

Dynamic Purchasing System (DPS)

## **Framework Agreement May 2022 – May 2027**

Police & Crime Commissioner for Dorset Police

and

[Supplier]

### **For the Provision of Mobile Preliminary Roads Drugs Testing Devices (MPRDTD)**



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CONTAINS PUBLIC SECTOR INFORMATION LICENSED UNDER THE OPEN GOVERNMENT LICENCE V3.0.

This DPS Framework Award Form creates the Dynamic Purchasing System (**DPS**) Agreement. It summarises the main features of the DPS Agreement and includes the Authority and the Supplier's contact details.

<b>DPS AWARD FORM</b>		
<b>1.</b>	<b>Authority</b>	The Police and Crime Commissioner - Dorset Police and on behalf of the Forensic Capability Network ("the FCN") or any public or private sector body which performs or takes over the functions of the lead force in regard to the FCN.
<b>2.</b>	<b>Supplier</b>	<p>Name: <b>[Insert name (registered name if registered)]</b></p> <p>Address: <b>[Insert address registered address if registered]</b></p> <p>Registration number: <b>[Insert registration number if registered]</b></p> <p>SID4GOV ID: <b>[Insert SID4GOV ID if you have one]</b></p>
<b>3.</b>	<b>DPS Agreement</b>	<p>1. This DPS Agreement between the Authority and the Supplier(s) is for the supply of Goods &amp; Services to Contracting Authorities.</p> <p>2. This opportunity is advertised in Find a Tender (contract notice reference <b>[Insert reference number and date of contract notice]</b>).</p> <p>3. The Supplier made a request to participate by submitting its response to the Authority's Standard Selection Questionnaire (SSQ) pursuant to the Contract Notice (the SSQ Response).</p> <p>4. Through the SSQ Response, the Supplier represented to the Authority that it is capable of delivering the Goods and Services and, in particular, the Supplier made representations to the Authority in the SSQ Response in relation to suitability, economic and financial standing and technical and professional ability.</p>

		<p>5. On the basis of the Supplier's responses in the SSQ Response, the Supplier is admitted to the Dynamic Purchasing System to provide the LOTS:</p> <p><b>[Specify awarded LOTS],</b></p> <p>to the Contracting Authorities from time to time on a call off basis in accordance with this DPS Agreement.</p> <p>6. It is the Parties' intention that there will be no obligation for any Contracting Authority to award any Call-Off Contracts under this DPS Agreement during the DPS Agreement Period.</p>
4.	<b>DPS Agreement Reference</b>	<b>[Insert Authority contract reference here, if any]</b>
5.	<b>Goods &amp; Services</b>	<p>See Schedule 1 (Specification) for further details.</p> <p>The scope of this DPS Agreement shall include Goods and Services which have been developed, improved or have been the subject of innovation by the Supplier, but which can carry out the same tasks, output or Deliverables as the Goods and Services described in Schedule 1 (Specification).</p>
6.	<b>DPS Start Date</b>	<b>[31 May 2022]</b>
7.	<b>DPS End Date</b>	<b>[30 May 2027]</b>
8.	<b>Incorporated Terms</b>  (together these documents form the 'DPS Agreement')	<p>The following documents are incorporated into the DPS Agreement and form the DPS Agreement in order of priority:</p> <ol style="list-style-type: none"> <li>1. This DPS Award Form</li> <li>2. Any DPS Special Terms (see <b>Section 9 Special Terms</b> in this DPS Award Form)</li> <li>3. The DPS Terms and Definitions</li> <li>4. The following DPS Schedules (in equal order of precedence):</li> </ol>

		<ul style="list-style-type: none"> <li>• Schedule 1 (Specifications)</li> <li>• Schedule 2 (Definitions)</li> <li>• Schedule 3 (Baseline Charges)</li> <li>• Schedule 4 (DPS Management)</li> <li>• Schedule 5 (Call-Off Contract Award Form and Terms and Conditions)</li> <li>• Schedule 6 (Call for Competition Procedure)</li> <li>• Schedule 7 (Standards)</li> <li>• Schedule 8 (Self Audit Certificate)</li> <li>• Schedule 9 (DPS Variation)</li> <li>• Schedule 10 (Processing Data)</li> <li>• Schedule 11 (Commercially Sensitive Information)</li> <li>• Schedule 12 (Supply Chain Visibility)</li> <li>• Schedule 13 (Records and Virtual Library)</li> <li>• Schedule 14 (Financial Distress)</li> <li>• Schedule 15 (Continuous Improvement Plan)</li> <li>• Schedule 16 (SSQ Response)</li> </ul>
9.	<b>DPS Special Terms</b>	<b>[Insert terms to revise or supplement the DPS Agreement, or enter 'N/A']</b>
10.	<b>Baseline Charges</b>	<b>[Insert any additional information about the charges]</b>  <b>Details in Schedule 3 (Baseline Charges)</b>
11.	<b>Service Levels</b>	Service Levels shall be measured by the Authority in accordance with Schedule 4 (DPS Management).
12.	<b>Supplier Liability</b>	In accordance with Clause 10 of this DPS Agreement.

13.	<b>Progress Meetings and Progress Reports</b>	<p>The Supplier shall attend Progress Meetings with the Authority as required.</p> <p>The Supplier shall provide the Authority with Progress Reports every Month or as required.</p>
14.	<b>Supplier DPS Manager</b>	<p>[Insert name] [Insert job title] [Insert email address] [Insert phone number]</p>
15.	<b>Supplier DPS Authorised Representative</b>	<p>[Insert name] [Insert job title] [Insert email address] [Insert phone number]</p>
16.	<b>Supplier DPS Data Protection Officer</b>	<p>[Insert name] [Insert job title] [Insert email address] [Insert phone number]</p>
17.	<b>DPS Authority Authorised Representative</b>	<p>[Insert name] [Insert job title] [Insert email address] [Insert phone number]</p>

For and on behalf of the Supplier:		For and on behalf of the Authority:	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	

## **The DPS Terms and Definitions**

### **1. How the DPS Agreement works**

- 1.1 The Authority hereby admits the Supplier to the Dynamic Purchasing System as a potential provider of the LOTS listed in the DPS Award Form. The Supplier is eligible to be considered for the award of Call-Off Contracts during the DPS Agreement Period, subject to the terms of this DPS Agreement.
- 1.2 The Authority does not guarantee the Supplier any exclusivity, quantity or value of work under the DPS Agreement.
- 1.3 The Supplier acknowledges and agrees that:
  - (a) there is no obligation whatsoever on the Authority to invite or select the Supplier to supply any Goods and Services under this DPS Agreement; and
  - (b) in entering into this DPS Agreement, no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Authority and/or other Contracting Authorities in relation to the provision of the Goods and Services by the Supplier and that the Authority and/or other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all of the goods and services which are the same as or similar to the Goods and Services.
- 1.4 The Authority has paid one penny to the Supplier as consideration to legally form the DPS Agreement. The Supplier acknowledges receipt of this payment.
- 1.5 If the Authority or a Contracting Authority decides in its absolute and sole discretion to source Services under this DPS Agreement, it shall use Schedule 6 (Call for Competition Procedure) and must state its requirements using the Call-Off Contract Award Form (Schedule 5 (Call-Off Contract Award Form and Terms and Conditions)). In accordance with the Regulations, the Contracting Authority can:
  - i) make minor changes to Call-Off Contract Award Form.
  - ii) exclude optional template Call-Off Appendices; and/or
  - iii) use Special Terms in the Call-Off Award Form to add or change terms.
- 1.6 Each Call-Off Contract
  - i) is a separate contract from this DPS Agreement;
  - ii) is between a Supplier and a Contracting Authority;
  - iii) includes Call-Off Contract Terms, Call-Off Contract Appendices and any other



changes or items in the completed Call-Off Contract Award Form; and  
iv) survives the termination of the DPS Agreement.

- 1.7 The Supplier shall comply with the relevant provisions in Schedule 6 (Call for Competition Procedure).
- 1.8 Where the Supplier is approached by a Contracting Authority requesting the Goods and Services or substantially similar services, the Supplier must inform the Contracting Authority about this DPS Agreement before accepting their order. Where the Supplier accepts orders for substantially similar services outside of the DPS, the Supplier may be requested to provide the Authority with information on such orders in the Self Certification Form in accordance with Schedule 8 (Self Audit Certificate) and in the Management Information Reports in accordance with Schedule 4 (DPS Management).
- 1.9 The Supplier acknowledges it has all the information required to perform its obligations under each Call-Off Contract before entering into the Call-Off Contract. When information is provided by the Authority or a Contracting Authority, no warranty of its accuracy is given to the Supplier
- 1.10 The Supplier will not be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
  - (a) verify the accuracy of the Due Diligence Information; or
  - (b) properly perform its own adequate checks.
- 1.11 The Authority will not be liable for errors, omissions or misrepresentation of any information.
- 1.12 The Supplier warrants and represents that all statements made, and documents submitted as part of the procurement of Deliverables are and remain true and accurate.
- 1.13 The Authority shall not in any circumstances be liable to the Supplier or any Contracting Authority for payment or otherwise in respect of any Services provided by the Supplier to any Contracting Authority or any payment owed by a Contracting Authority to the Supplier.

## **2. What needs to be delivered**

### **2.1 Goods and Services**

- 2.1.1 The Supplier must perform its obligations under this DPS Agreement to provide the Goods and Services that comply with:
- (a) Schedule 1 (Specification); Annex 1 and Annex 2
  - (b) the Call-Off Contract;
  - (c) all relevant professional standards;
  - (d) the Minimum Standards set out in Schedule 7 (Standards);
  - (e) all reasonable skill and care;
  - (f) Good Industry Practice;
  - (g) Law;
  - (h) the Performance Indicators in Schedule 4 (DPS Management);
  - (i) its own policies, processes and internal quality control measures as long as they do not conflict with the DPS Agreement or any Call-Off Contract; and
  - (j) the SSQ Response.
- 2.1.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 2.1.1 and shall comply with the Authority's decision on the resolution of any conflict.

### **2.2 Services clauses**

- 2.2.1 Late Delivery of the Goods and Services will be a Default of a Call-Off Contract.
- 2.2.2 The Supplier must cooperate with the Authority, Contracting Authority and third-party suppliers on all aspects connected with the Delivery of the Goods and Services and ensure that Supplier Staff comply with any reasonable instructions
- 2.2.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Goods and Services.
- 2.2.4 The Supplier must allocate sufficient resources and appropriate expertise to each Call-Off Contract.
- 2.2.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Authority's or the Contracting Authority's operations, employees or other suppliers.

- 2.2.6 The Supplier must ensure all Services, and anything used to Deliver the Goods and Services, are of good quality and free from defects.
- 2.2.7 The Contracting Authority is entitled to withhold any payment for partially or undelivered Services but doing so does not stop it from using its other rights under the Call-Off Contract.
- 2.2.8 The Authority shall have the right to enter the Supplier's premises to:
- (a) inspect the Supplier's facilities and the equipment used by the Supplier in the provision of the Goods and Services; and/or
  - (b) inspect and take samples, test or otherwise inspect the Goods and Services;
  - (c) conduct an Audit or exercise its rights (including Third Party rights) under a Call-Off Contract.
- 2.2.9 Inspections carried out pursuant to Clause 2.2.8 shall be carried out during business hours on reasonable notice to the Supplier, provided that, in the event of an emergency, the Supplier shall grant the Authority immediate access to its premises.
- 2.2.10 If following an inspection, the Authority reasonably considers that the Goods and Services will not meet the requirements set out in this DPS Agreement, or any Call-Off Contract the Authority shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Goods and Services are as specified under this DPS Agreement or any Call-Off Contract. The Authority shall have the right to re-conduct inspections, carry out tests and take further samples after the Supplier has carried out its remedial actions.

### **3. Pricing and payments**

- 3.1 The Supplier acknowledges the importance to the Authority of the financial transparency and the Authority's need for complete transparency in the way in which the Baseline Charges and Charges are calculated.
- 3.2 In exchange for the Goods and Services, the Supplier must invoice the Contracting Authority for the Charges in accordance with the Call-Off Contract, which shall not exceed the Baseline Charges.
- 3.3 All Charges:
- (a) exclude VAT, which is payable on provision of a valid VAT invoice; and

- (b) include all costs connected with the supply of Goods and Services.
- 3.4 The Supplier must ensure that all Sub-contractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this does not happen, the Authority can publish the details of the late payment or non-payment.
- 3.5 If the Authority can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Goods and Services, then the Authority may require the Supplier to replace its existing Baseline Charges and/or commercial terms with the more favourable terms offered for the Goods and Services.
- 3.6 If the Authority uses Clause 3.5 then the Charges must be reduced by an agreed amount by using the Variation Procedure.
- 3.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they are ordered to do so by a court.

#### **4. The Authority obligations to the Supplier**

- 4.1 If Supplier Non-Performance arises from an Authority Cause:
  - (a) the Authority cannot terminate the DPS Agreement under Clause 9.4;
  - (b) the Supplier is entitled to additional time needed to Deliver the Goods and Services; and
  - (c) the Supplier cannot suspend the ongoing supply of the Goods and Services.
- 4.2 Clause 4.1 only applies if the Supplier:
  - (a) gives notice to the Party responsible for the Authority Cause within ten (10) Working Days of becoming aware;
  - (b) demonstrates that the Supplier Non-Performance would not have occurred but for the Authority Cause; and
  - (c) mitigated the impact of the Authority Cause.

