Call-off Terms and Conditions for the Provision of Plant AND Vehicle Hire (Operated and Non-Operated) and Associated Services

between

Lancashire County Council

and

[Supplier]

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BETWEEN

THE PARTIES

(1) **Lancashire County Council** of PO Box 100 County Hall, Preston, Lancashire PR1 8XJ (the "**Authority**"); and

(2) **[ ] Limited** (company registration number [ ]) [trading as [ ]] whose registered office is at [ ] (the "**Supplier**"),

each a "**Party**" and together the "**Parties**".

BACKGROUND

(A) The Authority placed a Notice in the Find a Tender [REFERENCE] on [DATE] inviting potential Suppliers to tender for the contract hire of storage accommodation, vehicles and plant (operated and non-operated), (**"Equipment")** (divided into Lots) and the provision of associated repair, maintenance and support services **("Services")** to itself under a framework agreement.

(B) On the basis of the Supplier's Tender, the Authority selected the Supplier as a Framework Provider to enter a Framework Agreement to supply the Equipment and provide the Services when an Order is placed by the Authority in accordance with this Framework Agreement.

(C) Following the Authority placing an Order and the Supplier accepting, the Supplier wishes to provide Equipment and deliver the Services to the Authority on the terms set out in these Call-off Terms and Conditions.

(D) Together, the Order form and the Call-off Terms and Conditions make up the Call-Off Contract.

(E) In consideration of payment by the Authority, the Supplier will deliver the Equipment and the Services in accordance with the terms of the Call-Off Contract.

OPERATIVE TERMS

1 Definitions and Interpretation

1.1 In these Call-off Terms and Conditions the words below have the meanings next to them unless the context requires otherwise:

Anti-Bribery and Corruption Policy	has the meaning set out in Schedule 2;
Call-off Contract	the written agreement between the Authority and the Supplier consisting of the Order and these Clauses (which are defined as Call-off Terms and Conditions and set out in Schedule 5 to the Framework Agreement) that apply to all of the Authority's Orders for the Equipment and Services save that for the purposes of Clause interpretation only, reference to Call-off Contract shall not include the Order;
CEDR	has the meaning set out in Clause 29;
Change	a proposed variation to the Call-off Contract requested by the Authority or recommended by the Supplier in accordance with the terms of Schedule 3;
Change Control Procedure	has the meaning set out in paragraph 2 of Schedule 3;
Commercially Sensitive Information	information, documents, trade secrets, designs and drawings of whatsoever nature which would in the reasonable opinion of the Supplier, if disclosed to a competitor of the Supplier, give that competitor a competitive advantage over the Supplier and thereby prejudice the business of the Supplier.

Competed Services	Means the competed services and equipment referred to in Schedule 1 of the Framework Agreement;
Confidential Information	all information of a confidential, commercially sensitive and/or proprietary nature in respect of a Party's (or in the case of the Supplier any of its Group companies') business including: information concerning a Party's (or in the case of the Supplier any of its Group companies') relationships with its actual or potential customers or suppliers; any technical, commercial and financial information; business methods; prices; development plans; computer systems and software; products and/or services; know-how; market opportunities; or other matters connected to such Party (or in the case of the Supplier any of its Group companies) and/or its or their customers and/or suppliers, including the terms of these Call-off Terms and Conditions (and including information designated by the Supplier and agreed as such by the Authority as Commercially Sensitive Information);
Contracting Authority	has the meaning set out in the Procurement Act 2023;
Corrupt Practices	has the meaning set out in Clause 20.1;
Data Protection Legislation	shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
Debarment List	means the list of suppliers referred to in section 62 of the Procurement Act 2023;
Default	A material breach of the obligation by the Supplier in a Call-Off Contract;
Dispute	has the meaning set out in Clause 29;
Dispute Notice	has the meaning set out in Clause 29;
Effective Date	the date of the Call-off Contract being the date of the Order;
EIR	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Expiry Date	has the meaning set out in Clause 4.1;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Force Majeure Event	the occurrence of any event beyond the reasonable control of a Party to the Call-off Contract (excluding any strike, lockout or industrial action involving that Party's employees or any other failure in the Supplier's supply chain) which directly causes that Party to be unable to comply with all or a material part of its

	obligations under the Call-off Contract where that event does not arise from the act, omission or negligence of that Party;
Forecast	any forecast or other document, statement or representation in whatever form of the likely amount of Equipment and Services the Authority may require from the Supplier but excluding any Order;
Framework Agreement	the framework agreement with reference number [ ] dated [ ] [ ] 2026 for the provision of storage accommodation, vehicles and plant hire (operated and non-operated) and associated services made between the Authority and the Supplier;
Framework Provider	means the Supplier appointed as a framework provider under this Framework Agreement and other suppliers appointed as framework providers under their framework agreements on substantially similar terms to the Framework Agreement;
Group	any Subsidiary, Subsidiary Undertaking or any entity under control, directly or indirectly, of any Holding Company, for the time being, of any Party; any ultimate Holding Company, for the time being within the Party's group or organisation; any entity that controls, directly or indirectly, for the time being, any Party; any Subsidiary, Subsidiary Undertaking or any entity under control, directly or indirectly, for the time being, of any Holding Company or any ultimate Holding Company within the Party's group or organisation for the time being;
Health and Safety	shall mean the legal duty to protect people from harm arising out of work
Hire Period	shall commence from the time when the Equipment is delivered to the Authority's site ready for use, is under the control of the Authority or from the date and time by which the Authority requested the item to be delivered (whichever is the later). The Hire Period shall continue until the Equipment is collected by the Supplier or returned to the Supplier by the Authority at the Supplier's named depot or other agreed location.
Holding Company	has the meaning set out in section 1159 of the Companies Act 2006;
Information	has the meaning given in section 84 of FOIA;
Insolvent	a Party is Insolvent where it: (a) proposes or passes a resolution for its winding up (save for the purpose of a solvent reconstruction or amalgamation); (b) is subject to an order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off; (c) enters administration; (d) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 of the Companies Act 2006; (e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income; (f) ceases to trade; or

	(g) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
Intellectual Property Rights	any and all intellectual property rights including but not limited to patents, patentable rights, copyright, design rights, utility models, trade marks (whether registered, registerable or otherwise), trade names, rights in inventions, rights in data, database rights, rights in know-how and Confidential Information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action);
Key Individuals	those individuals listed in the Framework Agreement;
Law	the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier must comply.
Liabilities	has the meaning set out in Clause 17.1;
Lots	means the categories of Services and Equipment set out at Schedule 5;
Materials	has the meaning set out in Clause 16.2;
New Authority:	means a new authority or authorities created pursuant to the Local Government Review proposal which will statutorily succeed the Authority in whole or in part and/or have the same statutory responsibilities of the Authority particularly in relation to the Services (and implemented under any ensuing statutory Regulations and/or Orders as applicable);
New Provider	has the meaning set out in Clause 17.2;
Order	the Authority's written instruction as a purchase order (issued by the Authority using its electronic purchasing system) to supply the Equipment and Services incorporating, and subject to, the Call-off Terms and Conditions set out in Schedule 5 to the Framework Agreement;
Outgoing Employee	has the meaning set out in Clause 17.7;
Price	has the meaning set out in Clause 9.1;
Prohibited Act	the following constitute Prohibited Acts: (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 Call-off Contract;

