**SCHEDULE 1 – Part 2**

**NEPO 219 BUILDING MATERIALS**

**DPS AGREEMENT**



**NEPO and TPPL Building Materials DPS Agreement**

Between

NEPO & The Procurement Partnership Ltd

And

DPS Commencement: 21st January 2020

DPS Reference: NEPO219

1. “Parties” to this agreement:
   1. The Association of North East Councils Limited trading as the North East Procurement Organisation (“NEPO”), Guildhall, Quayside, Newcastle upon Tyne, NE1 3AF, Company Registration Number 05014821
   2. The managing agent of this Agreement (“Agent”) on behalf of NEPO:

The Procurement Partnership Limited, Ebenezer House, Rooks Street, Cottenham, Cambridge, CB24 8QZ, Company Registration Number 05098402

And;

* 1. The Supplier appointed to this Agreement (“Supplier”)

Company Registration Number:

1. Definitions:

|  |  |
| --- | --- |
| **“Agreement”** | Means this agreement, its Schedules and the documentation used to award Call-Off Contracts under the DPS. |
| **“Agreement Fees”** | Means the fees charged by the Agent for the creation, management and ongoing administration of this Agreement including delivery of any Further Competitions on behalf of Members. |
| **“Award Criteria”** | Means the criteria used to evaluate tender submissions for Further Competitions conducted under the DPS. |
| **“Call-Off Award Criteria”** | Is the award criteria applied to evaluate tender submissions for Further Competition(s) and shall reflect the Member’s particular requirements. |
| **“Call-Off Contract”** | Means a contract for the Supply of Materials awarded by a Member to the Supplier by Further Competition. A template set of terms governing a Call-Off Contract awarded are provided in Schedule 3 of this Agreement. |
| **“Categories”** | Means the different categories within the DPS that forms the basis of this Agreement. The list of Categories the Supplier is appointed to are shown in Schedule 1. |
| **“Central Purchasing Body”** | Means as defined by Regulation 2 of the Public Contracts Regulations 2015/102: “a contracting authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities”. |
| **“Commencement Date”** | Means the commencement or start of this DPS to which the Supplier has been appointed. The commencement date is 21st January 2020. |
| **“Confidential Information”** | Means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including trade secrets, Intellectual Property Rights and know-how of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all personal data and sensitive personal data within the meaning of the DPA. |
| **“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”** | Have the meaning given in the GDPR. |
| **“Data Loss Event”** | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. |
| **“Data Protection Impact Assessment​”** | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| **“Data Protection Legislation”** | means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy. |
| **“Data Subject Access Request​”** | Means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| **“DPA”** | Means the Data Protection Act 2018. |
| **“DPS”** | Means the NEPO and TPPL DPS for supply of Building Materials (and associated services) that this Agreement governs, as advertised in the Official Journal of the European Union under Contract Notice 2019/S 228-558807. |
| **“DPS Portal”** | Means the electronic tender portal (<https://procontract.due-north.com>) under which this DPS has been created and through which all Further Competitions must be conducted. |
| **“EIR”** | Means the Environment Information Regulations 2004. |
| **“FOIA”** | Means the Freedom of Information Act 2000. |
| **“Force Majeure”** | Means any cause materially affecting the performance by a party of its obligations under this Agreement arising from any act (as defined in clause 15) beyond its reasonable control and affecting any party. |
| **“Further Competition”** | Means the process of reopening competition for the purpose of placing a Call-Off Contract pursuant to this Agreement. |
| **“GDPR”** | Means the General Data Protection Regulation​ (Regulation (EU) 2016/679). |
| **Information Commissioner’s Office** | Means the United Kingdom’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals (https://ico.org.uk/). |
| **“Insolvency”** | Means the following in relation to the Supplier   * 1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or   2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or   3. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or   4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or   5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or   6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or   7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or   8. where the Supplier is an individual or partnership, any event analogous to those listed in (a) to (g) (inclusive) occurs in relation to that individual or partnership; or   9. any event analogous to those listed in (a) to (h) (inclusive) occurs under the law of any other jurisdiction. |
| **“Intellectual Property Rights”** | Means   * 1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;   2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and   3. all other rights having equivalent or similar effect in any country or jurisdiction. |
| **“LED”** | Means the Law Enforcement Directive (Directive (EU) 2016/680). |
| **“Legislation or Law”** | Means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a UK court or the European Court of Justice, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply. Any reference to “Legislation” shall be construed accordingly. |
| **“Management Information”** | Means the information and data required by NEPO and the Agent from the Supplier regarding Member’s Purchases for each Payment Quarter of this Agreement. |
| **“Materials”** | Means the goods, products and services as defined by the Categories of this Agreement as shown within Schedule 1. It also means all other miscellaneous products, activities and services including that are likely and reasonable to be required by Members or Contracting Authorities under a Call-off Contract pursuant to the nature of this Agreement. |
| **“Member”** | Means, any organisation who is a member of NEPO or the TPPL buying club and who awards Call-Off Contracts under this Agreement. |
| **“Party”** | Means any party to this Agreement as listed in clause 1. |
| **“Payment Quarter”** | Means these defined quarters in each year of this Agreement;  Payment Quarter 1: 1st January to 31st March  Payment Quarter 2: 1st April to 30th June  Payment Quarter 3: 1st July to 30th September  Payment Quarter 4: 1st October to 31st December. |
| **“PCR 2015”** | Means Public Contracts Regulations 2015. |
| **“Price”** | Means the cost of Purchase of Materials from the Supplier. |
| **“Prohibited Act(s)”** | The following constitute a Prohibited Act:  (a) directly or indirectly to offer, promise or give any person;  (i) working for or engaged by NEPO a financial or other advantage;  (ii) induce that person to perform improperly a relevant function or activity; or  (iii) reward that person for improper performance of a relevant function or activity;  (b) directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract.  (c) committing any offence:  (i) under the Bribery Act;  (ii) under legislation creating offences concerning fraudulent acts;  (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with NEPO; or  (iv) defrauding, attempting to defraud or conspiring to defraud NEPO. |
| **“Protective Measures”** | Means 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. |
| **“Purchase”** | Means the purchase of Materials by a Member. |
| **“Request to Participate”** | Means the Supplier’s original application to participate in the DPS. |
| **“Service Levels”** | Means the service level template provided in Schedule 2 of this Agreement. Members have flexibility to amend and add service levels as appropriate to their requirements. |
| **“Sub-processor”** | Means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement. |
| **“Suspended”** | Means the Supplier has been temporarily removed from having opportunity to be awarded Call-Off Contracts via Further Competition. |
| **“Working Day”** | Means any day of the week except Saturday, Sunday and public holidays on which banks are open for general business in the City of London. |

