

**DATED**

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**GOODS AND/OR SERVICES FRAMEWORK AGREEMENT**

**FOR THE PROVISION OF ICT HARDWARE AND PROFESSIONAL  
SERVICES\_25**

**REFERENCE: DN776588**

between



**LIVERPOOL CITY COUNCIL**

and



**INSIGHT DIRECT (UK) LIMITED**

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## **PARTIES**

- (1) Liverpool City Council whose principal place of business is at Cunard Building, Water Street, Liverpool, L3 1AH (**Authority**).
- (2) Insight Direct (UK) Limited incorporated and registered in England and Wales with company number 02579852 whose registered office is at 1st Floor St Paul's Place, 121 Norfolk Street, Sheffield, S1 2JF (**Supplier**).

## **BACKGROUND**

- (A) Liverpool City Council placed a contract notice 2025/S 000-030202 on 5 June 2025 on the UK e-notification service inviting tenders from potential service providers for the provision of ICT hardware to itself and the Other Contracting Bodies identified in the contract notice under a framework agreement.
- (B) On the basis of the Supplier's Tender, and in particular, the representations made by the Supplier in relation to its competence, professionalism and ability to provide the Goods and/or Services, the Authority selected the Supplier to enter a framework agreement to provide goods/services to those Customers who place Orders in accordance with this Framework Agreement.
- (C) This Framework Agreement sets out the procedure for ordering Goods and/or Services, the main terms and conditions for the provision of the Services and the obligations of the Supplier under this Framework Agreement.
- (D) It is the Parties' intention that Customers have no obligation to place Orders with the Supplier under this Framework Agreement or at all.
- (E) The Supplier is aware that until receipt of the signed Framework Agreement is received by the Authority the Supplier shall not be able to take part in any call-off delivered through the Framework Agreement.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

**Approval:** means the prior written approval of the Authority.

**Audit:** means an audit carried out pursuant to clause 11.

**Auditor:** means the Authority's internal and external auditors, including the Authority's statutory or regulatory auditors, the Comptroller and Auditor General, their staff or any appointed representatives of the National Audit

Office, HM Treasury or the Cabinet Office, any party formally appointed by the Authority to carry out audit or similar review functions and the successors or assigns of any Auditor.

**Authorised Representative:** means the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in clause 31.

**Authority:** means Liverpool City Council.

**Award Criteria:** means the Standard Goods and/or Services Award Criteria and/or the Competed Goods and/or Services Award Criteria as the context requires.

**Call-off Terms and Conditions:** means the terms and conditions in Schedule 3.

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

**Commencement Date:** means 1 September 2025.

**Competed Goods and/or Services:** means the competed goods and/or services set out in Part 1 of Schedule 1.

**Competed Goods and/or Services Award Criteria:** means the award criteria to be applied to Supplemental Tenders received through mini-competitions held for the award of Contracts for Competed Goods and/or Services as set out in in the Invitation to Tender for this Framework Agreement.

**Complaint:** means any formal complaint raised by any Customer in relation to the performance under the Framework Agreement or any Contract in accordance with clause 20.

**Confidential Information:** means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

**Connected Person:** has the meaning given in paragraph 45, Part 3, Schedule 6 of Procurement Act 2023.

**Contract:** means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Goods and/or Services made between a Customer and the Supplier comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to clause 4.3).

**Contract Notice** means the contract notice 2025/S 000-030202 published on 5 June 2025 in the UK e-notification service.

**Contracts Finder:** the UK government's publishing portal for public sector procurement opportunities.

**Consistent Failure:** shall be as defined in the applicable Specification for the Goods and/or Services.

**Customer:** means the Authority and any other contracting authority (as defined in section 2 of the Procurement Act 2023) described in the Contract Notice.

**Default:** means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**Data Subject:** shall have the same meaning as set out in the UK Data Protection Legislation.

**Debarment List:** the list of suppliers referred to in section 62 of the Procurement Act 2023.

**Environmental Information Regulations:** mean 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.

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

**Framework Agreement:** means this agreement and all Schedules to this agreement as varied from time to time.

**Framework Agreement Variation Procedure:** means the procedure set out in Schedule 5.

**Framework Providers:** means the Supplier and other suppliers appointed as framework providers under this Framework Agreement.

**Framework Year:** means any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

**Goods and/or Services:** means the provision of any Goods and/or Services as specified in Schedule 1 (Goods and/or Services ).

**Guidance:** means any guidance issued or updated by the UK government from time to time in relation to the Procurement Act 2023.

**Information:** has the meaning given under section 84 of the FOIA.

**Intellectual Property Rights:** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

**Law:** means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

**Management Information:** means the management information specified in Schedule 4 and the Authority's applicable 'Specification' for the Services in Schedule 1.

**Month:** means a calendar month.

**Order:** means an order for Goods and/or Services sent by any Customer to the Supplier in accordance with the award procedures in *clause 4*.

**Order Form:** means a document setting out details of an Order in the form set out in the Schedule 1 of the Call-Off Terms and Conditions or as otherwise agreed in accordance with clause 4.7.

**Other Contracting Bodies:** means all Customers except the Authority.

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

**Party:** means the Authority and/or the Supplier.

**Personal Data:** shall have the same meaning as set out in the UK Data Protection Legislation.

**Quality Standard:** means the quality standards published by BSI British Standards, the National Standards Authority of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent Authority (and their successor Authorities), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form

**Specification:** refers to the applicable 'Specification for the Goods and/or Services' as contained in Schedule 1 Part 1.

**SQ Response:** means the response to the standard selection questionnaire submitted by the Supplier to the Authority on 7 July 2025.

**Pricing Matrices:** means the pricing matrices (typically to be provided by way of electronic brochure) provided to the Authority in the Suppliers Tender to be updated from time to time in accordance with Schedule 2.

**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 this 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 this Framework Agreement or any other contract with the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Authority.

**UK Data Protection Legislation:** 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.

**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 this Framework Agreement or any other affairs of the Authority.

**Requests for Information:** means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Staff:** means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Framework Agreement or Contracts.

**Standard Goods and/or Services:** means the standard Goods and/or Services referred to in Schedule 1.

**Standard Goods and/or Services Award Criteria:** means the award criteria to be applied for the award of Contracts for Standard Goods and/or Services in the Invitation to Tender for this Framework Agreement.

**Subcontract:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Goods and/or Services from that third party.

**Subcontractor:** the contractors or service providers that enter into a Subcontract with the Supplier.

**Supplemental Tender:** means the documents submitted to a Customer in response to the Customer's invitation to Framework Providers for formal offers to supply it with Competed Goods and/or Services.

**Tender:** means the tender submitted by the Supplier to the Authority on 7 July 2025.

**Term:** means the period commencing on the Commencement Date and ending after four years or on earlier termination of this Framework Agreement.

**Termination Date:** means the date of expiry or termination of this Framework Agreement.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Working Days:** means any day other than a Saturday, Sunday or public holiday in England and Wales.

**Year:** means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any

subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
- (h) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- (i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

## **PART ONE: FRAMEWORK AGREEMENT AND AWARD PROCEDURE**

### **2. TERM OF FRAMEWORK AGREEMENT**

- 2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Framework Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term.
- 2.2 The Authority may, by giving written notice to the Supplier not less than three Month(s) before the end of the initial Term (or any extended period), extend the duration of this Framework for up to twelve months provided that the total Term of this Framework Agreement does not exceed four years.
- 2.3 The provisions of the Framework Agreement will apply throughout any extended period.

### **3. SCOPE OF FRAMEWORK AGREEMENT**

- 3.1 This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Goods and/or Services by the Supplier to Customers.

- 3.2 The Authority appoints the Supplier as a Framework Provider of the Goods and/or Services and the Supplier shall be eligible to receive Orders for such Goods and/or Services from Customers during the Term.
- 3.3 The Authority and Customers may at their absolute discretion and from time to time order Goods and/or Services from the Supplier in accordance with the ordering procedure set out in clause 4 during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Goods and/or Services pursuant to this Framework Agreement provided that they comply at all times with the Procurement Act 2023 and the ordering procedure in clause 4.1. If there is a conflict between *clause 4* and the provisions of the Procurement Act 2023, the Procurement Act 2023 shall take precedence.
- 3.4 If and to the extent that any Goods and/or Services under this Framework Agreement are required each and every Customer shall:
- (a) enter into a contract with the Supplier for these Goods and/or Services materially in accordance with the terms of the Contract; and
  - (b) comply with the ordering procedure in *clause 4*.
- 3.5 The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Customer for the Goods and/or Services and that the Customer is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all Goods and/or Services which are the same as or similar to the Goods and/or Services.
- 3.6 The Authority shall not in any circumstances be liable to the Supplier or any Other Contracting Body for payment or otherwise in respect of any Goods and/or Services provided by the Supplier to any Other Contracting Body.

#### **4. AWARD PROCEDURES**

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

- 4.1 If a Customer decides to source Goods and/or Services through the Framework Agreement then it may:
- (a) satisfy its requirements for the Standard Goods and/or Services by awarding a Contract in accordance with the terms laid down in this Framework Agreement without re-opening competition; or
  - (b) satisfy its requirements for Competed Goods and/or Services by awarding a Contract following a mini-competition conducted in accordance with the requirements of clause 4.3 (if available).

**Standard Goods and/or Services (awards without re-opening competition)**

- 4.2 Any Customer ordering Standard Goods and/or Services under the Framework Agreement without re-opening competition shall:
- (a) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Procurement Act 2023 and Guidance;
  - (b) send an Order to the Framework Provider ranked highest following the evaluation of its Tender;
  - (c) if the Framework Provider who was ranked highest is not able to provide the Goods and/or Services, send an Order to the Framework Provider ranked next highest (if there is another Framework Provider available);
  - (d) repeat the process set out in clause 4.2(c) until the Order is fulfilled or there are no further Framework Providers qualified to fulfil it.

**Competed Goods and/or Services (awards following mini-competition (IF APPLICABLE))**

- 4.3 Any Customer ordering Competed Goods and/or Services under the Framework Agreement shall:
- (a) identify the Framework Providers capable of performing the Contract for the Competed Goods and/or Services requirements;
  - (b) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Procurement Act 2023 and Guidance;
  - (c) invite tenders by conducting a mini-competition for its Competed Goods and/or Services requirements in accordance with the Procurement Act 2023 and Guidance and in particular:
    - (i) consult in writing the Framework Providers capable of performing the Contract for the Competed Goods and/or Services requirements and invite them within a specified time limit to submit a Supplemental Tender;
    - (ii) set a time limit for the receipt by it of the Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and
    - (iii) keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;

- (d) apply the Competed Goods and/or Services Award Criteria to any compliant Supplemental Tenders submitted through the mini-competition; and
  - (e) subject to *clause 4.5* place an Order with the successful Framework Provider.
- 4.4 The Supplier agrees that all Supplemental Tenders submitted by the Supplier in relation to a mini-competition held pursuant to this clause 4 shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with this clause 4).
- 4.5 Notwithstanding the fact that the Customer has followed the procedure set out above for Competed Goods and/or Services, the Customer may cancel, postpone, delay or end the procedure without placing an Order for Goods and/or Services or awarding a Contract. Nothing in this Framework Agreement shall oblige any Customer to place any Order for Goods and/or Services.

#### **Responsibility for awards**

- 4.6 The Supplier acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- (a) the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
  - (b) the performance or non-performance of any Contracts between the Supplier and Other Contracting Bodies entered into pursuant to the Framework Agreement.

#### **Form of Order**

- 4.7 Subject to clause 4.1 to clause 4.6 above, each Customer may place an Order with the Supplier by serving an order in writing in substantially the form set out in Schedule 1 of the Call-off Terms and Conditions or such similar or analogous form agreed with the Supplier including systems of ordering involving e-mail or other online solutions.

#### **Accepting and declining Orders**

- 4.8 Following receipt of an Order, the Supplier shall promptly and in any event within a reasonable period determined by the relevant Customer and notified to the Supplier in writing at the same time as the submission of the Order

(which in any event shall not exceed three Working Days) acknowledge receipt of the Order and either:

- (a) notify the Customer in writing and with detailed reasons that it is unable to fulfil the Order; or
- (b) notify the relevant Customer that it is able to fulfil the Order by signing and returning the Order Form.

4.9 If the Supplier:

- (a) notifies the Customer that it is unable to fulfil an Order; or
- (b) the time limit referred to in clause 4.8 has expired;

then the Order shall lapse and the relevant Customer may then send that Order to another Framework Provider in accordance with the procedure set out in clause 4.2(d).

4.10 If the Supplier modifies or imposes conditions on the fulfilment of an Order, then the Customer may either:

- (a) reissue the Order incorporating the modifications or conditions; or
- (b) treat the Supplier's response as notification of its inability to fulfil the Order and the provisions of clause 4.9 shall apply.

4.11 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Customer. Accordingly, the Supplier shall sign and return the Order Form which shall constitute its offer to the Customer. The Customer shall signal its acceptance of the Supplier's offer and the formation of a Contract by counter-signing the Order Form.

## **5. CONFLICT OF INTEREST**

5.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Authority and Other Contracting Bodies under the provisions of this Framework Agreement or any Contract.

5.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Bodies if such conflict as referred to in Clause 5.1 above arises or is reasonably foreseeable to arise.

5.3 A Supplier may be considered to have a conflict of interest, if the Supplier:

- (i) Directly or indirectly controls, is controlled by or is under common control with another framework provider;
  - (ii) Receives or has received any direct or indirect subsidy from another framework provider;
  - (iii) Has the same legal representative as another framework provider;
  - (iv) Has a relationship with another framework provider, directly or through common third parties, that puts it in a position to influence another Supplier regarding the provision of Goods and/or Services under this Framework Agreement;
  - (v) Has a close business or family relationship with an employee of the Authority involved in the tendering of the Framework Agreement.
- (b) The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement or any Contract. The action of the Authority pursuant to this Clause 5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **6. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS**

- 6.1 The Supplier shall perform all Contracts entered into with a Customer in accordance with:
- (a) the requirements of this Framework Agreement; and
  - (b) the terms and conditions of the respective Contracts.
- 6.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the Contract;
  - (b) the Order Form except Appendices 5 (Supplier's Tender) and 6 (Supplemental Tender) to the Order Form;
  - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form,

except Schedule 1, part 2, Appendix 1 (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender);

- (d) any other document referred to in the clauses of the Contract; and
- (e) Schedule 1, part 2 of the Framework Agreement and Appendix 5 to the Order Form (the Supplier's Tender), and Appendix 6 to the Order Form (Supplemental Tender).

## **7. PRICES FOR GOODS AND/OR SERVICES**

- 7.1 The prices offered by the Supplier for Contracts to Customers for Standard Goods and/or Services shall be the prices listed in the Pricing Matrix and such prices shall be adjusted where permitted in accordance with the provisions of Schedule 2.
- 7.2 The prices offered by the Supplier for Contracts to Customers for Competed Goods and/or Services shall be tendered in accordance with the requirements of the mini-competition held pursuant to clause 4.
- 7.3 Unless otherwise expressly stated in the Framework Agreement the prices shall cover all the Supplier's obligations under the Framework Agreement and everything necessary for the provision of Goods and/or Services under the Framework Agreement.
- 7.4 Unless otherwise expressly stated in this Framework Agreement no claim for additional costs made by the Supplier will be allowed on the grounds of any matter relating to:-
  - (a) any document forming part of the Framework Agreement; or
  - (b) any ambiguity or discrepancy in the tender documentation or the Framework Agreement.