(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 Call-off Contract or any other contract with the Authority; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Authority;

Regulations	has the meaning set out in Clause 17.3;
Regulatory Bodies	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;
Relevant Supplier Personnel	has the meaning set out in Clause 17.4.1;
Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR;
Specification	the specification for the Equipment and Services set out in the Framework Agreement and/or the Order;
Standard Services	Means the standard services and equipment referred to in Schedule 1 of the Framework Agreement;
Subsidiary	has the meaning set out in section 1159 of the Companies Act 2006;
Subsidiary Undertaking	has the meaning set out in section 1162 of the Companies Act 2006;
Supplier Personnel	has the meaning set out in Clause 17.1;
Supplier's Tender	the Supplier's tender submission in response to the Authority's invitation to tender to join the Authority's framework for the supply of Equipment and Services (leading to the completion of the Framework Agreement);
Supplier Terms	The Supplier's terms and conditions in Schedule 1
Term	has the meaning set out in Clause 4.1;
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
Variation	has the meaning set out in Clause 25; and

VAT or **Value Added Tax**	value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto.

1.2 In these Call-off Terms and Conditions unless the context requires otherwise:

1.2.1 references to a Clause or Schedule are to a clause of, or a schedule to, these Call-off Terms and Conditions;

1.2.2 references to these Call-off Terms and Conditions include their schedules and references in a Schedule to a paragraph are to a paragraph of that Schedule;

1.2.3 references to the Call-off Contract includes any Order and means the Call-off Contract and any such Orders as amended from time to time in accordance with their terms;

1.2.4 the singular includes the plural and vice versa; references to any gender include every gender; and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;

1.2.5 all headings are for convenience, have no legal effect and should be ignored when interpreting these Call-off Terms and Conditions;

1.2.6 the words "**other**", "**includes**", "**including**" and "**in particular**" do not limit the generality of any preceding words;

1.2.7 reference to the Parties includes their respective successors in title and/or respective permitted assigns;

1.2.8 a reference to any provision of any statute and all statutory instruments, orders, by-laws, directions and notices made pursuant to it will be construed as a reference to that provision as amended, re-enacted, replaced, or extended at the relevant time;

1.2.9 any reference to:

(a) a "**day**" shall mean a period of twenty-four (24) hours running from midnight to midnight;

(b) a "**business day**" shall mean the hours of 9.00am and 5.30pm Monday to Friday that is not a public or bank holiday anywhere in the United Kingdom;

(c) a "**month**" or "**months**" shall mean the period commencing on (and including) the relevant day in the relevant calendar month and ending on (and excluding) the same day in (respectively) the following or final calendar month into which such period extends (provided that, if there is no corresponding day in that calendar month, the period shall end on (and include) the final day of such calendar month);

(d) a "**calendar month**" shall mean the period commencing on (and including) the first of the relevant calendar month and ending on (and excluding) the first of the immediately subsequent calendar month;

(e) references to times are to London times;

(f) a reference to "**writing**" or "**written**" includes e-mails;

1.2.10 in the event of a conflict or inconsistency between a term of Clauses of these Call-off Terms and Conditions, and a term of a Schedule, then the relevant term of Clauses of these Call-off Terms and Conditions shall prevail and apply; and

1.2.11 in the event of a conflict or inconsistency between (a) a term of Clauses of these Call-off Terms and Conditions and their Schedules and (b) a provision of an Order, the relevant provision of the Order shall prevail and apply except that the Supplier Terms shall not take precedence over any other Clause, Schedule or terms of any Order unless it benefits the Authority on such terms better that is stated in these Call-off Terms and Conditions

2 Purchase of Services and Hire of Equipment

2.1 The Supplier will only provide Equipment and Services to the Authority pursuant to an Order. All Orders placed with the Supplier by the Authority will be subject to the terms and conditions set out in these Call-off Terms and Conditions and incorporate, by reference, any relevant Schedules. Any terms and conditions included in or on the reverse of an Order by the Supplier shall have no legal effect.

2.2 The Authority may cancel or change an Order prior to delivery of Equipment.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's acknowledgement or acceptance of Order, or similar document (whether disclosed or exchanged before or after the date of an Order) shall form part of the Call-off Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These terms and conditions apply to the Call-off Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 Acceptance

3.1 An Order constitutes an offer by the Authority to purchase the Services and/or hire the Equipment in accordance with these terms and conditions.

3.2 An Order:

3.2.1 for Standard Services will be accepted by the Authority issuing an Order Form (as defined in the Framework Agreement) in accordance with clause 4.3(d) of the Framework Agreement;

3.2.2 for Competed Services will be accepted by the Authority issuing an Order Form (as defined in the Framework Agreement) in accordance with clause 4.4(g) of the Framework Agreement; or

3.2.3 shall be deemed to be accepted by the Supplier doing any act consistent with fulfilling the Order,

at which point the Call-off Contract shall come into existence.

4 Commencement and Duration

4.1 The Call-off Contract shall commence on the Effective Date and shall expire at the end of the Hire Period.

5 Conditions of Supply

5.1 The purchase of Services and hire of Equipment by the Authority pursuant to these Call-off Terms and Conditions shall, unless otherwise expressly agreed in an Order, be on a non-exclusive basis and the Supplier acknowledges that the Authority may appoint any other person to provide goods the same as or similar to the Services and Equipment provided pursuant to the Call-off Contract.

5.2 The Supplier acknowledges that the Authority shall have no obligation to place Orders pursuant to these Call-off Terms and Conditions and that any Forecast shall not constitute a binding commitment on the Authority. The Authority may provide the Supplier with Forecasts in such detail and within such timescales as the Authority thinks fit but if any such Forecast proves to be inaccurate, the Authority shall not have any liability to the Supplier. If the Supplier is unable to fulfil any Forecast it shall inform the Authority in writing immediately.

5.3 The Supplier acknowledges that the Services and Equipment provided (including for the avoidance of doubt, any agreed pricing, pursuant to the Call-off Contract) may be for the benefit of other companies within the Authority's Group (if applicable) and that any such company may enforce the terms of the Call-off Contract subject to and in accordance with the terms of these Call-off Terms and Conditions and the provisions of the Contracts (Rights of Third Parties) Act 1999.