#### **5. Record keeping, reporting and auditing**

- 5.1 The Supplier must attend Progress Meetings with the Authority and provide Progress Reports, Management Information Reports and all plans specified in Schedule 4 (DPS Management).
- 5.2
- 5.3 The Supplier must keep and maintain full and accurate Records and accounts on everything to do with the DPS Agreement including all Management Information Reports and compliance with the Minimum Standards:

- (a) during the DPS Agreement Period;
  - (b) for seven (7) years after the End Date; and
  - (c) in accordance with GDPR,  
including but not limited to the records and accounts stated in the definition of Audit in Schedule 2 (Definitions).
- 5.4 The Supplier must allow any Auditor access to their premises to verify all contract accounts and Records of everything to do with the DPS Agreement and provide copies to the Authority or Auditor for an Audit. This can be as an example but not limited to the suppliers policy documents and standard operating procedures, invoices for goods and services procured to deliver the contract, end of year accounts, quality & investigation reports.
- 5.5 The Supplier must provide information to the Auditor and reasonable co-operation at their request, either in advance of the audit and delivered by secure email or hard copies delivered by secure mail, to allow the Auditor to prepare or during the audit as required.
- 5.6 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Authority and give reasons;
  - (b) propose corrective action; and
  - (c) provide a deadline for completing the corrective action.
- 5.7 The Supplier must provide the Authority with a **Self-Audit Certificate** in the form set out in Schedule 8 (Self Audit Certificate) supported by an audit report at the end of each DPS Agreement Year or upon request of the Authority on reasonable notice. The report must contain:
- (a) evidence of compliance with all necessary certifications as set out in Schedule 7 (Standards);
  - (b) confirmation of Compliance with Clause 5 (Record Keeping, reporting and auditing) of the Call-Off Contract.
- 5.8 The Authority may also request as part of the Self Audit Certificate information on the values and volume percentages for the level of Service provision per LOT that is being undertaken by Sub-contractors instead of the Supplier directly.
- 5.9 The Self Audit Certificate must be completed and signed by senior member of the Supplier's management team.

## **6. Supplier staff and Sub-contractors**

- 6.1 The Supplier Staff involved in the performance of all Call-Off Contracts must:
- (a) be appropriately trained and qualified;
  - (b) be vetted using Good Industry Practice and the Security Policy NPPV Warwickshire Police Vetting (Background Checks); and
  - (c) comply with all conduct requirements when on the Authority's Premises.
- 6.2 Where the Authority decides one of the Supplier's Staff is not suitable to work on a Call-Off Contract, the Supplier must replace them with a suitably qualified alternative within reasonable timescales, taking into account the potential impacts on the provision of the Service
- 6.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 26 (Preventing fraud, bribery and corruption).
- 6.4 The Supplier must provide a list of Supplier Staff needing to access the Authority Premises and say why access is required.
- 6.5 The Supplier indemnifies the Authority and the Contracting Authorities against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 6.6 The Supplier must confirm where any part of the provision of Services under the DPS is to be delivered by a Sub-contractors set out in the SSQ Response and approved by the Authority.
- 6.7 The Supplier agrees to notify the Authority of changes to Sub-contractor information after the DPS Agreement Start Date and update its SSQ Response to record any such changes if required by the Authority.
- 6.8 Where during the DPS Agreement Period the Supplier wishes to engage a new Sub-contractor or replace an existing Sub-contractor, it must obtain the prior written consent of the Authority and the Supplier shall, at the time of requesting such consent, provide the Authority with the information detailed in the SSQ for the new Sub-contract.
- 6.9 Where during a Contract Period the Supplier wishes to enter into a new Sub-contractor or replace a Sub-contractor providing Services under a Call-Off Contract, the Supplier shall notify the Authority and the Contracting Authority. The decision of the Authority and the Contracting Authority to consent or not will not be unreasonably withheld or delayed.
- 6.10 Where the Authority and the Contracting Authority consent to the appointment of

a Sub-contractor, then the Sub-contractor will be added to the list of Sub-contractors at Annex 1 to Appendix 12 (Sub-contracting) in accordance with Paragraph 1.3 of Appendix 12 (Sub-contracting).

## **7. Rights and protection**

7.1 The Supplier warrants and represents that:

- (a) it has full capacity and authority to enter into and to perform this DPS Agreement and each Call-Off Contract;
- (b) this DPS Agreement and each Call-Off Contract is executed by its authorised representative;
- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Call-Off Contract.
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this DPS Agreement and each Call-Off Contract.
- (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform this DPS Agreement and each Call-Off Contract.
- (g) it is not impacted by an Insolvency Event; and
- (h) it will comply with the terms of this DPS Agreement and each Call-Off Contract.

7.2 The warranties and representations in Clauses 1.12 and 7.1 are repeated each time the Supplier provides Services and Deliverables under any Call-Off Contract.

7.3 The Supplier indemnifies the Authority and every Contracting Authority against each of the following:

- (a) wilful misconduct of the Supplier, Sub-contractor and Supplier Staff that impacts any Call-Off Contract; and
- (b) non-payment by the Supplier of any tax or National Insurance including any Occasion of Tax Non-Compliance.

7.4 All claims indemnified under this DPS Agreement must use Clause 25 (Dealing with claims).

7.5 A Contracting Authority can terminate a Call-Off Contract for breach of any warranty or indemnity where they are entitled to do so

7.6 If the Supplier becomes aware of a representation or warranty that becomes



untrue or misleading, it must immediately notify the Authority and every Contracting Authority.

- 7.7 All third-party warranties and indemnities covering the Goods and Services and Deliverables must be assigned for the Contracting Authority's benefit by the Supplier.

## **8. Intellectual Property Rights (IPRs)**

- 8.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Authority and every Contracting Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- (a) receive and use the Goods and Services; and
- (b) make use of the deliverables provided by a Replacement Supplier.

- 8.2 Where a Party acquires ownership of IPRs incorrectly under this DPS Agreement it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

- 8.3 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 8 or otherwise agreed in advance in writing.

- 8.4 If there is an IPR Claim, the Supplier indemnifies the Authority and each Contracting Authority against all Losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

- 8.5 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Authority's sole option, either:

- (a) Obtain for the Authority and the Contracting Authority the rights in Clause 8.1 and 8.2 without infringing any Third Party IPR; or
- (b) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Goods and Services.

- 8.6 In spite of any other provisions of a Call-Off Contract and for the avoidance of doubt, award of a Call-Off Contract by a Contracting Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any authorisation by the Crown under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.



## **9. Ending the DPS Agreement and Sub-contractors**

### **9.1 DPS Agreement Period**

- 9.1.1 The DPS Agreement takes effect on the DPS Start Date and ends on the DPS End Date or earlier if required by Law or terminated earlier.
- 9.1.2 The Authority can extend the DPS Agreement for an Extension Period by giving the Supplier no less than three (3) Months' written notice before the DPS Original end date.

### **9.2 Ending the contract without a reason**

- 9.2.1 The Authority has the right to terminate the DPS Agreement at any time without reason by giving the Supplier at least thirty (30) days' notice.

### **9.3 Ending Sub-contractors**

- 9.3.1 At the Authority's request, the Supplier must terminate any Sub-contractor in any of the following events:
  - (a) there is a Change of Control of a Sub-contractor which isn't pre-approved by the Authority in writing;
  - (b) the Sub-contractor suffers an Insolvency Event;
  - (c) there's a Default caused by the Sub-contractor that is not corrected in line with an accepted Rectification Plan or Revised Rectification Plan;
  - (d) there's any material Default of the Sub-contractor;
  - (e) the Authority discovers that the Sub-contractor is in one of the situations in 57(1) or 57(2) of the Regulations;
  - (f) the Sub-contractor fails to obtain appropriate accreditation, to the Authority's satisfaction;
  - (g) a Sub-contractor or its Affiliates embarrass or brings into disrepute or diminishes the public trust in the Authority.
- 9.3.2 In the event a Sub-contractor is terminated the Supplier shall be responsible for ensuring that:
  - (a) The Sub-contractor ceases to deliver any Services or Deliverables to any Contracting Authority; and
- 9.3.3 Neither the Authority or the Contracting Authority shall be liable to compensate the Supplier for any claim, loss or damage resulting from the termination of a Sub-contractor.

#### **9.4 Rectification plan process**

- 9.4.1 If there is a Default, or Supplier Non-Performance the Authority may, without limiting its other rights, request that the Supplier provide a Rectification Plan.
- 9.4.2 When the Authority receives a requested Rectification Plan it can either:
- (a) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
  - (b) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.
- 9.4.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Authority:
- (a) must give reasonable grounds for its decision; and
  - (b) may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.
- 9.4.4 If the Authority rejects any Rectification Plan, including any revised Rectification Plan, the Authority does not have to request a revised Rectification Plan before exercising its right to terminate this DPS Agreement under Clause 9.4 (Rectification plan process).

#### **9.5 When the Authority can end the DPS Agreement**

- 9.5.1 If any of the following events happen, the Authority has the right to immediately terminate the DPS Agreement by issuing a Termination Notice to the Supplier:
- (a) there is a Supplier Insolvency Event;
  - (b) there is a Default that is not corrected in line with an accepted Rectification Plan;
  - (c) the Supplier does not provide a Rectification Plan within ten (10) days of the request;
  - (d) there is any material Default of the DPS Agreement;
  - (e) there is any material Default of any Joint Controller Agreement;
  - (f) there is a Default of Clauses 1.12, 8, 13.3, 14.4, 26.6, 31.1 relating to any Call-Off Contract;
  - (g) there is a consistent repeated failure to meet the Performance

- Indicators in Schedule 4 (DPS Management);
- (h) there is a Change of Control of the Supplier which is not pre-approved by the Authority in writing;
  - (i) the Supplier fails to maintain the required accreditation or minimum specified quality standard, to the Contracting Authority's satisfaction;
  - (j) if the Authority discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations (or equivalent provision under any replacement regulations) at the time the DPS Agreement was awarded;
  - (k) termination is required by the Secretary of State for the Home Department in accordance with a "Trigger Event" under the National Security and Investment Act 2021; or
  - (l) the Supplier or its Affiliates embarrass or bring the Authority or any Contracting Authority into disrepute or diminish the public trust in them.

9.5.2 If any of the following non-fault-based events happen, the Authority has the right to immediately terminate the DPS Agreement by issuing a Termination Notice to the Supplier:

- (a) the Authority rejects a Rectification Plan;
- (b) there is a Variation which cannot be agreed using Clause 23 (Changing the DPS) or resolved using Clause 33 (Resolving disputes);
- (c) if there is a declaration of ineffectiveness in respect of any DPS Variation; or
- (d) any of the events in regulation 73(1)(a) or (c) of the Regulations (or any equivalent provision under any replacement regulations) happen.

## 9.6 When the supplier can end the DPS Agreement

The Supplier may not terminate this DPS Agreement.

## 9.7 What happens if the DPS Agreement ends?

- 9.7.1 Where the Authority terminates this DPS Agreement under any of Clauses 9.2.1, 9.5.1, 9.5.2, or 19.2 DPS Agreement expires all of the following apply (as applicable)
- (a) accumulated rights of the Parties are not affected;
  - (b) the Supplier must promptly delete or return the Authority Data and Authority Data (as applicable) except where required to retain copies by Law.
- 9.7.2 In addition to the consequences of termination listed in Clause 9.7.1, where a Party terminates under Clause 19.2 each Party must cover its own Losses.

9.7.3 The following Clauses survive the termination or expiry of each Contract:

- (a) Clause 5 (Record keeping, reporting and auditing);
- (b) Clause 6.5 (Staff Indemnity);
- (c) Clause 8 (Intellectual Property Rights);
- (d) Clause 10 (How much you can be held responsible for);
- (e) Clause 11.2 (Obeying the law);
- (f) Clause 13 (Data protection);
- (g) Clause 14 (What you must keep confidential);
- (h) Clause 15 (When you can share information);
- (i) Clause 16 (Invalid parts of the DPS Agreement);
- (j) Clause 17 (No other terms apply);
- (k) Clause 30.3 (Tax);
- (l) Clause 33 (Resolving disputes
- (m) Clause 34 (Which law applies)
- (n) and any Clauses and Schedules which are expressly or by implication intended to continue.

## 9.8 **Partially ending and suspending the DPS Agreement**

- 9.8.1 Where the Authority has the right to terminate the DPS Agreement it can suspend the Supplier's ability to accept orders (for any period) and the Supplier cannot enter into any new Call-Off Contracts during this period. If this happens, the Supplier must still meet its obligations under any existing Call-Off Contracts that have already been signed.
- 9.8.2 Where the Authority has the right to terminate this DPS Agreement it is entitled to terminate all or part of it.
- 9.8.3 The Parties must agree any necessary Variation required by Clause 9.8 using the Variation Procedure, but the Supplier may not either:
- (a) reject the DPS Variation; or
  - (b) increase the Charges, except where the right to partial termination is under Clause 9.2.
- 9.8.4 The Authority can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 9.8.

## **9.9 When sub-contractors can be ended**

At the Authority's request, the Supplier must terminate any Sub-contracts in any of the following events:

- (a) there is a Change of Control of a Sub-contractor which is not pre-approved by the Authority in writing;
- (b) the acts or omissions of the Sub-contractor have caused or materially contributed to a right of termination under Clause 9.5; or
- (c) a Sub-contractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Authority or a Contracting Authority.

## **10. How much you can be held responsible for (Supplier Liability)**

10.1 Each Party's total aggregate liability in each DPS Agreement Year under this DPS Agreement (whether in tort, contract or otherwise) is no more than £250,000 excluding liabilities for Data Protection Breach set out in Schedule 10 (Processing Data).

10.2 No Party is liable to the other for:

- (a) any indirect Losses; or
- (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

10.3 In spite of Clause 10.1, neither Party limits or excludes any of the following:

- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors;
- (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
- (c) any liability that cannot be excluded or limited by Law.

10.4 In spite of Clauses 10.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 6.5 (Supplier staff and Sub-contractors), 7.3 (Rights and protection), 8.4 (IPRs), 30.3 (Tax) or Call-Off Contract Appendix 11 (Staff Transfer) of a Contract.

10.5 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with this DPS Agreement and each Call-Off Contract, including any indemnities.

10.6 When calculating the Supplier's liability under Clause 10.1 the following items will not be taken into consideration:

- (a) deductions; and
  - (b) any items specified in Clauses 10.4.
- 10.7 If more than one Supplier is party to a Call-Off Contract, each Supplier Party is jointly and severally liable for their obligations under that Call-Off Contract.