## **SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS**

### **8. WARRANTIES AND REPRESENTATIONS**

- 8.1 The Supplier warrants and represents to the Authority and to each of the Other Contracting Bodies that:
  - (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement and under any Contract;
  - (b) all obligations of the Supplier pursuant to this Framework Agreement and under any Contract shall be performed by appropriately

- experienced, qualified and trained Staff with all due skill, care and diligence;
- (c) the Supplier and its Staff, agents, self-employed staff or personnel employed by the Provider in connection with the supply of the Goods and/or Services will comply with the relevant Quality Standards, Legislation, Codes of Conduct and regulations governing the provision of the Goods and/or Services;
  - (d) the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Framework Agreement and under any Contract.
  - (e) the Supplier shall discharge its obligations under this Framework Agreement and under any Contract with all due skill, care and diligence including good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
  - (f) this Framework Agreement is executed by a duly authorised representative of the Supplier;
  - (g) in entering into this Framework Agreement or any Contract it has not committed any fraud;
  - (h) as at the Commencement Date, all information, statements and representations contained in the Invitation to Tender and the Supplier's response to the Invitation to Tender (including statements made in relation to the categories referred to in regulation 57 of the Regulations) for the Goods and/or Services are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
  - (i) it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement or any Contract;
  - (j) it has not caused or induced any person or organisation to enter such agreement referred to in Clause (i) above;
  - (k) it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be

done any act or omission in relation to any other tender or proposed tender for Goods and/or Services under the Framework Agreement;

- (l) it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
- (m) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority or Other Contracting Bodies;
- (n) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority or Other Contracting Bodies;
- (o) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- (p) in the three (3) Years prior to the date of this Framework Agreement:-
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.
- (q) The Supplier shall provide the Goods and/or Services in a conscientious and timely manner in accordance with the contract standard as described in the Framework Agreement or as reasonably required by the Customer.
- (r) The Supplier shall notify the Authority's Authorised Representative immediately of any circumstances relating to the Supplier and/or the Other Contracting Body concerning the provision of the Goods and/or Services of which the Supplier is aware or anticipates which

may justify the Authority and/ or the Other Contracting Body taking action to protect its interests (including its reputation and standing).

- (s) The Supplier shall promptly notify the Authority in writing if, during the Term:
  - (i) the Supplier, the Supplier's Connected Persons or any Sub-Contractor is placed on the Debarment List;
  - (ii) a mandatory exclusion ground or discretionary exclusion ground applies to the Supplier, the Supplier's Connected Persons or any Sub-Contractor.
- (t) The Supplier shall promptly notify the Authority in writing within 7 days of any changes to the Supplier's Connected Persons together with information regarding the identity of the new Connected Persons.

8.2 The Supplier warrants and represents the statements in Clause 8.1 above to each of the Other Contracting Bodies.

## **9. SERVICE PRE-REQUISITES**

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

## **SUPPLIER'S INFORMATION OBLIGATIONS**

### **10. REPORTING AND MEETINGS**

- 10.1 The Supplier shall submit Management Information to the Authority in the form set out in Schedule 4 throughout the Term on the last day of every Month and thereafter in respect of any Contract entered into with any Customer.
- 10.2 Where stated in the applicable Specification in Schedule 1 or elsewhere by the Authority all communications and submission of Management Information in relation to the Framework Agreement or Contract will be undertaken via the Authority's 'Contract Management Portal' (currently found at <https://liverpoolcc.force.com/s/Welcome>).
- 10.3 The Authorised Representatives shall meet in accordance with the details set out in Schedule 4 and the Supplier shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.

10.4 The Authority may share the Management Information supplied by the Supplier with any Other Contracting Body.

10.5 The Authority may make changes to the nature of the Management Information that the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes.

## **11. RECORDS AND AUDIT ACCESS**

11.1 The Supplier shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Goods and/or Services provided under it, the Contracts entered into with Customers and the amounts paid by each Customer.

11.2 The Supplier shall keep the records and accounts referred to in clause 11.1 above in accordance with good accountancy practice.

11.3 The Supplier shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.

11.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six years after expiry of the Term to the Authority (or relevant Customer) and the Auditor.

11.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services pursuant to the Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.

11.6 Subject to the Authority's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

- (a) all information requested by the Auditor within the scope of the Audit;
- (b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services; and
- (c) access to the Staff.

11.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 11, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

## **12. CONFIDENTIALITY**

12.1 Subject to clause 12.2, the Parties shall keep confidential the Confidential Information of the Parties and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

12.2 Clause 12.1 shall not apply to any disclosure of information:

- (a) required by any applicable law or to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
- (c) that is reasonably required by Other Contracting Bodies;
- (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 12.1;
- (e) by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 21;
- (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (i) by the Authority relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

## **13. DATA PROTECTION**

13.1 Both Parties will comply with all applicable requirements of the UK Data Protection Legislation. This clause 13 is in addition to, and does not relieve,

remove or replace, a party's obligations under the UK Data Protection Legislation. In this clause 13, **Applicable Laws** means the UK UK Data Protection Legislation and any other law that applies in the UK.

- 13.2 The parties acknowledge that for the purposes of the UK Data Protection Legislation, the Authority is the data controller and the Supplier is the data processor. Schedule 8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 13.3 Without prejudice to the generality of clause 13.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 13.4 Without prejudice to the generality of clause 13.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Authority (as set out in Schedule 8), unless the Supplier is required by the **Applicable Laws** to otherwise process the Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Authority;
  - (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the UK Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, 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 measures 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 evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Supplier complies with its obligations under the UK Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (d) notify the Authority immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) any other request, complaint or communication relating to either Party's obligations under the UK Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the UK Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Authority immediately and in any event within 24 hours 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 this agreement;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 10 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the UK Data Protection Legislation;

- (i) indemnify the Authority against any losses, damages, cost or expenses incurred by the Authority arising from or in connection with any breach by the Supplier of its obligations under this clause 13.
- 13.5 Where the Supplier intends to engage a Sub-Contractor pursuant to clause 23 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
  - (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
  - (b) obtain prior written consent from the Authority to the processing;
  - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 13.
- 13.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 13.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

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

- 14.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
  - (a) 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 EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - (c) 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 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 14.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential 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 section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

**15. PUBLICITY**

- 15.1 Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.
- 15.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.
- 15.3 The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

**16. – NOT USED**

**FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**

**17. TERMINATION**

**Termination on Default**

- 17.1 The Authority may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:
  - (a) where the Supplier commits a material breach and the Supplier has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied;
  - (b) where any Customer terminates a Contract awarded to the Supplier under this Framework Agreement as a consequence of a material breach or a Consistent Failure by the Supplier;
  - (c) where a Consistent Failure has occurred in accordance with the Specification; and

- (d) any warranty given by the other party in clause 8 of this agreement is found to be untrue or misleading.
- 17.2 For the purposes of clause 17.1(a), **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 Authority would otherwise derive from:
- (a) a substantial portion of this agreement; or
  - (b) any of the obligations set out in clauses 5, clause 8, clause 10, clause 11, clause 12, clause 13, clause 14, clause 15, clause 22, clause 23; and clause 24 over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 17.3 The Authority may give the Supplier written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of an intention to terminate under this clause must:
- (a) set out which termination ground the Authority considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Authority's reasons for deciding to terminate on this basis;
  - (b) invite the Supplier to make representations to the Authority about the existence of the termination ground and the Authority's decision to terminate;
  - (c) specify the means by which, and the time by which, such representations must be made; and
  - (d) insofar as it states the Authority's intention to terminate by reference to the status of a Sub-contractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Supplier may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.
- 17.4 expiry of the time for the Supplier to make representations under clause 17.3(c), if, after considering any representations, the Authority is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final written notice to the Supplier.

#### **Termination on insolvency and Change of Control**

- 17.5 Without affecting any other right or remedy available to it, the Authority may terminate this agreement with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company);
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.5(a) to clause 17.5(g) (inclusive); or
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.6 The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate the Framework Agreement

by giving notice in writing to the Supplier with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control;

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

### **Termination by Authority for convenience**

- 17.7 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving six months written notice to the Supplier and all other Framework Providers.

### **18. SUSPENSION OF SUPPLIER'S APPOINTMENT**

Without prejudice to the Authority's rights to terminate the Framework Agreement in clause 17 above, if a right to terminate this Framework Agreement arises in accordance with clause 17, the Authority may suspend the Supplier's right to receive Orders from Customers by giving notice in writing to the Supplier. If the Authority provides notice to the Supplier in accordance with this clause 18, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

### **19. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 19.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 19.
- 19.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 19.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return or destroy at the request of the Authority

any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Supplier's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.

- 19.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 19.5 The provisions of clause 8, clause 11, clause 12, clause 13, clause 14, clause 15, clause 19, clause 22, and clause 33 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## **20. COMPLAINTS HANDLING AND RESOLUTION**

- 20.1 The Supplier shall notify the Authority of any Complaint made by Other Contracting Bodies within two Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint
- 20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

## **21. DISPUTE RESOLUTION**

- 21.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:
  - (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Director of ICT of the Authority and the CEO or Managing

Director of the Supplier shall attempt in good faith to resolve the Dispute;

- (b) if the Director of ICT of the Authority and CEO or Managing Director of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 21 days after the date of the ADR notice.

21.2 The commencement of mediation shall not prevent the parties commencing or continuing proceedings in relation to the Dispute under clause 33 which clause shall apply at all times.

## **GENERAL PROVISIONS**

### **22. PREVENTION OF BRIBERY**

22.1 The Supplier:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and
- (b) 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 Customer, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Framework Agreement.

22.2 The Supplier shall:

- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer 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
- (b) within 21 Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 22 by the Supplier and all persons associated with it or other persons

who are supplying goods or services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

- 22.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 22.4 If any breach of clause 22.1 is suspected or known, the Supplier must notify the Customer immediately.
- 22.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of clause 22, the Supplier must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Framework Agreement.
- 22.6 The Customer may terminate this Framework Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 22.1.
- 22.7 Any notice of termination under clause 22.6 must specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
  - (c) the date on which this Framework Agreement will terminate.
- 22.8 Despite clause 21, any dispute relating to:
- (a) the interpretation of this clause 22; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer and its decision shall be final and conclusive.
- 22.9 Any termination under this clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

## **23. MODERN SLAVERY ACT 2015**

- 23.1 In performing its obligations under the Agreement, the Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes,

regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and shall include in its contracts with its Subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 23.

**24. SUBCONTRACTING AND ASSIGNMENT**

- 24.1 Subject to clause 24.2 and clause 24.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Supplier subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.
- 24.2 The Authority shall be entitled to novate the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 24.3 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
  - (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.
- 24.4 For the avoidance of doubt, the Authority shall not consent to any proposed Sub-Contract if the Sub-Contractor (or any Connected Person of the Sub-Contractor) is on the Debarment List for a mandatory exclusion ground.
- 24.5 Without prejudice to the generality of this clause 24, the Supplier shall (unless otherwise agreed in writing with the Authority):
- (a) advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
  - (b) within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the Sub-Contractor;

- (c) monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded during the Term;
  - (d) provide reports, in a format and at a frequency reasonably specified by the Authority, containing the information referred to in clause 24.5(c) to the Authority;
  - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 24.6 Each advert referred to in clause 24.5 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

## **25. VARIATIONS TO FRAMEWORK AGREEMENT**

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 5.

## **26. THIRD PARTY RIGHTS**

- 26.1 Except as provided in clause 3, clause 4 a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **27. SEVERANCE**

- 27.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 27.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**28. RIGHTS AND REMEDIES**

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

**29. INTEREST**

29.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:

- (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) Period. From when the overdue sum became due, until it is paid.

**30. WAIVER**

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

**31. ENTIRE AGREEMENT**

31.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 31 shall operate to exclude any liability for fraud.

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

**32. NOTICES**

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

32.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, pre-paid first class post, or other next Working Day delivery service) or or e-mail (confirmed by letter). Such letter or e-mail shall be addressed to the other Party in the manner referred to in clause 32.3. Any notice shall be deemed to have been received:

(a) if delivered by hand at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting;

(c) if sent by email, at the time of transmission, or, if this time falls outside working hours in the place of receipt, when working hours resume. In this clause 31.2(c), working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

32.3 For the purposes of clause 32.2, the address of each Party shall be:

(a) For the Authority:

Address: Liverpool City Council, Cunard Building, Water Street,  
Liverpool L3 1AH

For the attention of: [REDACTED]

Tel:

E-mail: [REDACTED]

(b) For the Supplier:

Address: 1st Floor St Paul's Place, 121 Norfolk Street, Sheffield, S1  
2JF

For the attention of: [REDACTED]

Tel:

E-mail: [REDACTED]

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

### **33. GOVERNING LAW AND JURISDICTION**

33.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or

claims) shall be governed by and construed in accordance with the law of England and Wales.

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

This agreement has been entered into on the date stated at the beginning of it.

Executed for and behalf of **Insight Direct (UK) Limited and Liverpool City Council:**

	Insight Direct (UK) Limited	Liverpool City Council
Name	[Redacted]	
Role	PS Business Development Director	Senior Procurement Business Partner
Signature	[Redacted]	
Date	28/08/2025 14:15 GDT	28/08/2025 14:22 GDT

**Schedule 1 Goods and/or Services**

**Part 1. Goods and/or Services**



Liverpool  
City Council

Project Title: Framework agreement (public sector services)

Project Reference: DN776588

Document Label: Appendix B

Specification



## **34. Definitions**

- 34.1 In this specification document, defined terms used in the Terms and Conditions (attached to the Tender Documentation) must be used unless the contrary is indicated.

## **35. Overview**

- 35.1 Liverpool City Council (the “Council”) and Partner Organisations (together the “Customer”) are seeking a Supplier to supply ICT and digital hardware to the Customer.
- 35.2 The Supplier will be engaged to provide any ICT and digital hardware related goods and/or services that are required by the Customer.
- 35.3 The Council intends to use this framework as a first port of call for all relevant requirements, however the Council reserves the right to purchase from other suppliers where this provides best value to the Council.
- 35.4 The Council reserves the right to undertake Further Competitions across more than one lot of the framework. In such cases, the specification, evaluation questions and pricing schedule will be kept as similar as possible to ensure fair competition bet all suppliers regardless of the lot they are awarded to.

## **36. Range of Equipment & Services**

- 36.1 The Supplier must strategic relationships in place with all major original equipment manufacturers (“OEM”).
- 36.2 The range of equipment to be provided must include, but is not limited to, the list as per Appendix L: Hardware Equipment to be Asset Tagged by Supplier.
- 36.3 The Supplier may also be required to facilitate requests for the support and maintenance of a variety specialist hardware solutions including, but not limited to, those listed in Appendix L. These hardware solutions may be covered by existing support and maintenance contracts which will most likely run to their termination date, but these contracts will expire during the term of the framework and will likely be renewed via this route to market.
- 36.4 The Supplier must be capable of sourcing efficient and reliable desktop hardware repair services.

36.5 The supplier must be capable of sourcing and supplying a range of cloud infrastructure services including but not limited to:

- Server hosting (including associated storage);
- Database hosting;
- Data storage;
- Data backup;
- Data archiving;
- Server hosting Disaster Recovery;
- Virtual desktop solutions;
- Application virtualisation solutions.

### 37. **Best Value & Pricing**

37.1 It is expected that the Supplier will continually seek to source best value market pricing.

37.2 The Customer reserves the right to benchmark and challenge the Supplier's Cost Price at any time during the Contract and the Customer may, at any time, utilise a benchmarking tool, or any other form of market analysis, to determine the best available market pricing at any given time.

37.3 The Customer reserves the right to purchase items from another Supplier at any time, but in particular, where it can be demonstrated that the Supplier is not providing best value.

37.4 The Supplier must ensure continuous best value pricing from all distribution channels and manufacturers, by way of routine benchmarking and demonstration to the Customer that this has been undertaken, with evidence, on at least an annual basis.

37.5 All pricing is to be based on a *Cost Price plus Mark-Up/Mark-Down Percentage* principal, where the Mark-Up/Mark-Down Percentage to be applied is the Mark-Up/Mark-Down percentage stated by the Supplier in their Bid.

37.6 For example: Supplier Cost Price = £500; Supplier Contracted Mark-Up/Mark-Down = 3% (£15); Price to the Customer = £515.

37.7 Cisco equipment can be subject to its own individual Mark-Up/Mark-Down Percentage, where stated by the Supplier in their Bid.

37.8 Professional Services pricing should be based on the Skills Framework for the Information Age ("SFIA") matrix as set out in pricing schedule Appendix E. Pricing for all professional services should be based on the SFIA matrix throughout the course of the contract.

- 37.9 A 'basket of goods' pricing is requested in Pricing Schedule Appendix E for the Customer's Core Catalogue. Pricing should be provided based on the specific part codes provided and not generic devices fitting the specification.
- 37.10 Pricing is to be based on Core Items and Non-Core Items.
- 37.11 Pricing for Core Items is to be included in the Catalogue and is fixed for a period of 3 months, refreshed each quarter, January, April, July and October.
- 37.12 The schedule of Core Items may change at any time at the sole discretion of the Customer, including on occasion, mid-quarter.
- 37.13 Pricing for Non-Core Items is to be based on a quotation to be provided by the Supplier which must remain valid for a period of 30 days.