5.4 The Supplier warrants that in the supply of Equipment and Services, the Supplier will comply in each and every respect with the Law and all relevant legal, regulatory, quality and safety standards and other requirements for the time being in force (including any codes of practice

issued by any governmental, regulatory or other authority) and will comply from the date of issue with any codes of practice or policies issued by the Authority to the Supplier from time to time during the term of the Call-off Contract. Supplier breach of this Clause 5.4 shall be a material breach for the purposes of Clause 12.2.1.

5.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Call-off Contract. The Supplier shall bear all additional costs and performance risk implications (including delay) on the provision of the Services and the supply of Equipment caused by a change in Law.

5.6 The Supplier will ensure that (where notified by the Authority in its Order with details of any applicable regulation or policy) Supplier Personnel comply with all applicable staff, contractors' and other applicable regulations of the Authority whilst on the Authority's Premises and with any such regulations imposed by any agent or contractor of the Authority when on their Premises (including, any Law and policy concerning matters of health and safety or the Authority's statutory and regulatory obligations as a local authority).

5.7 The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this Call-Off Contract (including those in relation to the Services) in accordance with: any health and safety measures implemented by the Authority in relation to the Authority's Premises.

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

5.9 Where applicable, the Supplier is to comply with the Construction (Design and Management) Regulations 2015 and with any reasonable request by the Authority or any authorised representative of the Authority at the Authority's Premises.

6 Inspection of Records

6.1 The Authority, its agents and/or sub-contractors (and/or independent auditors on the Authority's behalf) shall have the right at any time to inspect the Supplier's records and books relating to the supply of Equipment and Services to the Authority. Any such inspection processes shall be subject to reasonable prior written notice.

6.2 The Supplier shall for a minimum of six (6) years after the Call-off Contract has expired or terminated or for as long as the Parties may agree is appropriate keep and maintain full and accurate records required under the Call-off Contract (including information required to validate compliance of the Equipment and Services in accordance with these Call-off Terms and Conditions).

7 Indemnity

7.1 Neither Party excludes or limits its liability for:

7.1.1 death or personal injury caused by its negligence;

7.1.2 fraud (including fraudulent misrepresentation);

7.1.3 or any other matter for which it would be unlawful to exclude or limit its liability.

7.2 The Supplier will indemnify and keep the Authority indemnified against all losses, liabilities, damages, claims, costs and expenses (including all legal and other professional fees and expenses) incurred or suffered by the Authority howsoever arising as a result of or in connection with:

7.2.1 breach by the Supplier of any term of the Call-off Contract;

7.2.2 any failure or alleged failure of the Services or Equipment to comply with the Call-off Contract or any other contract between the Authority and the Supplier;

7.2.3 any tort (including negligence) or breach of statutory duty by the Supplier;

7.2.4 any infringement or alleged infringement of Intellectual Property Rights (or other rights) of third parties in respect of the Equipment, associated documentation

(including, without limitation, instruction manuals), appearance, labelling or advertising; or

7.2.5 any infringement or alleged infringement of the Authority's Intellectual Property Rights;

7.2.6 breach of the Data Protection Legislation; or

7.2.7 any other act or omission, liability for which may not be limited under any applicable law.

7.3 For the avoidance of doubt, unless otherwise agreed in writing the Authority will control any legal proceedings with third parties in respect of which it is being indemnified by the Supplier.

7.4 Subject to Clause 7.1, in no circumstances shall the Authority's liability under an Order (whether such liability arises under contract, tort (including negligence) or otherwise) exceed the relevant Price.

7.5 Subject to Clause 7.1, the Supplier shall not be responsible for or be obliged to indemnify the Authority for any claim made under or in connection with an Order, including (without limitation) any claim for breach or on termination or expiry, to the extent when taken together with any other claims made under the Order:

7.5.1 (subject to Clause 7.5.2 below in respect of insured losses), where the aggregate liability of the Supplier for its uninsured losses exceeds a sum equal to one million pounds (£1,000,000) (indexed on every anniversary of the Commencement Date by the Consumer Price Index published by the Office for National Statistics) and

7.5.2 for any liability in respect of amounts that the Supplier is (or should be but for a breach by the Supplier of Clause 8 (Insurance)) able to recover under the Required Insurances that the Supplier is required to maintain in accordance with clause 8 (Insurance) of this agreement but, for the avoidance of doubt, only to the extent that such liability is below the maximum amount of cover specified for the relevant Required Insurance policy under clause 8 (Insurance) of this agreement. If the Supplier is in breach of clause 8 (Insurance) and there is no recovery or diminished recovery under the Required Insurances the Supplier shall be liable for the sum which, were it not for the Supplier's breach, should have been recoverable.

7.6 Except in the case of claims arising under Clauses 7.1 and 7.2.5, in no event shall either Party be liable to the other Party for any:

7.6.1 loss of profit;

7.6.2 loss of business;

7.6.3 loss of revenue;

7.6.4 loss of or damage to goodwill;

7.6.5 loss of savings (whether anticipated or otherwise); and/or

7.6.6 any indirect, special or consequential loss or damage.

7.7 For the avoidance of doubt, claims under clause 11.1 shall be considered direct losses and are outside the scope of clause 7.6.

7.8 This Clause 7 shall survive termination of the Call-off Contract.

8 Insurance

8.1 The 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 levels of cover set out below:

8.1.1 employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims without limit on the number of claims in any one (1) year or other period and such insurance shall expressly by its terms confer its benefits on the Authority;

8.1.2 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims without limit on the number of claims in any one (1) year or other period and such insurance shall expressly by its terms confer its benefits on the Authority; and

8.1.3 product liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims (the "**Required Insurances**") in respect of all risks which may be incurred by the Supplier, arising out of the 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 Supplier.

8.1.4 Contractor's All Risk Insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of or in connection with the performance of the Call-off Contract, including loss of or damage to the Equipment, materials, plant, temporary works and any works undertaken by or on behalf of the Supplier while at the Premises, in transit to or from the Premises, or otherwise in the Supplier's custody or control. Such insurance shall, where reasonably available, note the Authority's interest and shall not relieve the Supplier of any liability under the Call-off Contract.

8.1.5 Vehicle/motor insurance for the relevant Equipment for transport on, to and from the Premises (where applicable) for such relevant amount as deemed appropriate by the Supplier or otherwise requested in writing by the Authority.

8.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause 8 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.

8.3 If, for whatever reason, the 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 Supplier.

8.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Call-off Contract.

9 Prices

9.1 The prices for the Equipment and Services shall be the prices set out in the Order (the "**Price**").

9.1.1 In relation to Standard Works, the Price will be the aggregate of the total price for all Equipment as set out in the Pricing Matrices in the Framework Agreement, subject to any adjustments permitted under this Agreement; or

9.1.2 such rates as are agreed following a competitive selection process pursuant to the terms of the Framework Agreement

9.2 Unless otherwise agreed in an Order the Price shall be all inclusive (except in respect of VAT which the Authority shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of an additional valid VAT invoice) and the Supplier shall not be entitled to make any additional charges for administration, packaging, shipping, carriage, insurance or delivery of the Equipment.

