15.2 If any third party makes a claim, or notifies an intention to make a claim, against the Authority which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Authority shall:

15.2.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

15.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Authority may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Supplier, but without obtaining the Supplier's consent) if the Authority reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;

15.2.3 give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

15.2.4 subject to the Supplier providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

15.3 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Authority shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Authority in respect of the payment is the same as it would have been were the payment not subject to tax.

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

16 Limitation of liability

16.1 References to liability in this clause 16 include every kind of liability arising under or in connection with these Call Off Terms including liability:

16.1.1 in contract, tort (including negligence), misrepresentation, restitution or otherwise; and

16.1.2 arising out of any use made or resale of the Goods by the Authority, or of any product incorporating any of the Goods.

16.2 Nothing in these Call Off Terms limits any liability which cannot legally be limited, including liability for:

16.2.1 death or personal injury caused by negligence;

16.2.2 fraud or fraudulent misrepresentation;

16.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; and

16.2.4 breach of section 2 of the Consumer Protection Act 1987.

16.3 Unless specific provision is made to the contrary, nothing in these Call Off Terms shall limit any liability under clause 15 of these Call Off Terms.

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

16.5 Unless specific provision is made to the contrary, nothing in this clause 16 shall limit the Authority's payment obligations under these Call Off Terms.

16.6 Subject to clause 16.2, clause 16.3, clause 16.4 and clause 16.5, neither party shall be liable to the other, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise for any:

16.6.1 loss of profits;

16.6.2 loss of sales or business;

16.6.3 loss of agreements or contracts;

16.6.4 loss of anticipated savings;

16.6.5 loss of use or corruption of software, data or information;

16.6.6 loss of or damage to goodwill; or

16.6.7 indirect or consequential loss,

suffered by the other party that arises under or in connection with these Call Off Terms.

16.7 Subject to clause 16.2, clause 16.3 and clause 16.4, the Supplier's total liability to the Authority shall not exceed £10,000,000 in line with the Required Insurance levels.

16.8 Subject to clause 16.2, clause 16.4 and clause 16.5, the Authority's total liability to the Supplier shall not exceed £0.00.

17 Assignment and other dealings

17.1 The Supplier shall not assign its rights and obligations under these Call Off Terms without the prior written consent of the Authority.

18 Confidentiality and Freedom of Information

18.1 Each party undertakes that it shall not at any time during these Call Off Terms and for a period of two years after termination or expiry disclose to any person any confidential information concerning the business, affairs, customer, clients or Suppliers of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 18.2.

18.2 Each party may disclose the other party's Confidential Information:

18.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Call Off Terms. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 18; and

18.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Call Off Terms are granted to the other party or to be implied from these Call Off Terms. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

18.4 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, EIR, Human Rights Act 1998 (all as amended from time to time), and any codes of practice

and best practice guidance issued by the United Kingdom Government and appropriate enforcement agencies. The Supplier shall:

18.4.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;

18.4.2 transfer to the Authority all requests for information relating to these Call Off Terms or any Call Off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

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

18.4.4 not respond directly to a request for information unless authorised in writing to do so by the Authority.

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

19 Legislative Change

19.1 The Supplier shall neither be relieved of its obligations under these Call Off Terms or any Call Off Contract nor be entitled to an increase in the Goods Price paid under any Call Off Contract as a result of any Change in Law.

20 Termination

20.1 Without affecting any other right or remedy available to it, the Authority may terminate these Call Off Terms on giving not less than six months' written notice to the Supplier.

20.2 Without affecting any other right or remedy available to it, either party may terminate these Call Off Terms with immediate effect by giving written notice to the other party if:

20.2.1 the other party fails to pay any undisputed amount due under these Call Off Terms on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

20.2.2 the other party commits a material breach of any other term of these Call Off Terms and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

20.2.3 the other party repeatedly breaches any of the terms of these Call Off Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these Call Off Terms;

20.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

20.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

20.2.6 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

20.2.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the other party [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

20.2.8 an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the other party;

20.2.9 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

20.2.10 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

20.2.11 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;

20.2.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 20.2.4 to clause 20.2.11 (inclusive);

20.2.13 the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or

20.2.14 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Call Off Terms is in jeopardy; or

20.2.15 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

20.3 For the purposes of clause 20.2.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

20.3.1 a substantial portion of these Call Off Terms; or

20.3.2 any of the obligations set out in these Call Off Terms,

over the term of these Call Off Terms In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

21 Obligations on termination

21.1 On termination or expiry of these Call Off Terms or any Call Off Contracts, each party shall promptly:

21.1.1 return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Goods under these Call Off Terms;

21.1.2 return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;

21.1.3 erase all the other party’s Confidential Information from its computer systems (to the extent possible); and

21.1.4 on request, certify in writing to the other party that it has complied with the requirements of this clause 21.