## **38. Catalogue**

- 38.1 The Supplier must provide a quarterly Catalogue including all Core Items stipulated by the Customer and their prices which are fixed for the quarter.
- 38.2 This Catalogue must be available in an electronic spreadsheet format, unless otherwise agreed with the Customer, detailing the following accurate information:
- Supplier part code;
  - Manufacturer part code;
  - Full item description;
  - Full specification of item e.g. RAM, Processor/Speed, SSD etc;
  - Price;
  - Stock availability;
  - Any applicable supply chain factors/constraints;
  - Lead time for delivery;
  - Date item expected to go end of life;
  - Expected end date of manufacturer support for product;
  - Status field e.g. No Change, New Item, End of Life, Price Increase, Price Decrease, Part Code Change;
  - Additional comments for relevant information.
- 38.3 The Supplier must provide price list by 5th of each quarterly month (January, April, July, October) and must hold the previous quarter pricing until the new catalogue is signed off by the Customer. The Customer must sign-off the proposed catalogue within 2 working days of receipt.

- 38.4 Items added to the Catalogue should be available for at least six months and supported by the manufacturer for a reasonable timeframe beyond this date, unless otherwise agreed by both parties.
- 38.5 Any end-of-life equipment should be replaced on the Catalogue with a suggested alternative item of similar specification and price. These alternatives must be clearly highlighted and brought to the attention of the Customer in the comments.
- 38.6 Any changes to the price list in terms of price, part code etc should be clearly highlighted in an agreed format.
- 38.7 Where a price has varied to the previous quarter, this should be highlighted on the price list with the amount varied and a justification for any price increases provided in the comments field.
- 38.8 The Supplier must work with the Customer and review the full Catalogue list each quarter to ensure products listed are still required and any additional products are added.
- 38.9 Should any additional catalogue items be required mid-quarter, the Supplier must accommodate changes accordingly.
- 38.10 Lead times for Catalogue items should be no more than ten working days, unless otherwise agreed in advance by both parties.
- 38.11 Items added to the Catalogue should stipulate anticipated lead times and any supply chain constraints. If these change mid-quarter the Supplier should update accordingly and manage this regularly and proactively.
- 38.12 Where items are subject to supply chain constraints, the Supplier should work with the Customer and the further supply chain to source alternative similar specification items with a shorter lead time.
- 38.13 'Punch-Out Purchasing' integration must be possible with the supplier catalogue. The Customer intends to integrate the ICT hardware supplier catalogue with ERP systems during the course of the contract.
- 38.14 The catalogue integration must be facilitated and managed free of charge by the Supplier.

## **39. Education Hardware Requirements**

- 39.1 The Supplier must be a distributor of Clevertouch products and provide best value pricing for local schools.
- 39.2 There are occasions where the Supplier will be required to work on special bids for large scale school projects, such as a new school or the

refurbishment of a school building where budgets have been allocated for ICT hardware.

- 39.3 Volume discounts are expected to be applied wherever possible.
- 39.4 Microsoft's Shape the Future programme allows schools to register for eligibility to purchase Windows devices with discounted National Academic licenses. The Supplier is expected to be aware of this program and liaise with technology partners to process these purchases.
- 39.5 Occasionally, the Department for Education will create a programme for improving educational standards by providing funding to schools for the purchase of innovative technologies and engage with vendors to offer discounts. The Supplier is expected to be aware of any new programme and facilitate any additional steps to the order process.

#### **40. Quotations & Requests**

- 40.1 The Supplier must have online, email and telephony channels to accept quotation requests from the Customer.
- 40.2 The Supplier must have an online portal which shows real time Customer pricing for all products sold by the Supplier.
- 40.3 Quotations must only be provided to Authorised Representatives of the Customer. The Customer will provide the Supplier with a list of Authorised Representatives which must be updated from time-to-time as required.
- 40.4 The Supplier must respond to all email queries within 1 working day. An automated email response is not considered to be a response with respect to this Clause.
- 40.5 The Supplier should provide a generic, non-personal email address for quotation requests to be sent to. Where this is not possible and a personal email address is provided, the Supplier must pro-actively provide an alternative email address if the mailbox provided is to be unattended.
- 40.6 Standard quotations must be provided within 5 working days.
- 40.7 Priority quotations must be provided within 2 working days: priority is classes as business or education impact/business critical. The Customer will inform the Supplier of the priority status when requesting the quotation.
- 40.8 In emergency or exceptional circumstance, the Customer may expect the Supplier to provide a quotation within 4 working hours, or to work closely with the Customer where this is not possible. the Customer must inform the Supplier of the emergency or exceptional status when requesting the quotation.

- 40.9 Quotations should be provided to the Customer in GBP regardless of Vendor.
- 40.10 All quotations must remain valid for a period of thirty (30) calendar days, unless otherwise agreed in advance with the Customer. Cisco equipment may be subject to different validity periods due to market fluctuations.
- 40.11 All quotation requests must state anticipated lead times with any supply chain constraints highlighted.
- 40.12 The Supplier must be capable of sourcing a wide-ranging product set, including but not limited to all leading manufacturers. This could include the below, but please note this list is not exhaustive and the supplier must be capable of sourcing other goods or services required by the authority:
- Lenovo
  - HP
  - Dell
  - Microsoft
  - Samsung
  - Apple
  - Cisco
- 40.13 The Supplier must be capable of sourcing unique or niche goods or services on behalf of the Customer.

#### **41. Ordering & Deliveries**

- 41.1 The Supplier must provide a mechanism to allow the real-time tracking of online order/delivery status by way of an online portal.
- 41.2 All orders must be processed within 1 business day of receipt.
- 41.3 Online proof of delivery and signature image must be available.
- 41.4 The Supplier must provide free of charge delivery/courier service unless delivery charge can be justified by significant size/weight of item(s).
- 41.5 The Supplier must have established processes for dealing with order / delivery disputes and issues.
- 41.6 The Supplier must provide a desk-based Customer Service Representative to manage the processing of orders. In the event of absence, the necessary cover must be provided proactively, and adequate notice given to the Customer Supplier Manager for wider communication.
- 41.7 The Supplier must have appropriate secure storage facilities to bond and store, at the Supplier's own risk and cost, ordered items for at least 6 months before delivery. This service must be provided free of charge. The

Supplier will be liable for any damage, loss or theft to the goods whilst in Supplier storage.

- 41.8 Where any specialist goods or services can only be procured from a third party via credit card, the Supplier must transact on behalf of the Customer.
- 41.9 The delivery address will be specified on individual purchase orders.
- 41.10 The contact's name and number provided on individual purchase orders should be entered onto the shipping note for the courier to contact upon delivery.
- 41.11 Deliveries should only be attempted between 8am and 6pm, Monday to Friday (excluding bank holidays), unless otherwise agreed, in writing, by the Customer.

## **42. Installation**

- 42.1 The Suppliers will not be required generally to provide any installation services.
- 42.2 The Supplier must provide optional engineer services for build and installation of equipment which includes a site visit to capture requirements and information as standard.
- 42.3 Quotations with optional engineer services should be itemised with installation as an individual line item.
- 42.4 Any expenses must be pre-agreed with the Customer and quoted as part of any project costs.
- 42.5 Where installation services are potentially required, this will be clearly communicated when requesting a quotation, and when installation services are required, this will be stipulated on the purchase order as an individual line item.
- 42.6 Where engineer services are procured, all services should be provided within 10 working days of equipment delivery, subject to Customer availability, unless otherwise agreed by both parties.
- 42.7 Prior to completion, all engineer services should be signed off by an Authorised Representatives of the Customer.
- 42.8 Should the services not be delivered to Customer satisfaction, the Supplier must arrange for an engineer to revisit site within 2 working days to rectify issues.

42.9 Engineers must have enhanced disclosure and barring certification. The engineer will be expected to wear identification and provide evidence of certification when attending site.

### **43. Asset Management**

43.1 Customers may require the Supplier to apply Asset Labels to hardware supplied. Where Customers require this service, the following applies.

43.2 Asset Labels are usually a Customer-branded label, provided by the Customer, which is adhered to appropriate ICT hardware comprising of a unique numerical number for identification and security purposes.

43.3 The Supplier must retain the Customer Asset Labels securely.

43.4 Customer Asset Labels will be provided to the Supplier in batches and the Supplier must request additional Customer Asset Labels from the Customer when required.

43.5 For the Council, the Supplier must report to the Customer Asset Management team [ictassetmanagement@liverpool.gov.uk](mailto:ictassetmanagement@liverpool.gov.uk) once remaining stock quantity hits 150.

43.6 The Supplier must ensure that the Customer Asset Labels are affixed clearly to hardware that can be clearly identified and are not obscured or attached to components of a hardware item that can be separated such as for example a laptop battery or monitor stand.

43.7 The Supplier shall retain Asset Labels provided by the Customer and attach sequential tags to all hardware purchased unless otherwise instructed by the Customer.

43.8 The Supplier must provide timescales of providing a warehouse tagging service. Timescales should be taken from receipt of order to ready to deliver.

43.9 Where the equipment to be tagged attracts a delivery charge due to its size/weight, the Supplier must provide optional resource to asset tag equipment at Customer site.

43.10 The Supplier must have online, email and telephony channels to accept asset related queries from the Customer.

43.11 All email queries must be responded to within 1 working day.

43.12 Where the contact provided is out of office, an automatic email response not considered a response, and the Supplier should proactively provide an alternative contact or named cover for absence.

#### **44. Warranties & Guarantees**

- 44.1 Warranties should commence from date of shipment to the Customer.
- 44.2 Any warranties where goods are stored under bill and hold agreements should commence from date of shipment, as called off by the Customer.
- 44.3 The Supplier, in liaison with the relevant manufacturer, should register any standard, additional or enhanced warranties within five working days of delivery, on behalf of the Customer, unless otherwise agreed by both parties.
- 44.4 All warranty registrations must be issued to the Customer. For the Council, this is [ictassetmanagement@liverpool.gov.uk](mailto:ictassetmanagement@liverpool.gov.uk).
- 44.5 Confirmation of warranty registrations should quote the device serial number/service tag, along with the purchase date, and communicated to the Customer within 10 days of purchase.

#### **45. Accreditations**

- 45.1 The supplier must hold the following standards and maintain accreditation throughout the duration of the framework agreement.
- ISO27001 Information Security Management;
  - ISO9001 Quality Management Systems;
  - ISO14001 Environmental Management;
  - Microsoft: Gold Partner and License Solution Provider;
  - Cisco: Gold Partner or equivalent under any new Cisco partner programme.
- 45.2 It is desirable that the supplier holds the following standards and maintains accreditation throughout the duration of the framework term:
- ISO22301 Business Continuity Management;
  - ISO20001 Service Management;
  - Cyber Essentials Plus.
- 45.3 The Supplier must provide a copy of relevant accreditations / registrations for each year of the Framework. Proof of relevant accreditations / registrations must be provided within 7 days of each anniversary of the Framework.

#### **46. Returns & Repairs**

- 46.1 The supplier shall meet the Councils' Service Standard for ICT Suppliers for support requests as included at Appendix K: Service Standard for ICT Suppliers.

- 46.2 The Supplier must provide a named desk-based Customer service representative to manage the processing of returns.
- 46.3 The Supplier must have established processes for handling and managing returns or asset related queries. Such as Dead-on-Arrival, Early Life Failure, faulty or incorrectly ordered items.
- 46.4 The Supplier must have established processes for dealing with the repair / replacement of products during manufacturer warranty periods.
- 46.5 Where equipment is damaged/faulty the Supplier must provide a named single point of contact who must be responsible for managing the issue to resolution.
- 46.6 The Supplier must have established processes for dealing with the repair / replacement of products which are accidentally damaged or no longer covered by warranty.
- 46.7 The Supplier must have established processes for handling and managing free of charge returns.
- 46.8 Should an item return attract a restocking fee, this should be no more than 10% of the item value as per the purchase order.
- 46.9 The Customer reserves the right to withhold items of hardware that may contain the Customer data.

## **47. Reporting**

- 47.1 The Supplier must deliver each Monday a weekly comprehensive electronic asset report detailing all assets despatched the previous week to the Customer Asset Management in Excel spreadsheet format. Where the Monday is a bank holiday the asset report should be sent on the next business day.
- 47.2 This report should be sent to [ictassetmanagement@liverpool.gov.uk](mailto:ictassetmanagement@liverpool.gov.uk).
- 47.3 Asset Report means a comprehensive list of ICT hardware. Including a minimum but not limited to (as declared by the Customer and subject to change):
- Council Asset Reference;
  - Serial Number;
  - Make;
  - Model;
  - Type – Description of the hardware (Desktop / Laptop / Server / Switch / Wireless Access Point etc.);
  - Customer;

- Customer Address - (Customer or delivery location);
  - Delivery Contact Names;
  - Delivery Locations;
  - Delivery Dates;
  - Customer Purchase Order Reference;
  - Customer Project Reference – (the Customer Project Reference);
  - Purchase Date;
  - Warranty Expiry Dates - DD/MM/YYYY;
  - Warranty Information – Manufacturer warranty only / extended support etc.
- 47.4 In the event that equipment delivered is not to be asset tagged by the Supplier, the Supplier must provide a serial number line item as part of the asset report including information above.
- 47.5 In the event that no deliveries occurred, the Supplier must provide notice to the Customer ICT Asset Management Team to this effect.
- 47.6 In addition to online order tracking portal, the Supplier must provide each Monday a weekly outstanding orders report detailing anticipated delivery date, order number, project reference, project manager's name and product information. Should this information change at any point, the Supplier should contact the relevant the Customer ICT owner.
- 47.7 The supplier must provide a fully itemised transaction report detailing individual item costs, mark-up/mark-down and price. within 5 days of the end of each month.
- 47.8 The Supplier must also provide the above report at time-to-time within 5 days upon request by the Customer.
- 47.9 The Supplier will provide management information for all activity undertaken against the Framework within 5 days of the end of each quarter.
- 47.10 The Supplier will provide an annual report of their supply chain including but not limited to a structured map identifying subcontractors, sub-suppliers and third parties, for all tiers. Evidence of supply chain to be provided before the commencement of the Framework and within 7 days of each anniversary of the Framework.
- 47.11 The Supplier will provide an annual financial report. This can be a copy of the annual financial statement including profit/loss and balance sheet. Financial report to be provided within 7 days of each anniversary of the Framework.
- 47.12 The Supplier will provide annual updated insurance certificates when they become available.

47.13 The Supplier must provide a monthly report detailing all orders placed by other organisations utilising this framework.

#### **48. Account Management**

48.1 The Supplier must provide a Named Account Manager (“NAM”) who must be available from 8am to 6pm, Monday to Friday except on Bank Holidays.

48.2 The NAM must be responsible for working closely with the Customer to develop a working relationship with a view to benefitting both parties.

48.3 The NAM must be available at other times in exceptional circumstances by prior arrangement.

48.4 The NAM must have a named deputy with an equal or greater level of authority if they are to be unavailable for any reason.

48.5 The NAM and other appropriate Supplier personnel must attend a Monthly Service Review Meeting (“MSRM”) on customer premises, at their own expense, unless otherwise agreed by both Parties.

48.6 Dependant on volume of business additional meetings with the Supplier could be required and the Supplier must commit to attending site or increasing interaction accordingly

48.7 The MSRM must include, but are not limited to, the following:

- Asset management reporting and other asset management related issues;
- Performance against KPIs;
- Best value/benchmarking (including cost/price challenges);
- Disputes;
- Roadmapping;
- New Technologies;
- Evaluation devices/status;
- Good news stories;
- Social Value;
- Continual Service Improvement.

48.8 The NAM must commit to documenting all service review meetings /minutes and circulating actions within 2 working days of the meeting.

48.9 The Supplier shall commit to Service Improvement Review Meetings to be held on an annual basis underpinned by a documented Service Improvement Plan provided to the Customer within 21 days of meeting.