9.3 Unless otherwise agreed in accordance with the Call-off Contract, there will be no change to the Price during the term of the Call-off Contract and no extra charges shall be effective.

9.4 The Supplier will honour any rebates and early payment terms agreed as being payable to the Authority pursuant to an Order (or otherwise as stated in the Supplier's Tender) and the Authority or its authorised representative will issue an invoice to the Supplier for the sum due.

9.5 Payment of invoices will be made to the bank account nominated in writing by the Authority immediately after the date of a valid and proper VAT invoice.

9.6 The Supplier will notify the Authority of and pass on to the Authority by way of reduced prices the benefit of any cost savings to the Supplier which result from technology and process changes or otherwise.

10 Payment

10.1 The Supplier shall invoice the Authority for the Price in accordance with the terms set out in this Clause 10.

10.2 Except as otherwise agreed in writing by the Authority, payment of invoices will be made to the bank account nominated in writing by the Supplier thirty (30) days after the date of a valid and proper VAT invoice in the correct format (such format to be agreed with the Authority but which shall include as a minimum the date of the Order, the invoice number, the Authority's order number, the Supplier's VAT registration number and any supporting documents that the Authority may reasonably require). Invoices may not be dated or otherwise issued by the Supplier except in accordance with the terms of Clause 10.1. If the Authority disputes any invoice in good faith, it shall be entitled to withhold payment of the disputed amount pending resolution of the dispute but will pay the undisputed amount in accordance with the terms of this Clause 10.2. The provisions of Clause 10.6 shall not apply to any disputed amounts except, if the dispute is finally resolved in the Supplier's favour, Clause 10.6 shall apply to any period after the dispute has been finally resolved.

10.3 Save as the context requires or as otherwise stated in these Call-off Terms and Conditions, all references to payments made in these Call-off Terms and Conditions are references to such payments exclusive of any Value Added Tax chargeable in respect of the supply of the Equipment and Services and where such payments fall to be made under these Call-off Terms and Conditions such Value Added Tax shall be added to the amount at the rate applicable, if any, and paid in addition thereto subject to production of a valid and properly numbered VAT invoice.

10.4 The Authority will be entitled at its sole discretion to set off any liability of the Authority to the Supplier against any liability of the Supplier to the Authority (in either case however such liability arises and whether or not it is present or future, liquidated or unliquidated and irrespective of the currency of its denomination). Any exercise by the Authority of its rights under this Clause 10.4 does not affect any other rights and remedies it may have under these Call-off Terms and Conditions or otherwise.

10.5 Where the Authority is owed sums by the Supplier (whether under these Call-off Terms and Conditions or otherwise) which are in excess of the amounts payable by the Authority to the Supplier, the Authority will be entitled to suspend all payments to the Supplier under these Call-off Terms and Conditions until the balance owing to the Authority has been recouped by way of set off against the payments suspended.

10.6 If payment is not made when due under Clause 10.1 the Supplier may charge interest at three per cent (3%) per annum above the base rate of HSBC UK Bank plc at the time on all unpaid amounts. The time for payment is not of the essence. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount. This Clause 10.6 shall not apply to payments the defaulting Party disputes in good faith.

10.7 The Provider shall indemnify the Authority on a continuing basis against any liability, including any loss, liability, interest, penalties, costs or expenses incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Agreement. Any amounts due under this clause 10.7 shall be paid by the Provider to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

10.8 Where the Supplier enters into a sub-contract with another supplier or contractor for the purpose of performing its obligations under this Call-Off Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

11 Performance and Contract Management

11.1 Save in the event of a Force Majeure Event, if the Supplier fails to deliver Equipment by the delivery date and/or in accordance with the lead time specified in the Order it shall be liable for and shall pay to the Authority, as compensation the corresponding liquidated damages as set out below. For the avoidance of doubt the Authority's principles for calculating liquidated damages shall assume:

11.1.1 a blended hourly or day rate per employee of the Authority or its sub-contractors, (whether in a management or administrative capacity or as operatives) for the number of such employees reasonably expected to be deployed by or on behalf of the Authority to use the Equipment where such rate per employee shall be applied for any delay period exceeding one (1) hour of waiting time following the due delivery date and time for the Equipment; and

11.1.2 the daily rates of hire for any plant and equipment which the Authority has hired (and cannot cancel or reasonably redeploy elsewhere),

in each case where resources have been allocated to activities where delayed Equipment incurs waiting time costs.

11.2 The Parties agree that all liquidated damages (as applicable) represent a genuine pre-estimate of the relevant loss or damage incurred by the Authority and could not be construed as a penalty in the circumstances in which they fall due as being extravagant or unconscionable. Payment of liquidated damages shall be without prejudice to any other right or remedy of the Authority under the Call-off Contract or otherwise at Law.

11.3 The Authority will monitor the performance of the Supplier. The Supplier shall co-operate, and shall procure that its sub-contractors co-operate, with the Authority in carrying out such monitoring.

11.4 The Supplier shall submit a performance report based on their performance in line with the Key Performance Indicators Schedule as set out in the Framework Agreement with respect to this Order and shall meet with the Authority to discuss the Supplier's performance as required under the Framework Agreement.

12 Termination

12.1 The Authority may terminate the Call-off Contract for convenience and without liability to the Supplier upon giving the Supplier notice in writing where the period of notice shall be the lesser of thirty (30) days or the period of the remainder of the Term. Upon termination the Supplier shall discontinue all work on the Call-off Contract. The Authority shall pay the Supplier fair and reasonable compensation for any work in progress on the Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier may terminate the Call-off Contract for convenience to the Authority upon giving the Authority notice in writing where the period of notice shall be the lesser of a minimum of thirty (30) days or the period of the remainder of the Term.

