

2025

The Association of North East Councils Limited trading as the North East  
Procurement Organisation (NEPO)

Framework Agreement for Goods

## CONTENTS

Clause	Page
1. INTERPRETATION .....	1
2. TERM OF FRAMEWORK AGREEMENT .....	6
3. SCOPE OF FRAMEWORK AGREEMENT .....	6
4. CONTRACTOR'S APPOINTMENT .....	7
5. NON-EXCLUSIVITY .....	7
6. AWARD PROCEDURES – ENTERING INTO A CALL-OFF CONTRACT .....	7
7. CALL-OFF CONTRACT PERFORMANCE .....	11
8. MANAGEMENT PREMIUM.....	11
9. TERMINATION BY NEPO.....	11
10. CONSEQUENCES OF TERMINATION AND EXPIRY .....	13
11. TRANSFER AND SUB-CONTRACTING .....	13
12. DATA PROTECTION .....	13
13. FREEDOM OF INFORMATION .....	17
14. PROCUREMENT ACT DISCLOSURES .....	17
15. VARIATIONS TO THE FRAMEWORK AGREEMENT .....	17
16. SURVIVAL.....	18
17. THIRD PARTIES.....	18
18. LAW AND JURISDICTION.....	18
19. ENTIRE AGREEMENT .....	18
SCHEDULE 1 .....	19
Call-Off Terms and Conditions .....	19
APPENDIX 1.....	50
Schedule 1 – Appendix 1 .....	50
EPS Rebates which the Contracting Authority may deduct and retain.....	50
APPENDIX 2.....	52
Schedule 1 – Appendix 2 .....	52
Data Protection.....	52
APPENDIX 3.....	53
Schedule 1 – Appendix 3 .....	53
Pricing Schedule .....	53
APPENDIX 4.....	54
Schedule 1 – Appendix 4 .....	54
Special Terms and Conditions .....	54
APPENDIX 5.....	55
Schedule 1 – Appendix 5 .....	55
Specification .....	55
APPENDIX 6.....	56
Schedule 1 – Appendix 6 .....	56
Contract Management Plan .....	56
SCHEDULE 2 .....	57
Framework Particulars .....	57
SCHEDULE 3 .....	59
Data Protection.....	59
SCHEDULE 4 .....	60
Form of Order .....	60

23.06. 2025

## PARTIES

- (1) The Association of North East Councils Limited trading as the North East Procurement Organisation (CN 05014821) whose registered office is at City Hall Sunderland City Council, City Hall, Plater Way, Sunderland, Tyne And Wear, England, SR1 3AA (**NEPO**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**).

## BACKGROUND

- (A) NEPO conducted market engagement in April 2025 seeking expressions of interest from potential suppliers for the provision of Goods to itself and Other Contracting Bodies identified in the contract notice under a framework arrangement.
- (B) Following receipt of expressions of interest, NEPO invited potential suppliers (including the Contractor) on 8 May 2025 to tender for the supply of frozen food.
- (C) On the basis of the Contractor's Tender, NEPO selected the Contractor to enter a framework agreement to supply goods and ancillary services to those Contracting Authorities who enter into Call-Off Contracts in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for entering into Call-Off Contracts, the main terms and conditions for the provision of the Goods and Services and the obligations of the Contractor under this Framework Agreement.
- (E) It is the Parties' intention that Contracting Authorities have no obligation to enter into Call-Off Contracts with the Contractor under this Framework Agreement or at all.

**IT IS AGREED** as follows:-

### 1. INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

**Acceptance Notice** a notice in writing setting out the Contracting Authority's acceptance of the Contractor's Offer.

**Associated Person** any person the Contractor relies or relied upon to satisfy the Conditions of Participation (other than a guarantor).

**Authorised Officer** the person duly appointed by NEPO and notified in writing to the Contractor to act as the representative of NEPO for the purpose of the Framework Agreement in the Framework Particulars or as amended from time to time and in default of such notification NEPO's Managing Director or similar responsible officer.

**Business Day** any day other than a Saturday or Sunday or a public or bank holiday in England.

**Call-Off Award Criteria** the award criteria to be used for Call –Off Contracts as set out in the Invitation to Tender.

<b>Call-Off Contract</b>	a contract between the Contractor and a Contracting Authority entered into pursuant to this Framework Agreement under which the Contractor will supply services to the Contracting Authority.
<b>Call-Off Terms and Conditions</b>	the terms and conditions at Schedule 1.
<b>Commencement Date</b>	the date set out in the Framework Particulars.
<b>Conditions of Participation</b>	the criteria and/or conditions applied to the selection of the Contractor as a shortlisted supplier which resulted in the award of this Framework Agreement.
<b>Connected Person</b>	in relation to the Contractor or a sub-contractor (as context requires): <ul style="list-style-type: none"> <li>(a) a person with "significant control" (within the meaning given by section 790C(2) of the Companies Act 2006);</li> <li>(b) a director or shadow director;</li> <li>(c) a parent undertaking or a subsidiary undertaking;</li> <li>(d) a predecessor company;</li> <li>(e) any other person who it can reasonably be considered stands in an equivalent position as a person within paragraph (a) to (d);</li> <li>(f) any person with the right to exercise, or who actually exercises, significant influence or control;</li> </ul> any person over which the supplier has the right to exercise, or actually exercises, significant influence or control.
<b>Contracting Authority</b>	any local authority or public body identified in the FTS notice (if applicable) and/or the Invitation to Tender entitled to use this Framework Agreement and enter into a Call-Off Contract by virtue of their membership or affiliation with NEPO.
<b>Contractor(s)</b>	the contractor(s) who has/have been appointed under the Framework and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members.
<b>Control</b>	control as defined by section 1124 of the Corporation Tax Act 2010.
<b>Data Controller</b>	has the meaning set out in the Data Protection Legislation.
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement.
<b>Data Processor</b>	has the meaning set out in the Data Protection Legislation.
<b>Data Protection Legislation or DPL</b>	(a) UK GDPR, the LED and any applicable national implementing laws as amended from time to time; and then

	(b) the Data Protection Act 2018 and/or any other successor legislation to the UK GDPR or DPA 2018; and
	(c) all applicable Law about the processing of personal data and privacy.
<b>Data Sharing Agreement</b>	a formal agreement that documents what data is being shared and how the data can be used between the Parties.
<b>Data Sharing Code of Practice</b>	the code of practice issued by the Information Commissioner in respect to the sharing of personal data.
<b>Data Sharing Impact Assessment</b>	an assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Subject</b>	has the meaning set out in the Data Protection Legislation.
<b>Data Subject Access Request</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>EIR</b>	The Environmental Information Regulations 2004.
<b>Excludable Supplier</b>	has the meaning given to it in section 57(2) of the PA 2023.
<b>Excluded Supplier</b>	has the meaning given to it in section 57(1) of the PA 2023.
<b>Exclusion Grounds</b>	<p>where the Contractor:</p> <p>(a) is an Excluded Supplier; or</p> <p>(b) has, since the award of the Framework Agreement, become an Excludable Supplier on the basis of a discretionary exclusion ground that:</p> <p style="padding-left: 40px;">(i) did not apply before the award of the Framework Agreement; or</p> <p style="padding-left: 40px;">(ii) applied before the award of the Framework Agreement by reference to different circumstances; or</p> <p>(c) NEPO or the Contracting Authority discovers that, before the award of the Framework Agreement or Call-Off Contract, the Contractor was an Excludable Supplier,</p> <p>provided that, where the Contractor's status as an Excluded Supplier or Excludable Supplier is due to an Associated Person, the Contractor has been given reasonable opportunity to replace the Associated Person.</p>
<b>FOIA</b>	The Freedom of Information Act 2000.
<b>Framework</b>	the overarching arrangement whereby NEPO appoints the Contractor and others as potential suppliers of the Goods and Services to the Contracting Authorities.
<b>Framework Agreement</b>	the agreement between NEPO and each supplier appointed to the Framework (including the Contractor) which sets out the terms governing contracts to be awarded during the Term and which incorporates:

	(a) the Framework Agreement;
	(b) the Invitation to Tender; and
	(c) the Tender.
<b>Framework particulars</b>	the details relating to the Framework Agreement set out at Schedule 2.
<b>Goods</b>	the goods described in the Invitation to Tender, to be supplied by the Contractor in accordance with the Framework Agreement.
<b>Guidance</b>	any guidance issued or updated by the UK Government from time to time in relation to the PA 2023.
<b>Invitation to Tender</b>	NEPO's invitation to tender for appointment to the Framework including all the Schedules thereto.
<b>Joint Data Controller</b>	has the meaning set out in the Data Protection Legislation.
<b>Law</b>	any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, any saved enforceable community rights under European Communities Act 1972 as provided in withdrawal legislation, regulatory policy, guidance or industry code, judgment of a relevant court of law, or applicable directives or requirements of any Regulatory Body.
<b>LED</b>	Law Enforcement Directive (Regulation (EU) 2016/679).
<b>Liabilities</b>	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
<b>Nominated Representative</b>	the person duly appointed by the Contracting Authority to act as that Contracting Authority's nominated representative as notified to the Contractor within an Order or otherwise from time to time.
<b>Offer</b>	an offer to provide the Goods and Services detailed in an Order Form.
<b>Offer Notice</b>	a notice provided in writing setting out the Contractor's Offer to provide the Goods and Services.
<b>Open Book</b>	the complete and accurate financial and non-financial information which is required by the Contracting Authority to enable the Contracting Authority to understand and verify all costs and payments affecting the Price including; <ul style="list-style-type: none"> <li>i) the Contractor's actual cost breakdown and overheads;</li> <li>ii) all interest, expenses and other third party financing costs incurred in relation to provision of the Goods and Services; and</li> <li>iii) full details of payments to employees, key persons and/or subcontractors and any other third party in relation to provision of the Goods and Services,</li> </ul>
<b>Order</b>	an order for Goods and Services (or either of them) served by the Contracting Authority on a Contractor in accordance with the Ordering Procedures.

<b>Ordering Procedures</b>	the ordering and award procedures specified in Clause 6.
<b>PA 2023</b>	the Procurement Act 2023 and any regulations enacted under it (including but not limited to the Procurement Regulations 2024).
<b>Party</b>	NEPO and the Contractor (or either of them).
<b>PCards</b>	Purchase Cards.
<b>Personal Data</b>	has the meaning set out in the Data Protection Legislation.
<b>Price</b>	the price of the Goods and Services (or either of them) detailed in the Pricing Schedule and specified, in relation to the Call-Off Contract, in the Order Form. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
<b>Pricing Schedule</b>	the Contractor's completed schedule from the Invitation to Tender detailing the applicable prices for the Goods and Services
<b>Protective Measures</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
<b>Rectification Period</b>	the timescale set out in any Termination Notice for the Contractor to either: (a) make representations relating to NEPO's intended termination of the Framework Agreement; or (b) cease sub-contracting to an Excluded Supplier or Excludable Supplier.
<b>Replacement Contractor</b>	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract.
<b>Selection Process</b>	a 'Mini Competition' or 'No Further Competition' process carried out by a Contracting Authority in order to establish a Call-Off Contract.
<b>Services</b>	any ancillary services described in the Specification to be supplied by the Contractor in accordance with the Call-Off Contract
<b>Special Terms and Conditions</b>	additional terms and conditions (in addition to the Call-Off Terms and Conditions) to be incorporated into an individual Call-Off Contract, consisting of amendments to the Call-Off Terms and Conditions and supplementary provisions contained in the Order and once the Order is accepted to be annexed as Appendix 4 to the Call-Off Terms and Conditions.
<b>Sub-processor</b>	any third party appointed to process Personal Data on behalf of the Contractor related to this Framework Agreement.
<b>Tender</b>	the Contractor's tender for admission to the Framework in response to NEPO's Invitation to Tender.
<b>Term</b>	the period commencing on the Commencement Date and continuing for the period specified in the Framework Particulars or ending on the date shown in the Framework Particulars unless this Framework Agreement is terminated earlier in accordance with its terms.