## **11. Obeying the law**

- 11.1 The Supplier must use reasonable endeavours to comply with the provisions of Legislation reliant on the Call-Off Contracts.
- 11.2 To the extent that it arises as a result of a Default by the Supplier, the Supplier indemnifies the Authority against any fine or penalty incurred by the Authority and any Contracting Authority pursuant to Law and any costs incurred by the Authority and any Contracting Authority in defending any proceedings which result in such fine or penalty.
- 11.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 11.1 and Clauses 26 (Preventing fraud, bribery and corruption) to 31 (Conflict of interest) and Schedule 7 (Standards).

## **12. Insurance**

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Call-Off Contract (Insurance Requirements).

## **13. Data protection**

- 13.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 10 (Processing Data).
- 13.2 The Supplier must not remove any ownership or security notices in or relating to the Authority Data
- 13.3 The Supplier must make secure back-ups of all Authority Data and this must be available upon request to the Authority.
- 13.4 The Supplier must ensure that any Supplier system holding any Authority Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 13.5 If at any time the Supplier suspects or has reason to believe that the Authority Data provided is corrupted, lost or sufficiently degraded, then the Supplier must notify the Authority and immediately suggest remedial action.

- 13.6 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable the Authority may either or both:
- (a) tell the Supplier to restore or get restored the Authority Data as soon as practical but no later than five (5) Working Days from the date that the Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
  - (b) restore the Authority Data itself or using a third party.
- 13.7 The Supplier must pay each Party's reasonable costs of complying with Clause 13.6 unless the Authority is at fault.
- 13.8 The Supplier:
- (a) must provide the Authority with all Authority Data in an agreed open format within ten (10) Working Days of a written request;
  - (b) must have documented processes to guarantee prompt availability of Authority Data if the Supplier stops trading;
  - (c) must securely destroy all Storage Media that has held Authority Data at the end of life of that media using Good Industry Practice;
  - (d) securely erase all Authority Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and
  - (e) indemnifies the Authority and each Contracting Authority against any and all Losses incurred if the Supplier breaches Clause 13 and any Data Protection Legislation.

#### **14. What you must keep confidential**

- 14.1 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
  - (b) except as expressly set out in Clauses 14.2 to 14.4 or elsewhere in the DPS Agreement, not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent; and
  - (c) immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 14.2 In spite of Clause 14.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - (b) if the Recipient Party already had the information without obligation of



- (c) confidentiality before it was disclosed by the Disclosing Party;
  - (d) if the information was given to it by a third party without obligation of confidentiality;
  - (e) if the information was in the public domain at the time of the disclosure;
  - (f) if the information was independently developed without access to the Disclosing Party's Confidential Information;
  - (g) on a confidential basis, to its auditors;
  - (h) on a confidential basis, to its professional advisers on a need-to-know basis; or
  - (i) to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 14.3 In spite of Clause 14.1, the Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the DPS Agreement. The Supplier Staff must enter into a direct confidentiality agreement with the Authority and any Contracting Authority at its request.
- 14.4 In spite of Clause 14.1, the Authority may disclose Confidential Information in any of the following cases:
  - (a) on a confidential basis to the Contracting Authorities and employees, agents, consultants, and contractors of the Authority;
  - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company or other public sector body that the Authority transfers or proposes to transfer all or any part of its business to;
  - (c) if the Authority (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - (d) Where requested by the Independent Office for Police Conduct (IOPC);
  - (e) where requested by Parliament; or
  - (f) under Clause 15.
- 14.5 For the purposes of Clauses 14.2 to 14.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 14.
- 14.6 Transparency Information is not Confidential Information.
- 14.7 The Supplier must not make any press announcement or publicise the DPS Agreement or any Call-off Contracts or any part of them in any way, without the prior written consent of the Authority and must take all reasonable steps to ensure that Supplier Staff do not either.



- 14.8 Without prejudice to any other rights or remedies under this DPS Agreement each Party acknowledges and agree that damages alone would not be an adequate remedy for any breach of this Clause 14. Each Party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Clause 14.

## **15. When you can share information**

- 15.1 The Supplier must tell the Authority within forty-eight (48) hours if it receives a Request for Information.
- 15.2 The Supplier must:
- (a) transfer to the Authority all Requests for Information that it receives within 48 hours of receipt;
  - (b) not respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority;
- 15.3 Within five (5) Working Days of the Authority's request the Supplier must give the Authority full co-operation and information needed so the Authority can:
- (a) publish the Transparency Information;
  - (b) comply with any Freedom of Information Act (FOIA) request; and/or
  - (c) comply with any Environmental Information Regulations (EIR) request.
- 15.4 The Authority may talk to the Supplier to help it decide whether to publish information under Clause 15. However, the extent, content and format of the disclosure is the Authority's decision in its absolute discretion.

## **16. Invalid parts of the DPS Agreement**

If any part of this DPS Agreement is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from the DPS Agreement as much as required and rendered ineffective as far as possible without affecting the rest of the DPS Agreement, whether it is valid or enforceable.

## **17. No other terms apply**

The provisions incorporated into this DPS Agreement are the entire agreement between the Parties. The DPS Agreement replaces all previous statements, agreements and any course of dealings made between the Parties, whether written or oral, in relation to its subject matter. No other provisions apply.

## **18. Other people's rights in the DPS Agreement**

No third parties (except Contracting Authorities) may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce any term of the DPS Agreement unless stated as having a right in the DPS Agreement. This does not affect third party rights and remedies that exist independently from CRTPA.

## **19. Circumstances beyond your control**

19.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Call-Off Contract while the inability to perform continues, if it both:

- (a) provides a Force Majeure Notice to the other Party; and
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

19.2 Either Party can partially or fully terminate the affected Call-Off Contract or DPS Agreement if the provision of the Goods and Services is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

## **20. Relationships created by the DPS Agreement**

No DPS Agreement or Call-Off Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **21. Giving up contractual rights**

A partial or full waiver or relaxation of the terms of this DPS Agreement or Call-Off Contract is only valid if it is stated to be a waiver in writing to the other Party.

## **22. Transferring responsibilities**

22.1 The Supplier cannot assign, novate or transfer the DPS Agreement or a Call-Off Contract or any part of the DPS Agreement or a Call-Off Contract without the Authority's written consent.

22.2 The Authority can assign, novate or transfer this DPS Agreement or any part of it to any Central Government Body, public or private sector body which performs the functions of the Authority.

22.3 When the Authority uses its rights under Clause 22.2 the Supplier must enter into a novation agreement in the form that the Authority specifies.

- 22.4 The Supplier can terminate a DPS Agreement novated under Clause 22.2 to a private sector body that is experiencing an Insolvency Event.
- 22.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 22.6 If the Authority asks the Supplier for details about Sub-contractors, the Supplier must provide details of Sub-contractors at all levels of the supply chain in accordance with Schedule 12 (Supply Chain Visibility) including:
  - (a) their name;
  - (b) the scope of their appointment; and
  - (c) the duration of their appointment.

### **23. Changing the DPS Agreement**

- 23.1 Either Party can request a DPS Variation of the DPS Agreement which is only effective if agreed in writing and signed by both Parties.
- 23.2 The Supplier must provide an Impact Assessment either:
  - (a) with the DPS Variation Form (Schedule 9), where the Supplier requests the DPS Variation; or
  - (b) within the time limits included in a DPS Variation Form requested by the Authority.
- 23.3 If the DPS Variation cannot be agreed or resolved by the Parties, the Authority can either:
  - (a) agree that the DPS Agreement continues without the DPS Variation; or
  - (b) refer the Dispute to be resolved using Clause 33 (Resolving Disputes).
- 23.4 The Authority is not required to accept a DPS Variation request made by the Supplier.
- 23.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges
- 23.6 If there is a Specific Change in Law or one is likely to happen during the DPS Agreement Period, the Supplier must give the Authority notice of the likely effects of the changes as in its SSQ Response. They must also say if they think any DPS Variation is needed either to the Goods and Services, Charges or a Call-Off Contract and provide evidence:
  - (a) that the Supplier has kept costs as low as possible, including in Sub-contractor costs; and

(b) of how it has affected the Supplier's costs.

23.7 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 23.1 to 23.6.

23.8 For regulation 101(5) of the Regulations, if the Court declares any DPS Variation ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of this DPS Agreement as they existed immediately prior to that DPS Variation and as if the Parties had never entered into that DPS Variation.

## **24. How to communicate about the DPS Agreement**

24.1 All notices under the DPS Agreement must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.

24.2 Notices to the Authority must be sent to the Authority Authorised Representative's address or email address in the Award Form.

24.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution

## **25. Dealing with claims**

25.1 If a Beneficiary is notified of a Claim, then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Day

25.2 At the Indemnifier's cost the Beneficiary must both:

- (a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
- (b) give the Indemnifier reasonable assistance with the claim if requested.

25.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

25.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

25.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or

delay.

- 25.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim
- 25.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
- (a) the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
  - (b) the amount the Indemnifier paid the Beneficiary for the Claim.

## **26. Preventing fraud, bribery and corruption**

- 26.1 The Supplier must not during any DPS Agreement Period:
- (a) commit a Prohibited Act or any other criminal offence in regulation 57(1) and 57(2) of the Regulations; or
  - (b) do or allow anything which would cause the Authority, or a Contracting Authority including any of their employees, consultants, contractors, Sub-contractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 26.2 The Supplier must during the DPS Agreement Period:
- (a) create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Sub-contractors to do the same;
  - (b) keep full records to show it has complied with its obligations under Clause 26 and give copies to the Authority on request; and
  - (c) if required by the Authority, within twenty (20) Working Days of the Start Date of the relevant Call-Off Contract, and then annually, certify in writing to the Authority, that they have complied with Clause 26, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 26.3 The Supplier must immediately notify the Authority if it becomes aware of any breach of Clauses 26.1 or 26.2 or has any reason to think that it, or any of the Supplier Staff, has either:
- (a) been investigated or prosecuted for an alleged Prohibited Act;
  - (b) been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - (c) received a request or demand for any undue financial or other advantage

- of any kind related to this DPS Agreement or any Call-Off Contract; or
  - (d) suspected that any person or Party directly or indirectly related to this DPS Agreement or a Call-Off Contract has committed or attempted to commit a Prohibited Act.
- 26.4 If the Supplier notifies the Authority as required by Clause 26.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 26.5 In any notice the Supplier gives under Clause 26.3 it must specify the:
- (a) Prohibited Act;
  - (b) identity of the Party who it thinks has committed the Prohibited Act; and
  - (c) action it has decided to take.

## **27. Equality, diversity and human rights**

- 27.1 The Supplier must follow all applicable equality Law when it performs its obligations under the DPS Agreement, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age, marriage, civil partnership or otherwise; and
  - (b) any other requirements and instructions which the Authority reasonably imposes related to equality Law.
- 27.2 The Supplier must take all necessary steps, and inform the Authority of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Call-Off Contract.

## **28. Health and safety**

- 28.1 The Supplier must perform its obligations meeting the requirements of:
- (a) all applicable Law regarding health and safety; and
  - (b) the Authority's current health and safety policy while at the Authority's Premises, as provided to the Supplier.

## **29. Environment**

- 29.1 When working on the Authority's Site the Supplier must perform its obligations under the Authority's current Environmental Policy, which the Authority must provide.

### **30. Tax**

- 30.1 The Supplier must not breach any Tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Authority cannot terminate the DPS Agreement where the Supplier has not paid a minor Tax or social security contribution.
- 30.2 Where the Charges payable under a Call-Off Contract with the Contracting Authority are or are likely to exceed £5 million at any point during the relevant Call-Off Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Authority of it within five (5) Working Days including:
- (a) the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
  - (b) other information relating to the Occasion of Tax Non-Compliance that the Authority may reasonably need
- 30.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - (b) indemnify the Authority against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the DPS Agreement Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 30.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- (a) the Authority may, at any time during the DPS Agreement Period, request that the Worker provides information which demonstrates they comply with Clause 30.3, or why those requirements do not apply, the Authority can specify the information the Worker must provide and the deadline for responding;
  - (b) the Worker's contract may be terminated at the Authority's request if the Worker fails to provide the information requested by the Authority within the time specified by the Authority;



- (c) the Worker's contract may be terminated at the Authority's request if the Worker provides information which the Authority considers is not good enough to demonstrate how it complies with Clause 30.3 or confirms that the Worker is not complying with those requirements; and
- (d) the Authority may supply any information they receive from the Worker to HMRC for revenue collection and management.

### **31. Conflict of interest**

- 31.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.
- 31.2 The Supplier must promptly notify and provide details to the Authority (and each Contracting Authority affected) if a Conflict of Interest happens or is expected to happen.
- 31.3 Each Contracting Authority can terminate its Call-Off Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

### **32. Reporting a breach of the DPS Agreement**

- 32.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Authority any actual or suspected breach of:
  - (a) Law;
  - (b) Clause 11.1 (Obeying the law); or
  - (c) Clauses 26 (Preventing fraud, bribery and corruption) through to 31 (Conflict of interest).
- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 32.1 to the Authority or a Prescribed Person.

### **33. Resolving disputes**

- 33.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within twenty-eight (28) days of a written request from the other Party, meet in good faith to resolve the Dispute.
- 33.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 33.3 to 33.5.



- 33.3 Unless the Authority refers the Dispute to arbitration using Clause 33.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the Dispute;
  - (b) grant interim remedies; and/or
  - (c) grant any other provisional or protective relief.
- 33.4 The Supplier agrees that the Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English
- 33.5 The Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 33.3, unless the Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 33.4
- 33.6 The Supplier cannot suspend the performance of a Call-Off Contract during any Dispute.

#### **34. Which law applies**

This DPS Agreement and any Disputes arising out of, or connected to it, are governed by English law.