1. **Interpretation**
   1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns.
   2. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
   3. A reference to a party shall be to a party to this Agreement and the expression parties shall be construed accordingly.
   4. Words in the singular shall include the plural and vice versa.
   5. A reference to one gender shall include a reference to the other genders.
   6. A reference to any statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.
   7. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
   8. A reference to writing or written includes faxes and e-mail.
   9. A reference to a clause in any Part shall, unless otherwise expressly provided, be to a clause within that Part.
   10. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
2. **Structure**
   1. The Agreement contains the following additional parts:-
      1. Schedule 1: The list of Categories that the Supplier is appointed to;
      2. Schedule 2: Service Level Template;
      3. Schedule 3: Template Call off Contract;
3. Duration
   1. This Agreement begins on the Commencement Date and will continue for a period of Sixty (60) months unless otherwise terminated in accordance with the terms of this Agreement, specifically Clause 12.
4. Scope of Agreement
   1. This Agreement governs a DPS accessible by Members consisting of seven (7) Categories for the Supply of Materials.
      1. Category 1: Managed Store/One-Stop Shop/Dedicated Store;
      2. Category 2: General Materials;
      3. Category 3: Plumbing, Heating and Gas Spares;
      4. Category 4: Electrical;
      5. Category 5: Commercial Plumbing, Heating and Laundry Spares;
      6. Category 6: Modular Build.
   2. This Agreement is to document the relationship between NEPO, the Agent and the Supplier. Its purpose is to ensure roles and any obligations as part of involvement in the Agreement are clear and understood.
   3. The Agreement provides an outline process that should be followed by Members wishing to place Call-Off Contracts through the DPS. Provided that actions taken by NEPO, the Agent or any Member are fair, reasonable, transparent and in compliance with the Public Contracts Regulations 2015, particularly regulations 28 and 34 then the processes for the award of Call-Off Contracts may be more precisely formulated to suit the needs of the Member.
   4. This Agreement includes a template form of Call-Off Contract (Schedule 3) for awards, it is expected, unless more precisely formulated during a Further Competition, that:-
      1. The Call-Off Contract terms and conditions for award will generally be the template Call-Off Contract as provided at Schedule 3 of this Agreement;
      2. Any relevant terms and conditions and Specification agreed to by the Supplier as part of this Agreement or their Request to Participate in the DPS may be varied under a Call-Off Contract, provided that it is reasonable and does not breach clause 7.1 of this agreement.
   5. This Agreement does not grant exclusivity for the Supplier. The Supplier agrees that at all times NEPO and Members are entitled to enter into other contracts and agreements with other providers for the Purchase of any or all Materials.
   6. The Supplier acknowledges and agrees that there is no obligation for NEPO and Members to Purchase any Materials from the Supplier throughout the duration of this Agreement.
   7. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made to the Supplier in respect of the total quantities or values of the Materials to be Purchased from them through this Agreement and the Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.
   8. The Supplier (including its subcontractors) and Members accessing the DPS acknowledge that NEPO and the Agent accept no responsibility for the chosen Call-Off Contract award process of any Member who chooses to use the DPS. It is for the Supplier and Members to ensure that the Call-Off Award Criteria and the Call-Off Contract will not breach PCR 2015 or any other legislative obligations and should it do so neither NEPO nor the Agent shall be held accountable, responsible or liable in any way.
5. Call-Off Contracts - Conditions
   1. A standard set of terms and conditions for a Call-Off Contract is provided within Schedule 3 of this Agreement. Members can supplement, more precisely formulate or replace these standard terms and conditions as appropriate and necessary to meet the needs of their organisation and any legislative requirements. This is provided that any changes, variations or replacements do not represent a significant material deviation from the nature and intent of this Agreement.
   2. Schedule 2 provides a Service Level template to be associated with the Purchase of Materials under a Call-Off Contract. Service Levels may be set dependent on the needs of the Member through a Further Competition process.
   3. Members and Suppliers are advised that Further Competitions with significant material deviation from the nature and intent of this Agreement are not permissible. However, in accordance with regulation 72 of PCR 2015 the Agreement may be modified provided that the modification cannot be considered substantial as defined by 72 (8).
   4. Call-Off Contracts awarded under this Agreement may be extended on the basis of continuity and cost in accordance with the provisions of regulation 72 of PCR 2015.
   5. Call-Off Contracts will be awarded by Members in accordance with the rules as defined by the PCR 2015.
   6. Members are advised that Call-Off Contracts awarded should contain the terms and conditions that their organisation requires but as a minimum should include provisions allowing termination of the contract where:
      1. The Call-Off Contract awarded has been subject to a substantial modification from the nature and intent of this Agreement which would have required a new procurement procedure;
      2. The Supplier has, at the time of Call-Off Contract award, been in one of the situations referred to in regulation 57 of PCR 2015 and should therefore have been excluded from the call-off, unless suitable evidence is provided in accordance with ‘self-cleaning’ (regulation 57 paragraphs 13 – 17 of PCR 2015);
      3. The Call-Off Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the PCR 2015.
   7. Standard payment terms for Members are set at 30 days from date of undisputed invoice:
      1. These payment terms can be varied by Members under Further Competition as appropriate to the needs of their organisation but cannot exceed 30 days from date of undisputed invoice;
      2. Members are advised that Call-Off Contracts placed are to include conditions ensuring any subcontractors are to be paid by the lead/main Supplier within 30 days from date of undisputed invoice;
      3. Members are advised to review Crown Commercial Services’ guidance with regards to prompt payment and if appropriate use the suggested model terms provided in any Call-Off Contract placed. For reference these model terms are (These can be amended as appropriate for use within any Call-Off Contract):
         1. Where the Supplier submits an invoice to the Member [in accordance with Call-Off Contract conditions set by the Member], the Member will consider and verify that invoice in a timely fashion.
         2. The Member shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Member has determined that the invoice is valid and undisputed.
         3. Where the Member fails to comply with paragraph 7.7.3.1 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 paragraph 7.7.3.2 after a reasonable time has passed.
         4. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

a) Provisions having the same effect as clauses 7.7.3.1 - 7.7.3.3 of this Agreement; and

b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 7.7.3.1 - 7.7.3.4 of this Agreement.

c) In clause 7.7.3.4, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Member 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 Agreement.

* 1. It is the Supplier’s responsibility to complete whatever forms or other such registration process that may be required by an individual Member to allow them to place an order and/or pay invoices promptly.
     1. The Supplier is advised to ensure that any such requirements are completed prior to the acceptance of any order placed by a Member pursuant to a Call-Off Contract.
  2. It is the Supplier’s responsibility to inform any of its branches, sites, outlets and/or supply-chain partners relevant to delivering a Call-Off Contract award. This is a particularly relevant when the individual Member’s Call-Off Contract requirements covers a variety of geographical locations.

1. Call-Off Contracts – Award Criteria
   1. Award Criteria and weightings used as part of any Further Competition process under the DPS may be more precisely formulated and/or supplemented with additional reasonable, relevant and proportionate sub-criteria. This is provided weightings and any Award Criteria used do not represent a material deviation to the nature or intent of the DPS.
   2. The suggested Award Criteria identified for each Category of the DPS are:
      1. Category 1: 70% Quality, 30% Cost
      2. Category 2: 40% Quality, 60% Cost
      3. Category 3: 40% Quality, 60% Cost
      4. Category 4: 40% Quality, 60% Cost
      5. Category 5: 40% Quality, 60% Cost
      6. Category 6: 70% Quality, 30% Cost

In accordance with clause 8.1 these Award Criteria may be more precisely formulated, to include introduction of varied sub-criteria. The Award Criteria and any sub-criteria introduced can be adjusted from 0% - 100%. Quality based Award Criteria may also be evaluated on a pass or fail basis, particularly in relation to meeting Materials specification(s) set by Members.

* + 1. Award Criteria (and any sub-criteria introduced) used in any Further Competition should be clearly communicated to all Supplier(s) participating in that Further Competition within the procurement documentation used.

1. Call-Off Contracts – Award Processes
   1. Call-Off Contracts can be awarded by Members on the following basis:
      1. Further Competition, whereby competition is opened up to Suppliers participating in the relevant Category(s) of the DPS and in accordance with the following Clauses 9.2 - 9.4.

**Further Competition**

* 1. Any Member awarding a Call-Off Contract under this Agreement through a Further Competition shall:
     1. Ensure compliance with the requirements of Regulations 34 and 54 of the PCR 2015;
     2. Identify which Category(s) the Call-Off Contract should be awarded under;
     3. Develop a Further Competition tender setting out its requirements for Materials, this including clear identification of the Member’s specific functional and operational requirements;
     4. Clearly state the Call-Off Award Criteria to be used and any appropriate guidance as to the evaluation process/methodology being applied;
     5. Make the Further Competition tender available to Suppliers identified as suitable to participate via the DPS Portal;
        1. Submissions from Suppliers for all Further Competitions awarded must also be made online only via the DPS portal.
     6. Ensure all Suppliers within the relevant Category(s) are invited to submit a response;
     7. Allow Suppliers a reasonable and proportionate amount of time to prepare and submit their responses, but in any event no less than 10 days;
     8. Evaluate submissions in accordance with the Call-Off Award Criteria detailed within the Further Competition. With the results of the application of the Call-Off Award Criteria forming the basis of its decision to award a Call-Off Contract for provision of Materials;
     9. Award its Call-Off Contract to the successful Supplier(s) as per the Call-Off Award Criteria stated within the Further Competition;
     10. Provide unsuccessful Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.
         1. Members are advised to hold a voluntary 10-day standstill period prior to entering into any Call-Off Contract. This is not a mandatory requirement.
  2. Any Supplier invited to participate in a Further Competition shall notify the Member in writing if it declines to submit a response to the Further Competition.
  3. The Member conducting the Further Competition shall be entitled at all times to decline to make an award. Nothing in this Agreement shall oblige any Member to award any Call-Off Contract.
  4. The Supplier recognises that each Member seeking to award a Call-Off Contract pursuant to this Agreement is responsible for its conduct and compliance of the process used. The Supplier agrees that NEPO and the Agent shall have no liability in relation to:-
     1. The conduct and behaviour of Members conducting Further Competitions
     2. The performance or non-performance of any Call-Off Contracts between Members and Suppliers.