**Termination Notice** has the meaning set out in Clause 9.5.

- 1.2 The interpretation and construction of this Framework Agreement shall be subject to the following provisions:-
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
  - 1.2.4 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;
  - 1.2.5 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 or replaced by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
  - 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
  - 1.2.7 in the event and to the extent only of any conflict between the provisions of the Call-Off Terms and Conditions, Special Terms and Conditions and the Framework Agreement (excluding the Schedule) then, the application of the clauses shall prevail in the following order:
    - (a) Special Terms and Conditions;
    - (b) Call-Off Terms and Conditions;
    - (c) Framework Agreement.

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

- 2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.
- 2.2 If the Framework Particulars includes an option to extend the Framework Agreement and NEPO intends to take up the option, the Contractor shall be notified in writing within the period stated in the Framework Particulars prior to the commencement of the extension. If no such notification is issued the Framework Agreement shall automatically expire after the initial Contract Period.
- 2.3 Clause 2.1 and 2.2 shall not apply to any Call-Off Contract made under this Framework Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Call-Off Contract.

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

- 3.1 This Framework Agreement governs the relationship between NEPO and the Contractor in respect of the operation of the Framework and the provision of Goods and Services (or either of them) by the Contractor to the Contracting Authorities.



- 3.2 Any Contracting Authority may at their absolute discretion and from time to time enter into Call-Off Contracts for the provision of Goods and Services (or either of them) from the Contractor in accordance with the Ordering Procedure during the Term.
- 3.3 The Contractor acknowledges that there is no obligation for any Contracting Authority to purchase any Goods and Services (or either of them) from the Contractor during the Term.
- 3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by any Contracting Authority in respect of the total quantities or values of the Goods and Services (or either of them) to be purchased by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.5 Where a Contracting Authority has utilised this Framework Agreement to purchase the Goods and Services (or either of them) from the Contractor, the Contractor is precluded, for the Term, from entering into any other contractual arrangements with that Contracting Authority outside of the Framework Agreement for the provision of the same Goods.

#### **4. CONTRACTOR'S APPOINTMENT**

- 4.1 NEPO appoints the Contractor as a potential supplier of the Goods and Services (or either of them) referred to in the Invitation to Tender and the Contractor shall be eligible to be considered for the award of Call-Off Contracts for such Goods and Services (or either of them) by a Contracting Authority during the Term.
- 4.2 The Contractor shall notify the Contracting Authority or NEPO of any changes to Connected Persons as soon as possible after the Contractor becomes aware of the change and in any event within ten (10) Business Days.

#### **5. NON-EXCLUSIVITY**

- 5.1 The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by NEPO or any Contracting Authority for Goods and Services from the Contractor and that NEPO and a Contracting Authority is at all times entitled to enter into other contracts and agreements with other Contractors for the provision of any of the Goods and Services (or either of them).

#### **6. AWARD PROCEDURES – ENTERING INTO A CALL-OFF CONTRACT**

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

##### **No Further Competition**

- 6.1 Where the Invitation to Tender allows for a Contracting Authority to award without re-opening competition a Contracting Authority shall, when ordering Goods and Services:-
- 6.1.1 identify the relevant Goods and Services;
- 6.1.2 (where there is more than one supplier appointed to the Framework) select the Contractor in accordance with the method set out in the Invitation to Tender, or where the Invitation to Tender does not specify a selection method, identify the Contractor who offers best value for money for those Goods and Services (or either of them) on the basis of the price(s) submitted by the Contractor in its Tender and who is able to fulfil the Order within the time specified;
- 6.1.3 place an Order with the successful Contractor which:-
- (a) states the requirements;

- (b) identifies the Goods and Services;
- (c) states the price payable in accordance with the Tender submitted by the successful Contractor: and
- (d) incorporates the Call-Off Terms and Conditions (supplemented and amended for the particular Order to the extent permitted by and in accordance with the requirements of the PA 2023 and Guidance where applicable).

### **Mini Competition**

- 6.2 Where there is more than one supplier appointed under the Framework and the Invitation to Tender provides for mini competitions, a Contracting Authority wishing to run a mini competition shall, prior to placing an Order:
- 6.2.1 subject to Clause 6.3, identify the suppliers capable of performing the Call-Off Contract for the Contracting Authority's requirements;
  - 6.2.2 supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the PA 2023 and Guidance where applicable;
  - 6.2.3 invite tenders by conducting a mini-competition for its requirements in accordance with the Invitation to Tender, the PA 2023 and Guidance where applicable and in particular:
    - (a) confirm prior to the mini-competition whether or not the Contracting Authority intends to follow this with an electronic auction or use the mini-competition alone. If the Contracting Authority intends to use an electronic auction the Contracting Authority shall provide all contractors with full details prior to the electronic auction including but not limited to how the electronic auction is to be conducted and the outcome of the mini-competition communicated;
    - (b) consult in writing all the Contractors capable of performing the Call-Off Contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
    - (c) ensure that the Call-Off Award Criteria provide for the assessment of tenders by reference to one or more of the award criteria against which tenders were assessed when awarding the Framework;
    - (d) set a time limit for the receipt by it of the tenders; and
    - (e) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
  - 6.2.4 apply the Call-Off Award Criteria, including where relevant in any pricing the consideration of any and all additional cost(s) to the Contracting Authority, to the Contractors' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements.
- 6.3 NEPO may exclude the Contractor from participating in any Selection Process if the Exclusion Grounds apply.
- 6.4 A Contracting Authority may exclude the Contractor from participating in a Selection Process held by the relevant Contracting Authority if the Exclusion Grounds apply.
- 6.5 The Contractor agrees that all tenders submitted by the Contractor in relation to a mini-competition held pursuant to Clause 6.2 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation issued by a Contracting Authority in accordance with the Ordering Procedure).

- 6.6 Notwithstanding the fact that a Contracting Authority has followed the procedure set out above in this Clause 6, a Contracting Authority shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige NEPO or any Contracting Authority to enter into a Call-Off Contract.
- 6.7 The Contracting Authority shall be entitled to deliver an Order to the supplier which has been successful in the mini competition.

#### **Form of Order**

- 6.8 Where, pursuant to Clause 6 above, a Contracting Authority wishes to place an Order with the Contractor it shall do so by delivering an Order Form in writing in such form and by such method as the Contracting Authority has agreed with the Contractor. Methods of delivery may include facsimile, electronic mail or other on-line solutions.
- 6.9 The Order does not constitute an offer by a Contracting Authority to purchase the Goods and Services (or either of them) subject to the Call-Off Terms and Conditions.

#### **Accepting and Declining Orders**

- 6.10 Following receipt of an Order, the Contractor shall promptly, and in any event within 14 days of receipt, acknowledge receipt of the Order and either:-
- 6.10.1 notify the Nominated Representative in writing that it declines to make an Offer; or
  - 6.10.2 notify the Nominated Representative in writing that it makes an Offer (**Offer Notice**).
- 6.11 If the Contractor:-
- 6.11.1 notifies the Nominated Representative that it declines to make an Offer; or
  - 6.11.2 the time-limit referred to in Clause 6.10 or indicated by the Contracting Authority within the Order (as applicable) has expired, then the Contractor may no longer make an Offer and the Contracting Authority may:
    - (a) provide any other supplier appointed to the Framework the opportunity to make an Offer (in the case of an Order pursuant to Clause 6.1); or
    - (b) provide the supplier that submitted the next most economically advantageous tender in accordance with the Call-Off Award Criteria the opportunity to make an Offer (in the case of an Order placed pursuant to Clause 6.2); or
    - (c) if there is only one supplier appointed under the Framework Agreement, or there is no other capable supplier, the Contracting Authority may make alternative arrangements for the provision of the Goods and Services (or either of them).
- 6.12 Following receipt of an Offer Notice, the Contracting Authority may, within 10 Business Days, either:
- 6.12.1 issue an Acceptance Notice; or
  - 6.12.2 reject the Offer.
- 6.13 The Contractor acknowledges that the Contracting Authority must issue a contract award notice and observe the mandatory standstill period in accordance with its obligations under the PA 2023 prior to issuing an Acceptance Notice.
- 6.14 If the Contracting Authority agrees to accept an Offer pursuant to Clause 6.10 above by issuing an Acceptance Notice, it shall enter into a Call-Off Contract with the Contractor for the provision of the Goods and Services referred to in the Order. A Call-Off Contract shall be formed on the

Contractor's receipt of the Acceptance Notice provided by the Contracting Authority pursuant to Clause 6.12.1.

### **Contractor Pricing**

- 6.15 In submitting a bid pursuant to Clause 6.2 or in making an Offer pursuant to Clause 6.1 the Contractor shall be obliged to offer the Contracting Authority the prices contained in the Tender.
- 6.16 Except as expressly provided in this Framework Agreement, no variations shall be made to Price during the Term.
- 6.17 The Price charged by the Contractor for the Goods and Services shall not be in excess of the Contractor's capped price as detailed in the Pricing Schedule. This clause 6.17 shall apply for the duration of each Call-Off Contract regardless of whether that Call-Off Contract expires before or after the termination or expiry of the Framework Agreement.
- 6.18 The Price for the Goods and Services shall remain unchanged for an initial period of three (3) months from the Commencement Date.
- 6.19 The Contractor may submit a request to vary the Price following the initial period of three (3) months from the Commencement Date by providing NEPO with not less than four (4) weeks' notice. Any request for a price variation must be submitted in accordance with the Invitation to Tender instructions. To request variation in Price, the Contractor shall:
- 6.19.1 Provide NEPO with justification for any variation in Price and provide such information as NEPO may reasonably require evidencing an increase in the cost of elements constituting the price which cannot be reasonably mitigated by the Contractor; and
  - 6.19.2 When requested, provide a Contracting Authority with an individual impact report for any price increase request once the price increase request has been submitted to NEPO; and
  - 6.19.3 Use its best endeavours to manage its costs to mitigate the impact of any cost increases.
- 6.20 In the event that goods equivalent to the Goods become available at a lower price during the Term, the Contractor shall notify NEPO and NEPO may invite the Contractor to agree a downward revision to the Price. For the avoidance of doubt, any reduction to the Price agreed shall not be limited in any way by the price available in the market.
- 6.21 If, during the Term, following the expiry of the initial three (3) months, the Price is affected by events, circumstances or causes beyond the Contractor's reasonable control, such as, detrimental changes to the law or statutory requirements, an epidemic or pandemic, terrorist attack, war, national emergency or other extraordinary circumstances, which necessitates a price variation, then either party may approach the other to request a Price variation.
- 6.22 NEPO reserves the right to continually monitor and test the market in the provision of the Goods for the purpose of comparing and benchmarking the Price against the current market price. In this regard, the Contractor must operate an Open Book accounting policy and permit NEPO to access the Contractor's records at any point during the Term. The Contractor's records must also be available for inspection to support any Price variation requests.
- 6.23 NEPO may, in its sole discretion, approve or reject any requested Price variation, in whole or in part.
- 6.24 Variations to the Price will only become effective when agreed and accepted in writing by NEPO's Authorised Officer and any Price variation will be effective from the date notified to the Contractor by NEPO and will not be retrospectively applied from the date of the request.
- 6.25 The Contractor shall be required to submit updated price lists upon an agreed Price variation.

- 6.26 If NEPO and the Contractor are unable to agree a Price variation and the Contractor notifies NEPO that it is unable to continue to supply items at the current Price, NEPO may treat this as notification that the Contractor is no longer able to supply under the Framework and the Contractor's inclusion on the Framework may be terminated in accordance with Clause 9.1.