#### **35. DPS Definitions**

- 35.1 In the DPS Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Clause 35 or Schedule 2 (Definitions).
- 35.2 If a capitalised expression does not have an interpretation in this Clause or Schedule 2 (Definitions), it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 35.3 In the DPS Agreement, unless the context otherwise requires:
- 35.3.1 the singular includes the plural and vice versa;
  - 35.3.2 reference to a gender includes the other gender and the neuter;

- 35.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- 35.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 35.3.5 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 35.3.6 unless the context otherwise requires, any reference in relation to any time after the date of this DPS Agreement to:
- any EU directive, EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (an EU Matter) which forms part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read as a reference to that EU Matter as it forms (by virtue of section 3 of the European Union (Withdrawal) Act 2018) part of domestic law and as modified by domestic law from time to time; and
  - any EU entity shall be read as a reference to the UK institution, authority or body to which its functions were transferred; and
  - words and expressions used in this Clause 35 shall have the meanings given to them respectively in the European Union (Withdrawal) Act 2018;
- 35.3.7 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
- 35.3.8 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 35.3.9 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the DPS Agreement;
- 35.3.10 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and Schedules of this DPS Agreement and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

- 35.3.11 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
- 35.3.12 references to a series of "Clauses" or "Paragraphs" shall be inclusive of the clause numbers specified; and
- 35.3.13 the headings in the DPS Agreement are for ease of reference only and shall not affect the interpretation or construction of the DPS Agreement.

## **SCHEDULE 1 (SPECIFICATION)**

[attached in separate document]

This Schedule 1 includes the Service Level Agreement (SLA) and Technical and Quality Standards Annex 1 and Annex 2

The Supplier must only provide the Goods and Services that they have been appointed to.

For all Goods and or Services, the Supplier must help Contracting Authorities comply with any specific applicable Standards of the Authority.

The Goods and or Services and any Standards set out in this Schedule 1 may be refined (to the extent permitted and set out in the Call-Off Contract Award Form) by a Contracting Authority during a Further Competition Procedure to reflect its specific requirements for entering a particular Call-Off Contract.

## **SCHEDULE 2 (DEFINITIONS) MPRDTD**

[attached in separate document]

### **SCHEDULE 3 (BASELINE CHARGES)**

- 1. How Baseline Charges are used**
  - 1.1 The Baseline Charges:
    - 1.1.1 may be used as the basis for the Charges (and are maximums that the Supplier may charge) under each Call-Off Contract; and
    - 1.1.2 cannot be increased except as in accordance with this Schedule
  - 1.2 The Charges:
    - 1.2.1 shall be calculated in accordance with the terms of the Call-Off Contract and in particular in accordance with the terms of the Call-Off Contract Award Form;
    - 1.2.2 cannot be increased except as specifically permitted by the Call-Off Contract and in particular shall only be subject to additional indexation where specifically stated in the Call-Off Contract Award Form;
  - 1.3 The Baseline Charges set out in Annex 1 shall be available for use in calculation of the Charges in Call-Off Contracts.
- 2. When the Supplier can ask to change the Baseline Charges**
  - 2.1 The Baseline Charges will be fixed for the first year following the DPS Start Date. After this Baseline Charges may be adjusted on each following yearly anniversary the date of each such anniversary is also a "**Review Date**". The Authority reserves the right to apply adjustments in line with changes in the Consumer Price Index to the Baseline Charges following a Review at its sole discretion.
  - 2.2 The Authority reserves the right to conduct a review of the Supplier's Baseline Charges at any time, at its sole discretion to ensure that Baseline Charges remain sustainable, fair and provide value for money to Contracting Authorities.
  - 2.3 The Authority may consider a request for a price increase from a Supplier prior to a Review Date. The Authority may grant Approval to an increase at its sole discretion.
  - 2.4 Where the Authority approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Authority may determine at its sole discretion and Annex 1 shall be updated accordingly.

### **3. Benchmarking the Baseline Charges**

- 3.1 The Authority may, by written notice to the Supplier, undertake a benchmark review of any or all of the Baseline Charges.
- 3.2 The Authority shall not be entitled to undertake a benchmark review during the first twelve (12) Month period from the DPS Agreement Start Date or at intervals of less than twelve (12) Months after any previous benchmark review of the Baseline Charges.
- 3.3 The purpose of a benchmark review will be to establish whether the Baseline Charges are, individually and/or as a whole, Good Value and sustainable.
- 3.4 The Supplier shall use all reasonable endeavours and act in good faith to supply information required in order to undertake the benchmarking of Baseline Charges.
- 3.5 The Authority shall confirm its findings as to whether or not the Baseline Charges individually or as a whole are, Good Value and sustainable and may make recommendations on the changes that the Supplier could make to the Baseline Charges to deliver Good Value.
- 3.6 The Supplier shall not be obliged to implement any benchmarking recommendations of the Authority to the extent this would cause the Supplier to provide the Goods and Services at a loss), or to the extent the Supplier cannot technically implement the recommended changes.
- 3.7 The Parties agree that any changes required to the Baseline Charges identified in the Authority's benchmarking exercise shall be implemented in accordance with Clause 23 (Changing the DPS Agreement).

### **Annex 1: Baseline Charges**

**[Insert Pricing Schedule(s) following DPS Award]**

## **SCHEDULE 4 (DPS MANAGEMENT)**

### **1. Definitions**

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 2 (Definitions):

<b>"Supplier DPS Manager"</b>	has the meaning given to it in Paragraph 10.1 of this Schedule; and
<b>"Supplier Review Meetings"</b>	has the meaning given to it in Paragraph 10.5 of this Schedule.

### **2. Governance Model**

- 2.1 The governance model provides a structure to enable the Authority to have strategic oversight through strategic Supplier relationship management, whilst contract management of the day-to-day service delivery is managed at a local level by the Contracting Authority (unless delegated to the Authority).

### **3. Executive Governance**

- 3.1 The objectives of governance at the executive level shall be to:
- 3.1.1 enable a holistic overview of the benefits and deliverables of the contracts and provide strategic direction, facilitated and supported by the Authority, at the executive level;
  - 3.1.2 enable engagement where appropriate with, the National Police Chiefs' Council (NPCC) and the Crown Prosecution Service (CPS) in relation to scientific standards and strategic contract performance;
  - 3.1.3 enable engagement with government ministers and National Police Chiefs' Council (NPCC) in relation to market development as and when appropriate.

### **4. Strategic Management**

- 4.1 The objectives of strategic management shall be:
- 4.1.1 to enable the Authority to connect subject matter experts supporting each other to share ideas and enable innovation and continuous improvement;
  - 4.1.2 to engage with the Suppliers to discuss performance and requirements from a national perspective;
  - 4.1.3 ensuring consistent high-quality Services provision by overseeing the review of the Goods and Services at the regional and national level;

- 4.1.4 to encourage marketplace development and innovation by suppliers
- 4.1.5 to determine business strategy and provide guidance on policy matters which may impact on the implementation of Call-Off Contracts for the Goods and or Services;
- 4.1.6 the escalation point for any disputes under Call-Off Contracts that are not resolved by the parties' Representatives at the local operational level;
- 4.1.7 to act as an intermediary between the Suppliers and local or collaborative contract management teams in respect of any issues they have been unable to resolve between them independently; and
- 4.1.8 to hold regular forums to allow all Supplier and Regional representatives of the Contracting Authorities resolve common issues and support improvements in communications and delivery of the Call-Off Contracts. Following clause 5 Commercial User Group (CUG)

## **5. Commercial User Group (CUG)**

### **5.1 The objectives of the CUG shall be to:**

- 5.1.1 enable collaborative discussion group meetings between heads of procurement to:
  - (a) discuss contract performance;
  - (b) discuss marketplace issues;
  - (c) review supplier financial stability;
  - (d) review supply chain economic risks;
- 5.1.2 undertake ongoing monitoring of quality, accreditation, financial stability, security (including staff vetting), business continuity mechanisms, sub-contracting arrangements and capacity;
- 5.1.3 ensure that any measures, plans and processes described in this DPS Agreement to improve or maintain the level of performance of the delivery of the goods and or services required by this DPS Agreement are implemented and complied with;
- 5.1.4 mediate any concerns, issues or risks raised from Local/Regional Operational Management (Commercial) Meetings escalated as unresolved for advice and resolution;
- 5.1.5 receive any lessons learnt from the Local Operational Management (Commercial) Meetings;
- 5.1.6 review and update on the social value deliveries and changes
- 5.1.7 review contract performance KPIs & Balanced Score Card;



- 5.1.8 manage and co-ordinate 360-degree feedback process; and
- 5.1.9 report upward to the strategic management level;
  - (a) escalate unresolved issues;
  - (b) ongoing marketplace health and stability;
  - (c) operational contract performance;
  - (d) proposed continuous improvement and innovation;
  - (e) any other areas as agreed through group terms of reference.
- 5.1.10 The CUG will comprise representatives from each Contracting Authority (or region) and will elect a chair from within the group.
- 5.1.11 Suppliers may be invited to attend the CUG.
- 5.1.12 The CUG will be supported by the Authority.

## **6. Local Operational Management**

- 6.1 The objectives of governance at the local operational management level shall be to robustly embed local and/or regional contract management by:
  - 6.1.1 enabling meetings between the Contracting Authority and the Supplier; and
  - 6.1.2 providing operational Contract Management on a day-to-day basis.
- 6.2 Contracting Authorities will control local operational and service management.

## **7. How the Authority and Contracting Authorities will work together**

- 7.1 FCN staff will be deployed for DPS management activities from time to time. Suppliers and Contracting Authorities will be required to follow the instructions of FCN when acting in the capacity of the Authority for the purposes of this DPS.
- 7.2 Any Contracting Authority wishing to purchase Goods and or Services under this DPS Agreement must enter into an Access Agreement between the Authority and the Contracting Authority. Direct access to the DPS will not be possible without an Access Agreement.
- 7.3 The Authority may have oversight of certain processes which are operated under Call-Off Contracts. Contracting Authorities may delegate any aspect of the Call-Off Contract management to the Authority and the Supplier shall be kept informed of changes to the management structure, roles and responsibilities for contract management under a Call-Off Contract.
- 7.4 In addition to its right under the DPS Agreement, the Authority may enforce the Contracting Authority's rights under the Call-Off Contract in accordance with this Schedule.

## **8. How the Authority and the Supplier will work together**

- 8.1 The Authority reserves the right to require Suppliers, on the 12-month anniversary of joining the DPS and thereafter every 12 months, to confirm that the information they have provided in SSQ Response is still valid and correct.
- 8.2 The Authority reserves the right to request additional information from Suppliers to evidence their ongoing adherence to quality and accreditation requirements. If that evidence is not deemed to be sufficient, the Authority reserves the right to suspend or remove the Supplier from the DPS.
- 8.3 The Authority reserves the right to carry out diligence stated in the ITP and SSQ on Suppliers that are admitted onto the DPS. The Authority reserves the right to conduct a Supplier Assurance Visit (SAV) prior to awarding a Call-Off Contract. This gives the Contracting Authority the opportunity to validate the Supplier's information provided at the SSQ stage, through onsite and or remote review of facilities and procedures in relation to the service provision.
- 8.4 The successful delivery of this DPS Agreement will rely on the ability of the Supplier and the Authority to develop a strategic relationship immediately following the conclusion of this DPS Agreement and maintaining this relationship throughout the DPS Agreement Period.
- 8.5 To achieve this strategic relationship, there will be a requirement to adopt proactive contract management activities which will be informed by quality Progress Reports, Management Information Reports, and the sharing of management information between the Supplier and the Authority.
- 8.6 This Schedule outlines the general structures and management activities that the Parties shall follow during the DPS Agreement Period.

## **Authority Strategic Level Responsibilities**

### **8.7 The Authority shall:**

- 8.7.1 engage with the Supplier(s) on the DPS to discuss performance and requirements from a national perspective;
- 8.7.2 undertake ongoing monitoring of quality, accreditation, financial stability, security (including staff vetting), business continuity mechanisms, sub-contracting arrangements and capacity;
- 8.7.3 ensure that any measures, plans and processes described in this DPS Agreement or the Call-Off Contracts to improve or maintain the level of performance of the Goods and Services required by this DPS Agreement are implemented and complied with;
- 8.7.4 determine business strategy and provide guidance on policy matters which may impact the implementation and provision of the Goods and or Services;
- 8.7.5 be the escalation point for any disputes under this DPS Agreement or any Call-Off Contract (that are not resolved by the parties'

Representatives in accordance with the Dispute Resolution Procedure);

- 8.7.6 act as an intermediary between the Supplier and the Contracting Authority in respect of any issues they have been unable to resolve between them independently; and
- 8.7.7 hold regular forums to allow all Suppliers under this DPS Agreement to discuss and seek to resolve common issues and proactively drive continuous improvement (Schedule 15 (Continuous Improvement Plan)).

## **8.8 The Authority may (with Contracting Authorities):**

- 8.8.1 lead and co-ordinate the Commercial User Group (CUG) to enable group meetings with the Contracting Authorities, presenting information to demonstrate that Supplier performance is being managed according to the relevant DPS Agreement and/or Call-Off Contract;
- 8.8.2 provide on-going liaison with suppliers on the DPS to identify and resolve risks and issues in the supply chain, Contractor and Sub-contractor performance and wider market matters in general;
- 8.8.3 generally, assist the Contracting Authorities with the strategic development of the marketplace;
- 8.8.4 hold procurement strategy meetings prior to any procurements with the relevant Contracting Authority to establish roles and responsibilities for that competition;
- 8.8.5 provide direct support to Contracting Authorities through the further competition process as required by each Contracting Authority;
- 8.8.6 support Call-Off Contracts either individually or on behalf of the Contracting Authorities within the relevant region;
- 8.8.7 assist with the provision of Management Information and draw on wider experience of suppliers' performance, to ensure regions/forces get the best possible service;
- 8.8.8 receive and review reports from the Contracting Authority which summarise key aspects of the operation of the Goods and or Services and review reports on technology, service and other developments that offer potential for improving the benefit either party is receiving, in particular value for money;
- 8.8.9 authorise the commissioning and initiation of new business change projects and shall assess opportunities for additional services; and
- 8.8.10 arrange and/or participate in contract/account management meetings with Suppliers.