22 Survival

22.1 On termination or expiry of these Call Off Terms or any Call Off Contracts, the following clauses shall survive and continue in full force and effect:

22.1.1 clause 13 (Insurance);]

22.1.2 clause 15 (Indemnity);

22.1.3 clause 16 (Limitation of liability);

22.1.4 clause 18 (Confidentiality);

22.1.5 clause 21 (Obligations on termination);

22.1.6 clause 26 (Dispute resolution);

22.1.7 clause 41 (Governing law); and

22.1.8 clause 42 (Jurisdiction)

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

23 Force majeure

23.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including:

23.1.1 acts of God, flood, drought, earthquake or other natural disaster;

23.1.2 epidemic or pandemic;

23.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

23.1.4 nuclear, chemical or biological contamination or sonic boom;

23.1.5 any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent];

23.1.6 collapse of buildings, fire, explosion or accident; [and]

23.1.7 any labour or trade dispute, strikes, industrial action or lockouts.

23.1.8 interruption or failure of utility service.

23.2 Provided it has complied with clause 23.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under these Call Off Terms by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of these Call Off Terms or

otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

23.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

23.4 The Affected Party shall:

23.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under these Call Off Terms or any Call Off Contract; and

23.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate these Call Off Terms by giving 2 weeks written notice to the Affected Party.

24 Costs

Except as expressly provided in these Call Off Terms, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of these Call Off Terms and any documents referred to in it.

25 Severance

25.1 If any provision or part-provision of these Call Off Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Call Off Terms.

25.2 If any provision or part-provision of these Call Off Terms is deemed deleted under clause 25.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26 Dispute Resolution procedure

26.1 The Parties shall attempt in good faith to negotiate a settlement of any disagreement and/or conflict between them ("**Dispute"**) arising out of or in connection with these Call Off Terms or any Call Off Contract and such efforts shall involve the escalation of the Dispute to an appropriately senior representative of each Party.

26.2 If the Dispute cannot be resolved between the Parties within a month of referral, then at the instance of either Party the Dispute shall be referred to mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure.

26.3 To initiate the mediation, either Party may give notice in writing to the other requesting mediation in accordance with this clause. The initiating Party shall send a copy of such request ("**Dispute Notice**") to the CEDR. All negotiations connected with the Dispute and Dispute Notice shall be conducted without prejudice to the rights of the Parties in any further proceedings.

26.4 If there is any issue concerning the conduct of the mediation (including the nomination of the mediator) on which the Parties cannot agree within a reasonable time, CEDR shall, at the request of either Party, decide the issue.

26.5 If the Dispute is not resolved within ninety (90) days of the mediation being initiated or if either Party does not participate in the mediation, either Party may commence court proceedings.

26.6 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 42, which clause shall apply at all times.

27 Further assurance

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to these Call Off Terms.

28 Variation

No variation of these Call Off Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

29 Waiver

29.1 A waiver of any right or remedy under these Call Off Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

29.2 A failure or delay by a party to exercise any right or remedy provided under these Call Off Terms or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Call Off Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.

30 Notices

30.1 Any notice or other communication given to a party under or in connection with these Call Off Terms shall be in writing and shall be:

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

30.1.2 sent by email to the address specified in the Call Off Contract

30.2 Any notice or communication shall be deemed to have been received:

30.2.1 if delivered by hand, at the time the notice is left at the proper address;

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

30.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 30.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

31 Entire agreement

31.1 Any Call Off Contract shall constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

31.2 Each party acknowledges that in entering into any Call Off Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in any Call Off Contract.

31.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Call Off Terms or any Call Off Contract.

31.4 Nothing in this clause shall limit or exclude any liability for fraud.

32 Third party rights

Unless it expressly states otherwise, these Call Off Terms, does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Call Off Terms.

33 Counterparts

33.1 Each Call Off Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

33.2 No counterpart shall be effective until each party has provided **or** delivered to the other at least one executed counterpart.

34 Publication of Expenditure

34.1 The Supplier is advised that local authorities are required by the Government to publish details of every item of expenditure that exceeds £500 and details of each invitation to tender (for contracts to provide goods or services) with a value of £5,000 or more.

34.2 The Supplier is advised that the Authority may therefore publish details (to the extent and in the manner required by the Government) of the tender process and any contract awarded.

34.3 The Supplier must comply with any reasonable request from the Authority in order to assist the Authority in complying with its obligations in respect of this requirement.