## **7. CALL-OFF CONTRACT PERFORMANCE**

- 7.1 The Contractor shall perform all Call-Off Contracts entered into with a Contracting Authority in accordance with:-
- 7.1.1 the requirements of this Framework Agreement; and
  - 7.1.2 the Call-Off Terms and Conditions, including any Special Terms and Conditions of the respective Call-Off Contracts.
  - 7.1.3 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement (excluding the Call-Off Terms and Conditions), the Call-Off Terms and Conditions, and any Special Terms and Conditions, the application of the Clauses shall prevail in the following order:
    - (a) Special Terms and Conditions of Contract;
    - (b) Call-Off Terms and Conditions;
    - (c) Framework Agreement.

## **8. MANAGEMENT PREMIUM**

- 8.1 The Contractor will pay NEPO a commission for all business received against all Call-off Contracts placed by any Contracting Authority under this Framework Agreement where the level of this commission and the method of payment are set out in the Framework Particulars in Schedule 2.
- 8.2 This clause shall apply for the duration of each Call-Off Contract regardless of whether that Call-Off Contract expires before or after the termination or expiry of the Framework Agreement.

## **9. TERMINATION BY NEPO**

- 9.1 NEPO 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 one month's written notice to the Contractor.
- 9.2 NEPO may suspend or terminate the Framework Agreement with immediate effect by notice in writing to the Contractor at any time if:
- 9.2.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
  - 9.2.2 the Contractor is convicted of a criminal offence; or
  - 9.2.3 the Contractor ceases or threatens to cease to carry on its business; or
  - 9.2.4 there is a change in the person or persons who Control the Contractor which NEPO believes will have a substantial impact on the performance of any Call-Off Contracts; or
  - 9.2.5 there is a risk or a genuine belief that reputational damage to NEPO will occur as a result of the Framework Agreement with the Contractor continuing; or

- 9.2.6 the Contractor is in material or substantial breach of any of its obligations under one or more Call-Off Contracts that is incapable of remedy, or if capable of remedy has not been remedied to the satisfaction of NEPO within 14 days, or such other reasonable period as may be specified by NEPO after issue of a written notice specifying the breach and requesting it to be remedied;
- 9.2.7 the Contractor commits persistent minor breaches under one or more Call-Off Contracts whether remedied or not;
- 9.2.8 the Contractor enters into contractual arrangements with a Contracting Authority outside of the Framework Agreement in contravention of Clause 3.5 above; or
- 9.2.9 the Contractor fails to notify or provides incomplete, inaccurate or misleading information to the Contracting Authority or NEPO in respect of a change to Connected Persons in accordance with Clause 4.2.
- 9.3 Subject to Clauses 9.5 and 9.7 and section 78 of the PA 2023 (as amended from time to time), NEPO shall be entitled to terminate this Framework Agreement by notice in writing to the Contractor at any time if:
- 9.3.1 NEPO considers that the Framework Agreement was awarded or modified in material breach of the PA 2023; or
- 9.3.2 the Contractor becomes an Excluded Supplier or an Excludable Supplier (including by reference to an Associated Person).
- 9.4 For the purposes of Clause 9.3.1, "material breach" means a breach of the PA 2023 which NEPO considers could reasonably result in a successful legal challenge under Part 9 of the PA 2023 or otherwise.
- 9.5 Where NEPO intends to terminate the Framework Agreement pursuant to Clause 9.3, NEPO must serve written notice (**Termination Notice**) on the Contractor which includes the following information:
- 9.5.1 notification that NEPO intends to terminate the Framework Agreement; and
- 9.5.2 the grounds for which NEPO intends to terminate; and
- 9.5.3 the timescale within which the Contractor may make representations about whether it believes NEPO has grounds for termination and NEPO's decision to terminate which will be reasonable, and in any event not less than fourteen (14) days.
- 9.6 Where NEPO has served a Termination Notice pursuant to Clause 9.5:
- 9.6.1 if the Contractor's representations are accepted by NEPO (confirmation of which must be provided in writing by NEPO), the Termination Notice will be deemed to be revoked and this Framework Agreement will continue; or
- 9.6.2 if the Contractor's representations are not accepted by NEPO, the Framework Agreement will terminate on the date falling immediately after the Rectification Period set out in the Termination Notice.
- 9.7 Nothing in this Framework Agreement, including (without limitation) Clauses 9.3 to 9.6 (inclusive), shall restrict or override the implied termination rights set out in section 78 PA 2023 and in the event of conflict or inconsistency between the implied termination rights set out in section 78 PA 2023 and Clauses 9.3 to 9.6 (inclusive), the implied termination rights set out in section 78 PA 2023 shall prevail to the extent of the conflict or inconsistency.

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

- 10.1 Notwithstanding the service of a notice to terminate the Framework Agreement under Clause 9 the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement.
- 10.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 10.3 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 prior to termination or expiry.

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

- 11.1 The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of NEPO. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.
- 11.2 NEPO shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by NEPO provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

## **12. DATA PROTECTION**

- 12.1 The Contractor shall (and shall procure that any of its employees involved in it exercising its rights or performance of its obligations under the Framework Agreement) comply with any requirements under the DPL.
- 12.2 In particular and without prejudice to the generality of Clause 12.1 above, if the Contractor is acting as Data Controller within the meaning of the DPL for any data provided to the Contractor by NEPO or vice versa under this Framework Agreement then the following provisions shall apply:
  - 12.2.1 The Contractor and NEPO shall comply with the Data Sharing Code of Practice produced by the Information Commissioner and as amended from time to time
  - 12.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably and without good reason refuse to enter into a Data Sharing Agreement.
- 12.3 In particular and without prejudice to the generality of Clause 12.1 above, if the Contractor and NEPO are acting as Joint Data Controllers within the meaning of the DPL for any data collected by or provided to either Party under this Framework Agreement then the following provisions shall apply:
  - 12.3.1 The Parties shall designate between them a contact point for data subjects in relation to any personal data under the joint control of the Parties.
  - 12.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the data protection legislation and the preparation of any Data Protection Impact Assessment.
  - 12.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures.

12.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Personnel or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data.

Each Party shall notify the other immediately if it:

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

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

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

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

12.4 In particular and without prejudice to the generality of Clause 12.1 above, if the Contractor is acting as Data Processor on behalf of NEPO within the meaning of the DPL for any data provided to it by NEPO under this Framework Agreement then the following provisions shall apply:

12.4.1 The Contractor shall process Personal Data only on the documented written instructions of NEPO including those set out in Schedule 3 unless the Contractor is required by law to otherwise process that Personal Data. Where the Contractor is relying on law as the basis for processing Personal Data, the Contractor shall promptly notify NEPO of this before performing the processing required by law unless the relevant law prohibits the Contractor from so notifying NEPO.

12.4.2 The Contractor shall provide all reasonable assistance to NEPO in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of NEPO, include:



- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Framework Agreement;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.4.3 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement:

- (a) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which NEPO may reasonably reject (but failure to reject shall not amount to approval by NEPO of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (b) ensure that the Contractor's personnel do not process Personal Data except in accordance with this Framework Agreement ;
- (c) ensure that it takes all reasonable steps to ensure the reliability and integrity of any Contractor's personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Contractor's duties under this clause;
  - (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by NEPO or as otherwise permitted by this Framework Agreement; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of NEPO has been obtained and the following conditions are fulfilled:
  - (i) NEPO or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by NEPO;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist NEPO in meeting its obligations); and

- (iv) the Contractor complies with any reasonable instructions notified to it in advance by NEPO with respect to the processing of the Personal Data;
- 12.4.4 At the written direction of NEPO, delete or return Personal Data (and any copies of it) to NEPO on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 12.4.5 The Contractor shall notify NEPO immediately if it:
  - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Framework Agreement
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 12.4.6 The Contractor's obligation to notify under Clause 12.4.5 shall include the provision of further information to NEPO in phases as details become available.
- 12.4.7 Taking into account the nature of the processing, the Contractor shall provide NEPO with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by NEPO) including by promptly providing:
  - (a) NEPO with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by NEPO to enable NEPO to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) NEPO, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by NEPO following any Data Loss Event;
  - (e) assistance as requested by NEPO with respect to any request from the Information Commissioner's Office, or any consultation by NEPO with the Information Commissioner's Office.
- 12.4.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 12.
- 12.4.9 The Contractor shall allow for audits of its Data Processing activity by NEPO or NEPO's designated auditor.
- 12.4.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 12.4.11 Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Contractor must:

- (a) notify NEPO in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of NEPO;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 12.4 such that they apply to the Sub-processor; and
- (d) provide NEPO with such information regarding the Sub-processor as NEPO may reasonably require.

12.4.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

12.4.13 NEPO may, at any time on not less than 30 Working Days' notice, revise any part of this Clause 12.4 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 Framework Agreement).

12.4.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. NEPO may on not less than 30 Working Days' notice to the Contractor amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **13. FREEDOM OF INFORMATION**

13.1 NEPO is subject to the FOIA and the EIR ("the Acts"). As part of NEPO's duties under the Acts, it may be required to disclose information forming part of the Framework Agreement or any Call-Off Contract to anyone who makes a reasonable request. NEPO has absolute discretion to apply or not to apply any exemptions under the Acts.

13.2 The Contractor shall assist and cooperate with NEPO (at the Contractor's expense) to enable NEPO to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by NEPO.

### **14. PROCUREMENT ACT DISCLOSURES**

14.1 NEPO is subject to the PA 2023. As part of NEPO's duties under the PA 2023, it may be required to publish and/or disclose certain information in relation to this Framework Agreement, including but not limited to any modifications to the Framework Agreement.

14.2 In the event that NEPO is required to publish and/or disclose information relating to this Framework Agreement pursuant to the PA 2023, the discretion as to what information to publish or disclose shall rest solely with NEPO and nothing in this Framework Agreement shall prevent NEPO from publishing or disclosing such information.

14.3 The Contractor shall assist and cooperate with NEPO (at the Contractor's expense) to enable NEPO to comply with the information publication and disclosure requirements under the PA 2023 and in so doing shall comply with any timescale notified to it by NEPO.

### **15. VARIATIONS TO THE FRAMEWORK AGREEMENT**

15.1 Any variations to the Framework Agreement must be made in writing and agreed by NEPO and all Contractors on the Framework.

15.2 Any variations to the Framework Agreement will not be effective until:

15.2.1 NEPO has published a contract change notice pursuant to section 75 PA 2023, if applicable; and

15.2.2 any voluntary standstill period, if applicable, has expired.

15.3 Any variation to the Framework Agreement must not amount to a material change in the Framework Agreement or the Goods and Services (or either of them) and must comply with section 74 PA 2023, if applicable.

## **16. SURVIVAL**

Termination or expiry of the Framework Agreement shall not affect any provision which is expressly or impliedly intended to survive such termination or expiry.

## **17. THIRD PARTIES**

17.1 A Contracting Authority may enforce the terms of this Framework Agreement as if it were NEPO insofar as the terms of this Framework Agreement apply to:

17.1.1 a Call-Off Contract which the Contractor and the enforcing Contracting Authority are parties to; or

17.1.2 a Selection Process held by the enforcing Contracting Authority to award a Call-Off Contract which the Contractor is a participant of;

17.2 Unless it expressly states otherwise and except as provided in Clause 17.1 above, this Framework Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement.

## **18. LAW AND JURISDICTION**

18.1 This Framework Agreement and any issues, disputes or claims arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Framework Agreement or its subject matter or formation.