1. Agreement fees & Provision of data
   1. The Supplier, when awarded a Call-Off Contract under this Agreement to supply Materials will pay Agreement Fees to the Agent on the following basis, unless specified differently under the Further Competition process used to award the Call-Off Contract:
      1. The Agreement Fee for all Categories is set at 1% of the total invoiced value (ex VAT) of Materials purchased by all Members for the Payment Quarter in question as identified from the Management Information.
   2. The Agent shall be entitled to invoice the Supplier in respect of the Agreement Fee due for each Payment Quarter based on the Management Information provided by the Supplier.
   3. The Management Information for each Payment Quarter provided by the Supplier within five (5) Working Days of request will include the following information:
      1. A list of all Members purchasing Materials and Services through the Agreement including all active account numbers;
      2. Total value (excluding VAT) of all Materials and services purchased by each Member across the accounts identified in 10.3.1, in the preceding Payment Quarter;
      3. Full line level detail of the purchases made by Members for the Payment Quarter, including (but not limited to) where available;
         1. Category/sub-group of Material;
         2. Material product code;
         3. Material description;
         4. Unit of measure information;
         5. Quantity purchased;
         6. Line value (ex VAT).
      4. New additions to the list identified in 10.3.1, showing the commencement date and the anticipated end-date of any Call-Off Contract.
      5. Management Information requested by the Agent may also include other information required by NEPO, for example (but not limited to): training delivered and social value projects undertaken.
   4. Unless otherwise agreed in writing, the Supplier shall pay by BACS the amount stated in any invoice submitted by the Agent within thirty (30) calendar days of the date of issue of the invoice.
      1. If the Supplier fails to make any payment when due, in accordance with Clause 10.4 above, the Agent may charge the Supplier daily interest on the overdue amount at the rate of 3% per annum above the base rate from time to time of the Bank of England
   5. The Supplier shall not pass on, recharge to and/or recover by whatever means from any Member the cost of the Agreement fees. Agreement fees shall be exclusive of VAT. The Supplier shall pay the VAT on the Agreement fees at the prevailing rate on the date of invoice.
   6. Any IT development costs incurred by the Supplier in the provision of Management Information as described in clause 10.3 are the sole responsibility of the Supplier.
   7. The Agent reserves the right to review the position of the Supplier on the DPS for regular and unreasonable failure to provide the required Management Information and/or non-payment of invoices.
      1. Failure to provide Management Information or to pay invoices on time on more than three (3) occasions in any rolling twelve (12) month period may result in the Supplier being Suspended.
      2. Two (2) occurrences of the Supplier being Suspended, may at the discretion of the Agent and NEPO be considered a material breach of this Agreement for the purposes of clause 12.1.
2. Price
   1. Price will be in accordance the results of a Further Competition process and governed by the terms of any Call-Off Contract.
   2. Prices submitted through any Further Competition must be exclusive of VAT. Prices quoted in any Further Competition shall be deemed to include all taxes (except VAT) duties, insurance premiums, guarantees or other costs and commissions associated with the provision and delivery of the Materials (where applicable).
3. Termination
   1. NEPO and the Agent reserves the right to terminate this Agreement immediately in the following circumstances:
      1. the Supplier commits a material breach and/or persistent repeated breaches of any clause of this Agreement or Call-Off Contract with a Member and, if such breach is or are remediable, fails to provide remedy within a period of ten (10) Working Days after being notified in writing to do so; or
      2. the Supplier fails to declare a trading relationship with a Member directly resulting from this Agreement;
      3. NEPO and/or the Agent becomes aware of a serious infringement of the obligations under PCR 2015; or
      4. the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
      5. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
      6. the Supplier ceases, or threatens to cease, to carry on business; or
      7. NEPO and/or Agent reasonably apprehends that any of the events in Clauses 12.1.4 to 12.1.6 inclusive is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
      8. the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this DPS Agreement or to any other contract with NEPO and/or Agent; or
      9. the Supplier or any of its employees shall have committed any offence under the Bribery Act 2010.
   2. Either NEPO, its Agent or the Supplier may terminate this Agreement without reason at any time provided at least sixty (60) Working Days notice is given.
4. Consequences Of Termination
   1. Termination shall be without prejudice to the rights and remedies of the Supplier and NEPO and/or Agent accrued before such termination and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding as at the date of such termination.
   2. All provisions of this Agreement which are expressed to survive termination or expiry of this Agreement shall continue in force and effect in accordance with their terms.
   3. Subject as otherwise provided in the Agreement neither Party shall have any further obligation to the other under the Agreement.
   4. Notwithstanding the service of a notice to terminate the Agreement, the Supplier shall continue to fulfil its obligations under the Agreement and any Call-Off Contract until the date of termination or expiry of the Agreement or such other date as required.
   5. Termination or expiry of the Agreement shall not cause any Call-Off Contract entered into prior to the termination of the Agreement to terminate.
5. Marketing
   1. The Supplier shall not, without written approval of NEPO, the Agent or other relevant Party:
      1. make any statements to the press or publicise this Agreement in any way; or
      2. use NEPO’s, the Agent’s or any of the Party’s name or brand in any promotion or marketing.
   2. The decision to approve any request for use of name, brand or other marketing information shall not be unreasonably withheld or delayed by any Party.
   3. The Supplier will ensure that any marketing information relating to this Agreement published via any media, particularly online, is kept up to date and accurate where it is practically possible to do so.  In the event that the Supplier fails to keep any information up to date, NEPO or the Agent may give the Supplier notice of the failure.
      1. Where notice is given of a failure the Supplier has twenty (20) Working Days to resolve the issue to the satisfaction of NEPO or the Agent. Where a failure is not resolved within the timescale stated NEPO or the Agent reserve the right to for such information to be removed immediately by any means. The cost of such removal to be the sole responsibility of the Supplier.
6. Force Majeure
   1. If either Party is unable to perform any obligation under this DPS Agreement because of an event of Force Majeure which is both beyond that Party’s control and is such that the Party with the application of all due diligence and foresight could not prevent which causes the cessation of or a substantial interference with the performance of the Agreement, the duty of the Party to perform the relevant obligation shall be suspended until such circumstances have ceased.
   2. For the purposes of this Clause 15 the circumstances below are events of Force Majeure:
      1. explosion;
      2. war;
      3. civil disorder;
      4. fire or flood;
      5. actual or threatened terrorist attack; or
      6. acts or legislation passed by central Government that may impact the validity of any aspect of this Agreement.
7. Notices
   1. Except as otherwise expressly provided within this Agreement, no notice from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.
   2. Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, registered post, by recorded delivery service and/or by email) such letters shall be addressed to the other Party at the addresses stated below. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) working days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters. No notice will be accepted if sent by fax.
   3. For the purposes of notices the address of each Party shall be as stated in Clause 1;
      1. Any Party may change its address by serving a notice in accordance with clause 17.2.
8. Intellectual Property Rights
   1. No Party to this Agreement shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
   2. The Agent and/or Supplier shall not cause or permit anything which may damage or endanger the Intellectual Property Rights of NEPO or NEPO’s title to it, nor assist or allow others to do so.
   3. The Agent and/or Supplier shall not in connection with the performance of the DPS use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.
   4. No Party to this Agreement shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
9. Confidentiality
   1. Each Party to this Agreement will:
      1. treat the other Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
      2. not disclose the other Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the other Party's prior written consent;
      3. not use or exploit the Confidential Information disclosed in any way except for the purposes anticipated under this Agreement; and
      4. immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party’s Confidential Information.
   2. Parties shall be entitled to disclose the Confidential Information of the other Party where:
      1. there is a requirement to disclose the Confidential Information by Law, including, but not limited to, requirements in connection with the FOIA or the EIRs;
      2. the need for such disclosure arises out of or in connection with any legal challenge or potential legal challenge against NEPO, the Agent or Member arising out of or in connection with this Agreement;
      3. a Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
   3. This whole Clause 18 shall survive beyond any expiry or termination of this Agreement.
10. Data Protection
    1. The Supplier shall, and shall procure that all staff shall, comply with any notification requirements under DPA and all Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
    2. It is not envisaged that for the purposes of management of the DPS in accordance with this Agreement that there will be any provision of Personal Data to the Supplier by NEPO for processing. This clause does not seek to limit or obviate the responsibilities of Members and Suppliers to Personal Data, which are covered in Call-Off Contracts associated with this DPS.
       1. Whilst it is not envisaged that there will be any provision of Personal Data by NEPO to any Supplier, should this situation alter then the following clauses 19.3 – 19.16 apply.
    3. All Parties acknowledge that for the purposes of the Data Protection Legislation, NEPO is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to undertake will be notified in writing by NEPO. Changes to processing may not be determined by the Supplier.
    4. The Supplier shall notify NEPO immediately if it considers that any of NEPO's instructions infringe DPA.
    5. The Supplier 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 this 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.