- 48.10 The Supplier shall provide a three-tier escalation path designed to resolve any matters arising with all contact information, maintained and reviewed on a quarterly basis to ensure the Customer has up to date information.
- 48.11 In the event of any account team changes, the Supplier should advise the Customer proactively at the earliest opportunity.
- 48.12 The Supplier will complete regular reviews of competitor offerings to ensure pricing remains competitive compared to the wider marketplace.
- 48.13 The Supplier will directly utilise the Authority's Contract Management Portal for managing activity across the Framework, and all basic information must be input within 7 days of the commencement of the Framework.
- 48.14 The Supplier will provide up to date insurances for each year of the Framework, with proof of insurance provided within 7 days of each anniversary of the Framework.
- 48.15 The Supplier will complete all relevant items listed within the Specification and shall attending all the mobilisation they are required to attend. This will also include sending the nominated personnel and/or correctly qualified personnel.
- 48.16 The supplier must schedule with the Council a maximum of two workshops per annum, approximately six months apart, unless otherwise agreed by both parties. The workshops will discuss specific challenges or change activities the Council faces across its ICT estate. Following a workshop, the supplier will produce an options paper with a specific recommendation within 10 working days of the workshop.

#### **49. Key Performance Indicators**

- 49.1 Key performance indicators applicable for this lot are listed in Appendix H.
- 49.2 The Supplier must ensure key performance indicators are updated within the Customer's contract management tool in accordance with the frequency of the measurement.

#### **50. New & End of Life Technology**

- 50.1 The Supplier must produce a Technology Road Map for the existing product set and hold onsite sessions, including vendors, every six months to assist the Customer and set expectations.
- 50.2 The Supplier must ensure continuous engagement with the Customer to demonstrate new technologies and solutions. A quarterly session must be held where the Supplier may introduce vendors and their products.

- 50.3 At the request of the Customer, the Supplier must provide free of charge specialist resource to assist the project and technical teams and demonstrate products and solutions.
- 50.4 Where standard items are to be replaced or superseded, the Supplier shall provide the Customer with six months' notice.
- 50.5 The Supplier shall facilitate loan or trialling of evaluation devices should the Customer require for testing. This must be available for a period of at least 45 days.

## **51. Cloud Services**

- 51.1 Liverpool City Council are in the process of adopting a range of cloud services. This will in part replace or otherwise reduce traditional on-premise hardware purchases.
- 51.2 The supplier must be capable of sourcing and supplying a range of cloud infrastructure services including but not limited to:
- Server hosting (including associated storage);
  - Database hosting;
  - Data storage;
  - Data backup;
  - Data archiving;
  - Server hosting Disaster Recovery;
  - Virtual desktop solutions;
  - Application virtualisation solutions.
- 51.3 The supplier must have the ability to provide either directly, or via a specialist subcontractor, professional services to support:
- On-premise to cloud migration;
  - Multi-cloud interconnectivity;
  - Cloud to cloud migration;
  - Cloud to on-premise repatriation.
- 51.4 The supplier must have the ability to provide either directly, or via a specialist subcontractor, professional services to either implement or advise on cloud infrastructure configuration. This should include but not be limited to:
- Firewall;
  - Remote access;
  - Cloud networking;
  - Private Cloud "datacentre" management;
  - Identity management;

- System security;
- Cost management and ongoing administration.

51.5 The supplier must be able to provide managed services for all aspects of cloud hosting. Managed services would include support assisting with the ongoing management and maintenance of cloud services called off from the contract. This may include:

- Firewall rulesets;
- Expansion of service provision (adding nodes or additional resource);
- Performance monitoring;
- Disaster recovery;
- Backup recovery;
- Data archiving.

## 52. Invoicing & Payments

52.1 All payments will be made by BACS.

52.2 All items procured under this framework should be invoiced electronically and the invoice must quote the individual the Customer purchase order number and itemised as per the purchase order to which it is related.

52.3 The Supplier will accept the payment terms of Liverpool City Council; 30 days payment terms (unless otherwise stated within the Customer's Contract Standing Orders) for goods and services delivered to the Customer's satisfaction.

52.4 Should the framework be utilised to procure goods or services that require a phased payment approach related to delivery of goods/services then a milestone payment schedule must be agreed as part of the call-off agreement.

## 53. Social Value

53.1 Liverpool City Council is keen to ensure that contracts awarded, not only deliver the supplies and services required, but that they also provided benefits to the local economy and the wider environment.

53.2 As part of Liverpool City Council's commitment to bridging the digital divide, this tender seeks as part of our social value commitment to invite suppliers to advise if they can provide laptops, tablets, and other digital devices. These devices will be issued to local residents under our Digital Empowerment and Innovation Pillar including at Appendix J: Digital, Data and Technology Strategy 2024-28 ("DDATS"), which aims to empower

individuals with access to digital tools, fostering opportunities for education, employment, and community engagement enabling our residents to access the digital economy.

- 53.3 Suppliers are required to advise how many devices they would provide based on every £50,000 net revenue spent on the contract.
- 53.4 The devices should be provided at the end of each contractual year.
- 53.5 In terms of acceptable devices, in order to ensure we receive devices that have a high reusability rate to create impact, the following statements must be adhered to:
- Where possible devices should be brand new and not tampered with;
  - If devices are not brand new the devices should be in working order (turns on, no obvious faults, no cracked screens and material cosmetic blemishes affecting functionality).
- 53.6 Devices should, where possible:
- Not be older than 7 years;
  - Ideally be Intel 3rd gen processors or above for laptops or chrome books.
- 53.7 To ensure that your devices can be successfully redistributed, we request that, where possible, the donor facilitates the provision of removing passwords/user accounts prior to the donation including:
- Remove BIOS lock (Windows);
  - Remove EFI password (Apple);
  - Remove iCloud Accounts (Apple);
  - Remove Google Accounts (Chrome);
  - Remove all personal user accounts linked to mobile devices before factory resetting (iPhone, iPad & Android).

#### **54. Disaster Recovery & Business Continuity**

- 54.1 The Customer has an obligation to ensure the continuity of critical business processes and operations that may rely on the services provided by the Supplier.
- 54.2 As such, the Supplier is required to have a Disaster Recovery Plan and Business Continuity Plan that can be invoked should the Supplier find themselves in circumstances of service disruption or failure, with the aim of minimising disruption to the services provided to the Customer.
- 54.3 The Disaster Recovery Plan and the Business Continuity Plan shall detail processes and arrangements which the Supplier shall follow in order to

provide their service to the Customer in accordance with the Contract at all times during and after the invocation of the plan.

- 54.4 The Supplier shall ensure that any Subcontractor it relies on to provide service to the Customer is considered within its Business Continuity Plan.
- 54.5 The Supplier must ensure that the Subcontractors own Disaster Recovery and Business Continuity Plans are integrated with and support the Suppliers own Business Continuity Plan.
- 54.6 The Supplier shall review the Business Continuity Plan on a regular basis and as a minimum, once every 12 calendar months to reconfirm the suitability of the plan.
- 54.7 The Supplier shall conduct testing of the Business Continuity Plan on a regular basis and as a minimum, once every 12 calendar months. Evidence of this testing must be presented upon request to the Customer.
- 54.8 In the event of a complete loss of service or in the event of a disaster, the Supplier shall immediately invoke the Business Continuity Plan and shall inform the Customer promptly of such invocation.

## **55. Strategic Alignment**

- 55.1 In alignment with Liverpool City Council's DDATS included at Appendix J, the supplier will be required to work closely with the Council to promote and enable the take-up of innovative solutions relating to hardware and or cloud infrastructure purchases.
- 55.2 The Council is seeking a supplier who will proactively:
  - Challenge established thinking at the Council;
  - Maintain a regular cadence review of the delivery of Council's DDATS included at Appendix J;
  - Actively investigate and propose opportunities and solutions which will align with the Council's DDATS included at Appendix J;
  - Hybrid working / meeting: The modern workplace requires hybrid meetings with in-room and remote participants actively collaborating and sharing content. The Council is currently adopting technology to support this and it is anticipated this is a requirement which will grow in demand, both in terms of quantity and expectation;
  - The Cloud is transforming the way it hosts and manages systems and application, aligned with enabling technologies such as AI and a workforce located both in office and remote. This will introduce a services model, replacing the traditional on-premise hardware

model. Suppliers will be required to understand the Council as a “brown field” enterprise which will likely always be to an extent hybrid cloud. This creates grey areas between hardware infrastructure supply and provision and service provision. The Council expects suppliers to be capable of clearly demonstrating understanding and provision of appropriate solutions with such an environment. Blending on-premise, private cloud, SaaS, PaaS and IaaS solutions as required;

- Network and Security Equipment: There are many areas of networking, connectivity and security stack technology innovation which the council will be looking to exploit. These include 5G, Next-Gen Wi-Fi, Software-Defined Wide Area Networks (“SD-WAN”), Unified Computing, Network Automation and Network Analytics. The increasing take-up of cloud services will require solutions which enable a simplified network edge and consistent and simplified network monitoring and management across on-premise and multi-cloud infrastructure components.

## 56. Mobilisation

56.1 Prior to commencement of contract, the Supplier is expected to provide:

- A completed vendor set up form;
- Sample standard asset report for review and sign off by the Customer;
- Sample asset moves/changes report for review and sign off by the Customer;
- Acknowledged receipt of Asset Labels;
- Name and contact details for NAM;
- Name and contact details for named Customer Service Representative;
- Escalation path including all names and contact numbers;
- A copy of the agreed Catalogue price list for review and sign off by the Customer;
- Sample quotation template for review and sign off by the Customer;
- Sample outstanding orders report template for review and sign off by the Customer.
- Names and email addresses for named account personnel who will access and update the Customer’s contract management tool with key performance indicator details.

## 57. Contract Exit

- 57.1 Upon Contract Exit, regardless of whether this is due to the Contract End Date being reached, or because of an earlier Termination, the Supplier is expected to:
- Return all stored the Customer Asset Labels within 15 working days;
  - Where the Supplier has transacted on behalf of the Customer for any support or maintenance of goods or services, contact details are to be provided for the supporting body if this is not the Supplier and the service is subcontracted;
  - Provide a report detailing all outstanding orders with expected delivery dates within 5 working days which is proactively updated with any delayed deliveries and provided to the Customer accordingly;
  - Provide a final statement and report detailing all outstanding invoices within 15 working days;
  - Provide two Key Account Contacts for handover and continuity purposes, one of which must be the NAM, to assist with any queries, disputes or ongoing issues for up to 6 months following contract end date.

## **58. Data Processing**

- 58.1 Processing of personal data is required to be based in the UK or for more general services fully compliant with the Data Protection Act 2018.
- 58.2 This would also apply to professional services requiring access to Council data.

## **Part 2. Supplier's Tender**

**Consisting of:**

- **Submission Document – Quality;**
- **Submission Document – Social Value**

























































































































































































































































































































































































































































































































































## **Schedule 2 Pricing Matrices**

### **PRICING MATRICES FOR COMPETED CALL-OFFS WILL FORM PART OF THE COMPETED CALL OFF DOCUMENTATION**

### **PRICING FOR STANDARD GOODS AND/OR SERVICES SHALL BE SUBMITTED INITIALLY VIA THE SUPPLIERS ITT SUBMISSION, AND THEN UPDATED PERIODICALLY IN ACCORDANCE WITH THIS SCHEDULE 3 AND THE APPLICABLE SPECIFICATION**

#### **1. Pricing and Benchmarking**

The Supplier shall continually seek to source the best value market pricing in line with the applicable Specification.

The Customer reserves the right to benchmark and challenge the Supplier's price at any time using market analysis or benchmarking tools to ensure best value pricing.

The Supplier is reminded that the Customer may, at any time, purchase Goods and/or Services from another Supplier if it is demonstrated that the Supplier is not providing best value.

The Supplier must ensure best value pricing from all distribution channels and manufacturers, providing evidence of routine benchmarking to the Customer at least annually.

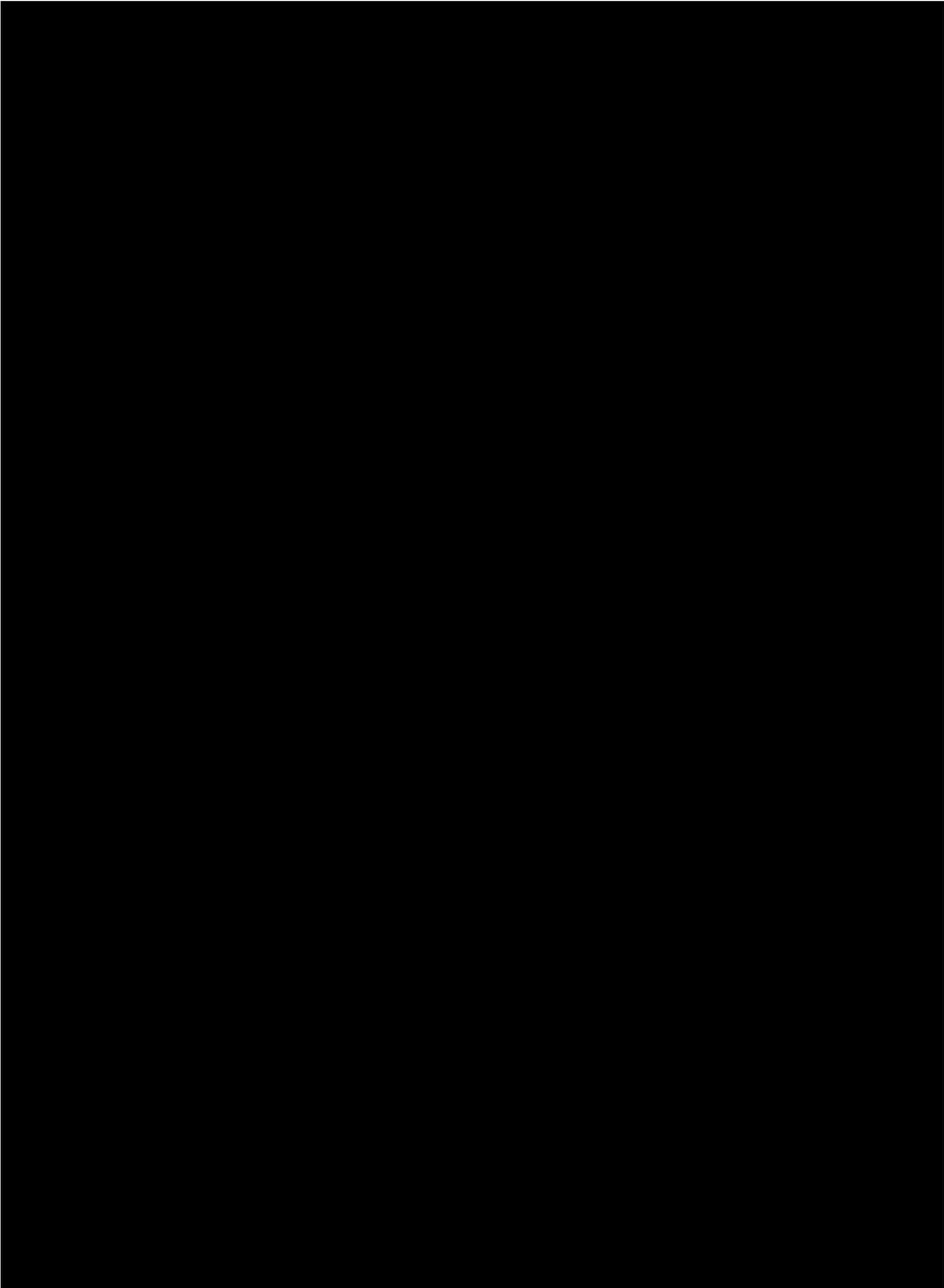
#### **2. Pricing Matrices and Periodic Revision and Pricing Methodology**

The prices contained in the Pricing Matrix are subject to revision on a 3-monthly basis, as outlined in the Tender documents, with effect from each anniversary of the Commencement Date. The first price revision shall take effect three (3) months following the Commencement Date and shall be provided by the Supplier in the form of an updated Pricing Matrix or catalogue.

Changes in prices must be based on a cost-plus mark-up basis as per the Specification where the mark-up percentage is applied to the Goods and/or Services available. Mark-up shall be fixed for the duration of the Framework and shall be as stated in the Suppliers Tender.

#### **3. Non-Catalogue Items**

For items not featured in an electronic catalogue or Pricing Matrices, the Supplier shall provide a quotation valid for 30 days, in line with the applicable Specification.