18.2 The Framework may also be accessed by Contracting Authorities based in Northern Ireland and Scotland. In that event such Contracting Authorities in their individual Call-Off Contracts may agree with the Contractor that any Call-Off Contract:

18.2.1 will be governed by the law of Scotland or Northern Ireland (as appropriate); and

18.2.2 will be subject to the exclusive jurisdiction of the courts of Scotland or Northern Ireland, as the case may be, if any dispute arises out of or in connection with the relevant Call-Off Contract or its subject matter or formation.

## **19. ENTIRE AGREEMENT**

19.1 This Framework Agreement including all Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

19.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement 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 this Framework Agreement. The only remedy available to either Party in respect of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

19.3 Nothing in this Clause 19 shall operate to exclude fraud or fraudulent misrepresentation.

**SCHEDULE 1**

**Call-Off Terms and Conditions**

## CONTENTS

Clause		Page
1.	DEFINITIONS.....	21
2.	HEADINGS.....	27
3.	NOTICES.....	27
4.	ENTIRE AGREEMENT .....	27
5.	CALL-OFF CONTRACT PERIOD .....	28
6.	DELIVERY PLAN .....	28
7.	PERFORMANCE OF SERVICES .....	28
8.	PROVISION OF GOODS .....	28
9.	CONTRACT MANAGEMENT.....	29
10.	RISK IN AND TITLE TO GOODS .....	29
11.	WARRANTIES .....	30
12.	CONTRACTOR'S EMPLOYEES .....	31
13.	PRICE AND PAYMENT .....	31
14.	TERMINATION.....	33
15.	CONSEQUENCES OF TERMINATION.....	35
16.	DISPUTE RESOLUTION PROCEDURE .....	36
17.	SURVIVAL.....	36
18.	INSURANCE .....	36
19.	INDEMNITY AND LIABILITY .....	37
20.	INTELLECTUAL PROPERTY .....	37
21.	DATA PROTECTION .....	38
22.	FREEDOM OF INFORMATION .....	42
23.	PROCUREMENT ACT DISCLOSURES .....	42
24.	CONFIDENTIALITY .....	42
25.	RECORD KEEPING AND MONITORING.....	43
26.	TRANSPARENCY.....	44
27.	HEALTH AND SAFETY.....	44
28.	CORPORATE REQUIREMENTS .....	44
29.	LAW AND CHANGE IN LAW .....	45
30.	CONTRACT VARIATION .....	46
31.	THIRD PARTY RIGHTS.....	46
32.	NO WAIVER.....	46
33.	SEVERANCE .....	46
34.	ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY .....	47
35.	FORCE MAJEURE.....	48
36.	INDUCEMENTS .....	48
37.	COSTS AND EXPENSES.....	48
38.	NO AGENCY OR PARTNERSHIP.....	48
39.	NON SOLICITATION AND OFFERS OF EMPLOYMENT .....	49
40.	INSPECTION OF CONTRACTOR'S PREMISES .....	49
41.	LAW AND JURISDICTION.....	49

## 1. DEFINITIONS

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

<b>Associated Person</b>	any person the Contractor relies or relied upon to satisfy the Conditions of Participation (other than a guarantor).
<b>Authorised Officer</b>	the person duly appointed by the Contracting Authority and notified in writing to the Contractor to act as the representative of the Contracting Authority for the purpose of the Call-Off Contract as amended from time to time and in default of such notification the Contracting Authority's head of procurement or similar responsible officer.
<b>Business Day</b>	any day other than a Saturday or Sunday or a public or bank holiday in England.
<b>Calculation Trigger Date</b>	for any undisputed Invoiced Debt, the date the relevant invoice is received by the Contracting Authority, such date being the date recorded in the Contracting Authority's accounts payable system as the registration date. For any disputed Invoiced Debt, the Calculation Trigger Date shall be the date on which the dispute has been resolved to the mutual satisfaction of the parties.
<b>Call-Off Contract</b>	<p>the agreement (made pursuant to the provisions of the Framework Agreement) in respect of the provision of the Goods and Services (or either of them) consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:</p> <ul style="list-style-type: none"><li>(a) the Order Form;</li><li>(b) any Special Terms and Conditions;</li><li>(c) the Call-Off Terms and Conditions;</li><li>(d) any Mini-Competition Invitation to Tender; and</li><li>(e) any Mini-Competition Tender.</li></ul>
<b>Call-Off Terms and Conditions</b>	the terms and conditions set out in this document.
<b>Change in Law</b>	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Call-Off Contract.
<b>Commencement Date</b>	the date stated in the Order Form.
<b>Commercially Sensitive Information</b>	information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to either NEPO or the Contracting Authority that, if disclosed by either NEPO or the

Contracting Authority would cause the Contractor significant commercial disadvantage or material financial loss.

<b>Confidential Information</b>	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Goods, the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, Contracting Authorities and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA and UK GDPR).
<b>Connected Person</b>	<p>in relation to the Contractor or a sub-contractor (as context requires):</p> <ul style="list-style-type: none"><li>(a) a person with "significant control" (within the meaning given by section 790C(2) of the Companies Act 2006);</li><li>(b) a director or shadow director;</li><li>(c) a parent undertaking or a subsidiary undertaking;</li><li>(d) a predecessor company;</li><li>(e) any other person who it can reasonably be considered stands in an equivalent position as a person within paragraph (a) to (d);</li><li>(f) any person with the right to exercise, or who actually exercises, significant influence or control;</li></ul> <p>any person over which the supplier has the right to exercise, or actually exercises, significant influence or control.</p>
<b>Contract Management Plan</b>	The plan relating to meetings and reporting in respect of the Call-Off Contract as specified in the Order which once the Order is finalised shall be annexed to these Call-Off Terms and Conditions at Appendix 6.
<b>Contract Manager</b>	the person nominated by the Contractor as the contract manager and any replacement from time to time in accordance with Clause 9.2
<b>Contract Period</b>	the period of the Call-Off Contract as stated in the Order Form (and any extension in accordance with Clause 5.2).
<b>Contracting Authority</b>	the contracting authority named in the Order and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Contracting Authority (whether in part or totally) or which is controlled by or is under common control with the Contracting Authority (and the expression 'control' shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
<b>Contractor</b>	the contractor identified in the Order and where applicable this shall include the contractor's employees, sub-contractors, agents, representatives, and permitted assigns and, if the



	contractor is a consortium or consortium leader, the consortium members.
<b>Control</b>	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
<b>Data Controller</b>	has the meaning set out in the Data Protection Legislation.
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract.
<b>Data Processor</b>	has the meaning set out in the Data Protection Legislation.
<b>Data Protection Impact Assessment</b>	an assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Protection Legislation or DPL</b>	(i) UK GDPR, the LED and any applicable national implementing laws as amended from time to time and then (ii) the Data Protection Act 2018 and/or any other successor legislation to the UK GDPR or DPA 2018 and (iii) all applicable Law about the processing of personal data and privacy.
<b>Data Sharing Agreement</b>	a formal agreement that documents what data is being shared and how the data can be used between the Parties.
<b>Data Sharing Code of Practice</b>	the code of practice issued by the Information Commissioner in respect to the sharing of personal data.
<b>Data Subject Access Request</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>Debarment List</b>	the list kept in accordance with section 62 of the PA 2023.
<b>Delivery Plan</b>	the plan for provision of the Goods and Services to be developed by the parties pursuant to Clause 6.
<b>Early Payment Scheme</b>	an optional scheme whereby the Contracting Authority is entitled to deduct and retain a rebate on sums invoiced to it by the Contractor, in consideration for early payment of such invoiced sums.
<b>EIR</b>	The Environmental Information Regulations 2004.
<b>Electronic Invoice</b>	an invoice which is issued, transmitted and received in a structured electronic format that allows for its automatic and electronic processing.
<b>Employee</b>	any person employed by the Contractor to perform the Call-Off Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives.
<b>EPS Rebate</b>	in respect of any Invoiced Debt, such percentage of that Invoiced Debt that the Contracting Authority is entitled to deduct and retain under clause 13.13 and calculated in accordance with Appendix 1.

<b>Excludable Supplier</b>	has the meaning given to it in section 57(2) of the PA 2023.
<b>Excluded Supplier</b>	has the meaning given to it in section 57(1) of the PA 2023.
<b>FOIA</b>	The Freedom of Information Act 2000.
<b>Force Majeure</b>	any cause materially affecting the performance by a party of its obligations under this Call-Off Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to Clause 34), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
<b>Framework</b>	the Framework operated by NEPO specified in the Order.
<b>Framework Agreement</b>	the framework agreement for Goods and Services between NEPO and the Contractor admitting the Contractor to the Framework.
<b>Good Industry Practice</b>	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of Goods and Services (or either of them) similar to those provided under this Call-Off Contract under the same or similar circumstances as those applicable to the Call-Off Contract.
<b>Goods</b>	the goods described in the Specification to be supplied by the Contractor in accordance with the Call-Off Contract and any associated services provided by the Contractor in relation to those Goods.
<b>HRA</b>	The Human Rights Act 1998.
<b>Intellectual Property Rights</b>	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 but not limited to the United Kingdom) and the right to sue for passing off.
<b>Invitation to Tender</b>	NEPO's invitation to tender for admission to the Framework.
<b>Invoice Payment Date</b>	the date on which the Contracting Authority executes its payment run in respect of the relevant Invoiced Debt.
<b>Invoiced Debt</b>	the Price payable by the Contracting Authority for the Goods and Services (or either of them) (including, without limitation, all fees, charges, expenses and other sums invoiced, including any applicable VAT and other taxes), that has been invoiced to the Contracting Authority by the Contractor.
<b>Joint Data Controllers</b>	has the meaning set out in the Data Protection Legislation.
<b>Key Performance Indicators</b>	a factor or measure against which the Contractor's performance of the Call-Off Contract can be assessed during the life-cycle of the Call-Off Contract set out in Appendix 5 (Specification).

<b>Key Personnel</b>	those persons named in the Order as being key personnel and any replacement from time to time under Clause <b>Error! Reference source not found.</b>
<b>Law</b>	any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, any saved enforceable community rights under European Communities Act 1972 as provided in withdrawal legislation, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.
<b>LED</b>	the Law Enforcement Directive (Regulation (EU) 2016/679).
<b>Liabilities</b>	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
<b>Mini-Competition Invitation to Tender</b>	the invitation to tender issued by the Contracting Authority in accordance with the mini-competition procedure set out at Clause 6.2 of the Framework Terms and Conditions.
<b>Mini-Competition Tender</b>	the tender response submitted by the Contractor in accordance with the mini-competition procedure set out at Clause 6.2 of the Framework Terms and Conditions.
<b>Minimum Required Information</b>	<ul style="list-style-type: none"> <li>(a) the name of the invoicing party,</li> <li>(b) a description of the goods, services or works supplied,</li> <li>(c) the sum requested, and</li> <li>(d) a unique identification number.</li> </ul>
<b>Order</b>	an order for Goods and Services (or either of them) served by the Contracting Authority on a Contractor in accordance with the procedures set out in the Framework Agreement.
<b>Order Form</b>	the document setting out details of an Order in a form to be specified by the Contracting Authority.
<b>PA 2023</b>	The Procurement Act 2023 and any regulations enacted under it including but not limited to the Procurement Regulations 2024).
<b>Personal Data</b>	has the meaning set out in the Data Protection Legislation.
<b>Price</b>	the price of the Goods and Services (or either of them) calculated in accordance with the Pricing Schedule and specified, in relation to the Call-Off Contract, in the Order Form. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
<b>Pricing Schedule</b>	the schedule from the Mini-Competition Tender or included in the Order detailing the pricing which when the Order is finalised shall be annexed to these Call-Off Terms and Conditions as Appendix 3.