35 Data Protection (If applicable)

35.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 35 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation which arise in connection with the Call Off Contract.

35.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the data controller and the Framework Supplier is the data processor in respect of the relevant Personal Data disclosed by the Authority (the "**Relevant Personal Data**"). Schedule 5 to the Framework Agreement sets out the scope, nature and purpose of processing by the Framework Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

35.3 Without prejudice to the generality of this clause, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer by it of the Relevant Personal Data to the Framework Supplier for the duration and purposes of this Framework Agreement.

35.4 Without prejudice to the generality of this clause, the Framework Supplier shall, in relation to any Personal Data processed in connection with the performance by the Framework Supplier of its obligations under the Call Off Contract:

process that Personal Data only on the written instructions of the Authority (as set out in Schedule 5 to the Framework Agreement), unless the Framework Supplier is required by the Domestic Law, the UK GDPR or any other laws applicable to the Framework Supplier (the "**Applicable Laws**") to otherwise process the Personal Data. Where the Framework Supplier is so required, it shall promptly notify the Authority before processing the Personal Data, unless prohibited by the Applicable Laws;

35.4.1 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to ensure the security of the Personal Data and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measure may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluation the effectiveness of the technical and organisational measures adopted by it); and

35.4.2 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

35.4.2.1 the Authority or the Framework Supplier has provided appropriate safeguards in relation to the transfer;

35.4.2.2 the Data Subject has enforceable rights and effective remedies;

35.4.2.3 the Framework Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

35.4.2.4 the Framework Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

35.4.3 notify the Authority immediately if it receives:

35.4.3.1 a request from a Data Subject to have access to that person's Personal Data;

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

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

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

35.4.5 notify the Authority and the Authority immediately on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of these Call Off Terms;

- at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority and any Buyer on termination or expiry of unless required by the Applicable Laws to store the Personal Data;

35.4.6 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Authority and the Authority or a designated auditor;

35.4.7 indemnify the Authority against any loss or damage suffered by it from or in connection with any breach by the Framework Supplier of its obligations under this clause.

36 The Authority as a Local Authority

Nothing in any Call Off Contract shall prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the Authority in the exercise of its statutory powers as a local authority, local planning authority, highway authority, fire authority or statutory undertaker.

37 Audit Requirements

37.1 The Supplier shall facilitate the Authority's compliance with its statutory audit obligations and comply (at its own cost) with any reasonable request from the Authority for that purpose. If either the Authority's internal or external auditors or if the Local Government Ombudsman wish to investigate any Call Off Contract, then the Supplier shall provide such information, access and cooperation as those persons may reasonably require.

37.2 The Authority may terminate any Call Off Contract by written notice if the Supplier is in breach of Clause 13.1. No period of notice shall be required but the notice shall state the date on which it is to take effect

38 Prevention of Corruption

38.1 The Authority may immediately terminate any Call Off Contract and recover in full any loss sustained as a consequence of a breach of this clause, in the event that the Supplier, its employees or anyone acting on the Supplier's behalf does any of the following things:

38.1.1 offer, give or agree to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Supplier does not know what has been done); or

38.1.2 commit an offence under the Bribery Act 2010 or under section 117(2) of the Local Government Act 1972; or

38.1.3 commits a Prohibited Act

38.1.4 commit any fraud in connection with this or any other Authority order or contract whether alone or in conjunction with Authority members or employees.

38.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Supplier Personnel and the Supplier (including its shareholders, members and directors) in connection with any Call Off Contract and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

39 Compliance with PCR

In performing any Call Off Contract, the Supplier shall comply with the Authority's Financial Regulations and Procurement Rules. Where the Supplier purchases goods, works or services on behalf of the Authority in the course of providing the Goods under these Call Off Terms or any Call Off Contract, it shall comply with all applicable public procurement legislation, the Public Contracts Regulations 2015 and the Authority's policies and procedures. The Supplier shall ensure that the Authority receives the benefit of all guarantees and warranties provided by any such suppliers of goods, works or services.

40 No Agency, Employment or Partnership

Nothing in any Call Off Contract shall be construed as creating a legal partnership or a contract of employment or a relationship of principal and agent between the Authority and the Supplier and the Supplier shall not at any time or under any circumstances take any action so as to bind (or purport to bind) the Authority, nor shall the Supplier hold itself out as having authority to bind the Authority and the Authority shall ensure that its employees and agents do not hold themselves out likewise.

41 Governing law

These Call Off Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

42 Jurisdiction

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

Schedule 1 - The Goods and Goods Prices (Framework Tender Response Part C - Pricing)

Schedule 2 Specification

[INSERT SPECIFICATION]