### Schedule 3 Call-off Terms and Conditions

# **SCHEDULE 3**

## **CALL-OFF TERMS AND CONDITIONS**

**(FOR USE BETWEEN THE CUSTOMER AND THE SUPPLIER)**

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**APPENDIX 6 - SUPPLEMENTAL TENDER (FOR COMPETED SERVICES)**

## 1. INTERPRETATION

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

<b>“Achieved KPIs”</b>	in respect of the supply of any Goods and/or Services in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Good and/or Service in the measurement period in question.
<b>"Approval" and "Approved"</b>	means the written consent of the Customer not to be unreasonably withheld or delayed.
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Customer.
<b>“Authority”</b>	any contracting authority as defined in section 2 of the Procurement Act 2023 aside from the Customer.
<b>“Catastrophic Failure”</b>	means :- <ul style="list-style-type: none"><li>(a) a failure by the Supplier (where applicable) for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster;</li><li>(b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Customer authorised representative has or may cause significant harm to the reputation of the Customer.</li></ul>
<b>“Certificate of Conformity”</b>	means a certificate authorised by an Independent Testing House/Organisation evidencing that all Goods supplied meet the required minimum specification.
<b>"Commencement Date"</b>	means the date set out in the Order Form.
<b>"Commercially Sensitive Information"</b>	means the Confidential Information listed in the Order Form comprised of information which is provided by the Supplier and designated as commercially sensitive information by the Customer

for the period set out in that Order Form.

**"Confidential Information"**

means:-

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and
- (b) the Commercially Sensitive Information,

and does not include any information:-

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 37 (Confidential Information));
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information.

**"Consistent Failure"**

shall be as defined in the applicable Specification for the Goods and/or Services.

**"Contract"**

means the written agreement between the Customer and the Supplier consisting of the Order Form and these clauses (except that, for the purposes of 7.4 only, reference to "Contract" shall not include the Order Form) as varied from time to time.

**"Contract Period"**

means the period from the Commencement Date to:-

- (a) the date of expiry set out in Clause 2 (Initial Contract Period); or
- (b) following an extension pursuant to Clause 3 (Extension of Initial Contract Period), the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the

Contract.

<b>"Contract Price"</b>	means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract.
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular Authorities, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"Customer"</b>	means the customer(s) identified in the Order Form.
<b>"Data Loss Event"</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data breach.
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time.
<b>"Data Protection Legislation" or "DPA"</b>	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) (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.
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time.
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data.
<b>"Default"</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent

statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

**"Deliverables"**

means those deliverables listed in the Order Form and shall refer to all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through the Supplier in connection with this Contract.

**"Disaster"**

an event defined as a disaster in the Disaster Recovery Plan.

**"Disaster Recovery Plan"**

a plan to be provided by the Supplier to the Customer where required which sets out the procedures to be adopted by the Supplier in the event that there is a service interruption or failure by reason of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event).

**"EIR"**

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**"Equipment"**

means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

**"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/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**"Force Majeure"**

means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-

- (a) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or
- (b) the failure by any sub-contractor to

perform its obligations under any sub-contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure);

- (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent.

<b>"Framework Agreement"</b>	means the framework agreement for the provision Goods and/or Services between Liverpool City Council and the Supplier.
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud Liverpool City Council or the Customer.
<b>"Good Industry Practice"</b>	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 engaged in a similar type of undertaking under the same or similar circumstances.
<b>"Goods and/or Services"</b>	means the Goods and/or Services to be supplied as specified in the Order Form.
<b>"Improvement Notice"</b>	means a notice issued on the Supplier to improve minor breaches of the Framework Agreement, the Contract or the Order Form instructing the Supplier to improve or remedy any minor breaches in the provision of the Goods and/or Services.
<b>"Independent Testing Engineer"</b>	means an independent engineer appointed by either Liverpool City Council, the Customer or the Supplier to provide written advice as to whether or not Goods have been installed correctly. It is agreed that the Independent Testing Engineer's decision shall be final as to whether or not the Goods have been installed to the required standard/specification.
<b>"Independent Testing House/Organisation"</b>	means a testing house/organisation independent of any party that may be appointed for the testing of any Goods either in situ or at premises to be agreed under the terms of this Contract. It is agreed that the Independent Testing House/Organisation's decision shall be final as to whether or not the Goods meet the required standard/specification.
<b>"Information"</b>	has the meaning given under section 84 of the FOIA.
<b>"Intellectual Property Rights" and "IPRs"</b>	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing,

copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

<b>"Key Personnel"</b>	means any individual identified in the Order Form as being key personnel
<b>"KPIs"</b>	means the key performance indicators set out in the Specification.
<b>"Law"</b>	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 is bound to comply.
<b>"Liverpool City Council"</b>	means Liverpool City Council, any employee, agent servant or representative of Liverpool City Council or any other public authority or person employed on behalf of Liverpool City Council.
<b>"Material Default"</b>	means any breach of clauses 10 (Conflict of Interest), 30 (Prevention of Bribery and Corruption), 34 (Health and Safety), 35 (Data Protection Act), 36 (Freedom of Information Act and Environmental Information Regulations), 41 (Records and Audit Access), 42 (Transfer and Sub-Contracting), 54 (Warranties and Representations).
<b>"Minor Breach"</b>	means any breach of the Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default.
<b>"Month"</b>	means calendar month.
<b>"Order"</b>	means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement.
<b>"Order Form"</b>	means the order submitted to the Supplier by the Customer in accordance with the Framework Agreement which sets out the description of the Goods and/or Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the

Quality Standards.

**"Parent Company"**

means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term **"Holding Company"** shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

**"Party"**

means the Supplier or the Customer.

**"Personal Data"**

has the meaning given to it in the Data Protection Legislation as amended from time to time.

**"Premises"**

means the location where the Goods and/or Services are to be supplied, as set out in the Order Form.

**"Processing"**

has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call-Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly.

**"Prohibited Act"**

means any of the following acts, as described in the Bribery Act 2010:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by Liverpool City Council or the Customer a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Call-off Contract; or

defrauding, attempting to defraud or conspiring to defraud Liverpool City Council or the Customer.

**"Property"**

means the property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract.

**"Quality Standards"**

means the quality standards published by BSI British Standards, the National Standards Authority of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent Authority (and their successor Authorities), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

**"Replacement Supplier"**

means any third party Supplier appointed by the Customer, to supply substantially similar Goods and/or Services, and which the Customer receives in substitution for any of the Goods and/or Services following the expiry, termination or partial termination of the 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).

**"Restricted Country/Countries"**

Any country that is not the United Kingdom.

**"Specification"**

refers to the applicable 'Specification for the Goods and/or Services' as contained in the Framework Agreement.

**"Sub-Processor"**

means any third Party appointed to Process Personal Data on behalf of the Supplier related to this Call-Off Contract.

**"Staff"**

means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

**"Staff Vetting Procedures"**

means the Customer's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive of confidential nature or the handling of information which is subject to any relevant security measures.

means the person, firm or company or organisation

<b>“Supplier”</b>	whom executes this Contract and includes any employee, agent, servant, sub-contractor or representative of the supplier or person employed by on or on behalf of the supplier to provide the Goods and/or Services.
<b>“Supplier’s Contract Manager”</b>	means the person appointed by the Supplier to manage the Contract.
<b>“Target KPI”</b>	means the minimum level of performance for a KPI which is required by the Customer as set out against the relevant KPI in the applicable Specification.
<b>"Tender"</b>	means the document(s) submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Goods and/or Services.
<b>“Term”</b>	means the period commencing on the Commencement Date following a period of 4 years or on earlier termination of this Call-Off Contract.
<b>“UK GDPR”</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales.
<b>“Year”</b>	means a calendar year.

The interpretation and construction of the Contract shall be subject to the following provisions:-

- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.4 References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;
- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and

- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.8 Reference to any employees of the Supplier shall be deemed to include the Supplier's agents and sub-contractors unless expressly stated otherwise.
- 1.9 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

## **2. INITIAL CONTRACT PERIOD**

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

## **3. EXTENSION OF INITIAL CONTRACT PERIOD**

Subject to satisfactory performance of its obligations under the Contract by the Supplier during the Initial Contract Period, the Customer may, by giving written notice to the Supplier not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

## **4. SUPPLIERS STATUS**

At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

## **5. PROVISION OF MANAGEMENT INFORMATION**

- 5.1 The Supplier shall submit Management Information to the Customer in the format and frequency agreed by both Parties prior to the start of the Contract
- 5.2 The Customer may make reasonable changes to the Management Information which the Supplier is required to supply and shall give the Supplier at least one (1) Month's written notice of any changes. Any costs of providing information incurred as a result of these changes will be borne by the Supplier.

## **6. CUSTOMER OBLIGATIONS**

- 6.1 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.
- 6.2 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 6.3 The Customer shall respond to any reasonable request for information from the Supplier.

- 6.4 The Customer will assign an authorised representative who will liaise with the Supplier's Contract Manager, to ensure both parties use reasonable endeavours to meet their contractual obligations.
- 6.5 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Procurement Act 2023 (and any subsequent re-enactment thereof).

## **7. ENTIRE AGREEMENT**

- 7.1 Subject to the provisions of the Framework Agreement relating to Call-off Contracts, this Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2 Each of the Parties acknowledge and agree that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
  - 7.4.1 the clauses of the Contract;
  - 7.4.2 the Order Form except Appendices 5 (Suppliers Tender) and 6 (Supplimental Tender (for Competed Services)) to the Order Form;
  - 7.4.3 the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form except Schedule 1 part 2, Appendix 5 (the Supplier's Tender), and Appendix 6 to the Order Form (Supplimental Tender (for Competed Services));
  - 7.4.4 any other document referred to in the clauses of the Contract; and
  - 7.4.5 Schedule 1, part 2 of the Framework Agreement and Appendix 5 to the Order Form (Suppliers Tender) and Appendix 6 (Supplimental Tender (for Competed Services)) to the Order Form.
- 7.5 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.
- 7.6 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts together shall constitute the one agreement.

## **8. NOTICES**

- 8.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the

Contract unless made in writing by or on behalf of the Party sending the communication.

- 8.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 8.3 For the purposes of Clause 8.2, the address of each Party shall be:
- 8.3.1 For the Customer: the address set out in the Order Form.
- 8.3.2 For the Supplier: the address set out in the Framework Agreement.
- 8.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## **9. MISTAKES IN INFORMATION**

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except to the extent caused or contributed to by discrepancies, errors or omissions in drawings, documentation and information provided by the Customer (or by a third party on the Customer's behalf).

## **10. CONFLICTS OF INTEREST**

- 10.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract.
- 10.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
- 10.3 A Supplier may be considered to have a conflict of interest, if the Supplier:
- (a) directly or indirectly controls, is controlled by or is under common control with another Supplier;
  - (b) receives or has received any direct or indirect subsidy from another Supplier;
  - (c) has the same legal representative as another Supplier;
  - (d) has a relationship with another Supplier, directly or through common third parties, that puts it in a position to influence another Supplier regarding the provision of Goods and/or Services under this Contract; and/or
  - (e) has a close business or family relationship with an employee of a Customer involved in the tendering of this Contract.

- 10.4 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

## **11. PREVENTION OF FRAUD**

- 11.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 11.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 11.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with Liverpool City Council or the Customer, the Customer may:-
- 11.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
- 11.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **SUPPLY OF GOODS**

### **12. PROVISION OF THE GOODS**

- 12.1 The Supplier shall supply and, where relevant, install the Goods in accordance with the Specification in the Framework Agreement, the Invitation to Tender, the Order Form and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979.
- 12.2 If requested by the Customer the Supplier shall provide the Customer with samples of Goods for evaluation and Approval, at the Supplier's cost and expense.
- 12.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Goods do not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Supplier shall at its own expense re-schedule and replace or credit the costs of the Goods in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 12.4 If reasonably requested by the Customer the Supplier shall submit products to an Independent Testing House/Organisation for testing at the Supplier's cost and expense. Where the Goods are too large to be sent to an Independent Testing House/Organisation or need to be tested in situ then the Supplier shall arrange for an Independent Testing Engineer to test the Goods and the installation of the Goods at their own cost and expense. Such requests for Testing should be acted upon immediately.

- 12.5 The Supplier shall ensure that the Goods are fully compatible with any of the Customer's equipment, to the extent specified in the Order Form.
- 12.6 The Supplier acknowledges that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and the performance of its obligations under the Contract.
- 12.7 The Supplier shall employ sufficient Staff to ensure that the Goods are provided at all times and in accordance with the Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of Staff is available to provide the Goods in accordance with the Contract during Staff holidays or absence through sickness or any other cause.
- 12.8 Timely supply of the Goods shall be of the essence of the Contract, including in relation to commencing the supply of the Goods within the time agreed or on a specified date.
- 12.9 During the life of the Framework Agreement Suppliers should ensure (where applicable) that ongoing testing of the Goods takes place to ensure that the Goods meet the relevant required standards. All ongoing testing will require a Certificate of Conformity which may be requested by Liverpool City Council and the Customer at any time during the Term. Where requested any deliveries of Orders placed during the term of the Framework Agreement shall be accompanied by a Certificate of Conformity.

### **13. MANNER OF PROVIDING GOODS AND/OR SERVICES**

- 13.1 The Supplier shall at all times comply with the relevant legislation, codes of conduct and regulations governing the provision of Goods and/or Services.
- 13.2 The Supplier shall at all times provide the Goods and/or Services in accordance with the terms and conditions of the Contract and the Specification.
- 13.3 Where applicable the Supplier shall maintain and shall ensure that any Staff utilised in the provision of the Goods and/or Services maintain accreditation and certification with the relevant authorised body. To the extent that the standard of Goods and/or Services has not been specified in the Contract the Supplier shall agree the relevant standard of the Goods and/or Services with the Customer prior to the supply of the Goods and provision of the Services, and in any event the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 13.4 The Supplier shall ensure that all Staff providing the Goods and/or Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper supply of the Goods and provision of the Services.
- 13.5 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation Authority.

### **14. KPI'S**

- 14.1 Where the provision of Goods and/or Services are stated to be subject to a specific KPI, the Supplier shall provide that Good and/or Service in such a manner as will ensure that the Achieved KPI in respect of that Good and/or Service is equal to or higher than the corresponding Target KPI to such specific KPI.

- 14.2 If the existing Goods and/or Services are varied or new Goods and/or Services are added, Target KPIs for the same will be determined and included within the new specification/agreement.
- 14.3 The Supplier shall provide records of and reports summarising the Achieved KPIs as provided at any review meetings.
- 14.4 KPI's shall be adhered to as set out in the applicable Specification for the Goods and/or Services.

## **15. DELIVERY**

- 15.1 The Supplier shall deliver the Goods and/or Services at the time(s) and date(s) specified in the Order Form and within such lead times indicated in the Invitation to Tender.
- 15.2 Unless otherwise stated in the Order Form, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 15.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 15.4 Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods and/or Services within the time specified in the Order Form, the Customer may release itself from any obligation to accept and pay for the Goods and/or Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 15.5 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Customer in writing.
- 15.6 The Customer shall be under no obligation to accept or pay for any Goods and/or Services supplied earlier than the date for delivery stated in the Order Form.
- 15.7 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Contract without further liability to the Customer.

## **16. OWNERSHIP AND RISK**

Except in the event a Good includes licenced software, risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of delivery. Ownership of the Goods, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of payment. Notwithstanding Title, the Customer shall be entitled to use or

re-sell the Goods in the ordinary course of its business.

## **17. NON-DELIVERY**

Where specified by the Customer on dispatch of any consignment of the Goods, the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Customer on the due date for delivery, the Customer shall, (provided that the Customer has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been delivered and may request the Supplier free of charge to deliver substitute Goods within the timescales specified by the Customer or terminate the Contract.

## **18. INSPECTION, REJECTION AND GUARANTEE**

18.1 The Customer or its authorised representatives may inspect or test the Goods or installation of the Goods either when complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no Approval given during or after such inspection or test shall constitute a waiver by the Customer of any rights or remedies in respect of the Goods and the Customer reserves the right to reject the Goods in accordance with Clause 18.2.

18.2 The Customer may by written notice to the Supplier reject any of the Goods which fail to conform to the Approved sample, do not have valid certification, or fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery/installation to the Customer of such Goods. If the Customer rejects any of the Goods pursuant to this clause the Customer may (without prejudice to other rights and remedies) either:-

18.2.1 have such Goods promptly, and in any event within ten (10) Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the Approved sample or with the Order Form and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

18.2.2 treat the Contract as discharged by the Supplier's breach and obtain a refund from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Customer in obtaining other Goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

18.3 The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.

18.4 The Supplier hereby guarantees the Goods for the period from the date of delivery to the Customer or the end user to the date of either:-

18.4.1 twelve (12) Months thereafter;

18.4.2 or such other guarantee period or warranty period notified by the Supplier in their response to the Invitation to Tender against faulty materials or workmanship.