<b>Prohibited Act</b>	<p>includes any of the following:</p> <ul style="list-style-type: none"> <li>(a) materially increasing or decreasing the number of employees employed in connection with the Contract;</li> <li>(b) varying or purporting or promising to vary the terms and conditions of any Employees;</li> <li>(c) terminating the employment of any of the employees assigned to the provisions of the Services for any reason whatsoever save where termination is lawful; or</li> <li>(d) assigning or redeploying any employee employed in connection with the Services to other duties unconnected with the Contract.</li> </ul>
<b>Protective Measures</b>	<p>appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.</p>
<b>Rectification Period</b>	<p>the timescale set out in any Termination Notice for the Contractor to either: (a) make representations relating to the Contracting Authority's intended termination of the Call-Off Contract; or (b) cease sub-contracting to an Excluded Supplier or Excludable Supplier.</p>
<b>Replacement Contractor</b>	<p>any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Call-Off Contract.</p>
<b>Required Electronic Form</b>	<p>a form that:</p> <ul style="list-style-type: none"> <li>(a) complies with the standard for electronic invoicing approved and issued by British Standards Institution from time to time in the document numbered BS EN 16931-1:2017 (Electronic invoicing – Part 1: Semantic data model of the core elements of an electronic invoice), and</li> <li>(b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing – Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution from time to time.</li> </ul>
<b>Services</b>	<p>any ancillary services described in the Specification to be supplied by the Contractor in accordance with the Call-Off Contract.</p>
<b>Special Terms and Conditions</b>	<p>the supplementary terms and conditions applying to the Call-Off Contract as set out in the Order and once the Order is finalised annexed to these Call-Off Terms and Conditions at Appendix 4.</p>
<b>Specification</b>	<p>the specification included in the Mini-Competition Invitation to Tender or in the Order setting out the Contracting Authority's detailed requirements in relation to the Goods and Services and</p>

once the Order is finalised annexed to these Call-Off Terms and Conditions at Appendix 5.

**Sub-processor** any third Party appointed to process Personal Data on behalf of the Contractor related to this Call-Off Contract.

**Tender** the Contractor's tender for the Goods in response to NEPO's Invitation to Tender and the Mini-Competition Invitation to Tender (if applicable).

**Termination Notice** has the meaning set out in Clause 14.4.

**VAT** Value added tax.

- 1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
- 1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.
- 1.3 Any reference to a clause or appendix in these Call-Off Terms and Conditions shall, unless expressly stated otherwise, be a reference to a clause or appendix within these Call-Off terms and Conditions and not a reference to any other part of the Framework Agreement.
- 1.4 Where a term is defined in these Call-Off Terms it shall be ascribed this definition in relation to these Call-Off Terms notwithstanding that an identical term is defined elsewhere in the Framework Agreement Terms and Conditions.

## **2. HEADINGS**

The index and headings to the clauses and appendices to and schedules of these Call-Off Terms and Conditions are for convenience only and will not affect its construction or interpretation.

## **3. NOTICES**

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

## **4. ENTIRE AGREEMENT**

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

## **5. CALL-OFF CONTRACT PERIOD**

- 5.1 The Call-Off Contract shall commence on the Commencement Date and subject to Clause 5.2 shall continue for the Contract Period.
- 5.2 If the Contract Period includes an option to extend and the Contracting Authority intends to take up the option, the Contractor shall be notified in writing within the period stated in the Order Form prior to the commencement of the extension. If no such notification is issued the Call-Off Contract shall automatically expire after the initial Contract Period.

## **6. DELIVERY PLAN**

- 6.1 Within 20 Business Days of the Commencement Date (or within such alternative timescale as is specified in the Order) the Contractor shall provide a draft Delivery Plan to the Contracting Authority.
- 6.2 Upon receipt of the draft Delivery Plan the Contracting Authority shall:
- 6.2.1 inform the Contractor that it accepts the Delivery Plan as drafted in which case it shall become the final Delivery Plan; or
  - 6.2.2 suggest or request changes to the draft Delivery Plan, in which case the parties shall work together in order to finalise the Delivery Plan.
- 6.3 In the event that the parties are unable to agree a final Delivery plan in accordance with Clause 6.2.2 within 15 Business Days of commencing negotiations under Clause 6.2.2 the Contracting Authority shall be entitled to terminate the Call-Off Contract immediately on notice to the Contractor.
- 6.4 The Delivery Plan shall be subject to the Works Contract and shall be adjusted where necessary to reflect the Works Contract.

## **7. PERFORMANCE OF SERVICES**

- 7.1 The Services shall be provided:
- 7.1.1 in accordance with Good Industry Practice
  - 7.1.2 in accordance with the Delivery Plan.
  - 7.1.3 unless stated otherwise in the Order or the Delivery Plan between 9a.m. and 5p.m. on a Business Day.

## **8. PROVISION OF GOODS**

- 8.1 The Goods shall be provided in accordance with the Delivery Plan.
- 8.2 Where the Goods are to be delivered to the Contracting Authority:
- 8.2.1 if no time for delivery is stated in the Delivery Plan the Goods shall be delivered between 9a.m. and 5p.m. on a Business Day;
  - 8.2.2 the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by the Contracting Authority from the Contractor, the point of delivery shall be when they are loaded onto the Contracting Authority's vehicle;
  - 8.2.3 delivery shall include the uploading or stacking of the Goods by the Contractor at such places the Contracting Authority may direct;

- 8.2.4 the issue by the Contracting Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Contracting Authority shall not be deemed to have accepted any Goods until it has had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent;
- 8.2.5 all Goods must be properly packaged to survive transit without damage, clearly and legibly labelled and addressed. The Contracting Authority will not be liable to pay for any pallets, packages or containers in which Goods are supplied;
- 8.2.6 the Contracting Authority shall not be obliged to accept delivery by instalments, unless expressly agreed to the contrary. If the Contracting Authority does specify or agree to delivery by instalments, delivery of any one instalment not in accordance with the Delivery Plan shall, without prejudice to any other rights or remedies of the Contracting Authority, entitle the Contracting Authority to terminate the whole of any unfulfilled part of the Call-Off Contract without further liability to the Contractor.

8.3 [The Key Performance Indicators are set out in Appendix 5 (Specification). The Contractor shall achieve the Key Performance Indicators and shall keep records to demonstrate its performance against the Key Performance Indicators.]

8.4 [The Contracting Authority will assess the Contractor's performance against the Key Performance Indicators and shall report on its performance in the format and at the frequency specified by the Contracting Authority.]<sup>1</sup>

8.5 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Contracting Authority which prevents or hinders, or may prevent or hinder the Contractor from supplying the Goods in accordance with the Call-Off Contract, the Contractor shall inform the Contracting Authority.

8.6 The Contracting Authority retains the Contractor for the supply of the Goods on a non-exclusive basis.

## 9. CONTRACT MANAGEMENT

9.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Call-Off Contract.

9.2 The Contractor shall forthwith give notice in writing to the Contracting Authority of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Contracting Authority before changing its Contract Manager.

9.3 The parties shall give effect to the Contract Management Plan.

## 10. RISK IN AND TITLE TO GOODS

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

10.2 Title in the Goods and any goods provided as part of the Goods shall pass to the Contracting Authority upon delivery or, if earlier, upon payment.

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<sup>1</sup> DRAFTING NOTE: This drafting relating to KPIs is optional unless the estimated value of the Call-Off Contract is above £5 million, in which case **at least three KPIs must be set and the Contracting Authority must assess and publish details of the Contractor's performance against KPIs.**

## 11. WARRANTIES

- 11.1 The Contractor warrants to the Contracting Authority that the Services will be provided:
- 11.1.1 in a proper, skilful and workmanlike manner;
  - 11.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
  - 11.1.3 in accordance with the Call-Off Contract and any descriptions provided by the Contractor;
  - 11.1.4 in accordance with the Specification (including any service levels set out in the Specification);
  - 11.1.5 in accordance with Law;
  - 11.1.6 to the reasonable satisfaction of the Authorised Officer;
  - 11.1.7 in a way that the Contractor takes every reasonable precaution to safeguard the Contracting Authority's property entrusted to the care of the Contractor.
- 11.2 Without prejudice to the Contracting Authority's rights under this Call-Off Contract or generally, if any of the Services supplied are not in accordance with the Call-Off Contract, the Contracting Authority shall be entitled to:
- 11.2.1 require the Contractor to provide replacement Services in accordance with the Call-Off Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
  - 11.2.2 require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Contracting Authority in obtaining replacement Services.
- 11.3 The Contractor warrants to the Contracting Authority that the Goods and any other goods provided in the course of providing the Services will be:
- 11.3.1 of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as required by the Specification or held out by the Contractor; and
  - 11.3.2 free from defects in design, material and workmanship; and
  - 11.3.3 provided in accordance with the Call-Off Contract, correspond with the Specification and any drawings, samples or descriptions provided by the Contractor; and
  - 11.3.4 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 11.4 Without prejudice to the Contracting Authority's rights under the Call-Off Contract or generally, if any of the Goods supplied are not in accordance with the Call-Off Contract, the Contracting Authority shall be entitled to:
- 11.4.1 require the Contractor to repair the Goods or provide replacement Goods in accordance with the Call-Off Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
  - 11.4.2 require repayment of the proportion of the Price which has been paid in respect of such Goods together with payment of any additional expenditure over and above the Price reasonably incurred by the Contracting Authority in obtaining replacement Goods.



## **12. CONTRACTOR'S EMPLOYEES**

- 12.1 The Contracting Authority reserves the right under the Call-Off Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Contracting Authority:
- 12.1.1 any of the Contractor's Employees; and/or
  - 12.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor whose admission or continued presence would be, in the reasonable opinion of the Contracting Authority, undesirable.
- 12.2 When directed by the Contracting Authority, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Call-Off Contract to any premises occupied by or on behalf of the Contracting Authority, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Contracting Authority may reasonably desire.
- 12.3 The Contractor's Employees, engaged within the boundaries of any of the Contracting Authority's 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 that establishment and when outside that establishment.
- 12.4 The decision of the Contracting Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Contracting Authority shall be final and conclusive.
- 12.5 The Contractor shall replace any of the Contractor's Employees who the Contracting Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 12.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Contracting Authority under this clause.

## **13. PRICE AND PAYMENT**

- 13.1 The Contracting Authority shall pay the Price for the Goods and Services (or either of them) to the Contractor.
- 13.2 The Price shall as detailed in the Order Form for the duration of the Contract Period.
- 13.3 The Contractor shall submit a single VAT invoice to the Contracting Authority no later than seven (7) days after the end of each calendar month detailing the Goods and Services provided during the calendar month and the amount payable. The Contracting Authority will consider and verify all invoices in a timely fashion.
- 13.4 The Contractor must be capable of implementing, managing and supporting PCards if requested by a Contracting Authority. Payment by PCards will be made as agreed between the Contractor and their PCard provider.
- 13.5 The Contractor will be liable to pay any merchant fee levied for using PCard's and must not recover this charge from the Contracting Authority.
- 13.6 Payment of any undisputed invoice will be made no later than thirty (30) days from the date on which **[[the Contracting Authority has determined that the invoice is valid and undisputed] OR [the**

relevant invoice was received by the Contracting Authority or, if later, the date on which payment falls due in accordance with the invoice]]<sup>2</sup>.