- 8.9 For the avoidance of doubt, any procurement process and award decision will always be the responsibility of the relevant Contracting Authority and will be between the relevant Contracting Authority and the Supplier. Any Elements of the evaluation undertaken by the Authority will be on behalf of the Contracting Authority.
- 8.10 **The Supplier shall cooperate as reasonably required by the Authority including:**
- 8.10.1 provision of general market information;
  - 8.10.2 provide the Management Information Reports as set out in Annex A to this Schedule and the Progress Reports if required, in accordance with the Management Information requirements set out in Annex A to this Schedule;
  - 8.10.3 allowing the Authority to act as agent for the Contracting Authorities for such matters as the Authority may notify to the Supplier from time to time;
  - 8.10.4 adopt a policy of continuous improvement in relation to the provision of the goods and or service to any or all Contracting Authorities;
  - 8.10.5 create, maintain and update a Continuous Improvement Plan in accordance with Schedule 15 (Continuous Improvement Plan) for improving the provision of the Goods or Services reducing the Charges and, where requested by the Authority, incorporate any improvement identified in accordance with the DPS Variation Procedure or the Call-Off Variation Procedure as the case may be;
  - 8.10.6 notify the Authority in the event that any Benchmarking is appointed in respect of any Call-Off Contract and the Supplier recognises that the Authority may want to co-ordinate how benchmarking is conducted across multiple Call-Off Contracts;
  - 8.10.7 where the Authority is appointed as agent by Contracting Authorities in respect of benchmarking, co-operate with the Authority in order to operate the benchmarking as efficiently as possible;
  - 8.10.8 agrees that notwithstanding the remainder of Clause 14 (What you must keep confidential) the Authority shall be entitled to publish the results of any benchmarking of the Charges to Contracting Authorities (subject to the other party entering into reasonable confidentiality undertakings);
  - 8.10.9 create and hold a template BCDR plan that can be used by each Contracting Authority and shall make them available to the Authority so that it can be published to potential Contracting Authorities;
  - 8.10.10 notify the Authority in the event of the invocation or potential invocation of any BCDR plan and the Supplier shall provide such support as the Authority may reasonably require coordinating the application of BCDR plans across all Call-Off Contracts;

- 8.10.11 produce (if required) a BCDR plan for all Contracting Authorities at a national level;
- 8.10.12 support the activities of any Gold, Silver or Bronze group that is established in response to a national or regional incident requiring a co-ordinated national response or a single BCDR plan;
- 8.10.13 adopt a policy of abiding by all requirements, standards, law, guidance and policies in respect to the delivery of the Goods and Services; as outlined Schedule 1 Specification
- 8.10.14 co-operate and collaborate with the Authority to ensure the standards and quality of Services as set out in Schedule 1 Specification, Technical & Quality Standards are maintained;
- 8.10.15 notify the Authority of any non-confirming tests reported by the manufacturers;
- 8.10.16 notify the Authority immediately of any significant quality related issues;
- 8.10.17 co-operate with the Authority to consider options for reviewing affected samples;
- 8.10.18 enable and support Contracting Authorities in maintaining the supply of the goods and services, reporting to the Authority any mitigations that are put in place;
- 8.10.19 create and hold a template Security Plan that can be used by each Contracting Authority and shall make it available to the Authority so that it can be published to potential Contracting Authorities;
- 8.10.20 notify the Authority in the event of breach of any Security Plan and the Supplier shall provide such support as the Authority may reasonably require coordinating the application of Security Plans across all Call-Off Contracts;
- 8.10.21 provide the Authority with the information as required in accordance with Schedule 12 (Supply Chain Visibility);
- 8.10.22 support a co-ordinated approach to Exit Plans for any or all Call-Off Contracts as directed by the Authority; and
- 8.10.23 such other matters as the Authority may notify to the Supplier from time to time.

## **9. How the Contracting Authorities and the Supplier will work together?**

- 9.1 Contracting Authorities may call off contracts under the DPS individually, in groups or as a consortium under a lead Contracting Authority who liaises with the Supplier.
- 9.2 Contracting Authorities in a consortium may choose to enter into individual Call-Off Contracts with the Supplier or elect for the lead Contracting Authority to enter into a single Call-Off Contract with the Supplier on behalf of each member of the consortium. In either case a Call-Off Contract Award Form must be completed for each Contracting Authority in the consortium. Special terms and conditions may be required to deal with interface issues or alignment of provision across the consortium.

## **10. DPS Agreement Management**

### **DPS Agreement Management Structure**

- 10.1 The Supplier shall provide a suitably qualified nominated contact (the "**Supplier DPS Manager**") who will take overall responsibility for delivering the requirements within this Schedule, as well as a suitably qualified deputy to act in their absence.
- 10.2 The Supplier shall put in place a structure to manage this DPS Agreement in accordance with Schedule 1 (Specification).
- 10.3 A governance structure will be agreed between the Parties as soon as reasonably practicable following the DPS Start Date.
- 10.4 The Supplier shall comply with all requests from the Authority in regard to compliance requirements as required including:
  - 10.4.1 risk failure score monitoring;
  - 10.4.2 regular evidence that the Required Insurances and Additional Insurances have been renewed and maintained;
  - 10.4.3 invoice payment performance; and
  - 10.4.4 verification of required accreditations & certifications.

## **Supplier Review Meetings**

- 10.5 Regular Performance Review Meetings will take place at the Authority's premises or via virtual meetings throughout the DPS Agreement Period ("**Supplier Review Meetings**") at such times and frequencies as the Authority determine from time to time. The Parties shall be flexible about the timings and locations of these meetings.
- 10.6 The Supplier shall be required to attend periodic meetings with the Authority and the Contracting Authorities, individually or collectively, to ensure continued communication and to enable issues to be dealt with as they arise. The frequency of meetings shall be proportionate to the volume of business awarded to the Supplier and issues arising from the Supplier's performance.
- 10.7 Supplier Review Meetings will be arranged by either the Authority or the Contracting Authority, as appropriate.
- 10.8 The specific purpose of a Supplier Review Meeting shall be to review the performance of the Supplier's outstanding issues and discuss potential improvements or developments. In particular, the meetings shall be to identify:
  - 10.8.1 the occasions when the provision of the Goods and Services falls below the applicable Service Level so that any problem areas can be discussed, and corrective action taken in order to achieve the contracted level of performance;
  - 10.8.2 variations in the level of service and quality required of the Goods and Services;
  - 10.8.3 any innovations or improvements to the Goods and Services either requested by the Authority or proposed by the Supplier.
- 10.9 The Supplier Review Meetings will review the Supplier's performance under this DPS Agreement and, where applicable, the Supplier's adherence to the Supplier Action Plan. The agenda for each Supplier Review Meeting shall be set by the Authority or the Contracting Authority, as appropriate and sent to the Supplier in advance.
- 10.10 The Supplier Review Meetings may be attended by the Authority Representative(s), Contracting Authority's representative(s), and the Supplier DPS Manager.
- 10.11 The Authority reserves the right to call other periodic meetings and require attendance of the Supplier DPS Manager or other Supplier representatives, upon giving reasonable notice, to be held at reasonable times.



## 11. How the Supplier's Performance will be measured

11.1 The Supplier's performance under this DPS Agreement will be measured by the following Performance Indicators ("PI"):

Performance Indicator (PI)	PI Target	Measured by
Demonstration of ongoing robust DPS Agreement management	100%	<ul style="list-style-type: none"> <li>Provision of accurate, timely, Management information.</li> <li>Completion of any action identified through an Action Plans within the agreed timescales.</li> <li>Timely provision of Quality or Technical Certification &amp; Insurance Certification to evidence compliance.</li> </ul>
Demonstration of ongoing robust DPS Agreement performance management	100%	<ul style="list-style-type: none"> <li>Provision of information on awarded Call-Off Contracts in the agreed format and frequency.</li> <li>Timely provision of information relating to potential supply chain risk or emerging issues which may have an impact on operational performance.</li> <li>Appropriate evidence of Contracting Authority satisfaction (via surveys/ feedback).</li> <li>Evidence of satisfactory complaint management and resolution.</li> </ul>
Demonstration of Continuous Improvement	100%	<ul style="list-style-type: none"> <li>Demonstrate achievement of improvements in areas such as value for money, quality, and efficiencies which have benefited the Contracting Authorities or the Authority.</li> <li>Report progress on any agreed Continuous Improvement Plans to the Authority as requested.</li> </ul>
Demonstration of continued value for money as part of a sustainable market throughout the DPS Agreement Period	100%	<ul style="list-style-type: none"> <li>Support the Authority and provide information required for benchmarking to demonstrate the ongoing Good Value and sustainability of the market for the DPS Agreement.</li> <li>Support the tracking and reporting requirements for efficiency, quality improvements and commercial benefits.</li> <li>Document improvements and benefits implemented for Contracting Authorities in the agreed format and frequency.</li> </ul>



- 11.2 The Supplier shall comply with the PIs and establish processes to monitor its performance against them and the Supplier's achievement of PIs shall be reviewed during the Supplier Review Meetings with the Authority.
- 11.3 the Authority reserves the right to adjust, introduce new, or remove PIs throughout the DPS Agreement Period, however any significant changes to PIs shall be agreed between the Authority and the Supplier in accordance with the DPS Variation Procedure.
- 11.4 the Authority reserves the right to use and publish the performance of the Supplier against the PIs without restriction.

## **12. What the Supplier must do to measure their performance**

- 12.1 The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this DPS Agreement and relating to the delivery of the Call-Off Contracts. This shall include the following (but this list is not exhaustive and may be developed during the DPS Agreement Period):
  - 12.1.1 developing additional PIs to ensure that this DPS Agreement supports the efficient and quality delivery of Services.
  - 12.1.2 developing additional KPIs to ensure that Call-Off Contracts support the efficient and quality delivery of Services.
- 12.2 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of PIs set out in this Schedule.
- 12.3 The ongoing progress and development of the efficiency tracking performance measures shall be reported through contract management activities as outlined in this Schedule.

## **13. What to do if the Authority and the Supplier can't agree about the performance**

- 13.1 In the event that the Authority and the Supplier are unable to agree the performance score for any PI during a Supplier Review Meeting, the disputed score shall be recorded, and the matter shall be referred to the Authority Representative and the Supplier Authorised Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 13.2 In cases where the Authority Representative and the Supplier Authorised Representative fail to reach a solution within a reasonable period of time, the matter shall be referred to the Dispute Resolution Procedure.

## **14. How the Supplier must contribute to the Authority publications**

- 14.1 The Supplier shall supply current information relating to:
- 14.1.1 the Goods and Services it offers;
  - 14.1.2 provision of Services and any delays or capacity issues;
  - 14.1.3 technology innovations and current market thinking;
  - 14.1.4 contractual performance;
  - 14.1.5 anything else the Authority may reasonably request;
- for inclusion in the Authority marketing materials and information which the Authority may share with potential Contracting Authorities and Contracting Authorities from time to time.
- 14.2 Such information shall be provided in such form and at such time as the Authority may request.
- 14.3 Failure to comply with the provisions of Paragraphs 14.1 and 14.2 may result in the Supplier's exclusion from the use of such marketing materials.

### **What Suppliers can say in its own publications**

- 14.4 All marketing materials produced by the Supplier in relation to this DPS Agreement shall at all times comply with the Authority branding guidance. The Supplier will periodically update and revise its marketing materials to ensure ongoing compliance.
- 14.5 The Supplier shall regularly review the content of any information which appears on its website and which relates to the DPS Agreement and ensure that such information is up to date at all times.
- 14.6 The Supplier shall obtain all appropriate Approvals prior to publishing any content in relation to this DSP Agreement and any Call-Off Contract via any media, including on any electronic medium (which includes social media), and the Supplier will ensure that such content is regularly maintained and updated.
- 14.7 In the event that the Supplier fails to maintain or update any content in relation to this DSP Agreement and any Call-Off Contract, the Authority or the relevant Contracting Authority may give the Supplier notice to rectify the failure and if the failure is not rectified its reasonable satisfaction within one (1) Month of receipt of such notice, the Authority or relevant Contracting Authority shall have the right to remove such content itself or require that the Supplier immediately arrange the removal of such content.

## Annex A: Management Information (MI) Reports

- 1.1. Management information (MI) Reports shall be provided to the Authority by the Supplier which will confirm the national performance and the quality of the service delivered. (National)
- 1.2. Management Information (MI) Reports shall be provided to the Contracting Authority(s) focusing on their Force or Region as requested of the Supplier(s). (Local MI Reports)
- 1.3. The following are examples of MI Reports and not intended to be an exhausted listing:
- 1.4. The following are examples of MI Reports to be available both at a National level for the Authority and at a Local Level by the Contracting Authority and or their region or consortium as requested. This listing is not intended to be an exhausted listing:

REF	Title	Description	Format options to be available
MI-001	Spend & Quantity	Spend and Quantity of products, issued date and delivered date, to the Contracting Authority(s) under the DPS Framework. (National) (Local)	excel
MI-002	KPI Status Report	MI reports on the status of the KPI directly relating to the performance of the supplier under the DPS Framework. (National) (Local)	excel/word/ppt
MI-003	Quality Control Reports	MI Reports on the Quality Control Batch Testing Results.	excel/word/ppt
MI-004	Calibration & Servicing	MI Reports on the Calibration and Annual Services as maybe required on powered drug testing devices.	excel/word/ppt
MI-005	Risks & Issue Report	Supply Chain & Quality Risks and Issues with mitigation MI Reports and Updates.	excel
MI-006	Action or Rectification Plans	Action Plan or Rectification Plan Reports and Updates	excel

- 1.5. The frequency of such MI reports to be agreed, with the general expectation to be monthly, quarterly and some on an annual basis. (National) (Local)
- 1.6. MI report formats to be available in excel and word and PDF as requested by the Authority or Contracting Authority (National) (Local)
- 1.7. And any other MI as agreed with the Authority, Contracting Authority and Supplier during the DPS and or Call-Off Contracts

## **SCHEDULE 5 (CALL-OFF CONTRACT AWARD FORM AND TERMS AND CONDITIONS)**

[attached in separate document]

Available under Schedule 5 are the Template Documents to be used after a completed ITT and for Awarding Call Off Contract under the provision of this DPS Framework.

The Call-Off Contract Award Form PART A  
The Call-Off Contract Terms and Conditions PART B

## **SCHEDULE 6 (CALL FOR COMPETITION PROCEDURE)**

If a Contracting Authority decides to source the Goods and or Services through this DPS Agreement, then it will award its Goods or Service requirements in accordance with the procedure in this Schedule and the requirements of the Regulations and the Guidance. For the purposes of this Schedule, Guidance shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

The award of any Call-Off Contract under this DPS Agreement must be conducted using electronic means currently via the Blue Light Emergency Services E-Tendering Portal or the e-sourcing system nominated by the Authority from time to time.