12.2 The Call-off Contract may be terminated immediately by notice in writing:

12.2.1 by either Party if the other Party is in material breach of any of its obligations under the Call-off Contract and fails to remedy the breach (if capable of remedy) within seven (7) days after written notice by the other Party specifying the breach and requiring the same to be remedied;

12.2.2 by either Party with immediate effect from the date of service on the other of written notice if the Party is Insolvent;

12.2.3 by either Party with immediate effect from the date of service on the other of a written notice if the other Party suffers any analogous event to those set out in Clause 12.2.2 in any other jurisdiction;

12.2.4 by either Party in the circumstances set out in Clause 14;

12.2.5 Not Used;

12.2.6 by the Authority with immediate effect from the date of service on the Supplier of written notice where the circumstances set out in clause 18.3 of the Framework Agreement apply;

12.2.7 by the Authority with immediate effect from the date of service on the Supplier of written notice where the circumstances set out in clause 19 of the Framework Agreement apply;

12.2.8 by the Authority with immediate effect from the date of service on the Supplier of written notice if the Supplier has, in the reasonable opinion of the Authority, harmed the name or business of the Authority;

12.2.9 by the Authority with immediate effect from the date of service on the Supplier of written notice if a person (or persons acting together) take a controlling interest in the Supplier's share capital (for this purpose, a "**controlling interest**" being either:

(a) the ownership or control (directly or indirectly) of more than thirty per cent (30%) of the Supplier's voting share capital or the share capital of the Supplier's Holding Company; or

(b) the ability to direct the casting of more than thirty per cent (30%) of the votes exercisable at the Supplier's general meetings or those of the Supplier's Holding Company on all, or substantially all, matters);

12.2.10 by the Authority with immediate effect from the date of service on the Supplier of a written notice in the circumstances set out in Clause 20.2; or

12.2.11 the Supplier's financial position deteriorates to such an extent that in the Authority's opinion the Supplier's capacity to adequately fulfil its obligations under the Call-off Contract has been placed in jeopardy.

12.3 The termination of the Call-off Contract for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after the termination.

12.4 Any termination of the Call-off Contract under this Clause 12 will be without prejudice to any other rights or remedies of either Party under the Call-off Contract or at Law and will not affect any accrued rights or liabilities of either Party at the date of termination.

13 Consequences of Termination

13.1 The Supplier acknowledges that the Authority may wish, prior to, on or after termination or expiry of the Call-off Contract, to invite persons (who may include the Supplier) to tender for the right to provide some or all of the Equipment and Services after termination or expiry of the Call-off Contract. Accordingly, the Supplier agrees that at any time the Authority may require the Supplier to provide to the Authority, at the Supplier's cost, within fourteen (14) days of the Authority's request such information as is reasonably required by the Authority to develop such tender(s) (subject always to the rights of the Supplier to withhold confidential or Commercially Sensitive Information).

13.2 In the event of termination or expiry of the Call-off Contract the Supplier shall (at its cost):

13.2.1 deliver to the Authority all documents, books and records which relate to the provision of the Equipment and Services which are severable from the records of the Supplier. Where any such documents, books and/or records are not severable from the records of the Supplier, the Supplier shall maintain such records for such period as is prescribed by UK legislation and shall give to the Authority reasonable access to the said documents, books and/or records as Authority may require (including the right to take copies and extracts on reasonable advance notice) and will keep them in good order;

13.2.2 return or procure the return to the Authority of all and any copies of the Authority's Confidential Information in the possession or control of the Supplier and/or any sub-contractors appointed in accordance with the Call-off Contract;

13.2.3 provide all assistance, information and co-operation which the Authority may reasonably require to ensure an orderly migration of the Services to the Authority or to such new service provider as the Authority may appoint;

13.2.4 offer to the Authority any work in progress not yet paid for, at a reasonable price having regard to the status of the relevant work in progress and the basis of the Price agreed under the Order. Any work in progress purchased by the Authority shall be delivered by the Supplier in a format and at a time reasonably specified by the Authority and, notwithstanding it is not yet completed, shall be subject to any relevant warranty, indemnity, quality and certification provisions contained in the Call-off Contract; and

13.2.5 promptly re-deliver any free issue material issued by the Authority pursuant to a relevant Order.

13.3 In the event of termination or expiry of the Call-off Contract the Authority shall:

13.3.1 pay to the Supplier all sums validly due and owing for outstanding Orders which the Authority has agreed will be fulfilled notwithstanding termination of the Call-off Contract; and

13.3.2 return or procure the return to the Supplier of all and any copies of the Supplier's Confidential Information in the possession or control of the Authority.

14 Force Majeure

14.1 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Call-off Contract by a Force Majeure Event, then:

14.1.1 that Party's obligations under the Call-off Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed;

14.1.2 as soon as possible after the start of the Force Majeure Event that Party shall give notice to the other Party of the nature of the Force Majeure Event, the date and time at which it started and the likely effects of the Force Majeure Event on its ability to perform its obligations;

14.1.3 that Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Call-off Contract; and

14.1.4 as soon as practicable after the end of the Force Majeure Event that Party shall notify the other Party and resume performance of its obligations under the Call-off Contract.

14.2 If the Supplier is prevented, hindered or delayed from or in performing any of its obligations under the Call-off Contract by a Force Majeure Event, the Authority may either engage an alternative supplier to provide the Equipment and Services for the duration of the Force Majeure Event and for a reasonable period thereafter (and provided the Authority uses reasonable endeavours to minimise its contractual commitments to the alternative supplier, the Supplier will reimburse the Authority for any additional costs incurred by the Authority in relation to such alternative supplier) and/or at any time during the Force Majeure Event terminate any Orders by giving immediate notice in writing to the Supplier.

14.3 If a Party is prevented, hindered or delayed from or in performing any of its obligations under the Call-off Contract by a Force Majeure Event for a continuous period in excess of one (1) calendar month the other Party may terminate the Call-off Contract immediately by notice in writing.

15 Information Requirements

15.1 Invoices must show date, invoice number, the Supplier name and address, VAT breakdown as well as the Order number and the Price for the Equipment and Services supplied together with any other information or supporting documentation the Authority may reasonably require.

15.2 The Supplier warrants and represents that all information provided to the Authority prior to the date of the Order was materially true, accurate and not misleading. The Supplier agrees to notify the Authority immediately if any such information becomes untrue, inaccurate or misleading.

15.3 The Supplier warrants and represents that it has not relied on any information provided by the Authority prior to the date of the Call-off Contract and that it has carried out its own due diligence in relation to the Authority's requirements in relation to the Equipment and Services.

15.4 All specifications, drawings, sketches, models, prototypes, samples, tools, designs, technical information or data or other proprietary information (whether written, oral or otherwise and including personal data as defined in the Data Protection Act 2018) made available to the Supplier by the Authority (or on its behalf) will remain the property of the Authority and will be returned promptly to the Authority (together with all copies) at the Authority's request. Such information will be treated as strictly confidential, will be kept safely and will not be used or disclosed by the Supplier except as strictly necessary in the performance of the Call-off Contract.

16 Intellectual Property

16.1 Nothing in the Call-off Contract shall operate to assign or otherwise transfer any title to, or ownership of, any pre-existing Intellectual Property Rights owned by a Party or its third party licensors.

16.2 All Intellectual Property Rights in systems, concepts, brands, logos, marks, slogans, digital scans, advertising, promotional or packing material, artistic works, illustrations, documents, instructions, databases, drawings, information, designs, specifications, formulae, test results, software, inventions, tooling, display equipment, labels, models, samples, photographs or other material or products acquired or created by the Supplier or on the Supplier's behalf in the course of performing the Call-off Contract, commissioned by the Authority or which are made to the Authority's specification ("**Materials**") will vest in the Authority. The Supplier assigns to the Authority all such rights (whether presently existing or to be created in the future) to the fullest extent to which the Supplier is able (and if moral rights exist, the Supplier waives such rights) and regardless of whether or not the Supplier has received payment for the Equipment or Services purchased pursuant to the Call-off Contract.