- 13.7 Where an Electronic Invoice is submitted, the Contracting Authority shall determine that an invoice is valid if:
- 13.7.1 it is an Electronic Invoice issued in the Required Electronic Form; or
  - 13.7.2 it sets out the Minimum Required Information and meets the requirements set out in this Clause 13.
- 13.8 Where the Contracting Authority fails to comply with Clause 13.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 13.2 after a reasonable time has passed.
- 13.9 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- 13.9.1 provisions having the same effect as Clauses 13.2 to 13.5 above; and
  - 13.9.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clauses 13.2 to 13.5 above. In this context, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Contracting Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Call-Off Contract.
- 13.10 The Contracting Authority reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Goods and Services (or either of them) in accordance with this Call-Off Contract and any invoice relating to such Goods will not be paid unless or until the Goods have been provided in accordance with this Call-Off Contract or the Services have been performed to the Contracting Authority's satisfaction..
- 13.11 Any overdue sums will bear interest from the due date until payment is made at 2% per annum over the Bank of England base rate from time to time. The Contractor is not entitled to suspend provision of the Goods and Services (or either of them) as a result of any overdue sums.
- 13.12 The Contracting Authority will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Contracting Authority to the Contractor against any liability of the Contractor to the Contracting Authority (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Contracting Authority are payable under this Call-off Contract. The Contracting Authority's rights under this clause will be without prejudice to any other rights or remedies available to the Contracting Authority under this Call-Off Contract or otherwise.
- 13.13 Where the Contracting Authority has offered participation in an Early Payment Scheme and the Contractor has indicated in its Mini-Competition Tender that it wishes to participate, then the following provisions will apply:
- 13.13.1 the Contractor acknowledges and agrees that in consideration of the Contracting Authority paying an Invoiced Debt owed to the Contractor under this Call-Off Contract prior to the date by which such payment would otherwise be required to be made, the

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<sup>2</sup> **DRAFTING NOTE: For contracts that are above the relevant PA 2023 thresholds, invoices must be paid within 30 days of receipt or, if later, the date on which they become payable according to the terms of the invoice.**

Contracting Authority shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, the EPS Rebate.

- 13.13.2 for the avoidance of doubt, nothing in this Call-Off Contract shall:
- (a) affect the date by which payment of an Invoiced Debt is required to be made by the Contracting Authority;
  - (b) require the Contracting Authority to make early payment to the Contractor in respect of any Invoiced Debt; or
  - (c) affect the Contractor's obligation to pay any contract rebate due to NEPO under the terms of the Framework Agreement.
- 13.13.3 In the event the Contractor, acting reasonably, considers that the Contracting Authority has incorrectly applied an EPS Rebate it shall raise a query in respect of that EPS Rebate with Contracting Authority's accounts payable team (whose details will be provided to the Contractor by the Contracting Authority, as updated from time to time) within seven (7) days of the relevant payment being received by the Contractor.
- 13.13.4 If the Contractor does not raise a genuine query under Clause 13.13.3 within seven (7) days of the relevant EPS Rebate being applied, the Contracting Authority shall be deemed to have applied the EPS Rebate correctly in that instance and shall be entitled to retain that EPS Rebate.
- 13.13.5 The parties shall use reasonable endeavours to resolve any query raised in accordance with Clause 13.13.3 in a timely manner, including making relevant personnel available for the purpose.

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

## **TERMINATION**

- 13.15 Subject to the provisions of Clause 34 (Force Majeure) the Contracting Authority may terminate the Call-Off Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- 13.15.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
  - 13.15.2 the Contractor is convicted of a criminal offence; or
  - 13.15.3 the Contractor ceases or threatens to cease to carry on its business; or
  - 13.15.4 the Contractor has a change in Control which the Contracting Authority believes will have a substantial impact on the performance of the Call-Off Contract; or
  - 13.15.5 there is a risk or a genuine belief that reputational damage to the Contracting Authority will occur as a result of the Call-Off Contract continuing; or
  - 13.15.6 the Contractor is in breach of any of its obligations under this Call-Off Contract that is capable of remedy and which has not been remedied to the satisfaction of the Contracting Authority within 14 days, or such other reasonable period as may be specified by the Contracting Authority after issue of a written notice specifying the breach and requesting it to be remedied; or
  - 13.15.7 there is a material or substantial breach by the Contractor of any of its obligations under this Call-Off Contract which is incapable of remedy; or

- 13.15.8 the Contractor commits persistent minor breaches of this Call-Off Contract whether remedied or not; or
  - 13.15.9 the Call-Off Contract should not have been awarded to the Contractor who has been found guilty of having failed to discharge his obligations under any applicable UK law; or
  - 13.15.10 the Contractor fails to notify or provides incomplete, inaccurate or misleading information to the Contracting Authority in respect of a change to Connected Persons in accordance with Clause **Error! Reference source not found.**
- 13.16 Subject to Clauses 13.18 and 13.21 and section 78 of the PA 2023 (as amended from time to time), the Contracting Authority shall be entitled to terminate the Call-Off Contract by notice in writing to the Contractor at any time if:
- 13.16.1 the Contracting Authority considers that the Call-Off Contract or the Framework Agreement was awarded or modified in material breach of the PA 2023; or
  - 13.16.2 the Contractor becomes an Excluded Supplier or an Excludable Supplier (including by reference to an Associated Person); or
  - 13.16.3 a supplier to whom the Contractor is sub-contracting the performance of all or part of the Call-Off Contract becomes an Excluded or Excludable Supplier, provided that:
    - (a) the Contracting Authority or NEPO requested information under section 28(1)(a) of the PA 2023 (information relating to whether the Contractor intended to sub-contract the performance of all or part of the Call-Off Contract), and:
      - (i) before awarding the Call-Off Contract, the Contracting Authority did not know the Contractor intended to sub-contract the performance of all or part of the Call-Off Contract); or
      - (ii) the sub-contractor is an Excluded Supplier or an Excludable Supplier under section 57(1)(b) or 57(2)(b) of the PA 2023, and before awarding the Call-Off Contract the Contracting Authority or NEPO sought to determine whether the sub-contractor was an Excluded Supplier or Excludable Supplier but did not know that it was; or
      - (iii) the sub-contractor is an Excluded Supplier or Excludable Supplier under section 57(1)(a) or 57(2)(a) of the PA 2023, and before awarding the Call-Off Contract the Contracting Authority or NEPO requested information about the sub-contractor to determine if it is an Excluded Supplier or Excludable Supplier but did not know that it was.
- 13.17 For the purposes of Clause 13.16.1, "material breach" means a breach of the PA 2023 which the Contracting Authority considers could reasonably result in a successful legal challenge under Part 9 of the PA 2023 or otherwise.
- 13.18 Where the Contracting Authority intends to terminate the Call-Off Contract pursuant to Clause 13.16, the Contracting Authority must serve written notice (**Termination Notice**) on the Contractor which includes the following information:
- 13.18.1 notification that the Contracting Authority intends to terminate the Call-Off Contract; and
  - 13.18.2 the grounds for which the Contracting Authority intends to terminate; and
  - 13.18.3 the timescale within which the Contractor may make representations about whether it believes the Contracting Authority has grounds for termination and the Contracting

Authority's decision to terminate which will be reasonable, and in any event, not less than fourteen (14) days; and

13.18.4 where the Contracting Authority intends to terminate the Call-Off Contract pursuant to Clauses 13.16.2 or 13.16.3, the timescale within which the Contractor must cease sub-contracting to the Excluded Supplier or Excludable Supplier and, if necessary, find an alternative sub-contractor which will be reasonable, and in any event, be not less than fourteen (14) days.

13.19 If either:

13.19.1 the Contractor ceases to sub-contract to the relevant Excluded Supplier or Excludable Supplier within the timescale specified within the Termination Notice; or

13.19.2 the Contractor's representations are accepted by the Contracting Authority (confirmation of which must be provided in writing by the Contracting Authority),

the Termination Notice will be deemed to be revoked and the Call-Off Contract will continue.

13.20 If either:

13.20.1 the Contractor does not cease to sub-contract to the relevant Excluded Supplier or Excludable Supplier within the timescale specified within the Termination Notice; or

13.20.2 the Contractor's representations are not accepted by the Contracting Authority,

the Call-Off Contract will terminate on the date falling immediately after the Rectification Period set out in the Termination Notice.

13.21 Nothing in this Framework Agreement, including (without limitation) Clauses 13.16 to 13.20 (inclusive), shall restrict or override the implied termination rights set out in section 78 PA 2023 and in the event of conflict or inconsistency between the implied termination rights set out in section 78 PA 2023 and Clauses 13.16 to 13.20 (inclusive), the implied termination rights set out in section 78 PA 2023 shall prevail to the extent of the conflict or inconsistency.

13.22 The Contracting Authority reserves the right to terminate the Call-Off Contract in part in the case of termination under Clauses 13.15.6, 13.15.7 or 13.15.8.

13.23 The Contracting Authority reserves the right to terminate the Call-Off Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

13.24 Termination of the Call-Off Contract under this Clause 0 shall not cause the Framework Agreement to terminate automatically. For the avoidance of doubt, the Framework Agreement shall remain in force unless and until it is terminated or expires by its own terms.

13.25 Termination of this Call-Off Contract under this Clause 0 shall not cause other Call-Off Contracts, which may have been entered into separately by the Parties under the Framework Agreement, to terminate automatically.

## **14. CONSEQUENCES OF TERMINATION**

14.1 If this Call-Off Contract is terminated in whole or in part the Contracting Authority shall:

14.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Call-Off Contract or the affected part of the Call-Off Contract up to the time of the termination; and/or

14.1.2 be entitled to deduct from any sum or sums which would have been due from the Contracting Authority to the Contractor under this Call-Off Contract or any other

contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Contracting Authority resulting from or arising out of the termination of this Call-Off Contract. Such loss or damage shall include the reasonable cost to the Contracting Authority of the time spent by its officers in terminating the Call-Off Contract and in making alternative arrangements for the supply of the Goods and Services (or either of them) or any parts of them; and/or

- 14.1.3 where termination arises under Clause 13.23, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination; and/or
  - 14.1.4 in the event that any sum of money owed by the Contractor to the Contracting Authority (the Contractor's debt) exceeds any sum of money owed by the Contracting Authority to the Contractor (the Contracting Authority's debt) under this Call-Off Contract then the Contracting Authority shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Contracting Authority's debt or to recover the Contractor's debt as a civil debt.
- 14.2 Upon the termination of the Call-Off Contract for any reason, subject as otherwise provided in this Call-Off Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Call-Off Contract.

## **15. DISPUTE RESOLUTION PROCEDURE**

- 15.1 If a dispute arises between the Contracting Authority and the Contractor in connection with the Call-Off Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 15.2 If a dispute is not resolved within fourteen (14) days of commencement of discussions under Clause 15.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 15.3 Provided that both parties consent, a dispute not resolved in accordance with Clauses 15.1 and 15.2 shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- 15.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

## **16. SURVIVAL**

- 16.1 The following clauses will survive termination or expiry of the Call-Off Contract: Clause 10 (Risk in and Title to the Goods), Clause 13.13 (Early Payment Scheme), Clause 14 (Consequences of Termination), Clause 19 (Intellectual Property), Clause 20 (Data Protection), Clause 21 (Freedom of Information), Clause 22 (Procurement Act Disclosures), Clause 22 (Confidentiality), Clause 24 (Record Keeping and Monitoring), Clause 25 (Transparency), Clause 32 (Severance), Clause 38 (Non Solicitation and Offers of Employment) and Clause 40 (Law and Jurisdiction).
- 16.2 Termination or expiry of the Call-Off Contract shall not affect any provision which is expressly or impliedly intended to survive such termination or expiry.

## **17. INSURANCE**

- 17.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Call-Off Contract.
- 17.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that:

17.2.1 the insurance required pursuant to Clause 17.1 is in place; and

17.2.2 all premiums relating to such insurances have been paid.

17.3 If the Contractor does not maintain the necessary insurances under the Call-Off Contract the Contracting Authority may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

## **18. INDEMNITY AND LIABILITY**

18.1 Either Party ("the Indemnifying Party") shall fully indemnify the other Parties ("the Indemnified Parties) in full without limit of liability for any losses arising from the Indemnifying Party's breach of their obligations under this Call-Off Contract, or the reckless, negligent or wilful default of the Indemnifying Party or their appointed agents, representatives or sub-contractors in the provision of the Goods and Services (or either of them). For the avoidance of doubt, this indemnity shall include claims for damage or injury to the personal property of any third party (including any infringement of Intellectual Property Rights) which results in Liabilities awarded against or costs incurred by the Indemnified Parties.