### **Part 1: Order Procedure**

#### **1. How a Call-Off Contract is awarded**

- 1.1 If a potential Contracting Authority decides to source Goods and or Services through this DPS Agreement, then it will award its Call-Off Contracts in accordance with the procedure in this Schedule and the requirements of the Regulations.

#### **2. Call for Competition Procedure**

##### **What the Contracting Authority has to do**

- 2.1 The Contracting Authority when awarding a Call Off Agreement under this DPS Agreement through a Call for Competition Procedure shall:
  - 2.1.1 develop an invitation to tender (ITT) and identify the relevant LOT which its requirement falls into;
  - 2.1.2 develop a Specific Requirements in accordance with the Specification at Schedule 1, but setting out its Specific requirements (SR) for the Goods and or Services and identify the Suppliers are capable of supplying them;
  - 2.1.3 invite tenders by conducting a Call for Competition Procedure for its ITT in accordance with the Regulations;
  - 2.1.4 apply the Further Competition Award Criteria (Annex A to this Schedule (and as set by the Contracting Authority in the ITT) to the Suppliers' compliant tenders submitted through the Further

Competition Procedure as the basis of its decision to award a Call-Off Contract for its ITT;

- 2.1.5 on the basis set out above, award its Call-Off Contract to the successful DPS Supplier in accordance with this Schedule 6 (Call for Competition Procedure), which Call-Off Contract shall:
- (a) state the Goods and Services requirements;
  - (b) state the Deliverables;
  - (c) state the tender submitted by the successful DPS Supplier;
  - (d) state the charges payable for the Goods and Services in accordance with the tender submitted by the successful DPS Supplier; and
  - (e) incorporate the Call-Off Contract Award Form and Call-Off Contract (as may be amended or refined by the Contracting Authority in accordance with Paragraph 2.1.2 above) applicable to the Goods and Services;
- 2.1.6 provide unsuccessful DPS Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.
- 2.1.7 amend or refine the Call-Off Contract Award Form and/or Call Off Contract to reflect its ITT only to the extent permitted by and in accordance with the requirements of the Regulations; & the suppliers submission details as appropriate ready for signing

### **What the Supplier has to do**

- 2.2 The Supplier shall notify, by the time and date specified by the Authority or the Contracting Authority following an ITT pursuant to Paragraph 2.1.3 above provide the Authority with either:
- 2.2.1 the full details of its tender made in respect of the relevant ITT in accordance with the instructions contained within the ITT; and
  - 2.2.2 ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this Schedule shall:
    - (a) be based on the Baseline Charges in Schedule 3 (Baseline Charges) where required by the Contracting Authority and shall not exceed the Baseline Charges;
    - (b) take into account any discount to which the Contracting Authority may be entitled as set out in the Supplier's Tender; and

### **2.3 The Supplier agrees that:**

- 2.3.1 all tenders submitted by the Supplier in relation to a Call for Competition Procedure held pursuant to this Schedule shall remain open for acceptance by the Contracting Authority for the period specified in the ITT issued by the relevant Contracting Authority in accordance with the Call for Competition Procedure);
- 2.3.2 all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person;
- 2.3.3 it has not and undertakes that it will not:
  - (a) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
  - (b) it will not enter into any arrangement or agreement with any other person that they or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

### **3. No award**

Notwithstanding the fact that the Authority or a Contracting Authority has followed a procedure as set out in this Schedule, the Authority and the Contracting Authority shall be entitled at all times to decline to make an award for its ITT or may make a partial award. Nothing in this DPS Agreement shall oblige any Contracting Authority to award any Call-Off Contract.

### **4. Who is responsible for the award?**

- 4.1 The Supplier acknowledges that the Contracting Authority will be independently responsible for the conduct of its award of Call-Off Contracts under this DPS Agreement and that the Authority may not be responsible or accountable for and in those circumstances, shall have no liability whatsoever, except where it is the Contracting Authority, in relation to:
  - 4.1.1 the conduct of a Contracting Authority in relation to this DPS Agreement; or
  - 4.1.2 subject to the terms of Schedule 4 (DPS Management), the performance or non-performance of any Call-Off Contracts between

the Supplier and Contracting Authority entered into pursuant to this DPS Agreement.

**5. Awarding and creating a Call-Off contract**

- 5.1 Subject to Paragraphs 1 to 4 above, a Contracting Authority may award a single or multiple Call-Off Contracts with the suppliers on the DPS by sending (including electronically) a signed Call-Off Contract Award Form substantially in the form set out in Schedule 5 (Call-Off Contract Award Form and Terms and Conditions) (as may be amended or refined by the Contracting Authority in accordance with Paragraph 2.1.3 above).
- 5.2 The Parties agree that any document or communication (including any document or communication in the apparent form of a Call-Off Contract) which is not as described in this Paragraph 5 shall not constitute a Call-Off Contract under this DPS Agreement.
- 5.3 On receipt of a Call-Off Contract Award Form as described in Paragraph 5.1 from a Contracting Authority, the Supplier shall accept the Call-Off Contract by promptly signing and returning (including by electronic means) a copy of the Call-Off Contract Award Form to the Contracting Authority concerned.
- 5.4 On receipt of the countersigned Call-Off Contract Award Form from the Supplier, the Authority shall send (including by electronic means) a written notice of receipt to the Supplier as soon as reasonably practicable the Call-Off Contract shall be formed with effect from the Call-Off Contract Start Date stated in the Call-Off Contract Award Form (as signed by both Parties).



## **Annex A: Further Competition Award Criteria**

### **Award Criteria for Both LOTS:**

#### **1 Award Criteria**

- 1.1 A Call-Off Contract may be awarded on the basis of the most economically advantageous tender ("MEAT") using the Award Criteria set out in the Contract Notice and below.
- 1.2 All Suppliers on the LOT will be invited to bid.
- 1.3 However, where there is only a single Supplier on the LOT, Contracting Authorities may award Call-Off Contracts to that Supplier without the need for a Further Competition however;
- 1.4 The Contracting Authority can issue their Specific Requirements (SR) on a given "commitment" and request a best price for a specific period of time, based on that given commitment. Contracting Authorities should ensure best value on the whole life cost is reviewed.

#### **1.5 The Award Criteria for LOTS:**

- 1.5.1 Price (approx. 45%)
- 1.5.2 Quality & Social Value (approx. 45%)
- 1.5.3 Social Value (approx. 10%)

The Price/Quality/Social Value percentage (%) can be allocated equal to or plus or minus, (=/+/-) up to 10% across each Award Criterion.

- 1.6 The Contracting Authority can formulate the Award Criteria more precisely in the invitation to tender as appropriate to their requirements for the Further Competition in accordance with Regulation 34 (24).
- 1.7 Weightings for the evaluation criteria set by the Contracting Authority shall add up to 100%.
- 1.8 Where Baseline Charges are used to calculate Charges for a Call-Off Contract, they will be evaluated as part of the Award Criteria in the Further Competition.
- 1.9 The Authority reserves the right to conduct a Supplier Assurance Visit (SAV) prior to awarding a Call-Off Contract. This gives the Contracting Authority the opportunity to validate the Supplier's information provided at either the SSQ stage or the ITT stage, through onsite and or remote review of facilities and procedures in relation to the service provision along with compliance with the Technical & Quality Standards as outlined in the Dstl Schedule 1 Annex 1.

## **2 Supplier Award Strategy**

- 2.1 At the Further Competition stage, the Contracting Authority may choose to adopt a “single supplier award strategy”, by awarding a single Call-Off Contract to a single Supplier per LOT or multiple suppliers per LOT where appropriate

## **3 Multi Supplier Award Strategy**

- 3.1 At the Further Competition stage, the Contracting Authority may choose to adopt a “multi supplier award strategy”, by spreading its demand and specific requirements across a number of Suppliers, that collectively provides greater capacity and responsiveness.
- 3.2 All Suppliers on the relevant LOTs will be invited to bid, and the approach and award split will be fully defined in the Invitation to Tender document.
- 3.3 The Contracting Authority may choose to split the allocation of the volume within the LOT awarded to each Supplier that is successful in the Further Competition stage.
- 3.4 As part of the evaluation process, the Contracting Authority may rank the successful Suppliers according to the scores that they have achieved and subsequently allocate a specific volume or range of volumes for the LOT that they have tendered for. For example:
- 3.4.1 Supplier A, 1<sup>st</sup> place – 50%-70% volume of Services
  - 3.4.2 Supplier B, 2<sup>nd</sup> place – 20%-50% volume of Services
  - 3.4.3 Supplier C, 3<sup>rd</sup> place – 10%-20% volume of Services
- 3.5 Contracting Authorities may carry out joint Further Competitions on a regional basis in accordance with Regulation 38 of the Regulations. There could be a one lead Contracting Authority acting on behalf of multiple Contracting Authorities and the Further Competition could also be based on either a single or multi supplier award strategy.

## **SCHEDULE 7 (STANDARDS)**

### **1 Compliance with the Standards**

- 1.1 The minimum standards for the Drug Testing Devices are detailed in Schedule 1 (Specification) Technical & Quality Standards (Annex 1 and Annex 2)
- 1.2 The Authority or suitably appointed third party may assess the Supplier's and the Supplier's Sub-contractors and Manufacturers of the Drugs Devices for compliance with the Schedule 1 Technical & Quality Standards (Annex 1 and Annex 2) whenever it considers (in its absolute discretion) that it is appropriate to do so.
- 1.3 In each case, the Supplier shall co-operate, and shall ensure that its Sub-contractors co-operate, with the Authority including by providing the Authority with all necessary information and documentation, and access to any relevant Supplier Staff and/or to any relevant Site, which it reasonably requires in connection with its rights at no additional charge to the Authority.
- 1.4 Notwithstanding that any assessment visit will be circumstance specific, consideration could be given to the following areas (to include but not exclusive to):
  - (a) Premises and security;
  - (b) Documentation;
  - (c) Personnel and skills;
  - (d) Scientific methods and procedures;
  - (e) Corrective action and continuous improvement.
- 1.5 In the event that the Supplier (or their Sub-contractor) or the Manufacturer of the Drugs Devices and the actual Drugs Devices themselves, does not demonstrate that it meets the Technical & Quality Standards in an assessment carried out pursuant to Paragraph 1.1, the Authority shall so notify the Supplier. The Authority shall, with the Supplier, agree a Rectification Plan to be undertaken within a reasonable time considering the nature and gravity of the failure.
- 1.6 In the event that the Supplier fails to meet the requirements of the Rectification Plan the Authority reserves the right to terminate this DPS Agreement for material Default under Clause 9.5 (When the Authority can end the DPS Agreement).

## **2 Legislation and Guidance**

- 2.1 The Supplier and the Supplier's Sub-contractors, Manufacturers shall at all times comply with and abide all relevant legislation and guidance (including any amended versions of this legislation) including but not limited to and where relevant to the delivery of the Goods and Services:
- 2.1.1 The Forensic Science Regulator Act 2021;
  - 2.1.2 The National Security and Investment Act 2021 ("NSIA");
  - 2.1.3 The Criminal Procedure and Investigations Act 1996 ("CPIA"), as amended by the Criminal Justice Act 2003 and the revised Code of Practice.
  - 2.1.4 The Criminal Justice Act 1967;
  - 2.1.5 The Criminal Justice act 2003;
  - 2.1.6 The Magistrates' Courts Act 1980;
  - 2.1.7 The Protection of Freedoms Act 2012;
  - 2.1.8 The Criminal Procedure Rules and Practice Directions 2020;
  - 2.1.9 Guidance for Experts (cps.gov.uk);
  - 2.1.10 Where required, possess a valid Home Office Drug licence to produce, supply or possess controlled drugs, under the Misuse of Drugs Act 1971, or a valid licence to hold controlled drugs under the Misuse of Drugs Regulations 2001.

## **3 The National Security and Investment Act 2021**

- 3.1 In the event of a "Trigger Event" as defined in NSIA the Supplier shall notify the Contracting Authority (where relevant) and the Authority of any:
- 3.1.1 mandatory notification to the Secretary of State for the Home Department;
  - 3.1.2 voluntary notification Secretary of State for the Home Department;
  - 3.1.3 call-in by the Secretary of State for the Home Department;
  - 3.1.4 remedies or sanctions imposed by the Secretary of State for the Home Department.
- 3.2 Any notification to the Contracting Authority or the Authority made in accordance with Paragraph 3.1 must be received within five (5) Working Days of being made to or received from the Secretary of State for the Home Department.

## **4 Quality and Accreditation Standards**

### **4.1 Technical and Quality Standards as advised Schedule 1, Annex 1 and Annex 2**

4.1.1 The Supplier and all Sub-contractors, Manufacturer who provide the drugs testing devices, and delivery of the goods and service supplied under the DPS Framework Agreement must at all times comply with:

- (a) The Technical and Quality Standards as prepared by Dstl;
- (b) the Statement of Standards and Accreditation Requirements;
- (c) any quality standards as notified periodically by the Dstl (or any successor to that part).

### **4.2 Quality System**

4.2.1 The Supplier and Manufacturer shall have a certified quality system in place before being accepted onto the Dynamic Purchasing System and therefore before performing any services. As a minimum requirement this will be ISO 9001.

4.2.2 If the supplier or Manufacturer is accredited to ISO/IEC 17025, ISO/IEC 17020 or ISO 15189 for any or all of the Goods and Services then ISO 9001 is not an additional requirement.

### **4.3 Maintaining Quality Standards**

4.3.1 Where the Supplier Manufacturers of the goods or services Supplied under the DPS does not maintain the required technical and Quality Standards as at 4.1 the Contracting Authority may terminate or suspend all or part of the Goods and Services under a Call-Off Contract.