* 1. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with ensuring delivery of Materials unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify NEPO before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by NEPO as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that:

(i) the employees do not process Personal Data except in accordance with this Agreement (particularly for the purposes of delivery of Materials);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any employees who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Supplier’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

(C) 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 Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of NEPO has been obtained and the following conditions are fulfilled:

(i) The Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by NEPO;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Supplier 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 Supplier complies with any reasonable instructions notified to it in advance by NEPO with respect to the processing of the Personal Data;

(e) at the written direction of NEPO, delete or return Personal Data (and any copies of it) to NEPO on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

* 1. Subject to clause 19.8 the Supplier 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’s Office or any other regulatory authority in connection with Personal Data processed under this 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.

* 1. The Supplier’s obligation to notify under clause 19.7 shall include the provision of further information to NEPO in phases, as details become available.
  2. Taking into account the nature of the processing, the Supplier shall provide NEPO with full assistance in relation to either Party's obligations under DPA and any complaint, communication or request made under clause 19.7 (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.

* 1. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

(a) NEPO determines that the processing is not occasional;

(b) NEPO determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) NEPO determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

* 1. The Supplier shall allow for audits of its data processing activity by NEPO or NEPO’s designated auditor.
  2. The Supplier shall designate a Data Protection Officer if required by DPA.
  3. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier 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 Clause 19.3 – 19.16 of this Agreement such that they apply to the Sub-processor; and

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

* 1. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
  2. The Supplier may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
  3. 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 Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

1. The Supplier’s Obligations And The DPS Agreement Standard
   1. The Supplier shall act:
      1. with all the due skill care and diligence to be expected of a competent Supplier experienced in providing services of a similar kind scope and complexity as that under this Agreement;
      2. in accordance with the provisions of the Agreement and Call Off Contract(s) awarded;
      3. in accordance with all applicable Legislation or other legal requirements concerning the obligations under the Agreement and Call-Off Contract including without limitation those relating to the health and safety of staff and users;
      4. in a manner that does not damage the reputation of NEPO or the Agent.
2. Warranties And Representations
   1. The Supplier warrants and represents to NEPO and the Agent that:-
      1. it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement and any Call-Off Contract;
      2. this Agreement is executed by a duly authorised representative of the Supplier;
      3. in entering into this Agreement it has not committed any Prohibited Act;
      4. as at the Commencement Date, all information, statements and representations contained in the Supplier’s Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to NEPO and/or Agent prior to the execution of this Agreement and it will promptly advise NEPO and/or Agent of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
      5. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Agreement;
      6. it has not caused or induced any person to enter such agreement referred to in Clause 21.1.5 above;
      7. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement;
      8. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement;
      9. in the three (3) years prior to the Commencement Date:-
         1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
         2. it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
         3. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an on-going business concern or its ability to fulfil its obligations under this Agreement.
3. Prohibited Acts
   1. The Supplier shall not commit any Prohibited Acts.
   2. In the event the Supplier breaches Clause 22.1, the Supplier shall indemnify NEPO and Agent from and against any other loss sustained by NEPO and Agent in consequence of such breach, whether or not the Agreement has been terminated.
4. Conflicts Of Interest
   1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any staff are placed in a position where (in the reasonable opinion of NEPO and/or Agent) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or staff and the duties owed to NEPO and/or Agent under the provisions of this Agreement. The Supplier shall notify NEPO and Agent if such a conflict arises.
5. Insurance And Indemnity
   1. Subject to Clause 24.2 the Supplier shall indemnify NEPO and Agent, and keep NEPO and Agent indemnified, from and against any and all losses, costs, expenses, damages, claims demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract tort including negligence under statute in common law or otherwise out of the act default negligence breach of contract breach of statute or statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its sub-Suppliers and their employees or agents.
   2. The Supplier’s liability under Clause 24.1 shall be limited as follows:
      1. The aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply the Materials, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 25% of the total Price paid for all Materials by Members under the Agreement in the 12 month period preceding any claim up to a maximum of five million pounds (£5,000,000);
      2. accordance with Clause 24.5 it shall be unlimited.
   3. The Supplier shall at its own cost take out and maintain throughout the Agreement with a reputable insurance company or companies the following policies of insurance:
      1. Employers liability insurance in accordance with the Employer’s Liability (Compulsory Insurance Act) 1969 with a limit of indemnity of not less than five million pounds (£5,000,000) annually and in the aggregate;
      2. Public liability with a limit of indemnity of not less than five million pounds (£5,000,000) annually and in the aggregate;
   4. Notwithstanding anything to the contrary contained in this Agreement, NEPO’s liability whether arising from breach of contract tort including negligence breach of statutory duty or otherwise shall be limited as follows:
      1. accordance with Clause 24.5 it shall be unlimited;
      2. in respect of all other liability falling outside of Clause 24.5 arising out of or in connection with its obligations under this Agreement and all actions claims demands proceedings costs and expenses arising in respect of it to £500,000 (five hundred thousand pounds).
   5. No Party to this Agreement limits its liability for death or personal injury caused by the negligence of itself or any of its employees or agents acting in the course of their employment, in respect of a misrepresentation made fraudulently or elsewhere where this is not permitted under Legislation.
6. Dispute Resolution
   1. If there is a dispute between the Parties concerning the interpretation or operation of this Agreement it shall be referred to a senior officer of the Agent and a senior representative of the Supplier for resolution.
   2. If any dispute is not resolved within twenty (20) Working Days of the referral under Clause 25.1 (or such longer period as the Agent and the Supplier may agree), then the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure 2001 (the “model Procedure”) or such later edition as may be in force from time to time.
   3. To initiate mediation a Party must give notice in writing (the “ADR notice”) to the other Party requesting a mediation in accordance with this Clause 25 The mediation is to take place not later than twenty (20) Working Days after the date of the ADR notice. If there is any issue concerning the conduct of the mediation upon which the Parties cannot agree within ten (10) Working Days after the date of the ADR notice, then CEDR will, at the request of any Party, decide the issue for the Parties having consulted with them.
   4. If the dispute is not resolved within ten (10) Working Days of the mediation then the Parties may litigate the matter.
7. Audit And Information
   1. The Supplier shall keep full and proper records in relation to the performance of its obligations under this Agreement and provide NEPO and/or Agent with any information regarding such records as may be reasonably requested in writing by NEPO and/or Agent and/or its internal or external auditors having regard to NEPO’s duties and responsibilities as a public authority.
   2. Any information requested in writing under Clause 26.1 shall be provided by the Supplier within a reasonable time being no longer than ten (10) Working Days, unless agreed with NEPO and/or Agent, from the date of such written request and shall be provided in hard copy and, where available, also electronically..
   3. Without prejudice to the Supplier’s obligations under Clauses 26.1 and 26.2, NEPO and/or Agent shall be entitled to request, and the Supplier shall provide within a reasonable time, employment and relevant personal information in relation to the Supplier’s personnel engaged upon or in connection with the Agreement and/or Call-Off Contract for the purposes of anti-fraud measures such as data matching. The Supplier shall ensure that it takes any measures necessary pursuant to the Data Protection Act 2018 and any other relevant legislation to facilitate such disclosure lawfully and fairly.
   4. The Supplier shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or a longer period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement.
   5. The Supplier shall keep the records and accounts referred to in Clause 26.1 above in accordance with good accountancy practice.
   6. The Supplier shall afford NEPO and/or Agent, and/or the auditor such access (which may reasonably be provision of electronic copies) to such records and accounts as may be required by NEPO and/or Agent, and/or the auditor from time to time.
   7. The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) to NEPO and/or Agent and the Auditor upon request and without delay at any time during the Agreement and for a period of six (6) years after expiry or termination of the Agreement.
   8. NEPO and/or Agent shall use reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Supplier or delay the provision of the Agreement, save insofar as control over the conduct of audits carried out by the auditor is outside of the control of NEPO and/or Agent.
   9. The Supplier shall on demand provide the auditor with all reasonable co-operation and assistance in relation to each audit, including: -
      1. all information requested by the auditor within the scope of the audit;
      2. reasonable (which may be withheld by the Supplier for reasons of commercial sensitivity) access to sites controlled by the Supplier; and
      3. access to the staff.
   10. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 26 unless the audit reveals a material default by the Supplier in which case the Supplier shall reimburse NEPO and/or Agent for NEPO’s and/or Agent’s reasonable costs incurred in relation to the audit.
8. Novation, Delegation Or Sub-Contracting
   1. The Supplier shall not be entitled to assign, novate or otherwise transfer this Agreement or its rights or obligations thereunder without the prior written consent of NEPO, and/or Agent and such consent shall be at the entire discretion of NEPO, but shall not unreasonably be withheld.
   2. In the event NEPO and/or Agent consents to any assignment, novation or other transfer pursuant to Clause 27.1 it shall be entitled to require and the Supplier shall pay the reasonable administrative and legal costs to NEPO of formalising the assignment, novation or transfer.
   3. NEPO shall be entitled to assign, novate or otherwise transfer this Agreement to any other party at any time.
   4. The Supplier shall be entitled to delegate or sub-contract any of its duties or obligations under this Agreement provided that it has first obtained the express written consent of NEPO and Agent to do so. The Supplier is not required to obtain written consent from NEPO or Agent to provide sub-contracted services necessary for the Purchase of Materials by Members, including Delivery. However, NEPO and the Agent reserve the right to provide written notice for the Supplier to immediately cease (and on receipt of such notice the Supplier shall immediately cease) delegating, sub-contracting or otherwise engaging an agent or other third party where any such services or sub-contractors, agents or other, are found for any reason to not be acting or operating in accordance with Legislation or in any way which might cause reputational damage or harm to NEPO or the Agent.
      1. Novation, Delegation or sub-contracting any duties or obligations under a Call-Off Contract awarded pursuant to this Agreement is covered by the relevant terms of the Call-Off Contract not this Clause 27 and must be in compliance with regulation 72 of the PCR 2015.
   5. The giving of any consent by NEPO in accordance with Clause 27.4 shall not relieve the Supplier of any liability or obligation under this Agreement so that the Supplier shall remain responsible for the acts, omissions and defaults of any sub-supplier or any employees or agents of any sub-supplier in all respects as though they were the acts, omissions and default of the Supplier or any of its agents or employees.
9. Variations
   1. No variation shall be effective unless it is recorded in writing and signed by all Parties to this Agreement.
10. Waiver
    1. The failure of any Party to insist upon strict performance of any provision of this Agreement, or the failure of any Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligation established by this Agreement.
    2. A waiver of any performance default shall not constitute a waiver of any subsequent performance default.
    3. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated by the waiving party to the other parties in writing.
11. Complaints Handling
    1. The Supplier shall notify NEPO and Agent of any complaint made in relation to the provision of this Agreement within two (2) Working Days (or sooner if appropriate to the subject matter of the complaint) of becoming aware of that complaint and such notice shall contain full details of the Supplier's plans to resolve such complaint.
    2. Without prejudice to any rights and remedies that a complainant may have under the Agreement, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Agreement, the Supplier shall use its best endeavours to resolve the complaint within ten (10) Working Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
    3. Within two (2) Working Days of a request by NEPO and/or Agent, the Supplier shall provide full details of a complaint to NEPO and/or Agent, including details of steps taken to resolve the complaint.
12. Contracts Rights Of Third Parties Act 1999
    1. The Parties do not intend that any term of this Agreement be enforceable by any third party whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
13. Whistleblowing
    1. The Supplier confirms that the Supplier has an authorised person to whom the Supplier’s staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 (“PID Act”) and declares that any of its staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the staff will be made aware of this provision. The Supplier further declares that any provision in any contract purporting to preclude a member of its staff from making a protected disclosure is void.
14. Law and Jurisdiction
    1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
    2. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter.