18.2 Neither party seeks to exclude or limit its liability for:

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

18.2.2 fraudulent misrepresentation; or

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

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

## **19. INTELLECTUAL PROPERTY**

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

19.1.1 provided to the Contractor by the Contracting Authority shall remain the property of the Contracting Authority;

19.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Call-Off Contract shall belong to the Contracting Authority.

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

19.3 It is a condition of the Call-Off Contract that the Goods and Services (or either of them) will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Contracting Authority against all Liabilities which the Contracting Authority may suffer or incur as

a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Contracting Authority.

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

## **20. DATA PROTECTION**

- 20.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Goods) comply with any requirements under DPL.

- 20.2 In particular and without prejudice to the generality of Clause 20.1 above, if the Contractor is acting as Data Controller within the meaning of the DPL for any data provided to the Contractor by Contracting Authority or vice versa under this Call-Off Contract then the following provisions shall apply:

20.2.1 The Contractor and the Contracting Authority shall comply with the Data Sharing Code of Practice produced by the Information Commissioner and as amended from time to time.

20.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonable and without good reason refuse to enter into a Data Sharing Agreement.

- 20.3 In particular and without prejudice to the generality of Clause 20.1 above, if the Contractor and the Contracting Authority are acting as Joint Data Controllers within the meaning of the DPL for any data collected by or provided to either party under this Call-Off Contract then the following provisions shall apply:

20.3.1 The Parties shall designate between them a contact point for data subjects in relation to any personal data under the joint control of the parties.

20.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the data protection legislation and the preparation of any Data Protection Impact Assessment.

20.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) .cost of implementing any measures;

20.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Personnel or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data.

20.3.5 Each Party shall notify the other immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to any data under the joint control of the Parties;



- (b) receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;
  - (e) receives a request from any third Party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties.
- 20.3.6 Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 20.3.7 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.
- 20.3.8 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.
- 20.4 In particular and without prejudice to the generality of Clause 20.1 above, if the Contractor is acting as Data Processor on behalf of the Contracting Authority within the meaning of the DPL for any data provided to it by the Contracting Authority under this Call-Off Contract then the following provisions shall apply:
- 20.4.1 The Contractor shall process Personal Data only on the documented written instructions of the Contracting Authority including those set out in Appendix 2 unless the Contractor is required by law to otherwise process that Personal Data. Where the Contractor is relying on law as the basis for processing Personal Data, the Contractor shall promptly notify the Contracting Authority of this before performing the processing required by law unless the relevant law prohibits the Contractor from so notifying NEPO.
- 20.4.2 The Contractor shall provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to this Call-Off Contract;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 20.4.3 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:

- (a) ensure that it has in place Protective Measures, which have been reviewed and approved by the Contracting Authority as appropriate to protect the Personal Data having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (b) ensure that the Contractor Personnel do not process Personal Data except in accordance with this Call-Off Contract;
- (c) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Contractor's duties under this clause;
  - (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Contracting Authority or as otherwise permitted by this Call-Off Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled:
  - (i) the Contracting Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Contracting Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Contracting Authority in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data.

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

20.4.5 The Contractor shall notify the Contracting Authority immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);

- (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Call-Off Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 20.4.6 The Contractor's obligation to notify under Clause 20.4.5 shall include the provision of further information to the Contracting Authority in phases as details become available.
- 20.4.7 Taking into account the nature of the processing, the Contractor shall provide the Contracting Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Contracting Authority) including by promptly providing:
- (a) the Contracting Authority or NEPO with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Contracting Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Contracting Authority following any Data Loss Event;
  - (e) assistance as requested by the Contracting Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority with the Information Commissioner's Office.
- 20.4.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 20.4.
- 20.4.9 The Contractor shall allow for audits of its Data Processing activity by the Contracting Authority or the Contracting Authority's designated auditor.
- 20.4.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 20.4.11 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Contractor must:
- (a) notify the Contracting Authority in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Contracting Authority;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 20.4 such that they apply to the Sub-processor; and

- (d) provide the Contracting Authority with such information regarding the Sub-processor as the Contracting Authority may reasonably require.

20.4.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

20.4.13 The Contracting Authority may, at any time on not less than 30 Working Days' notice, revise any part of this Clause 20.4 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 Call-Off Contract).

20.4.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Contracting Authority may on not less than 30 Working Days' notice to the Contractor amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **21. FREEDOM OF INFORMATION**

21.1 The Contracting Authority is subject to the FOIA and the EIR ("the Acts"). As part of the Contracting Authority's duties under the Acts, it may be required to disclose information forming part of the Call-Off Contract to anyone who makes a reasonable request. The Contracting Authority has absolute discretion to apply or not to apply any exemptions under the Acts.

21.2 The Contractor shall assist and cooperate with the Contracting Authority (at the Contractor's expense) to enable the Contracting Authority to comply with the information disclosure requirements under the Acts and in so doing shall comply with any timescale notified to it by the Contracting Authority.

## **22. PROCUREMENT ACT DISCLOSURES**

22.1 The Contracting Authority is subject to the PA 2023. As part of the Contracting Authority's duties under the PA 2023, it may be required to publish and/or disclose certain information in relation to this Call-Off Contract, including but not limited to any modifications to the Call-Off Contract and the performance of the same by the Contractor.

22.2 In the event that the Contracting Authority is required to publish and/or disclose information relating to this Call-Off Contract pursuant to the PA 2023, the discretion as to what information to publish or disclose shall rest solely with the Contracting Authority and nothing in this Call-Off Contract shall prevent the Contracting Authority from publishing or disclosing such information.

22.3 The Contractor shall assist and cooperate with the Contracting Authority (at the Contractor's expense) to enable the Contracting Authority to comply with the information publication or disclosure requirements under the PA 2023 and in so doing shall comply with any timescale notified to it by the Contracting Authority.

## **23. CONFIDENTIALITY**

23.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Call-Off Contract, each party shall do each of the following:

23.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

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

23.2 Clause 23.1 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:

23.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the PA 2023 or the FOIA, Code of

Practice on Access to Government Information or the EIR pursuant to Clause 21 (Freedom of Information);

- 23.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 23.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 23.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Contract; and
  - 23.2.5 it is independently developed without access to the other party's Confidential Information.
- 23.3 The Contractor may only disclose the Contracting Authority's Confidential Information to the Contractor personnel who are directly involved in the provision of the Goods and Services (or either of them) and who need to know the information, and shall make sure that such Contractor personnel are aware of and shall comply with these obligations as to confidentiality.
- 23.4 The Contractor shall not, and shall procure that the Contractor personnel do not, use any of the Contracting Authority's Confidential Information received other than for the purposes of this Call-Off Contract.
- 23.5 At the written request of the Contracting Authority and if reasonable in the circumstances to make that request, the Contractor shall procure that the Contractor's personnel, sub-contractors, agents and advisers (or any of them) sign a confidentiality undertaking prior to commencing any work in accordance with this Call-Off Contract.
- 23.6 Nothing in this Call-Off Contract shall prevent the Contracting Authority from disclosing the Contractor's Confidential Information in any one or more of the following circumstances:
- 23.6.1 to any Crown body or any other contracting authority as defined in the PA 2023 other than the Contracting Authority. All crown bodies or such contracting authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or other contracting authority;
  - 23.6.2 to any consultant, Contractor or other person engaged by the Contracting Authority;
  - 23.6.3 for the purpose of the examination and certification of the Contracting Authority's accounts; and/or
  - 23.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.

## **24. RECORD KEEPING AND MONITORING**

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

24.2 The Contractor will at its own cost, provide any information that may be required by the Contracting Authority to comply with the Contracting Authority's procedures for monitoring of the Call-Off Contract.

## 25. TRANSPARENCY

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

25.2 As noted in Clause 22, the Contracting Authority may be required as part of its duties under the PA 2023 to disclose certain information in relation to this Call-Off Contract. [In particular, in order to comply with sections 52 and 71 of the PA 2023, the Contracting Authority is required to:

25.2.1 publish a copy of this Call-Off Contract;

25.2.2 publish the Key Performance Indicators (set out in Appendix 5 (Specification)); and

25.2.3 conduct and publish an assessment of performance against the Key Performance Indicators on an annual basis.]<sup>3</sup>

25.3 The parties acknowledge and agree that information required to be disclosed by the PA 2023, including but not limited to the information set out in Clause 25.2, is not Confidential Information nor Commercially Sensitive Information.

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

## 26. HEALTH AND SAFETY

26.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Contracting Authority.

26.2 The Contractor shall comply with all health and safety requirements specified in this Call-Off Contract, including but not limited to:

26.2.1 any such requirements set out in the Delivery Plan;

26.2.2 any such requirements set out in the Specification; and

26.2.3 any such requirements set out in the Invitation to Tender.

## 27. CORPORATE REQUIREMENTS

27.1 The Contractor shall comply with all obligations under the HRA.

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<sup>3</sup> DRAFTING NOTE: This drafting should only be included where the estimated contract value is above the relevant threshold set out in the PA 2023 (currently £5 million).

- 27.2 The Contractor shall comply with all Contracting Authority policies and rules, such as, but not limited to:
- 27.2.1 equality and diversity policies;
  - 27.2.2 Sustainability;
  - 27.2.3 information security rules;
  - 27.2.4 whistleblowing and/or confidential reporting policies; and
  - 27.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the delivery of the Goods or in the performance of the Services.
- 27.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 27.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
- 27.5 If the Contractor has a finding against it relating to its obligations under Clause 27.4 it will provide the Contracting Authority with:
- 27.5.1 details of the finding; and
  - 27.5.2 the steps the Contractor has taken to remedy the situation.
- 27.6 The Contractor represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Contractor nor any of its officers, employees or other persons associated with it:
- 27.6.1 has been convicted of any offence involving slavery and human trafficking;
  - 27.6.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 27.7 The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 27.8 The Contractor shall use all reasonable endeavours to adhere to the principles of the 'Prevent' strategy under the Counter-Terrorism and Security Act 2015.
- 27.9 The Contractor shall ensure that its employees, agents and subcontractors are familiar with and have a good understanding of the 'Prevent' strategy, are trained to recognise vulnerability to be drawn into terrorism and are aware of the available programmes to deal with this issue.

## **28. LAW AND CHANGE IN LAW**

- 28.1 The Contractor shall comply at all times with the Law in its performance of the Call-Off Contract.
- 28.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Contracting Authority of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting,

have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with Clause 15.

- 28.3 Any agreed additional sums payable as a result of the operation of Clause 28.2 shall be included in the Price. For the avoidance of doubt nothing in this Call-Off Contract is intended to allow the Contractor double recovery of any increase in costs.

## **29. CONTRACT VARIATION**

- 29.1 The parties may agree to modify the Call-Off Contract in any of the circumstances set out in section 74 of the PA 2023.
- 29.2 Subject to Clause 29.3, no variation or modification to the Call-Off Contract is valid unless it is in writing and signed by the Contracting Authority and the Contractor.
- 29.3 Where the Contracting Authority intends to modify the Call-Off Contract it shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Contracting Authority confirms oral instructions in writing as soon as it is practicable), a variation order setting out the proposed modification or variation to the Call-Off Contract. As soon as practicable after receiving the variation order, the Contractor shall confirm whether it is able to comply with the modification or variation and if so confirm any change to the Price for the modification or variation.
- 29.4 Upon receipt of confirmation that the Contractor is able to comply with the modification or variation, the Contracting Authority shall, where required, publish a contract change notice pursuant to section 75 of the PA 2023. Where a contract change notice is required, the modification or variation shall not be effective until such notice has been published and any voluntary standstill period has expired.
- 29.5 Where a contract change notice is not required to be published by the Contracting Authority, any modification or variation shall be effective from the date agreed between the parties.
- 29.6 Where a mechanism for agreeing a price for the modification or variation has not been set out in the initial procurement documents, the Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

## **30. THIRD PARTY RIGHTS**

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

## **31. NO WAIVER**

- 31.1 Failure by either party at any time to enforce any one or more of the provisions of this Call-Off Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Call-Off Contract nor affect the validity of the Call-Off Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- 31.2 No waiver of any of the provisions of this Call-Off Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with Clause 3 (Notices).