4.3.2 The Supplier shall, in any such event of loss of their Manufacturers accreditation, immediately (or as soon as is reasonably practicable):

- (a) notify the Authority in writing; and
- (b) in accordance with the Call-Off Contract, provide the Contracting Authority with options for reviewing the affected Items including but not limited to refunding or crediting all relevant Charges.

4.3.3 The Authority reserves the right to exercise some degree of flexibility over scope of accreditation, in order to allow sufficient time for the Supplier to become fully accredited for the Goods and Services to be provided.

- 4.4 The Supplier must notify the Authority immediately of any of the following reported (including where any relate to a Sub-contractor):
- 4.4.1 complaints;
  - 4.4.2 all non-conforming testing and results;
  - 4.4.3 investigations;
  - 4.4.4 compliance notices (affecting the Supplier or the Supplier Staff);
  - 4.4.5 a prohibition of a member of the Supplier Staff from providing Expert Witness (where) applicable the Contracting Authority's Cases affected;
  - 4.4.6 any other matter which relates to this DPS Agreement or may affect the Supplier's ability to perform the Deliverables or Services under any Call-Off Contract.

## **5 Corrective Action**

- 5.1 Where any re-testing, analysis or review of results or reports is required to resolve a Quality Issue ("Corrective Action"), it shall be undertaken at the Supplier's own cost and within appropriate timescales (as agreed with the Authority) to resolve the Quality Issues as soon as possible.
- 5.2 Where Corrective Action is required the Supplier shall complete a Rectification Plan and shall hold and attend meetings at an agreed frequency with the Authority (and the Contracting Authority, if required by the Contracting Authority) to ensure the Rectification Plan is adhered to.

## **6 Standards Testing and Assessment**

- 6.1 The Supplier shall disclose to the Authority the results of proficiency / Inter Laboratory Comparison (ILC) testing if requested. The Supplier shall immediately disclose to the Authority any issues arising or reported during such testing, which may call into question the reliability of previously reported results.
- 6.2 The Authority reserves the right to set blind quality assessment trials. The parties shall agree the basis, including the form, content and frequency of such trials, and the Authority shall notify the Supplier of the outcome of any trials undertaken. In the case of a failure of any blind quality assessment trial the provisions of Clause 9.4 (Rectification Plan Process) shall apply.

## **7 Streamlined Forensic Reporting ("SFR")**

- 7.1 Not Applicable.

## **8 Criminal Justice requirements (where applicable)**

- 8.1 All Witness Statements provided by the Supplier shall meet the requirements of the Criminal Justice System and shall be provided in an agreed format. This shall be by electronic means and/or with the signed original sent by post where required.
- 8.2 A Witness Statement must comply with the legal requirements of the Criminal Justice System in the jurisdiction in which it is to be used:
- 8.2.1 An expert report is required when the Forensic Practitioner will, either in the report or in testimony at court, provide evidence of opinion. Subject to the court's agreement, a Forensic Practitioner who provides opinion evidence to the Criminal Justice System, may be considered an "expert".
  - 8.2.2 Forensic Practitioners may be called upon to provide evidence that is 'statement of fact' rather than opinion evidence. This is a report which does not contain any opinion.
  - 8.2.3 Evidential reports/statements provided by a Forensic Practitioner whether an expert report or not, shall comply with the legal requirements of the Criminal Justice System in the jurisdiction in which it is to be used. Experts shall also comply with all legal obligations placed on expert witnesses in that jurisdiction.
  - 8.2.4 In England and Wales, the Witness Statement must comply with the requirements of the Criminal Justice Act 1967, the Magistrates Courts Act 1980 and the Criminal Procedure Rules. Reports shall also comply with the reporting requirements of the Forensic Science Regulator Codes of Practice and Conduct including the reporting guidance appendices, FSR-G-220 and FSR-G-200, and FSR-1-400 Legal Obligations.
  - 8.2.5 In Scotland all Evidence, Expert Witnesses and Witness Statements must comply with the requirements of the:
    - (a) Criminal Justice (Scotland) Act 2016;
    - (b) the Criminal Procedure (Scotland) Act 1995;
    - (c) Criminal Procedure (Amendment) (Scotland) Act 2004;
    - (d) Vulnerable Witnesses (Scotland) Act 2004;
    - (e) Criminal Proceedings (Reform) (Scotland) Act 2007;
    - (f) Criminal Justice and Licensing (Scotland) Act 2010;
    - (g) Victims and Witnesses (Scotland) Act 2014;as amended and any other relevant legislation from time to time in force.



- 8.2.6 The Forensic Practitioner shall meet their obligations under the Criminal Procedure and Investigations Act 1996 (CPIA), the Criminal Justice Act 2003 and Criminal Procedure Rules. To this end, all Forensic Practitioners, whether expert or not, shall comply with the Crown Prosecution Service (CPS) Guidance for Experts on Disclosure, Unused Material and Case Management and the CPS Core Foundation Principles for Forensic Science Providers (as amended or updated).
- 8.2.7 Details of the CPS guidance can be found at the following websites:
- a. Guidance for Experts ([cps.gov.uk](https://cps.gov.uk))
  - b. Forensic Science: Core Foundation Principles for Forensic Science Providers | The Crown Prosecution Service ([cps.gov.uk](https://cps.gov.uk))
- 8.2.8 In addition, experts shall comply with Part 19 of the Criminal Procedure Rules. (The Criminal Procedure Rules 2020 Part 19 - Expert Evidence).

## **9 Court attendance (Where applicable)**

- 9.1 Supplier staff, who has been involved or has given a statement in support of a police investigation shall be designated as a Witness.
- 9.2 Where Supplier staff, whether a Forensic Practitioner or not, is called to provide oral testimony in court, he/she shall attend court at a time and place as directed to give evidence. Court hearing dates shall be fixed by the court. It is a mandatory requirement for the Supplier to release its staff for court attendance when required.
- 9.3 Where a Forensic Practitioner or other Supplier staff is called to provide oral testimony in court but is unavailable due to exceptional circumstances such as death, ill health or extended leave, a suitability qualified replacement should be appointed by the Supplier. The original evidence shall be reproduced in a further statement issued by the replacement witness prior to trial and without cost to the Contracting Authority or the CPS.
- 9.4 Fees and allowances for court preparation and attendance shall not be paid by the Contracting Authority. Supplier may claim such fees and allowances from the CPS in accordance with CPS guidance.
- 9.5 The Supplier shall remain liable for the performance of any Services required in Cases which were undertaken by former Supplier Staff.
- 9.6 Nothing in this Schedule is intended to make the Authority liable for the acts or omissions of (including non-payment by) the CPS.



## **10 Storage, Retention and Disposal Standards**

As outlined in Schedule 4 Call Off Contract Terms and Conditions

## **11 Conflicts**

The Supplier shall discuss with the Authority any conflict that the Supplier reasonably believes that there is or will be between any of the Standards or between any of the Standards and any other obligation under this DPS Agreement and shall comply with the Authority's decision on the resolution of that conflict.

## **12 Identification and management of risks**

The Supplier shall maintain risk logs which identify risks to any and all parts of the Service delivered to the Contracting Authority.

## Annex A Minimum Drugs Panels

### Road Traffic Act 1988

#### Section 5A Full Panel – For Information Only

Controlled Drug	Limit (micrograms per litre of blood)
Amphetamine	250
Benzoyllecgonine	50
Clonazepam	50
Cocaine	10
Delta-9-Tetrahydrocannabinol	2
Diazepam	550
Flunitrazepam	300
Ketamine	20
Lorazepam	100
Lysergic Acid Diethylamide	1
Methadone	500
Methylamphetamine	10
Methylenedioxymethamphetamine	10
6-Monoacetylmorphine	5
Morphine	80
Oxazepam	300
Temazepam	1000

#### The Target Drugs for the Preliminary Drugs Testing are outlined below:

The Suppliers devices therefore must be able to detect the following target drugs currently specified under the Road Traffic Act 1988:

- Delta-9-tetrahydrocannabinol (the main active ingredient of cannabis)
- Cocaine.
- Benzoyllecgonine

The full details are outlined in Schedule 1 Specification – Technical and Quality Standards Annex 1

The Target Drugs will be reviewed and may be adjusted during the life of the DPS Framework with a view to ensuring that they are fit for purpose and meet the needs of policing and the Criminal Justice System.

Consequently, there may be subject to change throughout the life of the DPS Agreement and the Call-Off Contract as the Contracting Authorities' requirements evolve.

To drive continuous improvement and the quality of reporting into the Criminal Justice System, the Authority will expect the Supplier to seek accreditation for flexible scope to enable them to provide an accredited result for the analysis of new or infrequently tested substances.

## SCHEDULE 8 (SELF AUDIT CERTIFICATE)

**[Supplier guidance:** You must ensure that this certificate is completed at the end of the year or as requested by the Authority and sent to the Authority Authorised Representative]

In accordance with Clause 5 (Record keeping, reporting and auditing) of the DPS Agreement entered into on **[Insert DPS Agreement Start Date dd/mm/yyyy]** between **[Insert Supplier name]** and Authority, we confirm the following:

1. In our opinion based on our review undertaken **[Insert Supplier name]** is successfully identifying, recording and reporting on DPS Agreement activity.
- 2(a). We can confirm that there has been no DPS Agreement Contract activity for the Contract Year ending **[Insert dd/mm/yyyy]** and our audit verifies that there are no Call-Off Contract awards or related invoices to be tested under the DPS Agreement. This includes both newly awarded and ongoing/existing DPS Agreement activity.
- 2(b). We have reviewed and confirm the following spend against the DPS Agreement for this period is **[£ xxx]**.
3. We have reviewed and confirm the following Insurance Certificates are in date coverage of not less than 5 million pounds sterling (£5,000,000) for anyone, or series of claims that may arise; and

	Insurance Company Name	Cover £	Certificate No	Expiry Date
Product Liability Insurance				
Employer Liability				
Public Liability Insurance				
Professional Indemnity Insurance				
Cyber Essentials Liability Insurance				

3. We confirm that: there have been no Prohibited Act or any other criminal offence in regulation 57(1) and 57(2) of the PCR Regulations committed by the Supplier or Supplier Staff; there have been no breaches of the Relevant Requirements; and our policies and procedures are in line with the Relevant Requirements.
4. We Confirm that; the information provided on [ date ] the SSQ remains correct, and no further updates or amendments are required.

### Suppliers Authorised Representative

Name:..... Title:.....

Signed:..... Date:.....

## SCHEDULE 9 (DPS CHANGE VARIATION)

This form is to be used in order to change the DPS Agreement in accordance with Clause 23 (Changing the DPS Agreement).

1. This Variation must be agreed and signed by both Parties to the DPS Agreement and shall only be effective from the date it is signed by the Authority.
2. Words and expressions in this DPS Variation shall have the meanings given to them in the DPS Agreement.
3. The DPS Agreement, including any previous DPS Variations, shall remain effective and unaltered except as amended by this DPS Variation.

DPS Variation	
This variation is between:	<b>[Authority]</b> ("the Authority") And <b>[insert name of Supplier]</b> ("the Supplier")
DPS Agreement name:	Dynamic Purchasing System for the Provision of Mobile Preliminary Roads Drug Testing Devices ( <b>"the Contract"</b> )
DPS Agreement reference number:	<b>[insert DPS reference number]</b>
Details of Proposed Variation	
Variation initiated by:	<b>[delete as applicable: Authority/Supplier]</b>
Variation number:	<b>[insert variation number]</b>
Date variation is raised:	<b>[insert date]</b>
Proposed variation	
Reason for the variation:	<b>[insert reason]</b>
An Impact Assessment shall be provided within:	<b>[insert number]</b> days
Impact of Variation	
Likely impact of the proposed variation:	<b>[Supplier to insert assessment of impact]</b>
Outcome of Variation	

DPS Agreement variation:	This DPS Agreement detailed above is varied as follows: <ul style="list-style-type: none"> <li>• <b>[Authority to insert original clauses or paragraphs to be varied and the changed clause]</b></li> </ul>	
Financial variation (complete if applicable):	Original DPS Value:	£ <b>[insert amount]</b>
	Anticipated increase in Value due to variation:	£ <b>[insert amount]</b>
	New DPS Agreement Value:	£ <b>[insert amount]</b>

Signed by an authorised signatory for and on behalf of the Authority

Signature	
Date	
Name (in Capitals)	
Address	

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature	
Date	
Name (in Capitals)	
Address	

## **SCHEDULE 10 (PROCESSING DATA)**

### **1. Status of the Controller**

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the DPS Agreement dictates the status of each party under the Data Protection Legislation. A Party may act as:

- 1.1.1 “Controller” in respect of the other Party who is “Processor”;
- 1.1.2 “Processor” in respect of the other Party who is “Controller”;
- 1.1.3 “Joint Controller” with the other Party;
- 1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”;

in respect of certain Personal Data under a DPS Agreement and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### **2. Where one Party is Controller and the other Party its Processor**

Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.

- 2.1 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 2.2 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - 2.2.1 a systematic description of the envisaged Processing and the purpose of the Processing;
  - 2.2.2 an assessment of the necessity and proportionality of the Processing in relation to the Goods and Services;
  - 2.2.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.2.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.3 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:

- 2.3.1 Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*) unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
- 2.3.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 13 (Data protection) of the DPS Agreement, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
- (a) nature of the data to be protected;
  - (b) harm that might result from a Personal Data Breach;
  - (c) state of technological development; and
  - (d) cost of implementing any measures;
- 2.3.3 ensure that:
- (a) the Processor Personnel do not Process Personal Data except in accordance with the DPS Agreement (and in particular Annex 1 (*Processing Personal Data*));
  - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Processor's duties under this Schedule 10, Clauses 13 (Data protection), 14 (What you must keep confidential) and 15 (When you can share information);
    - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 2.3.4 Not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
  - (b) the Data Subject has enforceable rights and effective legal remedies;



- (c) the Processor 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 Controller in meeting its obligations); and
  - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the DPS Agreement unless the Processor is required by Law to retain the Personal Data.
- 2.4 Subject to Paragraph 2.6 of this Schedule 10, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the DPS Agreement it:
- 2.4.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.4.2 receives a request to rectify, block or erase any Personal Data;
  - 2.4.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 2.4.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - 2.4.5 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
  - 2.4.6 becomes aware of a Personal Data Breach or a near miss.
- 2.5 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 10 shall include the provision of further information to the Controller, as details become available.
- 2.6 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 10 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 2.6.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.6.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- 2.6.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.6.4 assistance as requested by the Controller following any Personal Data Breach; and/or
  - 2.6.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 2.7 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 10. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - 2.7.1 the Controller determines that the Processing is not occasional;
  - 2.7.2 the Controller 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; or
  - 2.7.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.8 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.9 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.10 Before allowing any Sub processor to Process any Personal Data related to the Contract, the Processor must:
  - 2.10.1 notify the Controller in writing of the intended Sub processor and Processing;
  - 2.10.2 obtain the written consent of the Controller;
  - 2.10.3 enter into a written agreement with the Sub processor which give effect to the terms set out in this Schedule 10 such that they apply to the Sub processor; and
  - 2.10.4 provide the Controller with such information regarding the Sub processor as the Controller may reasonably require.
- 2.11 The Processor shall remain fully liable for all acts or omissions of any of its Sub processors.
- 2.12 The Authority may, at any time on not less than 30 Working Days' notice, revise this Schedule 10 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 the Contract).
- 2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days'

notice to the Supplier amend the DPS Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **3. Where the Parties are Joint Controllers of Personal Data**

In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 10 (Processing Data).