16.3 The Supplier agrees to execute all documents and to do any other things reasonably necessary to further assure the Authority's title to the Intellectual Property Rights in the Materials and to allow the Authority to enforce its rights in the Materials. For the avoidance of doubt, this may involve the Supplier providing the Authority with the names of the individuals who created the Materials and with information as to the novelty and state of the art of the Materials. Where the Supplier engages the assistance of third parties in preparing or producing the Materials for the Authority, the Supplier will notify the Authority, ensure at the outset that such third parties assign any such Intellectual Property Rights to the Authority (and if moral rights exist, waive such rights) and promptly provide the Authority with documentation evidencing such assignment and waiver.

16.4 All Intellectual Property Rights in systems, concepts, brands, logos, marks, slogans, digital scans, advertising, promotional or packing material, artistic works, illustrations, documents, instructions, databases, drawings, information, designs, specifications, formulae, test results, software, inventions, tooling, display equipment, labels, models, samples, photographs or other material or products supplied by the Authority to the Supplier or used by the Supplier in the supply of the Equipment and Services shall at all times be and remain the exclusive property of the Authority and such items shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Authority and shall not be disposed of other than in accordance with the Authority's written instructions, nor shall such items be used otherwise than as authorised by the Authority in writing.

16.5 The Supplier acknowledges that any rights granted by the Authority to use or exploit any of the Authority's Intellectual Property Rights will terminate immediately upon the termination of the Call-off Contract for any reason. All goodwill in respect of the Authority's Intellectual Property Rights shall remain with the Authority at all times.

17 Supplier Personnel

17.1 All losses, damages, costs, claims, liabilities and expenses (including all legal and other professional fees and expenses) ("**Liabilities**") relating to the employment or engagement of any of the Supplier's employees, workers, sub-contractors and agents ("**Supplier Personnel**") in respect of the period from the Effective Date up to and including the date of termination of the Call-off Contract are to be borne by the Supplier.

17.2 The Supplier will indemnify and keep the Authority and any new provider of goods to the Authority similar to the Equipment or Services or any part of such Equipment or Services (a "**New Provider**") indemnified against any Liabilities transferred to, imposed upon or incurred by Authority and/or any New Provider, in each case to the extent arising out of or in connection with the employment of any Supplier Personnel in respect of the period from the Effective Date to the date of termination of the Call-off Contract.

17.3 If any of the Supplier Personnel makes any claim (whether successful or not) at any time prior to termination of the Call-off Contract that they have become an employee of, or have rights against, Authority or any New Provider by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (the "**Regulations**") or otherwise, the Supplier will indemnify and keep the Authority and any New Provider indemnified against any Liabilities transferred to, imposed upon or incurred by the Authority or any New Provider in each case to the extent arising out of or in connection with any such claim.

17.4 The Supplier undertakes that (for any Call-off Contract whose Term exceeds six (6) months) during either the final six (6) month period before the expiry of the Call-off Contract or (for any Call-off Contract) during any notice period to terminate the Call-off Contract it shall not, save with the prior written consent of the Authority:

17.4.1 withdraw or permit the withdrawal of any of the Supplier Personnel engaged wholly or mainly at that time in the provision of the Equipment and Services (the "**Relevant Supplier Personnel**") from the provision of the Equipment and Services;

17.4.2 alter in any material respect the terms and conditions of employment of any of the Relevant Supplier Personnel (including, without limitation, any increase in salary, wages or other emoluments (whether pursuant to a general review or otherwise) where the effect of such increase would be to increase the annual salary, wages or other emoluments of any Relevant Supplier Personnel to an annual level above the market rate paid to such personnel across the relevant industry);

17.4.3 assign any member of the Supplier's staff (not already engaged in the provision of the Equipment or Services) to the provision of the Equipment or Services; or

17.4.4 engage new employees who would become Relevant Supplier Personnel except to replace Relevant Supplier Personnel who have left the Supplier's employment.

17.5 The Supplier undertakes that during any notice period to terminate the Call-off Contract, the Supplier shall provide to the Authority and/or New Provider the following information:

17.5.1 details of the Equipment/Services; and

17.5.2 all information relating to transferring employees required to be supplied under the Regulations.

17.6 Following the termination of the Call-off Contract for whatever reason, the Supplier will indemnify and keep the Authority and any New Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any act or omission of the Supplier prior to the termination or expiry of the Call-off Contract in respect of any Supplier Personnel for which the Authority and/or any New Provider is liable by reason of the Regulations.

17.7 If, as a result of the application of the Regulations, the contract of employment of any employee of the Supplier shall have effect, following the termination of the Call-off Contract, as if originally made between the Authority and/or any New Provider and that person ("**Outgoing Employee**"), the Authority and/or any New Provider may terminate the contract of employment with such Outgoing Employee and the Supplier shall indemnify and keep the Authority and any New Provider indemnified against all Liabilities incurred in respect of any such dismissal. The Supplier shall also indemnify and keep the Authority indemnified against all Liabilities incurred by the Authority arising out of or in connection with any claim (whether successful or not) made by an Outgoing Employee (whether or not such person is dismissed by the Authority).

17.8 A New Provider may enforce the terms of this Clause 17 subject to and in accordance with the terms of the Call-off Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999.

18 Not Used

19 Notices

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

19.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) and confirmed by e-mail or if sent by electronic mail (confirmed by letter). Such correspondence shall be addressed to the other Party in the manner referred to in the Framework Agreement.

19.3 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given within two Working Days after the day on which the letter was posted, or four hours of the date it was sent by e-mail or sooner where the other Party acknowledges receipt of such letters or e-mail.

19.4 The addresses of the Parties for the purposes of Clause 19.1 shall be those set out in the Framework Agreement unless alternative addresses are agreed in the relevant Order or such other address in the United Kingdom as may be notified in writing from time to time by the relevant Party to the other Party.

19.5 This Clause 19 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

20 Anti-Bribery

20.1 The Authority is committed to responsible and ethical business practices and does not engage in, facilitate or accept the conduct of any activity that may constitute bribery, corruption or fraud as such terms are defined in the Bribery Act 2010 and other related international laws and regulations and by responsible governmental and enforcement authorities (together "**Corrupt Practices**").

20.2 The Supplier shall not engage in any Corrupt Practices. The Supplier acknowledges and agrees that any act or omission on its part in the performance of the Call-off Contract, and which constitutes a Corrupt Practice and/or a breach of the Authority's Anti-Bribery and Corruption Policy, shall entitle the Authority to terminate the Call-off Contract and all Orders placed pursuant to it on notice and with immediate effect.