## **32. SEVERANCE**

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



### **33. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

- 33.1 Subject to any express provision of this Call-Off Contract and Clause 33.2 below, the Contractor shall not without the prior written consent of the Contracting Authority, assign all or any benefit, right or interest under this Call-Off Contract or sub-contract the provision of the Goods and Services (or either of them).
- 33.2 The Contractor shall not sub-contract, at any time during the Contract Period, the provision of Goods or Services for the purposes of the Call-Off Contract:
- 33.2.1 to a supplier listed on the Debarment List under mandatory exclusion grounds; or
- 33.2.2 without the prior written consent of the Contracting Authority, to a supplier listed on the Debarment List under discretionary exclusion grounds.
- 33.3 The Contracting Authority shall be entitled to:
- 33.3.1 assign, novate or dispose of its rights and obligations under this Call-Off Contract either in whole or part to any contracting authority (as defined in the PA 2023); or
- 33.3.2 transfer, assign or novate its rights and obligations where required by Law.
- 33.4 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.
- 33.5 If any of the Contractor's sub-contractors which the Contracting Authority sought to determine were an Excluded Supplier or Excludable Supplier during the procurement process becomes an Excluded Supplier or Excludable Supplier at any time during the Contract Period (including by virtue of a Connected Person or Associated Person), the Contractor shall notify the Contracting Authority as soon as possible, and in any event no more than ten (10) Business Days from the date the Contractor becomes aware that its sub-contractor becomes an Excluded Supplier or Excludable Supplier.
- 33.6 Where the Services are to be provided at a facility under the direct oversight of the Contracting Authority, the Contractor shall notify the Contracting Authority of the name, contact details and legal representatives of any sub-contractors involved in delivering the Services.
- 33.7 Notwithstanding Clauses 33.1 and 33.2 the Contractor may assign to a third party ("the Payment Assignee") the right to receive payment of the Price or any part thereof due to the Contractor under this Call-Off Contract. Any assignment under this Condition shall be subject to:
- 33.7.1 reduction of any sums in respect of which the Contracting Authority exercises its right of recovery;
- 33.7.2 all related rights of the Contracting Authority under the Call-Off Contract in relation to the recovery of sums due but unpaid; and
- 33.7.3 the Contracting Authority receiving prior notification of the assignment.
- 33.8 In the event the Contractor assigns the right to receive the Price under Clause 33.5 the Contractor or the Payment Assignee shall notify the Contracting Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 33.9 The Contractor shall notify the Contracting Authority in writing of the Payment Assignee's contact information and bank account details to which the Contracting Authority shall make payment.
- 33.10 The provisions of Clause 13 (Price and Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the approval of the Contracting Authority.

## **34. FORCE MAJEURE**

- 34.1 Neither party shall be liable for failure to perform its obligations under the Call-Off Contract if such failure results from Force Majeure.
- 34.2 If the Contracting Authority or the delivery location is affected by circumstance of Force Majeure, the Contracting Authority shall be entitled to, totally or partially, suspend the date or dates for delivery of the Goods and Services (or either of them) until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Contracting Authority nor entitle the Contractor to terminate the Call-Off Contract.
- 34.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under Clause 11 shall not be regarded as an event of Force Majeure.
- 34.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Call-Off Contract immediately or on a set termination date.
- 34.5 If the Call-Off Contract is terminated in accordance with Clause 34.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

## **35. INDUCEMENTS**

- 35.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Authority any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Contracting Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.
- 35.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Contracting Authority by the Contractor or on the Contractor's behalf.
- 35.3 Where the Contractor engages in conduct prohibited by Clauses 35.1 or 35.2 in relation to this or any other contract with the Contracting Authority, the Contracting Authority has the right to:
- 35.3.1 terminate the Call-Off Contract and recover from the Contractor the amount of any loss suffered by the Contracting Authority resulting from the termination, including the cost reasonably incurred by the Contracting Authority of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period; or
  - 35.3.2 recover in full from the Contractor any other loss sustained by the Contracting Authority in consequence of any breach of this clause whether or not the Call-Off Contract has been terminated.

## **36. COSTS AND EXPENSES**

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

## **37. NO AGENCY OR PARTNERSHIP**

Nothing contained in this Call-Off Contract, and no action taken by the parties pursuant to this Call-Off Contract, will be deemed to constitute a relationship between the parties of partnership,

joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

### **38. NON SOLICITATION AND OFFERS OF EMPLOYMENT**

38.1 The Contractor agrees that it will not, without the prior written consent of the Contracting Authority, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Call-Off Contract:

38.1.1 solicit or entice, or endeavour to solicit or entice, away from the Contracting Authority, any person directly related to the Goods and Services (or either of them) employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Contracting Authority at the date of the termination of this Call-Off Contract or at any time during the period of one month immediately preceding the date of termination; or

38.1.2 attempt, or knowingly assist or procure any other person to do the above.

### **39. INSPECTION OF CONTRACTOR'S PREMISES**

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

### **40. LAW AND JURISDICTION**

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

**APPENDIX 1**

**Schedule 1 – Appendix 1**

**EPS Rebates which the Contracting Authority may deduct and retain**

Number of days elapsed between the Calculation Trigger Date and the Invoice Payment Date	% of the amount owed that may be deducted and retained by Contracting Authority as the EPS Rebate				
	<i>[Please note that the actual SPA issued will only contain the rebate column that corresponds to the rebate offered.]</i>				
0	0.75%	1.50%	1.88%	2.25%	3.00%
1	0.73%	1.45%	1.81%	2.18%	2.90%
2	0.70%	1.40%	1.75%	2.10%	2.80%
3	0.68%	1.35%	1.69%	2.03%	2.70%
4	0.65%	1.30%	1.63%	1.95%	2.60%
5	0.63%	1.25%	1.56%	1.88%	2.50%
6	0.60%	1.20%	1.50%	1.80%	2.40%
7	0.58%	1.15%	1.44%	1.73%	2.30%
8	0.55%	1.10%	1.38%	1.65%	2.20%
9	0.53%	1.05%	1.31%	1.58%	2.10%
10 (Target Day)	0.50%	1.00%	1.25%	1.50%	2.0%
11	0.48%	0.95%	1.19%	1.43%	1.90%
12	0.45%	0.90%	1.13%	1.35%	1.80%
13	0.43%	0.85%	1.06%	1.28%	1.70%
14	0.40%	0.80%	1.00%	1.20%	1.60%
15	0.38%	0.75%	0.94%	1.13%	1.50%
16	0.35%	0.70%	0.88%	1.05%	1.40%
17	0.33%	0.65%	0.81%	0.98%	1.30%
18	0.30%	0.60%	0.75%	0.90%	1.20%
19	0.28%	0.55%	0.69%	0.83%	1.10%
20	0.25%	0.50%	0.63%	0.75%	1.00%
21	0.23%	0.45%	0.56%	0.68%	0.90%

22	0.20%	0.40%	0.50%	0.60%	0.80%
23	0.18%	0.35%	0.44%	0.53%	0.70%
24	0.15%	0.30%	0.38%	0.45%	0.60%
25	0.13%	0.25%	0.31%	0.38%	0.50%
26	0.10%	0.20%	0.25%	0.30%	0.40%
27	0.08%	0.15%	0.19%	0.23%	0.30%
28	0.05%	0.10%	0.13%	0.15%	0.20%
29	0.03%	0.05%	0.06%	0.08%	0.10%
30	0.00%	0.00%	0.00%	0.00%	0.00%

1. Calculation of the EPS Rebate

1.1 The EPS Rebate is calculated by establishing the number of days that have elapsed between the Calculation Trigger Date and the Invoice Payment Date and comparing the number of days elapsed within the first column of the table above to determine the EPS Rebate to be applied to the invoiced amounts.

1.2 EPS Rebates applied to invoices are calculated at an invoice line item level. EPS Rebates are applied in the manner described at (a) immediately above, against the value of each line item. The result of this calculation is rounded to the nearest pence. Once the EPS Rebates for all line items have been calculated, they are aggregated to provide the total EPS Rebate value to be deducted from the Contractor's invoice on early payment of the invoice.

2. The Contracting Authority shall issue a debit note indicating the value of the EPS Rebate that has been applied.

## APPENDIX 2

### Schedule 1 – Appendix 2

#### Data Protection

1. The Supplier shall comply with any further written instructions with respect to processing by NEPO.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i></p> <p><i>[Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</i></p>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>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.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Example s here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

**APPENDIX 3**

**Schedule 1 – Appendix 3**

**Pricing Schedule**

[to be populated and included in the Order]

## **APPENDIX 4**

### **Schedule 1 – Appendix 4**

#### **Special Terms and Conditions**

[to be populated and included in the Order]

- 1.1 Amendments to Call-Off Terms and Conditions
- 1.2 Additional Call-Off Terms and Conditions



**APPENDIX 5**

**Schedule 1 – Appendix 5**

**Specification**

[to be populated and included in the Order]

**APPENDIX 6**

**Schedule 1 – Appendix 6**

**Contract Management Plan**

[to be populated and included in the Order]

## SCHEDULE 2

### Framework Particulars

Framework Title	Framework Agreement for NEPO407 – Frozen Food	
NEPO	The Association of North East Councils Limited trading as the North East Procurement Organisation (NEPO)	
Commencement Date	18 <sup>th</sup> July 2025	
Term (including option to extend)	24 months	
To be called off by order – please delete as appropriate	Yes	
Quantity	Neither NEPO nor any Contracting Authority is under an obligation to place Orders under the Framework Agreement and NEPO makes no guarantee that any orders will be placed under the Framework Agreement.  Quantities will be specified in any orders between the Contracting Authority and the Supplier.	
Specification or description	See Specification	
Address for Notice	NEPO Abbots Hill,  Baltic Business Quarter,  Gateshead,  NE8 3DF	
Price	See Pricing Schedule	
Contract rebate (%)	3% of each issued invoice to be paid in accordance with the Contract Rebate Form	
<b>NEPO authorised officers</b>		
<b>Name</b>	<b>Position</b>	<b>Contact details</b>
Steven Sinclair	Procurement and Commercial Director	Steven.sinclair@nepo.org
Carl Telford	Procurement Lead	<a href="mailto:carl.telford@nepo.org">carl.telford@nepo.org</a>
Harry McBeth	Procurement Assistant	<a href="mailto:harry.mcbeth@nepo.org">harry.mcbeth@nepo.org</a>

<b>Insurance</b>	
<b>Insurance type</b>	<b>Minimum level</b>
Employer's liability Insurance	<b>£10 million</b>
Public liability Insurance	<b>£10 Million</b>
Product Liability Insurance	<b>£5Million</b>

## **SCHEDULE 3**

### **Data Protection**

- 1. PROCESSING BY THE CONTRACTOR**
  - 1.1 Scope**
  - 1.2 Nature**
  - 1.3 Purpose of processing**
  - 1.4 Duration of the processing**
- 2. TYPES OF PERSONAL DATA**
- 3. CATEGORIES OF DATA SUBJECT**

**SCHEDULE 4**  
**Form of Order**