**IN WITNESS of which this Agreement has been duly executed by the Parties**

|  |  |
| --- | --- |
|  |  |
| **Authorised Signatory (NEPO)** | **Print Name** |
|  |  |
| **Authorised Signatory (Agent)** | **Print Name** |
|  |  |
| **Authorised Signatory (Supplier)** | **Print Name** |
|  |  |
| **Supplier Name (Print)** | **Date** |

# Schedule 1

**The Category(s) of the DPS the Supplier is appointed to:**

The following tables indicate the participating suppliers by Category. This is accurate as of the date upon which the Supplier gained access to the DPS. The list of all suppliers participating by Category may vary overtime due to the flexible nature of a DPS.

If the Supplier’s company name is not listed within in a Category the Supplier is not participating in that Category and will not be invited to Further Competitions issued within that Category.









# Schedule 2

**Service Level (Template)**

1. This is a template for Members to use for applying minimum Service Levels to be associated with Call-Off Contracts they award under the DPS.

1. Service Levels may vary as necessary by the Member awarding a Call-Off Contract from this Agreement. However, amendments or additions cannot be for the purposes of altering the purpose and/or nature of the overarching DPS.

| **Minimum Required Service** | | | |
| --- | --- | --- | --- |
| **No.** | **Item** | **Contract Requirement** | **Performance Level** |
|  | | | |
| 1a |  |  |  |
| 1b |  |  |  |
| 1c |  |  |  |
| 1d |  |  |  |
| 1e |  |  |  |
|  | | | |
| 2a |  |  |  |
| 2b |  |  |  |
| 2c |  |  |  |
| 2d |  |  |  |
| 2e |  |  |  |
|  | | | |
| 3a |  |  |  |
| 3b |  |  |  |
| 3c |  |  |  |
| 3d |  |  |  |
| 3e |  |  |  |
|  | | | |
| 4a |  |  |  |
| 4b |  |  |  |
| 4c |  |  |  |
| 4d |  |  |  |
| 4e |  |  |  |
|  | | | |
| 5a |  |  |  |
| 5b |  |  |  |
| 5c |  |  |  |
| 5d |  |  |  |
| 5e |  |  |  |

# Schedule 3

**Terms and Conditions of Contract for Purchase**

**(Call-Off Contract – Purchase: All Categories)**

[Guidance: this is provided as the template form of call-off contract. It is expected that it will require more precise formulation by Customers dependent on their specific requirements and the Category under which the Call-Off Contract is to be awarded, e.g. Category 7]

**Materials Supply Contract**

1. “Parties” to this agreement:
   1. [Full Customer registered address] (“Customer”)

And;

* 1. [Full Supplier registered address and company number] (“Supplier”)

1. Definitions

In these terms and conditions:

|  |  |
| --- | --- |
| “Agreement” | means this call-off contract awarded under the DPS between the Customer and the Supplier; |
| “Change Control” | means the procedure for managing potential changes/variations to this Agreement as detailed in Schedule 4; | |
| “Commencement Date” | means the commencement or start of this Agreement for the supply of Materials by the Supplier to the Customer. The commencement date is [ ]; | |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; | |
| “Controller​, ​Processor, ​Data Subject​, ​Personal Data​, ​Personal Data Breach, Data Protection Office” | have the meaning given in the GDPR; | |
| “Core Range” | means Materials that have been identified as 'core' by the Customer to the delivery of their service and which must be held in stock at the primary locations identified in Schedule 3 by the Supplier to the levels set out in Schedule 1 and as agreed from time to time; | |
| “Customer” | means the organisation identified as the Customer in 1.1. A Customer must be a member of The Procurement Partnership Limited’s buying club; | |
| “Data Loss Event” | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach; | |
| “Data Protection Impact Assessment​” | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; | |
| “Data Subject Access Request​” | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; | |
| “Date of Delivery” | means the date and time by which the Materials must be Delivered to the Customer, as specified in the Purchase Order; | |
| “Deliver” | means the handover of Material(s) to the Customer at the location and on the date and time specified in the Purchase Order. This may also be used in the context of the Customer collecting from the Supplier’s location(s). This shall include unloading and any other specific handover arrangements agreed in accordance within a Purchase Order. Delivered and Delivery shall be construed accordingly; | |
| “DPA” | means the Data Protection Act 2018; |
| “DPS” | means the overarching Dynamic Purchasing System for Building Materials under which this Agreement is awarded, the contract notice published in the Official Journal of the European Union for the DPS is 2019/S XXXX; |
| “FOIA” | means the Freedom of Information Act 2000; |
| “GDPR” | means the General Data Protection Regulation​ (Regulation (EU) 2016/679); |
| “Factor” | means the supply of Specials by the Supplier via an agreed third-party to the Customer on either a handled (i.e. brought into the Supplier’s stock-holding) or non-handled (i.e. the Customer collects directly, or the Special is delivered directly to the Customer by the third-party) basis; |
| “Further-Competition” | means the process of opening competition under the DPS for the purpose of identifying a Supplier with whom Purchase Orders are to be placed; |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Information Commissioner’s Office” | means the United Kingdom’s independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals (https://ico.org.uk/); |
| “LED” | means the Law Enforcement Directive ​(Directive (EU) 2016/680); |
| “Material” | means the goods and associated services to be supplied by the Supplier to the Customer as stated on the Purchase Order. It also means other associated activities and services that are likely and reasonable to be required by the Customer; |
| “Non-Core Range” | means those Materials that are likely to be required by the Customer and which will form part of Supplier's standard goods materials and product ranges and be stocked throughout its operation but do not require a committed stock holding specifically for the Customer; | |
| “Party” | means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them; | |
| “PCR 2015” | means the Public Contracts Regulations 2015 (as amended); | |
| “Price” | means the cost of Purchase for Materials from the Supplier, identifiable from the Price List or Purchase Order; | |
| “Price List” | means the Core Range of Materials, complete with Prices, available for Purchase from the Supplier pursuant to Schedule 2 of this Agreement or otherwise agreed with the Supplier in writing. The Price List also includes the agreed methodology for pricing of Non-Core Range Materials and fees associated with the Factoring of Materials from third-party suppliers; | |
| “Primary Locations” | means the Materials stockholding locations, identified within Schedule 3, that the Supplier has committed to holding in stock the Customer’s Core Range; | |
| “Protective Measures” | means 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; | |
| “Purchase” | means the Purchase of Material(s) and any ancillary service from the Supplier; | |
| “Purchase Order” | means the Customer’s notification to the Supplier of an order for the Purchase of Material(s). This may be issued in-person at the Supplier’s location(s), or by phone, email, facsimile or electronically via a system(s) based interface, this may be a bespoke web-based solution. For the purposes of this Agreement a Purchase Order may include:   1. Customer details, including name, registered address and full contact details 2. The required Delivery location; 3. The date and time required for Delivery; 4. The agreed invoicing schedule (if different to standard); 5. The Materials(s) required and the volume. 6. A Purchase Order Number or other unique customer reference (e.g. a job and/or works order number; 7. Any additional specification(s) or requirement(s) that the Customer may reasonably require from the Supplier pursuant to this Agreement;   Any other necessary information, including additional terms and conditions supplementary to this Agreement; | |
| “Purchase Order Number” | means the Customer’s unique number, this may be a works or job number, relating to an order for Materials to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement; | |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); | |
| “Service Level” | means the minimum required Service Levels associated with the supply of Materials by the Supplier to the Customer. The Service Levels are listed within Schedule 1 of this Agreement; | |
| “Specials” | means those Materials that are required by the Customer but in levels below that requiring a committed stock holding for the Customer and which would not ordinarily form part of the Supplier's standard goods, materials and products range but which are procurable by the Supplier, typically from an agreed (with the Customer) third-party supplier. Dependent on volume and frequency of Purchase by the Customer, Specials may be required to form part of the Core Range; |
| “Specification” | means the Specification of the Service (e.g. identification of the Supplier’s key/primary branch or other stockholding locations) or any of the Materials to be ordered by the Customer. Materials supplied must meet and/or exceed the minimum specification as set in Schedule 3 of this Agreement. The Specification may be reasonably varied in writing by the Parties at any point of this Agreement using Change Control; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Sub-processor” | means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement; |
| “Supplier” | means the person named as Supplier in clause 1.2 of this Agreement; |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014; | |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; | |
| “Volatile” | means those items for which Price is closely linked to base material commodity prices. For the purposes of this Agreement only Materials categorised as aggregates, lead & solder, plaster products, chipboard, tube & fittings, doors (timber), plywood, copper products, timber and cementitious products can be classified as Volatile; | |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

1. Interpretation
   1. In these terms and conditions, unless the context otherwise requires:
      1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns.
      2. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
      3. A reference to a party shall be to a party to this Agreement and the expression parties shall be construed accordingly.
      4. Words in the singular shall include the plural and vice versa.
      5. A reference to one gender shall include a reference to the other genders.
      6. A reference to any statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.
      7. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
      8. A reference to writing or written includes e-mail.
      9. A reference to a clause in any Part shall, unless otherwise expressly provided, be to a clause within that Part.
      10. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
2. Duration
   1. This Agreement begins on the Commencement Date and will continue for a period of [ ] months unless otherwise terminated in accordance with the terms of this Agreement, specifically Clause 22.
   2. This Agreement may be extended by a further 12 months, should all Parties agree to such an extension in writing.
3. Structure
   1. This Agreement contains the following additional parts:-
      1. Schedule 1: The Service Levels
      2. Schedule 2: The Price List
      3. Schedule 3: The Specification
      4. Schedule 4: Change Control
4. Purchase of Materials
   1. The Purchase Order constitutes an offer by the Customer to Purchase the Materials subject to and in accordance with the terms and conditions of this Agreement, the Service Levels, the Specification, the Purchase Order and the DPS.
   2. The Customer enters into this Agreement with the Supplier on a non-exclusive basis and accordingly nothing shall prevent the Customer from arranging for any other person to supply goods and services which are the same as or similar to the goods and services stated within this Agreement.
   3. In consideration of the Customer’s agreement to pay the Price, the Supplier shall Deliver the Materials to the Customer subject to the Service Levels, the Specification and in accordance with the terms and conditions of the Agreement. The Supplier reserves the right to decline any order where it is not able to provide the Materials.
   4. In Delivering the Materials, the Supplier shall co-operate with the Customer in all matters relating to the supply of the Materials and comply with all reasonable Customer instructions.
   5. The Supplier shall provide the Materials in accordance with the Purchase Order. The Supplier warrants, represents, undertakes and guarantees that the Materials supplied under the Agreement shall:
      1. be fit for any purpose agreed by the Parties in writing prior to the issue of a Purchase Order; and
      2. and the Supplier itself shall, comply with all applicable laws.
5. Customer Responsibilities
   1. The Customer must inspect upon Delivery the Materials and any accessories provided before accepting the Materials. If the condition of the Materials do not meet agreed standards the Supplier must be immediately notified.
   2. If the Supplier has agreed to Deliver the Materials at an address provided by the Customer, the Customer will be responsible for the Materials from the time the Supplier Delivers the Materials, following any agreed inspections.
6. Price, Payment and Recovery of Sums Due
   1. The Price for Materials shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the Purchase of Materials. Unless otherwise agreed in writing by the Customer, the Price shall be calculated in accordance with the Price List.
   2. The Price List for Materials under this Agreement shall be fixed for each 12 month period from the Commencement Date.
   3. Adjustment to the Prices within in the Price List shall be agreed by the Customer and the Supplier in writing no later than the annual anniversary of the Commencement Date, with the exception of products identified as Volatile.
      1. Annual application for adjustments to the Price List shall be made by the Supplier no later than three (3) months before the annual anniversary of the Commencement Date.
         1. Annual applications for adjustment to the Price List are to be provided in a format agreed by the Parties, and the Supplier is advised to collate and provide the Customer with additional documentary evidence of how any proposed increases in Price on the Price List cannot be mitigated, including any steps taken by the Supplier to reduce the impact for the Customer.
      2. Materials identified as Volatile within the Price List can have pricing reviewed and if necessary adjusted up or down every three (3) months, provided appropriate supporting evidence is made available by the Supplier.
      3. The Customer will review applications for price increases outside of each fixed price period where evidence of supply-chain price increases such as exchange rate fluctuations, manufacturer increases and commodity cost increases are provided.
         1. Such applications are to be made in a format agreed by the Parties. To support applications, the Supplier is advised to collate and provide the Customer with additional documentary evidence of how any proposed increases in Price cannot be mitigated, including any steps taken by the Supplier to reduce the impact for the Customer.
      4. For the avoidance of doubt, the Customer retains the final decision regarding acceptance of any proposed changes to the Price List.
         1. Where the Parties are unable to agree a revised Price List an orderly exit to this Agreement can be undertaken in accordance with clause 22.2.
      5. Nothing within Clauses 8.2 and 8.3 shall be considered to limit the Customer’s ability to require new Materials be added to the Price List, or for revisions to be made to Prices at any point of this Agreement.
   4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Materials Purchased.
   5. Following Delivery of Materials, the Supplier shall invoice the Customer in accordance with the Service Level agreed in Schedule 1. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number (if applicable) and a breakdown of the Materials Purchased in the invoice period.
   6. In consideration of the Delivery of Materials by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and if necessary includes a valid Purchase Order Number.
   7. If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 8.6 after a reasonable time has passed.
   8. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of Materials unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 22. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 26.
   9. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
   10. Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
       1. provisions having the same effects as clauses 8.5 to 8.9 of this Agreement; and
       2. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 8.5 to 8.10 of this Agreement.
       3. In this clause 8.10, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Customer 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 Agreement.
7. Cancellation
   1. The Customer shall have the right to cancel a Purchase Order for Material(s), or any part of a Purchase Order which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Price or that part of the Price for Materials which have been Delivered to the Customer or, on the deemed date of service of the notice of cancellation, are already in transit or, in respect of undelivered non-stock orders, the reasonable costs the Supplier has incurred to fulfil the Purchase Order.
      1. For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.
      2. In circumstances where the Purchase Order contains Specials, and in particular Specials which are bespoke in nature (e.g. made to order), the Customer shall be required to pay the Price (or any part of the Price incurred as a cost by the Supplier) for the Specials in the event of cancellation, unless the Supplier is able to cancel the Purchase Order without incurring costs.
8. Delivery
   1. The Supplier shall Deliver the Materials to the Customer in accordance with agreed Service Levels on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and to the address specified in the Purchase Order. Delivery of the Materials shall be completed once the completion of unloading the Materials from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.
   2. Any access to the Customer’s premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Materials shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
   3. Delivery of Materials shall be accompanied by a delivery or collection note which shows the Purchase Order Number (if applicable) and the type and quantity of the Materials and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
   4. Unless otherwise stipulated by the Customer in the Purchase Order, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
   5. Where (i) the Supplier fails to Deliver the Materials or part of the Materials in accordance with the appropriate Service Level or (ii) the Materials or part of the Materials do not comply with the requirements of the Specification or Purchase Order, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
      1. request the Supplier, free of charge, to deliver substitute Materials (of equal or better standard) within the timescales specified by the Customer;
      2. to require the Supplier, replace the rejected Materials, or to provide a full refund of the price of the rejected Materials (if paid);
      3. to reject the Materials (in whole or part) and return them to the Supplier at the Supplier’s own risk and expense and the Customer shall be entitled to a full refund on those Materials duly returned;
      4. to Purchase the same or similar Materials from another supplier and agree on a case by case basis with the Supplier any reasonable expenses incurred that may be recovered by the Customer. This may include, but is not limited to, administration costs, chargeable staff time and extra delivery costs.
9. Ownership and Risk
   1. The Supplier warrants that at the Date of Delivery of any Materials(s) it shall have full and unrestricted right, power and authority to supply and deliver those Material(s) to the Customer.
   2. Subject to Clause 11.3, risk in the Materials shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer at the time of Delivery.
   3. Ownership in the Materials shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer at the time of full payment.
10. Staff
    1. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
       1. refuse admission to the relevant person(s) to the Customer’s premises;
       2. direct the Supplier to end the involvement of an individual in the supply of Materials to the Customer;