18.5 If the Customer shall within such guarantee period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

18.6 Any Goods rejected or returned by the Customer as described in Clause 18.2 shall be returned to the Supplier at the Suppliers risk and expense.

## **19. LABELLING AND PACKAGING**

The Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and 'tare weights', the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

## **20. TRAINING**

Where indicated in the Order Form, the Contract Price shall include the cost of instruction of the Customer's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements specified in the Order Form.

## **21. CONTRACT PERFORMANCE**

21.1 In supplying the Goods and/or Services the Supplier shall perform its obligations under the Contract:

21.1.1 with appropriately experienced, accredited, qualified and trained Staff with all due care and attention;

21.1.2 in a timely manner; and

21.1.3 in compliance with applicable Laws, including any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.

21.2 The Supplier shall ensure that:

21.2.1 the Goods and/or Services conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement or any sample Approved by the Customer;

21.2.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;

21.2.3 the Goods and/or Services conform in all respects with all applicable Laws;

21.2.4 the Goods and/or Services are free from defects in design and workmanship; and

21.2.5 the Goods are fit for purpose for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Customer.

21.3 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

## **22. KEY PERSONNEL**

22.1 Where the Parties have agreed in the Order Form to the appointment of the Key Personnel:

22.1.1 the Supplier shall and shall procure that any sub-contractor shall inform the Customer within ten (10) Working Days or as soon as reasonably practicable of any changes to their Key Personnel and shall ensure that a meeting is arranged between the Parties to establish a good working relationship with the new Key Personnel;

22.1.2 the Supplier acknowledges that the Key Personnel are essential to the proper provision of the Goods and/or Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced; and

22.1.3 the Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of removing and/or replacing any Key Personnel.

## **23. SUPPLIER'S STAFF**

23.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:-

23.1.1 any member of the Staff; or

23.1.2 any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

23.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

23.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.

23.4 If the Supplier fails to comply with Clause 23.2 within two (2) Months of the date of the request, the Customer may refuse entry to the Premises for any persons who the Supplier has not provided the Customer details of.

23.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 23.2 shall be final and conclusive.

- 23.6 The Supplier shall comply with the Staff Vetting Procedures set out in the relevant Order Form in respect of all Supplier Staff, and shall ensure that Supplier Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than such Staff Vetting Procedures.
- 23.7 The Supplier must assign an authorised representative (Supplier's Contract Manager) who shall be available to the Customer's authorised representative between 08.00 and 18.00 weekdays (excluding bank holidays) and at other times as required by the Customer (acting reasonably).
- 23.8 The Suppliers Contract Manager shall be required to attend regular contract review meetings at the Customer Premises and at their own expense (unless otherwise agreed) produce minutes and action logs which shall be shared with the Customer.

#### **24. INSPECTION OF PREMISES**

- 24.1 Save as the Customer may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

#### **25. OFFERS OF EMPLOYMENT**

- 25.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's Staff who have been associated with the procurement and/or the contract management of the Goods and/or Services without that other Party's prior written consent.

#### **PAYMENT AND CONTRACT PRICE**

##### **26. CONTRACT PRICE**

- 26.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 27 (Payment and VAT).
- 26.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.
- 26.3 Unless otherwise expressly stated in the Framework Agreement, the Contract or the Order Form, no claim by the Supplier will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Framework Contract, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to the Customer or any other appropriate means.

##### **27. PAYMENT AND VAT**

- 27.1 The Customer shall pay all sums due to the Supplier in cleared funds within thirty (30) days of a valid undisputed invoice (which shall be presented in an electronic format according to the standards issued by the British Standards Institution) and submitted in accordance with the payment profile set out in the Order Form.
- 27.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and/or Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

- 27.3 Where the Supplier submits an invoice to the Authority in accordance with this clause 27 the Authority shall consider and verify the invoice without undue delay and shall promptly notify the Supplier if it disputes the invoice or does not consider it to be valid.
- 27.4 Where the Supplier enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a 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 of a valid undisputed invoice, as defined by the sub-contract requirements.
- 27.5 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 27.6 The Supplier shall indemnify Liverpool City Council and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on Liverpool City Council and/or the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 27.6 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 27.7 The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Contract under Clause 56 (Termination) for failure to pay undisputed sums of money.

## **28. SET OFF**

- 28.1 The Supplier shall not be entitled to retain or set-off any amount due to the Customer by it but the Customer may retain or set-off any amount owed to it by the Supplier under this Contract which has fallen due and payable against any amount due to the Supplier under this Contract.
- 28.2 If the payment or deduction of any amount referred to in Clause 27.1 or Clause 28.1 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

## **29. RECOVERY OF SUMS DUE**

- 29.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Customer.
- 29.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 29.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

- 29.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **STATUTORY OBLIGATIONS AND REGULATIONS**

### **30. PREVENTION OF BRIBERY AND CORRUPTION**

#### 30.1 The Supplier:

30.1.1 has not, will not, and will procure that its Staff have not, and will not commit a Prohibited Act in connection with this Contract;

30.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010; and

30.1.3 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 Liverpool City Council or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with Liverpool City Council or the Customer, excluding any arrangements of which full details have been disclosed in writing to Liverpool City Council and/or the Customer prior to the execution of this Contract.

30.2 The Supplier will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Supplier arising as a result.

30.3 The Supplier will provide to the Customer certification (if requested to do so), in writing in such form as may be provided by the Customer, to be signed by an officer of the Supplier, of the compliance with this Clause 30 by:

30.3.1 the Supplier;

30.3.2 all persons associated with the Supplier; and

30.3.3 any other persons who are supplying Goods and/or Services in connection with this Contract.

30.4 Certification (if requested) will be provided by the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Supplier will provide any evidence of compliance as may reasonably be requested by the Customer.

30.5 The Supplier will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer and enforced by the Supplier where appropriate.

30.6 Should the Supplier become aware of or suspect any breach of Clause 30.1 it will notify the Customer immediately.

30.7 Following notification under Clause 30.6 the Supplier will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by

the Customer and allow the Customer to audit any books, records and other relevant documentation. The Supplier's obligations under this Clause 30.7 shall survive the expiry or termination of this Contract for a further period of six (6) years.

30.8 The Customer may recover in full from the Supplier and the Supplier shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 30 (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.

30.9 The Customer may terminate this Contract and any Order immediately upon serving written notice if the Supplier or its Staff whether or not acting with the Supplier's knowledge, breaches Clause 30. Before exercising its right of termination under this Clause 30.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:

30.9.1 the Supplier or a senior officer of the Supplier; or

30.9.2 a member of Staff who is not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier or its Staff) means and shall be construed as acting;

(a) with the authority of;

(b) with the actual knowledge; of any one or more of the Supplier's or Staff (as applicable) directors or partners; or

(c) in circumstances where any one or more of the directors (or partners) of the Supplier or its Staff (as applicable) ought reasonably to have had knowledge.

30.10 Any notice of termination by the Customer under Clause 30.9 must specify:

30.10.1 the nature of the Prohibited Act;

30.10.2 the identity of the person whom the Customer believes has committed the Prohibited Act; and

30.10.3 the date on which the Contract will terminate.

30.11 In the event of any breach of this Clause 30 the Customer is entitled to recover from the Supplier the value of any gift, consideration or commission.

30.12 Notwithstanding Clause 67 (Dispute Resolution) any dispute relating to the interpretation of this Clause 30 shall be determined by the Customer and its decision shall be final and conclusive.

30.13 Termination under Clause 30.9 will:

30.13.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract;

30.13.2 prohibit the Supplier from claiming any damages for early termination;

30.13.3 allow the Customer to recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination; and

30.13.4 entitle the Customer to be indemnified by the Supplier for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Goods and/or Services from another party.

### **31. DISCRIMINATION**

31.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

31.2 The Supplier shall take all reasonable steps to secure the observance of Clause 31.1 by all its Staff and servants, employees, or agents of the Supplier and all suppliers and Staff employed in the execution of the Contract.

### **32. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999**

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

### **33. ENVIRONMENTAL REQUIREMENTS**

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

### **34. HEALTH AND SAFETY**

34.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Contract.

34.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

34.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

34.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to

health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and/or Services under the Contract.

- 34.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

## **PROTECTION OF INFORMATION**

### **35. DATA PROTECTION**

35.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Call-Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

35.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with written instructions from the Customer to perform its obligations under this Call-Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call-Off Contract);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under the Call-Off Contract;
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call-Off Contract; and
  - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) notify the Customer without undue delay and within forty-eight (48) hours if it becomes aware of a Data Loss Event or if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

- (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause 35.2(e)) including by promptly providing:
  - (i) the Customer with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 35.2(e) and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

35.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call-Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the United Kingdom, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other reasonable instructions and shall carry out such other reasonable actions as the Customer may notify.

35.3.2 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call-Off Contract in such a way as to cause the Customer to breach any of their obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

35.3.3 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

35.3.4 Before allowing any Sub-Processor to process any Personal Data related to this Call-Off Contract, the Supplier shall:

- (a) notify the Customer in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 35 such that they apply to the Sub-Processor; and provide the Customer with such information regarding the Sub-Processor as they may reasonably require.

35.3.5 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

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

36.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable them to comply with its Information disclosure obligations.

36.2 The Supplier shall and shall procure that its Staff shall:

36.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

36.2.2 provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

36.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.

36.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

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

36.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 36.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the EIR to disclose information concerning the Supplier of the Goods and/or Services:

36.5.1 in certain circumstances without consulting the Supplier; or

36.5.2 following consultation with the Supplier and having taken their views into account;

36.5.3 provided always that where Clause 36.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.

36.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

36.7 The Supplier acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 36.5

### **37. CONFIDENTIAL INFORMATION**

37.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

37.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

37.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

37.2 Clause 37.1 shall not apply to the extent that:

37.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 36 (Freedom of Information);

37.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

37.2.3 such information was obtained from a third party without obligation of confidentiality;

37.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

37.2.5 it is independently developed without access to the other party's Confidential Information.

- 37.3 The Supplier may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 37.4 The Supplier shall not, and shall procure that its Staff do not, use any of the Customers Confidential Information received otherwise than for the purposes of this Contract
- 37.5 At the written request of the Customer, the Supplier shall procure that those members of the Staff identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 37.6 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:
- 37.6.1 to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
  - 37.6.2 to any consultant or other person engaged by the Customer or any person conducting a gateway review;
  - 37.6.3 for the purpose of the examination and certification of the Customer's accounts;
  - 37.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 37.7 The Customer shall use all reasonable endeavours to ensure that any government department, employee, third party or sub-contractor to whom the Suppliers Confidential Information is disclosed pursuant to Clause 37.6 is made aware of the Customer's obligations of confidentiality.
- 37.8 Nothing in this Clause 37 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 37.9 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Contract or any Order or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.
- 37.10 In the event that the Supplier fails to comply with this Clause 37 the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.
- 37.11 The provisions of this Clause 37 shall apply notwithstanding termination of the Contract.

### **38. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 38.1 The Supplier shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its Staff comply with this Clause 38.1.
- 38.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 38.3 The Suppliers shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

### **39. SECURITY**

- 39.1 The Customer shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The Suppliers shall comply with all reasonable security requirements of the Customer while on the premises and shall ensure that all Staff comply with such requirements.
- 39.2 The Customer shall provide to the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

### **40. INTELLECTUAL PROPERTY RIGHTS**

- 40.1 Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's IPR.
- 40.2 The Parties shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any of the other Parties IPR to any third party.
- 40.3 The Parties shall waive or procure a waiver of any moral rights in any copyright works assigned to the other Party under the Contract.
- 40.4 Each Party hereby grants to the other Party a non-exclusive, revocable, non-assignable licence to use the other Party's IPR during the Contract Period for the sole purpose of enabling the Supplier to supply the Services and/or supply the Deliverables.
- 40.5 Prior to using any third party Intellectual Property Rights, the Supplier shall ensure that they have all necessary third-party licences to enable them to use the third-party Intellectual Property Rights to carry out its obligations under the Contract.
- 40.6 The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the Supplier of the Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:

- 40.6.1 items or materials based upon designs supplied by the Customer; or
  - 40.6.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.
- 40.7 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 40.7.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 40.7.2 shall take due and proper account of the interests of the Customer; and
  - 40.7.3 shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
- 40.8 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-
- 40.8.1 modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
  - 40.8.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- 40.9 In the event that the Supplier is unable to comply with Clauses 40.8.1 or 40.8.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverable that is subject to the Claim.
- 40.10 In the event that a modification or substitution in accordance with Clause 40.8.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 40.8.2 the Customer shall be entitled to delete the relevant Service from the Contract and/or terminate the Contract with immediate effect.
- 40.11 This Clause 40 sets out the entire financial liability of the Supplier with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise hereunder.

#### **41. RECORDS AND AUDIT ACCESS**

- 41.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including, the Goods and/or Services supplied under it, the Call-Off Contracts entered into with the Customer and the amounts paid by Customer.
- 41.2 The Supplier shall keep the records and accounts referred to in Clause 41.1 above in accordance with good accountancy practice.
- 41.3 The Supplier shall on request and upon reasonable notice provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Customer, the Customer's representatives and/or the Auditor as may be required from time to time.
- 41.4 The Customer shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the Supplier or delay the provision or supply of Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer. The Customer will use reasonable endeavours to ensure that all audits are carried out during normal business hours (Monday to Friday, 9AM to 5PM) and on reasonable notice.
- 41.5 Subject to the Customer's rights of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:-
- 41.5.1 all information requested by the Customer within the scope of the audit;
- 41.5.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and/or Services; and
- 41.5.3 access to the Staff.
- 41.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 41, unless the audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

## **CONTROL OF THE CONTRACT**

### **42. TRANSFER AND SUB-CONTRACTING**

- 42.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.
- 42.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are it's the actions and or omissions of its own Staff.
- 42.3 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 42.4 Subject to Clause 42.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- 42.4.1 any Contracting Authority;
- 42.4.2 any other Authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- 42.4.3 any private sector Authority which substantially performs the functions of the Customer;

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

- 42.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 42.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor Authority to the Customer.
- 42.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 42.4 to a Authority which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such Authorities being referred to as "**the Transferee**"):
  - 42.6.1 the rights of termination of the Customer in Clause 56 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - 42.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.
- 42.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 42.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

### **43. WAIVER**

- 43.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 43.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 8 (Notices).
- 43.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

#### 44. VARIATION

- 44.1 Subject to the provisions of this Clause 44, the Customer may request a variation to Goods and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 44.2 The Customer may request a Variation by completing and sending the Call-Off Terms and Conditions Variation form attached at Appendix 4 ("**the Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 44.3 In the event that the Supplier is unable to provide the Variation to the Goods and/or Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
- 44.3.1 agree to allow the Supplier to continue to perform their obligations under the Contract without the Variation; or
  - 44.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 67.
- 44.4 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

#### 45. SEVERABILITY

- 45.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 45.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

#### 46. REMEDIES IN THE EVENT OF DEFECTIVE GOODS

- 46.1 Without prejudice to any other right or remedy which the Customer may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract in relation to any Goods, the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Customer:
- 46.1.1 to rescind the Contract;
  - 46.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

- 46.1.3 at the Customer's option, to give the Supplier the opportunity at the Supplier's expense to either remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 46.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Customer;
- 46.1.5 such failure or non-compliance has not been remedied by the Supplier within ten (10) Working Days of written notice to do so, to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
- 46.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

#### **47. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES**

- 47.1 Where a complaint is received about the standard of Goods or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 56 (Termination) of the Contract.
- 47.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 56 (Termination), do any of the following:
  - 47.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
  - 47.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - 47.2.3 terminate, in accordance with Clause 56 (Termination), the whole of the Contract; and/or
  - 47.2.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 47.3 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.
- 47.4 In the event that the Supplier

47.4.1 fails to comply with Clause 47.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

47.4.2 persistently fails to comply with Clause 47.3 above

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

#### **48. NOT USED**

#### **49. CUMULATIVE REMEDIES**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **50. MONITORING OF CONTRACT PERFORMANCE**

The Supplier shall comply with the monitoring arrangements set out in the Order Form including, providing such data and information as the Supplier may be required to produce under the Contract.

### **LIABILITIES**

#### **51. LIABILITY, INDEMNITY AND INSURANCE**

51.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

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

51.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff; and

51.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods and/or Services Act 1979.