21 Sub-contractors

21.1 The Supplier will not be entitled to sub-contract any of the Supplier's obligations under the Call-off Contract except with the prior written consent of the Authority.

21.2 The appointment of a sub-contractor shall not affect the Supplier's obligations and liabilities under the Call-off Contract and the Supplier shall remain primarily liable to the Authority and fully responsible for the acts or omissions of its sub-contractors.

21.3 Where the Authority recommends or suggests any particular person to the Supplier as a sub-contractor, the Authority gives no warranty or assurance in respect of the performance of that person and no liability will be accepted by the Authority in respect of the performance of that person.

21.4 In making a request pursuant to **Clause 21.1** the Supplier shall provide the Authority with the following information about the proposed sub-contractor:

21.4.1 its name, registered office and company registration number;

21.4.2 a copy of the proposed sub-contract;

21.4.3 the fees and charges to be paid by the Supplier to the proposed sub-contractor;

21.4.4 the purposes for which the proposed sub-contractor will be appointed, including the scope of any goods, works or services to be provided by the proposed sub-contractor;

21.4.5 confirmation that the proposed sub-contractor will comply with the terms of the Call-off Contract as if it were a Party to the same;

21.4.6 (where the proposed sub-contractor is also an affiliate of the Supplier) evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed sub-contract has been agreed on "**arm's length**" terms; and

21.4.7 any further information reasonably requested by the Authority.

22 Assignment

22.1 The Supplier will not be entitled to assign, transfer, sub-license, charge, declare a trust over or deal in any other manner with any or all of the Supplier's rights or obligations under the Call-off Contract without the prior written consent of the Authority.

22.2 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under the Call-off Contract or any part thereof (without the Supplier's consent) to:

22.2.1 any Contracting Authority;

22.2.2 a New Authority; or

22.2.3 any other body established by the Crown or under statute in order to substantially perform any of the functions that previously had been performed by the Authority.

22.3 The Authority will give the Supplier notice of any such assignment as soon as reasonably practicable.

23 Waiver and Cumulative Remedies

The failure to exercise or delay in exercising a right or remedy provided by the Call-off Contract or by Law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of the Call-off Contract or a Default under the Call-off Contract does not constitute a waiver of any other breach or Default and shall not affect the other terms of the Call-off Contract. A waiver of a breach of any of the terms of the Call-off Contract or a Default under the Call-off Contract will not prevent a Party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by the Call-off Contract are cumulative and (subject as otherwise provided in the Call-off Contract) are not exclusive of any rights or remedies provided by Law.

24 No Partnership

Nothing in the Call-off Contract and no action taken by the Parties pursuant to the Call-off Contract shall constitute, or be deemed to constitute, a relationship between the Parties of partnership, association, joint venture or other co-operative entity.

25 Variation

25.1 No change, amendment, modification, extension or variation ("**Variation**") to, or concerning the Call-off Contract shall be valid unless it is in writing and signed by or on behalf of each of the Parties as set out at Schedule 2.

25.2 The Parties may agree a separate procedure for managing commercial, technical and/or operational changes to the supply of Equipment and Services pursuant to an Order or all Orders placed pursuant to the Call-off Contract. Any such procedure shall be agreed in writing in accordance with Clause 25.1.

26 Costs and Expenses

Each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of the Call-off Contract and of each document referred to in it.

27 Not used

28 Confidentiality and Privacy

28.1 Subject to Clause 28.2, the Parties shall keep confidential all Confidential Information relating to the Call-off Contract and shall use all reasonable endeavours to prevent their employees, workers, sub-contractors and agents from making any disclosure to any person of any matters relating hereto.

28.2 Clause 28.1 shall not apply to any disclosure of Confidential Information:

28.2.1 required by any applicable Law;

28.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under the Call-off Contract;

28.2.3 where a Party can demonstrate that such Confidential Information is already generally available and in the public domain otherwise than as a result of a breach of Clause 28.1;

28.2.4 by either Party of any document to which it is a party and which the Parties to the Call-off Contract have agreed contains no Confidential Information;

28.2.5 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party; or

28.2.6 by either Party relating to the Call-off Contract and in respect of which the other Party has given its prior written consent to disclosure.

28.3 The Supplier will not make any announcement or publicity statement relating to the Authority, the Call-off Contract or its subject matter without the prior written approval of the Authority (except as required by Law or by any legal or Regulatory Body).

28.4 If the Supplier processes personal data (as defined by the Data Protection Legislation) on behalf of the Authority the Supplier will:

28.4.1 only act on the Authority's instructions in relation to the processing of such personal data;

28.4.2 maintain sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data; and

28.4.3 not transfer any personal data outside of the European Economic Area without the Authority's prior written consent (and it shall be a condition of any such consent where requested by the Authority that the Supplier puts in place a data transfer agreement based on the European Commission's standard form of "model clauses").

28.5 This Clause 28 shall survive termination of the Call-off Contract.

29 Dispute Escalation

Without prejudice to either Party's right to seek interlocutory relief in the courts the Parties shall use reasonable efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Call-off Contract (or its construction, validity or termination) (a "**Dispute**"). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties, either Party may give to the other a notice in writing (a "**Dispute Notice**"). Within seven (7) days of the Dispute Notice being given the Parties shall each refer the Dispute to the senior representatives nominated by each Party who shall meet in order to attempt to resolve the dispute. If the Dispute is not settled by agreement in writing between the Parties within fourteen (14) days of the Dispute Notice it shall be resolved in accordance with Clause 30 or, if the Parties do not wish to attempt mediation, Clause 34.

30 Mediation

30.1 A Dispute may (only with the agreement of both Parties) be referred to mediation in accordance with the Centre for Dispute Resolution ("**CEDR**") Model Mediation Procedure. The mediation shall be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven (7) days of a notice from either Party to the other calling upon the other so to agree), by CEDR. Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge their duties and to bear equally between them the fees and expenses of the mediator.

30.2 The mediation shall be conducted in England in English. The mediation shall be conducted without prejudice to the rights of any of the Parties in future proceedings.

31 Third Party Rights

31.1 Not Used.

31.2 Not Used.

31.3 Any New Provider may enforce the terms of Clause 17 subject to and in accordance with the Call-off Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999.

31.4 Except as provided in Clause 31.3 a person who is not a Party to the Call-off Contract shall not have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

31.5 Notwithstanding that any term of the Call-off Contract may be or become enforceable by a person who is not a Party to it, the terms of the Call-off Contract may be varied, amended or modified without the consent of any such third party.

32 Entire Agreement

32.1 The Call-off Contract and the Framework Agreement set out the entire agreement and understanding between the Parties and supersede and extinguishe all previous agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to the subject matter of the Call-off Contract.

32.2 The Supplier acknowledges that in entering into the Call-off Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to the Call-off Contract or not) other than as expressly set out in the Call-off Contract.