and the Supplier shall comply with any such notice.

* 1. Clause 12.1.2 should not be construed as a direction to terminate any individual’s employment.
  2. The Supplier shall ensure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

1. TUPE
   1. As at the Commencement Date, it is not expected that TUPE will apply to the Agreement. However, in the event that TUPE is considered by either Party to apply on or before termination or expiry of the Agreement, the Parties shall work together in good faith to agree a fair and reasonable allocation of any risks involved and/or costs incurred as a result of the application of TUPE.
2. Assignment and Sub-Contracting
   1. The Supplier shall not without the written consent, which may not be unreasonably withheld, of the Customer assign, sub-contract (unless for the purposes of product delivery), novate or in any way dispose of the benefit and/or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
      1. Where appropriate the Supplier may apply in writing for blanket consent to assign or sub-contract elements of this Agreement to its subsidiaries and/or or other suppliers within the Supplier’s parent group. Blanket consent may not be applied for suppliers/other third parties that are not a subsidiary or member of the Supplier’s parent company group.
   2. Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
   3. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier’s obligations under the Agreement.
3. Intellectual Property Rights and Indemnity
   1. No Party to this Agreement shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
   2. The Supplier shall indemnify, and keep indemnified, the Customer against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party’s Intellectual Property Rights arising out of, or in connection with, the Purchase or use of Materials, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff. The limit of this liability shall in no event exceed a sum equal to 25% of the total Price paid for all Materials in the 12 month period preceding any claim.
   3. The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any Materials and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.
4. Governance and Records
   1. The Supplier shall if required by the Customer:
      1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
      2. submit progress reports to the Customer at the times and in the format specified by the Customer.
   2. The Supplier shall keep and maintain until seven (7) years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Materials Purchased under it, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer’s representatives provide those records by electronic means as may be reasonably requested by the Customer in connection with the Agreement.
5. Confidentiality, Transparency and Publicity
   1. Subject to clause 17.2, each Party shall:
      1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
      2. not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
   2. Notwithstanding clause 17.1, a Party may disclose Confidential Information which it receives from the other Party:
      1. where disclosure is required by applicable law or by a court of competent jurisdiction;
      2. to its auditors or for the purposes of regulatory requirements;
      3. on a confidential basis, to its professional advisers;
      4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
      5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier’s obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 17.2.5 shall observe the Supplier’s confidentiality obligations under the Agreement; and
      6. where the receiving Party is the Customer:
         * 1. on a confidential basis to the employees, agents, consultants and contractors of the Customer;
           2. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
           3. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
           4. in accordance with clause 18.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 17.

* 1. The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
  2. The Supplier shall not and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

1. Freedom of Information
   1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
      2. transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
   2. The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Materials (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure
   3. Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Materials is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
2. Protection and Security of Data
   1. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
   2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to by the Customer is for the purposes of ensuring Delivery. Changes to processing may not be determined by the Supplier.
   3. The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe DPA.
   4. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

* 1. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with ensuring Delivery unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that :

(i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (particularly for the purposes of Delivery);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Supplier’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Supplier 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 Customer in meeting its obligations); and

(iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

* 1. Subject to clause 19.7 the Supplier shall notify the Customer 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’s Office or any other regulatory authority in connection with Personal Data processed under this 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.

* 1. The Supplier’s obligation to notify under clause 19.6 shall include the provision of further information to the Customer in phases, as details become available.
  2. Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under DPA and any complaint, communication or request made under clause 19.6 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

(a) the Customer with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Customer following any Data Loss Event;

(e) assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner's Office.

* 1. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

(a) the Customer determines that the processing is not occasional;

(b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

* 1. The Supplier shall allow for audits, (which shall wherever possible be conducted electronically) of its Data Processing activity by the Customer or the Customer’s designated auditor.
  2. The Supplier shall designate a data protection officer if required by DPA.
  3. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:

(a) notify the Customer in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Customer;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in Clause 19.1 – 19.15 of this Agreement such that they apply to the Sub-processor; and

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

* 1. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
  2. The Supplier may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
  3. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