51.2 Subject to Clause 51.3 and Clause 51.4, the Supplier shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods and/or Services by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

51.3 Subject always to Clause 51.4 and Clause 51.5, the liability of either Party under of in connection with this Contract shall be subject to the following financial limits:

51.3.1 the aggregate liability of either Party under or in connection with this Contract for all direct loss of or damage to the property of the other Party shall in no event exceed £5,000,000; and

51.3.2 except for liability covered by clause 51.3.1 above, the annual aggregate liability of either Party under or in connection with the Contract shall in no event exceed the greater of £5,000,000 or 150% per cent of the Contract Price payable by the Customer to the Supplier in the year in which the liability arises.

51.4 Subject to Clause 51.1, in no event shall either Party be liable to the other for any:

51.4.1 loss of profits;

51.4.2 loss of business;

51.4.3 loss of revenue;

51.4.4 loss of or damage to goodwill;

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

51.4.6 any indirect or consequential loss or damage.

51.5 The Customer may, amongst other things, recover as a direct loss:

51.5.1 any additional operational and/or administrative expenses arising from the Supplier's default;

51.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's default; and

51.5.3 the additional cost of procuring replacement Goods and/or Services for the remainder of the Contract Period following termination of the Contract as a result of a default by the Supplier.

51.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

51.7 Save for any insurance policy required by clause 52 below, the Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

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

(b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the 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. .

51.8 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a brokers 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.

51.9 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

51.10 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 51.

## **52. PROFESSIONAL INDEMNITY AND PRODUCT LIABILITY INSURANCE (IF APPLICABLE)**

52.1 Where required in the Order Form or confirmed elsewhere by the Customer, the Supplier shall effect and maintain a professional indemnity insurance policy and/or product liability insurance policy during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Goods and/or Services effect and maintain appropriate professional indemnity insurance and/or product liability insurance policy during the Contract Period.

52.2 To comply with its obligations under this Clause and as a minimum, the Supplier shall ensure professional indemnity insurance and/or a product liability insurance policy held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Goods and/or Services has a limit of indemnity of not less than either the sum set out in the Invitation to Tender for the Framework Agreement or £2,000,000 (whatever is higher) and for each individual claim or such higher limit as the Customer may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

## **53. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods and/or Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract, except where liability arises following a TUPE event.

## **54. WARRANTIES AND REPRESENTATIONS**

54.1 The Supplier warrants and represents that:

54.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

54.1.2 the Contract is executed by a duly authorised representative of the Supplier;

54.1.3 in entering the Contract it has not committed any Fraud;

- 54.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender response for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
  - 54.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
  - 54.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
  - 54.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
  - 54.1.8 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
  - 54.1.9 the Goods and/or Services shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.
- 54.2 In the three (3) years prior to the date of the Contract:
- 54.2.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - 54.2.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - 54.2.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## **DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION**

### **55. SUSPENSION**

- 55.1 Without prejudice to the Customer's right to terminate the Contract in Clause 56 below, if a right to terminate this Contract arises in accordance with these terms and conditions, the Customer may suspend the Supplier's appointment to supply Goods and/or Services by giving notice in writing to the Supplier. If the Customer provides notice to the Supplier in accordance with this Clause 55, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Customer in writing from time to time.
- 55.2 Should the Customer request product or installation testing for any reason whatsoever the Supplier will be suspended from the Framework (at no cost to Liverpool City Council or the Customer) whilst this testing takes place. Any Orders already placed during this period shall be put on hold pending the outcome of the testing. For the avoidance of doubt, installation testing does not include acceptance

testing and refers to any installation problems that may come to light following acceptance testing sign off.

- 55.3 A Supplier's Appointment may be suspended to allow Liverpool City Council and/or a Customer the opportunity to investigate any incidents or complaints that may have arisen relating to the provision of Goods and/or Services under this Framework Agreement. Should this occur the Supplier will be suspended (at no cost to Liverpool City Council or the Customer) whilst investigations take place. Any Orders already placed during this period shall be put on hold pending the outcome.
- 55.4 Following suspension of a Supplier's appointment under this Clause 55 the Supplier will be informed of the outcome as soon as possible and be advised whether or not they the Contract has been terminated with immediate effect.

## **56. TERMINATION**

### **Termination - Insolvency and Change of Control**

- 56.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Supplier is a company and in respect of the Supplier:
- 56.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 56.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 56.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;
  - 56.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 56.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 56.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
  - 56.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 56.1.8 any event similar to those listed in Clause 56.1 occurs under the law of any other jurisdiction.
- 56.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
- 56.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme

or arrangement with, or assignment for the benefit of, the Supplier's creditors;

56.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy;

56.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

56.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;

56.2.5 a creditor or encumbrance 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 the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;

56.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

56.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

56.3 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

56.3.1 being notified that a Change of Control has occurred; or

56.3.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control;

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

56.4 The Customer may terminate the Contract with immediate effect by notice in writing where:

56.4.1 the Supplier are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Goods and/or Services;

56.4.2 the Supplier and its Staff employed in connection with the Goods and/or Services have failed to comply with the relevant Law governing the delivery of Goods and/or Services.

#### **Termination on Default – Minor Breaches**

56.5 Where the Supplier commits a Minor Breach of the Contract, the Customer shall be entitled to issue the Supplier with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Breach and give the Supplier a minimum of ten (10) working days to remedy the Minor Breach.

56.6 If the Supplier commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 56.7.3.

## **Termination on Default – Material Default**

- 56.7 The Customer may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice, where the Supplier commits a Material Default and:
- 56.7.1 the Supplier has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied;
  - 56.7.2 the Material Default is not, in the reasonable opinion of the Customer, capable of remedy;
  - 56.7.3 if the Supplier has committed three (3) or more Minor Breaches within a twelve (12) month rolling period;
  - 56.7.4 a Catastrophic Failure has occurred;
  - 56.7.5 A Consistent Failure has occurred;
  - 56.7.6 where any Goods and/or Services have been tested by an Independent Testing House/Organisation or an Independent Testing Engineer and certifies/states that the Goods and Installation Services do not meet the minimum required standards/specification, the Framework Agreement, and any Orders or Contracts for such Goods and/or Services may be terminated and all outstanding Orders may be cancelled at no cost and without any liability to Liverpool City Council or the Customer; or
  - 56.7.7 where requested the Supplier fails to provide a Certificate of Conformity in relation to any of the Goods supplied under the Contract evidencing that the Goods supplied are certified to the minimum agreed specification.
- 56.8 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 28 (Recovery of Sums Due).
- 56.9 If the Supplier has been suspended in accordance with Clause 55 and the outcome following such suspension shows the Supplier to be at fault, to have provided Goods and/or Services not to the required specification or that the Supplier has acted in breach of this Contract and/or the Framework Agreement the Customer may terminate the Contract by serving written notice on the Supplier with effect from the date specified in such notice.
- 56.10 If any of the provisions in Regulation 73(1) of the Regulations apply the Customer may terminate the Contract by serving written notice on the Supplier with effect from the date specified in such notice.

## **57. BREAK**

The Customer shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Supplier

## **58. FRAMEWORK AGREEMENT**

The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

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

59.1 Where the Customer terminates the Contract under Clause 56 and then makes other arrangements for the supply of Goods and/or Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 56, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

59.2 Where the Customer terminates the Contract under Clause 57 or Clause 58, the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and valuated list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 57.

59.3 The Customer shall not be liable under Clause 59.2 to pay any sum which:

59.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

59.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.

59.4 Save as otherwise expressly provided in the Contract:

59.4.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

59.4.2 Within thirty (30) Working Days of the date of termination or expiry of the Contract, each Party shall return to the other Party any data and Confidential Information belonging to the other Party that is in their possession, power or control, either in its then current format or in a format nominated by the other Party, together with all training manuals and other related documentation, and any other information and all copies, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such period as is necessary for such compliance.

59.4.3 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 27 (Payment and VAT), 29 (Recovery of Sums Due), 30 (Prevention of Bribery and Corruption), 35 (Data Protection Act), 36 (Freedom of Information), 37 (Confidential Information), 40 (Intellectual Property Rights), 41 (Records and Audit Access), 49 (Cumulative Remedies), 51 (Liability, Indemnity and

Insurance), 52 (Professional Indemnity), 59 (Consequences of Expiry or Termination), 61 (Recovery upon Termination) and 65 (Governing Law).

## **60. DISRUPTION**

- 60.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Supplier employed by the Customer.
- 60.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 60.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under the Contract.
- 60.4 If the Supplier's proposals referred to in Clause 60.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 60.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **61. RECOVERY UPON TERMINATION**

- 61.1 On the termination of the Contract for any reason, the Parties shall:
  - 61.1.1 immediately return to the other Party all Confidential Information, Personal Data and the other Parties IPR's in its possession or in the possession or under the control of any sub-contractors, which was obtained or produced in the course of the Services;
  - 61.1.2 immediately deliver to the other Party all Property (including materials, documents, information and access keys) provided to them under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- 61.2 On the termination of the Contract for any reason, the Supplier shall:
  - 61.2.1 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Supplier and/or the completion of any work in progress.
  - 61.2.2 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
  - 61.2.3 Remove any Equipment from the Customer Property within 7 days of the end of the end of the Contract Period.

61.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 61.1 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

61.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 40 shall automatically terminate without the need to serve notice.

## **62. DISASTER RECOVERY**

63. Where a Disaster Recovery Plan is required in the Order Form the Supplier shall comply at all times with the relevant provisions of the aforementioned Disaster Recovery Plan.

63.1 Following the declaration of a Disaster in respect of the provisions of Goods and/or Services, the Supplier shall:

63.1.1 implement the Disaster Recovery Plan;

63.1.2 unless instructed otherwise by the Customer, continue to provide the affected Goods and/or Services to the Customer in accordance with the Disaster Recovery Plan; and

63.1.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

63.2 To the extent that the Supplier complies fully with the provisions of this clause 62 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Supplier), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in the Order Form but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

63.3 Where a Disaster has been declared the Supplier accepts that the Customer shall be entitled to procure the Goods and/or Services from an alternative supplier (who may be a party to the Framework or otherwise) until the Disaster has been resolved to the satisfaction of the Customer.

## **64. FORCE MAJEURE**

64.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

64.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent or sub-contractor shall be regarded as due to Force Majeure only if that agent or sub-contractor is itself impeded by Force Majeure from complying with an obligation to the Supplier.

- 64.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 64.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 64.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 64.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## **DISPUTES AND LAW**

### **65. GOVERNING LAW**

- 65.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.
- 65.2 This Contract is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

### **66. TUPE**

- 66.1 During the period of six (6) Months preceding the expiry of this Contract or after the Customer has given notice to terminate the Contract or the Supplier stops trading, and within twenty (20) Working Days of being so requested by the Customer, the Supplier shall fully and accurately disclose to the Customer, for the purposes of TUPE, all relevant information relating to its Staff who are wholly or mainly engaged in providing the Goods and/or Services under the Contract, in particular but not necessarily restricted to, the following:
- 66.1.1 the total number of Staff whose employment with the Supplier is liable to be terminated at the expiry of the Contract but for any operation of law;
- 66.1.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given);
- 66.1.3 full information about the other terms and conditions on which the affected Staff are employed (including their working arrangements), or about where that information can be found;
- 66.1.4 details of pensions entitlements, if any; and
- 66.1.5 job titles of the members of Staff affected and the qualifications required for each position.
- 66.2 The Supplier shall permit the Customer to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the

Service by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.

- 66.3 The Supplier agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 66, except to the extent such actions, proceedings, claims, expenses, awards, costs and liabilities arise out of the acts or omissions of the Customer, its directors, officers, employees, agents or third party providers.
- 66.4 In the event that the information provided by the Supplier in accordance with Clause 66.1 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Customer of the inaccuracies and provide the amended information.
- 66.5 The provisions of this Clause 66 shall apply during the continuance of the Contract and indefinitely after its termination.

## **67. DISPUTE RESOLUTION**

- 67.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 67.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 67.3 If the dispute cannot be resolved by the Parties pursuant to Clause 66.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 67.5 unless:
  - 67.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
  - 67.3.2 the Supplier does not agree to mediation.
- 67.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 67.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
  - 67.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within then (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to specify relevant mediation Supplier to appoint a Mediator;
  - 67.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of

all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;

- 67.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 67.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 67.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 67.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

# SCHEDULE 1 – ORDER FORM

## ORDER FORM

### FRAMEWORK AGREEMENT (INSERT REF: )

*[Guidance Note: Guidance Notes are highlighted in green shading. The Customer should read the Guidance Notes and consider the information contained within them and insert details as appropriate to their individual requirements within this Framework.*

*Before signing, the Customer should ensure that all Guidance Notes have been deleted before issuing the Contract to the Supplier.*

#### FROM

<b>Customer</b>	
<b>Address</b>	
<b>Invoice Address</b>	
<b>Contact Ref:</b>	Ref: Name: Phone: e-mail:
<b>Order Number</b>	<i>To be quoted on all correspondence relating to this Order.</i>
<b>Order Date</b>	

#### TO

<b>Supplier:</b>	[insert Supplier's name] <b>TO BE COMPLETED FOLLOWING AWARD</b>
<b>Address:</b>	
<b>Contact Details</b>	Name: Phone: Email

<b>1. TERM</b>
<p><b>1.1 Effective Date</b></p> <p>1.1.1 This Contract shall commence on <b>[dd/mm/yyyy]</b>.  <b>[Guidance Note: The Customer should insert the date on which the Contract is to take effect.]</b></p>
<p><b>1.2 Expiry Date</b></p> <p>1.2.1 This Contract shall expire on:</p> <p>1.2.1.1 <b>[dd/mm/yyyy]</b> unless extended at the Customer’s sole discretion for <b>[INSERT TIME PERIOD]</b></p> <p>1.2.1.2 [Completion in accordance with the terms of the Contract, of the Contract Services specified in this Appendix 1]  <b>whichever is the earlier,</b> unless terminated earlier pursuant to this Contract.</p> <p><b>[Guidance Note: The Customer should insert in sub-paragraph 1.2.1.1 the date on which the Contract is to expire or choose sub-paragraph 1.2.1.2; or insert a date in sub-paragraph 1.2.1.1 and retain both sub-paragraphs on a “whichever is the earlier” basis. If the Customer makes reference to an “Initial Period” this should be reflected above, but care should be taken to check the termination clause as termination is not normally permitted within an “Initial Period”]</b></p>

## 2. GOODS AND/OR SERVICES REQUIREMENTS

### 2.1 Contract Goods and/or Services Required

**The Contract Goods and/or Services required are as set out in the Specification attached in Appendix 1(a)**

*[Guidance Note: The Customer should include a description of the Contract Goods and/or Services required, to include any Milestones and associated Deliverables. Consider how requirements specified in this section fit with milestones, key performance indicators and associated Deliverables which should be detailed in Section 3.1 below.*

*The Customer should also consider if there is a need to include any requirement for the following or whether this is something they wish to include in the Specification at Appendix 1(a):*

- *compliance with internal policies and procedures and/or Government code and practices (e.g. relating to, but not limited to, staff vetting, security, equality and diversity, confidentiality undertakings and sustainability etc).*
- *training / skills transfer that the Customer requires the Supplier to provide to the Customer's personnel;*
- *Accreditation of either the Goods and/or Services being delivered/ the Supplier or accredited outcome both prior to and following delivery of the Goods and/or Services*
- *disclosure of Relevant Convictions (e.g. where the Contract Services are being provided -for example at schools- it may be necessary to bar certain staff of the Supplier who have particular convictions and include details of such convictions in this section. If Relevant Convictions are not required)*
- *adherence to relevant quality / technical standards that apply to the Goods and Contract Services to be delivered.*
- *The need to name any specific Key Personnel for delivery of the Contract Services*
- *Timescales for delivery*
- *Do you need an exit strategy? Disaster Recovery Plan?*
- *Safeguarding Requirements?*
- *Additional Insurance requirements?*



**3. PERFORMANCE OF THE CONTRACT SERVICES AND DELIVERABLES**

**3.1 Implementation Plan and Milestones (including dates for completion)**

\*The customer requires an implementation plan to be either \*(a) submitted with the suppliers bid submission; or \*(b) submitted within 14 days of the commencement of the contract.

\*Such milestones/key performance indicators below shall be applicable in addition to any milestones/key performance indicators mutually agreed between the parties and set out in the implementation plan.