33 Severance

33.1 If any provision of the Call-off Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Call-off Contract which shall remain in full force and effect.

33.2 If any provision of the Call-off Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

34 Governing Law and Jurisdiction

English law applies to the Call-off Contract (and any non-contractual obligations arising out of or in connection with it) and the Parties agree to submit to the exclusive jurisdiction of the English courts.

35 Not Used

36 Not Used

37 Freedom of Information

37.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with these information disclosure requirements.

37.2 The Supplier shall and shall procure that its sub-contractors shall:

37.2.1 transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) business days of receiving a Request for Information;

37.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) business days (or such other period as the Authority may specify) of the Authority requesting that Information; and

37.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

37.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

37.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or

37.3.2 is to be disclosed in response to a Request for Information.

37.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.

37.5 The Supplier acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions

under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIR to disclose Information:

37.5.1 without consulting with the Supplier; or

37.5.2 following consultation with the Supplier and having taken its views into account,

provided always that where Clause 37.5.2 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

37.6 The Supplier shall ensure that all Information produced in the course of the Call-off Contract or relating to the Call-off Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

37.7 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 37.5.

38 Data Protection

The Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 38 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

39 Audit

39.1 During the Term and for a period of seven (7) years after the expiry date or earlier termination date of the Call-off Contract, the Authority may conduct or be subject to an audit for the following purposes:

39.1.1 to verify the accuracy of Prices (and proposed or actual variations to them in accordance with the Call-off Contract) and/or the costs of all suppliers (including sub-contractors) of the Equipment and Services;

39.1.2 to review the integrity, confidentiality and security of any data relating to the Authority;

39.1.3 to review the Supplier's compliance with Data Protection Legislation and/or the FOIA (in accordance with Clause 38 and Clause 37) and any other Law applicable to the Equipment and Services;

39.1.4 to review any records created during the provision of the Equipment and Services;

39.1.5 to review any books of account kept by the Supplier in connection with the provision of the Equipment and Services;

39.1.6 to carry out the audit and certification of the Authority's accounts;

39.1.7 to carry out an examination of the economy, efficiency and effectiveness with which the Authority has used its resources; and

39.1.8 to verify the accuracy and completeness of the Management Reports delivered or required by the Call-off Contract.

39.2 Except where an audit is imposed on the Authority by a Regulatory Body, the Authority may not conduct an audit under this Clause 39 more than twice in any calendar year.

39.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Equipment or Services.

39.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

39.4.1 all information requested by the above persons within the permitted scope of the audit;

39.4.2 reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Call-off Contract; and

39.4.3 access to the Supplier Personnel.

39.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its or, where possible, a Regulatory Body's, intention to conduct an audit.

39.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 39, unless the audit identifies a material failure to perform its obligations under the Call-off Contract in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

39.7 If an audit identifies that:

39.7.1 the Supplier has failed to perform its obligations under the Call-off Contract in any material manner, the Parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Prices, proposed Prices or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

39.7.2 the Authority has overpaid any Prices, the Supplier shall pay to the Authority the amount overpaid within twenty (20) days. The Authority may deduct the relevant amount from the Prices if the Supplier fails to make this payment; and

39.7.3 the Authority has underpaid any Prices, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Supplier in relation to invoicing within twenty (20) days.

40 Prevention of Bribery

40.1 The Supplier:

40.1.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, commit a Prohibited Act in connection with the Call-off Contract; and

40.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Call-off Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Call-off Contract.

40.2 The Supplier shall:

40.2.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

40.2.2 within fourteen (14) business days of the Effective Date, and (where relevant if the Term is at least one (1) year) annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause 40 by the Supplier and all persons associated with it or other persons who are supplying Equipment and Services in connection with the Call-off Contract. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

40.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.

40.4 If any breach of Clause 40.1 is suspected or known the Supplier must notify the Authority immediately.

40.5 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of Clause 40.1, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for seven (7) years following the expiry or termination of the Call-off Contract.

40.6 The Authority may terminate the Call-off Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the

Supplier's knowledge) breaches Clause 40.1. In determining whether to exercise the right of termination under this Clause 40.6, the Authority shall give all due consideration, where appropriate, to action other than termination of the Call-off Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, sub-contractor or supplier not acting independently of the Supplier. The expression "**not acting independently of**" (when used in relation to the Supplier or a sub-contractor) means and shall be construed as acting:

40.6.1 with the authority; or

40.6.2 with the actual knowledge,

of any one (1) or more of the directors of the Supplier or the sub-contractor (as the case may be); or

40.6.3 in circumstances where any one (1) or more of the directors of the Supplier ought reasonably to have had knowledge.

40.7 Any notice of termination under Clause 40.6 must specify:

40.7.1 the nature of the Prohibited Act;

40.7.2 the identity of the Party whom the Authority believes has committed the Prohibited Act; and

40.7.3 the date on which the Call-off Contract will terminate.

40.8 Notwithstanding the provisions of Clause 29, any dispute relating to:

40.8.1 the interpretation of Clause 40; or

40.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

40.9 Any termination under Clause 40 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

41 Non-solicitation

41.1 Neither Party shall (except with the prior written consent of the other) during the Term of the Call-off Contract, and for a period of one (1) year thereafter, solicit the services of any senior staff of the other Party who have been engaged in the provision of the Services/Equipment or the management of the Call-off Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

SCHEDULE 1 – SUPPLIER TERMS AND CONDITIONS

[to be inserted if included in tender return]

SCHEDULE 2 – VARIATIONS

1. General Principles

- Where the Authority or the Supplier sees a need to vary the Call-off Contract, the Authority may at any time request, and the Supplier may at any time recommend, such Variation only in accordance with the Variation Procedure set out in paragraph - of this Schedule 2.
- Until such time as a Variation is made in accordance with the Variation Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform the Call-off Contract in compliance with its terms before such Variation.
- Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Variation shall be without prejudice to the rights of either Party.
- Any work undertaken by the Supplier and the Supplier Personnel which has not been authorised in advance by a Variation, and which has not been otherwise agreed in accordance with the provisions of this Schedule 2, shall be undertaken entirely at the expense and liability of the Supplier.

- **Variation Procedure**

- Discussion between the Authority and the Supplier concerning a Variation shall result in any one of the following:
    - no further action being taken; or
    - a written Variation to the Call-off Contract authorised by the Authority's Key Individual named as Procurement Category Manager as listed in the Framework Agreement.
- Each Variation shall contain:
    - the title of the Variation;
    - the sequential number of the Variation
    - the implementation date of the Variation;
    - full details of the Variation;
    - a timetable for implementation of the Variation if appropriate;
    - a schedule of payments if appropriate; and
    - provision for signature by the Authority and the Supplier.
- For each Variation the Authority shall arrange for two (2) copies of the Variation to be signed by the designated signatories of both parties.
- A Variation signed by the Authority and by the Supplier shall constitute an amendment to the Call-off Contract.