1. Liability and Insurance
   1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
   2. Subject always to clause 20.3
      1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply the Materials, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 25% of the total Price paid for all Materials in the 12 month period preceding any claim; and
      2. except in the case of claims arising under clause 25.3, in no event shall either Party be liable to the other Party for any:
         * 1. loss of profits;
           2. loss of business;
           3. loss of revenue;
           4. loss of or damage to goodwill;
           5. loss of savings (whether anticipated or otherwise); and/or
           6. any indirect, special or consequential loss or damage.
   3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
      1. death or personal injury caused by its negligence or that of its Staff;
      2. fraud or fraudulent misrepresentation by it or that of its Staff;
      3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
      4. any other matter which, by law, may not be excluded or limited.
   4. The Supplier’s liability under the indemnity in clause 25.3 shall be unlimited.
   5. The Supplier shall at its own cost take out and maintain throughout the Agreement with a reputable insurance company or companies the following policies of insurance:
      1. Employers liability insurance in accordance with the Employer’s Liability (Compulsory Insurance Act) 1969 with a limit of indemnity of not less than five million pounds (£5,000,000) annually and in the aggregate;
      2. Public liability with a limit of indemnity of not less than five million pounds (£5,000,000) annually and in the aggregate;
2. Force Majeure
   1. If either Party is unable to perform any obligation under this Agreement because of an event of Force Majeure which is both beyond that Party’s control and is such that the Party with the application of all due diligence and foresight could not prevent which causes the cessation of or a substantial interference with the performance of the Agreement, the duty of the Party to perform the relevant obligation shall be suspended until such circumstances have ceased.
   2. For the purposes of this Clause 21 the circumstances below are events of Force Majeure:
      1. explosion;
      2. war;
      3. civil disorder;
      4. fire or flood;
      5. actual or threatened terrorist attack; or
      6. acts of local or central Government or other competent authorities (other than the Customer in its capacity as a party to this Agreement if the Customer is a local or central Government organisation);
3. Termination
   1. The Parties reserve the right to terminate this Agreement immediately in the following circumstances:
      1. Either Party commits a material breach and/or persistent repeated breaches of any clause of this Agreement and, if such breach is or are remediable, fails to provide remedy within a period of ten (10) Working Days after being notified in writing to do so; or
      2. Either Party becomes aware of a serious infringement of the obligations under PCR 2015, in particular:
         1. This Agreement has been awarded following a substantial modification from the nature and intent of the DPS, to the extent that a new procurement procedure should have been conducted;
         2. The Supplier has, at the time of award of this Agreement been in one of the situations referred to in the PCR 2015 regulation 57 and should have therefore been excluded from being awarded this Agreement, unless suitable evidence was provided in accordance with ‘self-cleaning’ (regulation 57 clauses 13 – 17)
      3. Either Party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
      4. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of either Party; or
      5. Either Party ceases, or threatens to cease, to carry on business; or
      6. Either Party reasonably apprehends that any of the events in Clauses 22.1.3 to 22.1.5 inclusive is about to occur in relation to the other Party and notifies the other Party accordingly; or
      7. the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or to any other contract with the Customer; or
      8. Either Party or any of its employees shall have committed any offence under the Bribery Act 2010.
   2. Either the Customer or the Supplier may terminate this Agreement without reason at any time provided at least one hundred and twenty (120) Working Days’ notice is given.
4. Consequences Of Termination
   1. Termination shall be without prejudice to the rights and remedies of the Supplier and the Customer accrued before such termination and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding as at the date of such termination.
   2. All provisions of this Agreement which are expressed to survive termination or expiry of this Agreement shall continue in force and effect in accordance with their terms.
   3. Subject as otherwise provided in the Agreement neither Party shall have any further obligation to the other under the Agreement.
   4. Notwithstanding the service of a notice to terminate the Agreement, both Customer and the Supplier shall continue to fulfil their obligations under the Agreement until the date of termination or expiry of the Agreement or such other date as required.
   5. The Customer shall pay for any Specials specifically ordered from outside of the Supplier’s standard supply-chain for the Customer by the Supplier.
      1. The Customer shall have no liability and will not pay for stock holding of Specials for stock levels exceeding four (4) weeks of usage by the Customer.
5. Compliance
   1. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer’s premises and which may affect the Supplier in the performance of its obligations under the Agreement.
   2. The Supplier shall:
      1. comply with the reasonable requirements of the Customer's security arrangements;
      2. comply with all the Customer’s health and safety measures;
      3. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
      4. perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer’s equality and diversity policy as provided to the Supplier from time to time;
      5. take all reasonable steps to secure the observance of clause 24.2.4 by all Staff; and
      6. provide Materials in accordance with the Customer’s environmental policy as provided from time to time.
   3. The Materials provided in accordance with any instructions specified in the Purchase Order and relevant any statutory requirements. The Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 24.3.
6. Prevention of Fraud and Corruption
   1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
   2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
   3. If the Supplier or the Staff engages in conduct prohibited by clause 25.1 or commits fraud in relation to the Agreement or any other contract under the DPS (including the Customer) the Customer may:
      1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of Materials and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
      2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.
7. Dispute Resolution
   1. If there is a dispute between the Parties concerning the interpretation or operation of this Agreement it shall be referred to a senior officer of the Customer and a senior representative of the Supplier for resolution.
   2. If any dispute is not resolved within 20 Working Days of the referral under Clause 26.1 (or such longer period as the Customer and the Supplier may agree), then the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure 2001 (the “model Procedure”) or such later edition as may be in force from time to time.
   3. To initiate a mediation a Party must give notice in writing (the “ADR notice”) to the other Party requesting a mediation in accordance with this Clause 26 The mediation is to take place not later than 20 Working Days after the date of the ADR notice. If there is any issue concerning the conduct of the mediation upon which the Parties cannot agree within 10 Working Days after the date of the ADR notice, then CEDR will, at the request of any Party, decide the issue for the Parties having consulted with them.
   4. If the dispute is not resolved within 10 Working Days of the mediation then the Parties may litigate the matter.
8. General
   1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
   2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
   3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties in accordance with the Change Control process defined in Schedule 4 of this Agreement.
   4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
   5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
   6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
   7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
9. Notices
   1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 28.3, e-mail to the address of the relevant Party set out in the Purchase Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
   2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
   3. Notices under clauses 21 (Force Majeure) and 22 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 28.1.
10. Governing Law and Jurisdiction
    1. The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

IN WITNESS of which this Agreement has been duly executed by the Parties

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Authorised Signatory (Customer)** | **Print Name** | **Date** |
|  |  |  |
| **Authorised Signatory (Supplier)** | **Print Name** | **Date** |
|  |  |  |
| **Supplier Name (Print)** |  |  |

**Schedule 1**

**Service Levels**

[Guidance: to be inserted by the Customer prior to issuing a Further Competition. A template is provided as part of the DPS Agreement, but Customers may choose to formulate and insert their own preferred approach to Service Levels]

**Schedule 2**

**Price List [to be inserted following tender]**

**[Guidance:**

The Price List inserted will depend on the outcome of the completed Further Competition, generally it should represent the Core Range of pricing submitted by the Supplier specific to the Customer, it should also include any Non-Core Range pricing methodology or % discounts. It should additionally list any agreed handling charges and/or uplift percentages for Factoring of Materials from third-parties if not stipulated by the Service Levels.]

**Schedule 3**

**Specification**

**[to be inserted and to generally include:**

**Primary Locations:**

* any key/primary branch locations identified by the Supplier in their submission

**Required Materials Specification**

* any fixed material specifications required by the Customer, e.g. required boiler/radiator/heating controls or the bathroom specification required for the planned works programmes
* For Category 7 this may be the specific details regarding the modular unit(s) being constructed]

**Schedule 4**

**CHANGE CONTROL PROCEDURES**

**Definitions:**

In addition to the definitions provided in clause 2 of the main Agreement:

“Authorised Signatory” means the individual(s) duly authorised by each Party to enter into contractual arrangements on behalf of the Party;

“Change Control Note” means the documented request for a change to the Agreement issued by either Party to this Agreement;

1. **PRINCIPLES** 
   1. Where the Customer or the Supplier see a need for a change to the Agreement, then either Party may at any time request a change and propose an amendment to this Contract in accordance with the procedure set out in Clause 2 below.
   2. Neither the Customer nor the Supplier shall unreasonably withhold its agreement to any change.
   3. The obligations of the Parties to this Agreement shall not be effected until a Change Control Note in the form attached to this Schedule has been signed by the Authorised Signatory of both Parties.
   4. The Customer shall not be responsible for the cost of any services provided, work undertaken or goods or materials ordered by the Supplier or its sub-contractors which has not been authorised in advance by a Change Control Note.
2. **PROCEDURE**
   1. The Customer and the Supplier shall discuss changes proposed by either Party to this Agreement and such discussion shall result in:
      1. Decision not to proceed further; or
      2. A written request for a change by the Customer; or
      3. A recommendation for a change by the Supplier.
   2. Where a written request for a change is received from the Customer, the Supplier shall submit two (2) signed copies of a Change Control Note to the Customer within five (5) Working Days of such request.
   3. A recommendation to amend this Agreement by the Supplier shall be submitted direct to the Customer in the form of two (2) copies of a Change Control Note signed by the Supplier.

* 1. Each Change Control Note shall contain details of the change including, where applicable:
     1. The title of the change;
     2. The originator and the date of the request or recommendation for the change;
     3. The reason for the change;
     4. Full details of the change including any specifications;
     5. Details of additional costs/savings to the Agreement if any, as a consequence of the change;
     6. A timetable for implementation together with any proposals for acceptance of the change;
     7. A schedule of payments associated with the change, if applicable;
     8. The impact, if any, of the change on other aspects of the Agreement;
     9. The date of expiry of validity of the Change Control Note;
     10. Provision for signature by the Customer if the change is agreed.
     11. The timescales within which the change is required
  2. For each Change Control Note submitted to the Customer, the Customer Representative shall, within the period of the validity of the Change Control Note evaluate the Change Control Note and, as appropriate:
     1. Request further information from the Supplier in which case the Supplier shall provide such information as soon as reasonably practicable and in any event within ten (10) Working Days or such other period as may be agreed, the request for information and the information once provided shall be deemed to be part of the Change Control Note, and the Customer may approve or reject the Change Control Note upon receipt of the new information; or
     2. Notify the Supplier of the rejection of the Change Control Note.
  3. A Change Control Note signed by both Parties shall constitute a variation to the Agreement in accordance with the terms of the Agreement.
  4. “Authorised Signatories”:
     1. The Authorised Signatory for the Customer will be in accordance with the Customer’s own constitution and any contract standing orders and/or financial regulations.
     2. The Authorised Signatory for the Supplier will be in accordance with the Customer’s own constitution and any contract standing orders and/or financial regulations.

**Change Control Note:**

Ref No:

Date:

Title of Change:

Details of Change:

Reasons for Change:

Impact of Change:

Timetable:

Additional costs or savings to the Agreement:

Supplier: Signed:

Customer Response: Accept/Reject Signed:

Note: The format of the Change Control Note may vary from time to time in circumstances where additional information is deemed necessary by the Customer or the Supplier in order to accurately reflect the nature of the change proposed.