**\*Once agreed the Implementation Plan will form part of the contractual documents and failure to meet the milestones/key performance indicators by the stipulated dates may be enforced as a breach of contract.**

**\*TIME IS OF THE ESSENCE FOR DELIVERY OF THE MILESTONES/KEY PERFORMANCE INDICATORS.**

*[Guidance Note: The Customer should consider which Milestones/KPI's should be inserted into the table below, together with associated Deliverables].*

*\* Delete if not appropriate*

(i) The Implementation Plan as at the Effective Date is set out below:

Milestone	Deliverables  (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration  (Working Days)	Milestone Date	Customer Responsibilities (if applicable)
*Provide an Implementation Plan	Parties to agree a mutually acceptable Implementation Plan that must include:-  *Particular milestones  * deadlines for completing the milestones	*14	*If not submitted with bid within 14 days of contract commencement	To mutually agree the Implementation Plan with the Supplier

*Various	<i>Any other milestones or Key Performance indicators as set out in the Implementation Plan</i>		As indicated in the Implementation Plan	
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- (ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.
- (iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- (iv) The Supplier shall perform its obligations so as to achieve each Milestone by the Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

### 3.2 Performance Monitoring

**\*Performance will be monitored by the milestones/key performance indicators set out in \*(a) The Specification \*(B) the Implementation Plan; or \*(c) Point 3.1 above or any combination of the above.**

***[Insert any additional details of how the Customer will monitor the Supplier's performance].***

***\*Delete if not appropriate***

***[Guidance Note: The Customer should include details of how the Customer intends to monitor the Supplier's performance, e.g. reporting, review meetings etc. including frequency of meetings. If a Post Contract Review is required by the Customer this should be stated here]***

## 4. CALL-OFF TERMS AND CONDITIONS (INCLUDING AMENDMENTS DUE TO MINI-COMPETITION)

4.1 Customers **must state** whether they are requiring any amendments or supplemental requirements to be added to the Call- Off Terms and Conditions by virtue of a Mini-Competition or otherwise and if so these must be included in Appendix 3.

**5. SPECIAL TERMS AND CONDITIONS**

**5.1**

**6. CONFIDENTIAL INFORMATION**

**6.1 The following information shall be deemed Commercially Sensitive Information or Confidential Information:**

**6.2 Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information:**

**7. Staff Vetting Procedures**

**The Staff Vetting Procedures are:**

**APPENDIX 1 – SPECIFICATION FOR THE SUPPLY GOODS AND/OR SERVICES**

## APPENDIX 2 - PRICES FOR GOODS AND/OR SERVICES

[AS DETAILED IN THE ATTACHED PRICING SCHEDULE]

### CHARGES FOR SERVICES

#### Contract Charges / Daily Rates / Fees

*[Guidance Note: Customers should consider if it is sufficient to incorporate the pricing elements in the format presented within the Supplier's proposal. If not, Customers should include the following information as obtained from the Supplier's proposal in tabular or similar format.]*

<p><b>Charging mechanism, price and Day Rates</b></p>	<p><b>[Guidance Note: This may be:</b></p> <ul style="list-style-type: none"> <li>• Day Rates</li> <li>• fixed price</li> <li>• Day Rates, capped</li> <li>• other mechanism, as agreed</li> </ul> <p>Where this is a fixed or capped price, state the price. Where this is Day Rates, include a table of agreed rates by grade – or by named individual if relevant.]</p> <p>As detailed in the <b>Pricing Schedule submitted by the Supplier in support of their bid.</b></p>
<p><b>Invoicing arrangements</b></p>	<p><b>[Guidance Note: This may include monthly invoicing; invoicing on Milestones etc. If Milestone payments, these should be specified, including sign-off arrangements for satisfactory completion]</b></p> <p>The Supplier is to invoice the Customer on a monthly basis providing an invoice that contains a breakdown of:</p> <ul style="list-style-type: none"> <li>• *Dates worked</li> <li>• *Hours worked per day</li> <li>• *Name of individual</li> <li>• *Charging Rate</li> <li>• *Purchase Order Number</li> <li>• *Timesheets</li> </ul> <p>On a receipt of a valid Invoice payment will be made to the Supplier within 30 days of the date of the invoice.</p> <p>If an invoice is disputed it will be returned to the Supplier with details on why the invoice cannot be processed for payment.</p> <p><b>Any changes to this standard requirement will need to be set out in the Specification</b></p>
<p><b>Performance-related payment</b></p>	<p><b>[Guidance Note: Detail any performance-related payment arrangements which may have been agreed.]</b></p> <p><b>Not applicable unless stated in the Specification or agreed and confirmed in writing and signed by both Parties.</b></p> <p><b>IF this is used you will need to ensure that it has been robustly addressed in all documentation</b></p>
<p><b>Travel and Subsistence</b></p>	<p><b>[Guidance Note: Insert details of any applicable rates and conditions.]</b></p>

	<p><i>May Not be applicable – depends on how you structure the pricing schedule whether you ask for them to be included within the price or you arrange for the pricing schedule to list them separately</i></p>
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**APPENDIX 3: (VARIATIONS AND/OR SUPPLEMENTS TO THE CALL-OFF TERMS)**

**THIS WILL HAVE TO BE CONSIDERED WITH YOUR LEGAL DEPARTMENT AS TO WHETHER OR NOT ANY OF THE CALL-OFF TERMS AND CONDITIONS NEED TO BE AMENDED.**

**CUSTOMERS WILL NEED TO TAKE THEIR OWN INDEPENDENT LEGAL ADVICE IN RELATION TO COMPLETION OF THIS SCHEDULE**

*[Guidance Note: Customers **must state** which set of call-off terms and conditions they wish to amend in relation to the provision of these goods and/or services. ]*

*[Guidance Note: Please insert variations and / or supplements to the Call-Off Terms as required by the Customer]*

**APPENDIX 4 - CALL-OFF TERMS AND CONDITIONS VARIATION FORM**

**CALL-OFF TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES**

[Name of Lot]  
.....

**No of Order Form being varied:**.....

**Variation Form No:**.....

**BETWEEN:**

[ ] ("the Customer")

and

[ ] ("the Supplier")

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Customer**

Signature .....

Date .....

Name in Capitals .....

Address .....

**Authorised to sign for and on behalf of the Supplier**

Signature .....

Date .....

Name in Capitals .....

Address .....

.....

.....

.....

## APPENDIX 5: SUPPLIERS TENDER

**APPENDIX 6 - SUPPLEMENTAL TENDER (FOR COMPETED SERVICES)**



**SIGNATORY PAGE:**

**BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES** to enter a legally binding contract with the Customer to provide to the Customer the Goods and/or Services specified in this Order Form (together with where completed and applicable, the mini-competition order (additional requirements) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Supplier and Liverpool City Council on [ ] 202[ ].

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	



## Schedule 4 Contract management

### 1. MEETINGS

1.1 Meetings shall take place as set out in Schedule 1 in the applicable 'Service Specification', but shall adhere to the following details:-

- (a) *Type* – Service Review and Spend Analysis
- (b) *Quorum* – Service Provider Authorised Representative and Authority Authorised Representative
- (c) *Frequency* – Monthly
- (d) *Agenda*- Meetings should include discussion and analysis of the following areas:-
  - (i) Spend Analysis
  - (ii) Management Information
  - (iii) Pricing benchmarking
  - (iv) Review of Performance of KPI's
  - (v) Achievement against any Social Value targets

### 2. REPORTS

2.1 Reports shall be formed by the Service Provider as set out in Schedule 1 in the applicable 'Service Specification'.

2.2 Where stated in the applicable 'Specification' in Schedule 1 or elsewhere by the Authority all communications and submission of Management Information in relation to the Framework Agreement or Contract will be conducted via the Authority's 'Contract Management Portal' (currently found at <https://liverpoolcc.force.com/s/Welcome>).

## Schedule 5 Framework Agreement Variation Procedure

### 1. INTRODUCTION

- 1.1 Schedule 5 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
- 1.2 The Authority may propose a variation to the Framework Agreement under Schedule 5 only where the variation does not amount to a material change in the Framework Agreement or the Services.

### 2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Authority shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Notice of Variation**).
- 2.3 The Notice of Variation shall:
  - (a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
  - (b) require each Framework Provider to notify the Authority within seven days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 On receipt of the Notice of Variation, each Framework Provider has seven days to respond in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within seven days of receipt.

- 2.6 On receipt of a signed agreement from each Framework Provider, the Authority shall notify all Framework Providers in writing of the commencement date of the variation.

**3. OBJECTIONS TO A VARIATION**

In the event that the Authority receives one or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

**4. CHANGES TO THE PRICING MATRICES**

- 4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.

- 4.2 The Authority may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.

- 4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Framework Provider in writing.

- 4.4 In the event that the Authority and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Authority may:

- (a) withdraw the variation; or
- (b) propose an amendment to the variation.

**5. VARIATIONS THAT ARE NOT PERMITTED**

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
- (b) is in contravention of any Law.

## Schedule 6 Data Processing

- 1.1. The contact details of the Authority Data Protection Officer are: [REDACTED]  
[REDACTED] DPO@liverpool.gov.uk.
- 1.2. The contact details of the Supplier's Data Protection Officer are: [REDACTED]  
[REDACTED]
- 1.3. The Framework Provider shall comply with any further written instructions with respect to Processing by the Authority.
- 1.4. Any such further instructions shall be incorporated into this Annex.

Description	Details
<b>Identity of Controller and Processor for each Category of Personal Data</b>	The Authority is Controller and the Supplier is Processor  The Parties acknowledge that in accordance with paragraphs 2 to paragraph 15 of Schedule 7 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the Personal Data detailed in this table.
<b>Duration of the Processing</b>	The Processing will commence on the Commencement Date of the Contract and will continue until the Termination of the Contract, unless otherwise advised, in writing, by the Customer.
<b>Nature and purposes of the Processing</b>	The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.
<b>Type of Personal Data</b>	Personal Data may include, but is not limited to name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.
<b>Categories of Data</b>	Categories of Data Subject may include, but is not

<b>Subject</b>	limited to employees of the Customer and partner organisations, employees of the Supplier, members of the public.
<b>International transfers and legal gateway</b>	[Explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract]
<b>Plan for return and destruction of the data once the Processing is complete</b>	The supplier must destroy all personal data within ten working days of the Termination of the Contract unless otherwise advised in writing by the Customer, or as required by relevant law.

## Schedule 7 Key Performance Indicators

# ICT Hardware and Professional Services Framework\_25

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## Appendix H – Key Performance Indicators

### 1. Part 1 – The KPIs

- 1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services and/or delivery of the Goods by the Supplier are contained in the below table.

Ref	KPI Title	KPI Description	Method of calculating delivery	Frequency Measurement	Target	Good	Approaching Target	Requires Improvement	Inadequate
KPI01	Account Manager	The Supplier will ensure that there is a Named Account Manager in place throughout the lifetime of the Framework.	No of days without a Named Account Manager	Quarterly	100% of the term of the contract	100% of the term of the contract	<=5 Days	<=10 Days	>10 Days
KPI02	Management Information	The Supplier will provide Management Information for all activity undertaken against the Framework.	Number of Days Late	Quarterly	Within 5 days of the end of the quarter	Within 5 days of the end of the quarter	1-2 days late	3-5 days late	>5 days late
KPI03	Insurances	The Supplier will provide up to date insurances for each year of the Framework.	Number of Days Late	Annually	Proof of insurances to be provided within 7 days of each anniversary of the Framework	Within 7 days of each anniversary of the Framework	1-2 days late	3-5 days late	>5 days late
KPI04	Accreditations	The Supplier will provide proof of	Number of Days	Annually	Proof of accreditations	Within 7 days of each	1-2 days late	3-5 days late	>5 days late

		accreditations for each year of the Framework.	Late			to be provided within 7 days of each anniversary of the Framework	anniversary of the Framework			
KPI05	Financial Report	The Supplier will provide an annual financial report. This can be a copy of the annual financial statement including profit/loss and balance sheet.	Number of Days Late	Annually		Financial report to be provided within 7 days of each anniversary of the framework	Within 7 days of each anniversary of the Framework	<=10 Days late	<=25 Days late	>25 Days late
KPI06	Contract Management Meetings	The Supplier will comply in attending all review meetings they are required to attend and specified. This shall include; 1. Monthly Service Review Meetings 2. Annual Service Improvement Meetings 3. Bi Annual Technology Roadmap (Lots 1	Pass / Fail per meeting	Quarterly		100% attendance	100% attendance	1 Fail per quarter	2 Fails per quarter	>2 Fails per quarter

		and 2 only) 4. Bi-Annual Vendor Workshops (Lots 1 and 2 only)										
KPI07	Vendor Workshop Options Paper	Following each bi-annual vendor workshop the supplier will produce an options paper with a specific recommendation within 10 working days of the workshop.	Number of Days Late	Bi-Annually	Options paper to be provided within 10 days of each vendor workshop	Within 10 days of the end of each vendor workshop	1-2 days late	3-5 days late	>5 days late			
KPI08	Service Improvement Report	The Supplier will provide an annual report regarding Service Improvement Plans.	Number of Days Late	Annually	Report to be provided within 21 days of the annual Service Improvement Meeting	Within 21 days of the annual Service Improvement Meeting	<=5 Days	<=10 Days	>10 Days			
KPI09	Transaction Order Report	The Supplier will provide a quarterly Transaction Report detailing orders transacted under this Framework	Number of Days Late	Quarterly	Report to be provided within 5 days of the end of each quarter	Within 5 days of the end of each quarter	1-2 days late	3-5 days late	>5 days late			

KPI10	Quotations	showing cost and mark-up.	The Supplier will submit all quotations and responses to requests for pricing (via the e-tendering portal for lot 2 only), as requested in the Specification, within 5 working days for standard quotations and within 2 working days for priority quotations.	% Score = No. of Times Quotations or Requests Submitted Within Timescales / No. of Times Quotations or Requests Were Requested * 100	Quarterly	95%	<95%	<90%	>80%		
KPI11	Catalogue Pricing	The Supplier will provide a Catalogue detailing pricing of Core Items showing the new and previous price.	The Supplier will provide a Catalogue detailing pricing of Core Items showing the new and previous price.	Number of Days Late	Quarterly	Catalogue to be provided within 5 days of the end of each quarter	Within 5 days of the end of each quarter	3-5 days late	>5 days late		
KPI12	Outstanding Orders Report	The Supplier will provide a weekly outstanding order report detailing anticipated delivery date, order	The Supplier will provide a weekly outstanding order report detailing anticipated delivery date, order	Pass / Fail per Report	Quarterly	Report to be provided each Monday	Report to be provided each Monday	2 Fails per quarter	>2 Fails per quarter		

KPI13	Non-Liverpool City Council Order Report	number, project reference, project manager's name and product information	The Supplier will provide a monthly report detailing any orders placed by other organisations named on the framework.	Pass / Fail per Report	Monthly	Report to be provided within 5 days of the end of each month	Report to be provided within 5 days of the end of each month	1 Fail per quarter	2 Fails per quarter	>2 Fails per quarter
KPI14	Asset Tagging	The Supplier shall continually ensure that all equipment requiring asset tagging have been correctly asset tagged and reported as per Specification.	% Score = No. of Times Warranty Registrations Required and submitted to the Authority/Customer on time / No. of Times Warranty Registrations were required during the reporting period * 100	Quarterly	Quarterly	100%	100%	1 Fail per quarter	2 Fails per quarter	>2 Fails per quarter
KPI15	Warranty Registrations	The Supplier shall ensure that standard warranty registrations are completed with the	Number of orders where asset tagging and reporting has not been	Quarterly	Quarterly	98%	98%	<=98%	<=95%	<=90%



- 1.2 The Supplier shall monitor its performance against each Target KPI and shall send the Authority/Customer a report detailing the Achieved KPIs in accordance with this Schedule.

## Part 2 Consistent failure

### 1. Consistent failure

In this Contract, **Consistent Failure** shall mean:

- (a) a failure to meet:
  - (i) 3 or more of the Inadequate in a rolling 12 month period; or
  - (ii) 5 or more of the Requires Improvement in a rolling 12 month period;  
or
  - (iii) 7 or more of the Approaching Target in a rolling 12 month period; or
  - (iv) 10 or more Failures which are combined across each measurement  
in a rolling 12 month period.

#### **AND/OR**

- (b) the Supplier repeatedly breaching any of the terms of this Contract 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 this Contract.