### **4. Independent Controllers of Personal Data**

- 4.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 4.2 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 4.3 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 2.6 of this Schedule 10 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 4.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
- 4.5 The Parties shall only provide Personal Data to each other:
  - 4.5.1 to the extent necessary to perform their respective obligations under the Contract;
  - 4.5.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - 4.5.3 where it has recorded it in Annex 1 (Processing Personal Data).
- 4.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party

shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

- 4.7 A Party Processing Personal Data for the purposes of the DPS Agreement shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 4.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the DPS Agreement (**“Request Recipient”**):
  - 4.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - 4.8.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 4.9 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the DPS Agreement and shall:
  - 4.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - 4.9.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 4.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

- 4.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 4.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the DPS Agreement as specified in Annex 1 (*Processing Personal Data*).
- 4.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the DPS Agreement which is specified in Annex 1 (*Processing Personal Data*).
- 4.12 Notwithstanding the general application of Paragraphs 2 to 4 of this Schedule 10 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 4 of this Schedule 10.

## Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Authority at its absolute discretion.

- 1.1 The contact details of the Authority's Data Protection Officer are: **[Insert Contact details]**
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"><li>• <i>Business contact details of Supplier Personnel for which the Supplier is the Controller,</i></li><li>• <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under the Contract) for which the Authority is the Controller,</i></li></ul>
Duration of the Processing	<i>DPS Agreement Period</i>
Nature and purposes of the Processing	<i>DPS Notices and communications with Supplier and Contracting Authorities Warwickshire Police National Contractors Vetting Scheme NPPV Background checks on Supplier Staff</i>
Type of Personal Data	<i>name, address, date of birth, NI number, telephone number, pay, images, etc.</i>
Categories of Data Subject	<i>Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students/ pupils, members of the public, users of a particular website etc.</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<p><i>A period of at least 7 years and up to thirty years (as required by law, guidance or the Contracting Authority).</i></p> <p><i>In accordance with Auditing requirements.</i></p>

## Annex 2 - Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Paragraphs 2 to 2.14 of Schedule 10 (Where one Party is Controller, and the other Party is Processor) and Paragraphs 2 to 4.1 of Schedule 10 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controllers.
- 1.2 The Parties agree that the [Supplier/Authority]:
- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the Data Protection Legislation regarding the exercise by Data Subjects of their rights under the Data Protection Legislation;
  - (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
  - (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the Data Protection Legislation, for Processing in connection with the Goods and Services where consent is the relevant legal basis for that Processing; and
  - (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

## **2. Undertakings of both Parties**

2.1 The Supplier and the Authority each undertake that they shall:

- (a) report to the other Party every **[x]** months on:
  - (i) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
  - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
  - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,that it has received in relation to the subject matter of the DPS Agreement during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraph 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Goods and Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under the DPS Agreement or is required by Law). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Goods and Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:



- (i) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
  - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so;
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Personal Data Breach;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- (j) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

### **3. Data Protection Breach**

- 3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Authority and its advisors with:
- (a) sufficient information and in a timescale, which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
  - (b) all reasonable assistance, including:
    - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
    - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;
    - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
    - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.
- 3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:
- (a) the nature of the Personal Data Breach;
  - (b) the nature of Personal Data affected;
  - (c) the categories and number of Data Subjects concerned;
  - (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
  - (e) measures taken or proposed to be taken to address the Personal Data Breach; and
  - (f) describe the likely consequences of the Personal Data Breach.

## **4. Audit**

4.1 The Supplier shall permit:

- (a) the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- (b) the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Goods and Services.

4.2 The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

## **5. Impact Assessments**

5.1 The Parties shall:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 GDPR.

## **6. ICO Guidance**

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Government Body. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the DPS Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Government Body.

## 7. Liabilities for Data Protection Breach

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
- (a) if in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Authority and its third-party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
  - (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
  - (c) if no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such dispute shall be referred to the Dispute Resolution Procedure set out in Clause 33 of the DPS Agreement (Resolving disputes).
- 7.2 If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

- (a) if the Authority is responsible for the relevant Personal Data Breach, then the Authority shall be responsible for the Claim Losses;
- (b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- (c) if responsibility for the relevant Personal Data Breach is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either Paragraph 7.2 or Paragraph 7.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third-party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Authority.

## **8. Termination**

If the Supplier is in material Default under any of its obligations under this Annex 2 (Joint Controller Agreement), the Authority shall be entitled to terminate the Agreement by issuing a Termination Notice to the Supplier in accordance with Clause 9 of the DPS Agreement (Ending the DPS Agreement and Sub-contractors).

## **9. Sub-Processing**

- 9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
  - (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## **10. Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and Storage Media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## SCHEDULE 11 (COMMERCIALLY SENSITIVE INFORMATION)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information from the SSQ Response that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or EIR, the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the legislation to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
	[insert date]	[insert details]	[insert duration]

## SCHEDULE 12 (SUPPLY CHAIN VISIBILITY)

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 2 (Definitions):

<b>“Supply Chain Information Report Template”</b>	the document at Annex 1 of this Schedule;
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### 2. Visibility of Supply Chain Spend

- 2.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate data described in the Supply Chain Information Report Template and in accordance with any guidance issued by the Authority from time to time.
- 2.2 The Supplier acknowledges that the Supply Chain Information Report Template may be changed from time to time (including the data required and/or format) by the Authority issuing a replacement version. The Authority agrees to give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 2.3 The Supplier shall upon request provide other details of their supply chain as requested by the Contracting Authority.
- 2.4 The Supplier agrees to incorporate into any sub-contracting arrangements or contracts with other suppliers' clauses that request information about their sub-contractors and other suppliers for the purposes of assurance and risk identification in the supply chain for the Goods and Services.
- 2.5 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Authority.

## Annex 1: Supply Chain Information Report template

Supply Chain Information Report Template table for Contracting Authority to request supply chain information:

(May be tailored to particular area)

Supplier company registered number and address	Description of good/ products/service Services provided	Costs associated with supply against turnover	Criticality to business model	Supply Chain Risks & Considerations (using key)

### Risk Indicator Key:

Demand Market	Location
Finance/Costs	Regulation changes
Financial Stability	Social/Environmental
Labour exploitation/modern slavery	Stock availability
Rare Earth Reserves	Border Delays
High impact on environment	Volume Changes
Security implications	Geopolitical
Customs & Tariffs	Human Resources
Data (e.g., GDPR)	Other



## **SCHEDULE 13 (RECORDS AND VIRTUAL LIBRARY)**

(Guidance – The Authority is looking to develop a “Virtual Library” where suppliers and the authority can store business documents, insurance certificates etc with ease of access but mindful of data security and integrity. The Virtual Library is not available at the moment however the Authority sees this as part of continuous improvement to work with the DPS Framework suppliers going forward.

### **1. Records**

- 1.1 In the meantime, the Supplier must keep and maintain full and accurate records as set out in Annex 1 of this Schedule in chronological order, in line with all relevant protocols, standards and legislation, and in a form that is capable of Audit, and at its own expense.
- 1.2 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 1.3 The Supplier shall, during the DPS Agreement Period and a period of at least seven (7) years and up to thirty (30) years (as required by law, guidance or the Authority) following the expiry or termination of this DPS Agreement maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Goods and Services including but not limited to all Records.
- 1.4 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this DPS Agreement.
- 1.5 Without prejudice to the foregoing, the Supplier shall provide the Authority as soon as they are available, and in any event within sixty (60) Working Days after the end of the first six (6) months of each financial year of the Supplier during the DPS Agreement Period, a copy, certified as a true copy by a Supplier Authorised Representative, of its audited accounts

## **Annex 1: Records to be kept By the Supplier**

The records to be kept by the Supplier are:

1. This Contract, its Appendices and all amendments to such documents.
2. All information in line with agreed protocols between the Supplier and the Contracting Authority and all published guidance.
3. All records relating to the Supplier's and Manufacturers compliance with Specification Annex 1 and Annex 2.
4. Validation & Batch test Certificates records for tests conducted on Items.
5. All records consistent with Good Industry Practice.
6. All operation and maintenance manuals prepared by the Supplier and or manufacturer for the purpose of maintaining the provision of the Goods and Services and the underlying IT environment, cyber security and Supplier Equipment.
7. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
8. All formal notices, reports or submissions made by the Supplier to the Contracting Authority Representative in connection with the provision of the Goods and Services.
9. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Goods and Services including all accreditations.
10. Documents submitted by the Supplier pursuant to the Variation Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Contracting Authority representative of the Dispute Resolution Procedure.
12. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
13. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
14. All documents relating to the insurances to be maintained under this Call-Off Contract and any claims made in respect of them.
15. All journals and audit trail data referred to in the Security Management Plan.
16. All other documents which this Call-Off Contract expressly requires to be prepared.
17. Records relating to the appointment and succession of the Supplier Authorised Representative and each member of the Key Supplier Staff.

All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Call-Off Contract.

## Annex 2: Records to upload to Virtual Library

(Guidance – Virtual Library go live date tbc. Documents to be uploaded to be agreed when Virtual Library is live Outlined below is for example only)

Required Data	Initial Upload Date	Update Requirement	3 <sup>rd</sup> Party Access Permissions
Progress Reports	From the Start Date	Monthly	Contracting Authority
Contract accounts and records for Audit	From the Start Date	As required by the Authority	Contracting Authority, Auditor
List of Supplier Staff with access to the Contracting Authority's Premises	From the date access is required	Per Contract Year	Contracting Authority
Sub-contractor information	From the Start Date	Every time there is a change in Sub-contractor(s)	Contracting Authority
Details of any conflict of interest	Upon a conflict or perceived conflict of interest arising	None	Contracting Authority
Transparency Reports	From the Start Date	As required by the Contracting Authority	Contracting Authority
Records	From the Start Date	In accordance with Annex 1 (Records to be kept By the Supplier)	Contracting Authority
Management Information	From the DPS Start Date and Call-Off Contract Start Date (as the case may be)	Monthly	Contracting Authority
Continuous Improvement Plan	From the DPS Start Date and Call-Off Contract Start Date (as the case may be)	Per Contract Year	Contracting Authority
BCDR Plan	From the DPS Start Date and Call-Off Contract Start Date (as the case may be)	Per Contract Year	Contracting Authority
Proof of: ISO/IEC27001	From the Start Date	Per Contract Year	Contracting Authority
Cyber-attack protection proof of adherence to standards under the FSR regulatory Notice 02/2020	From Start Date	Per Contract Year	Contracting Authority
Cyber essentials Certificate	As Specified by the Contracting Authority	Per Contract Year	Contracting Authority
Evidence of Insurance	From the Start Date	Within 15 days of insurance renewal	Contracting Authority
Exit Plan	Within 3 months of the Start Date	Every 6 months	Contracting Authority

## **SCHEDULE 14 (NOT REQUIRED)**

## **SCHEDULE 15 (CONTINUOUS IMPROVEMENT PLAN)**

### **1. Supplier's obligations**

- 1.1 The Supplier must, throughout the DPS Agreement Period, work with the Authority to identify new or potential improvements to the provision of the Goods and Services, under specific LOTS to Contracting Authorities with a view to improving the value for money, quality or efficiency of the Goods and Services and their supply to the Contracting Authorities.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Goods and Services, which must include regular reviews with the Authority of the Goods and Services and the way it provides them, with a view to reducing the Contracting Authorities' costs (including the Baseline Charges and the Charges to individual Contracting Authorities) and/or improving the quality and efficiency of the Goods and Services. The Supplier and the Authority must provide each other with any information relevant to meeting this objective.
- 1.3 The Supplier, working with the Authority, shall produce upon the request of the Authority an agreed plan for improving the provision of the Goods and Services and/or improving value for money (without adversely affecting the performance of any specific Call-Off Contract) ("Continuous Improvement Plan"). The Continuous Improvement Plan must include, as a minimum, proposals:
  - 1.3.1 identifying the emergence of relevant new and evolving technologies;
  - 1.3.2 changes in business processes of the Supplier or the Contracting Authorities and ways of working that would provide efficiency savings and/or enhanced benefits to the Contracting Authorities (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 1.3.3 new or potential improvements to the provision of the Goods and Services or the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Goods and Services or the Deliverables and identifying opportunities to assist the Contracting Authority in meeting their sustainability objectives.
- 1.4 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested by the Authority.

- 1.5 If the Authority or the Contracting Authority wishes to incorporate any improvement into the DPS Agreement or any Call-Off Contract, it must request a Variation in accordance with the relevant Variation Procedure (under the DPS Agreement or any Call-Off Contract) and the Supplier must implement such Variation at no additional cost to the Authority or the Contracting Authority.
- 1.6 Once the first Continuous Improvement Plan has been approved in accordance with Paragraph 1.3:
  - 1.6.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 1.6.2 the Authority will use all reasonable endeavours to enable the agreed deliverables where activity is reliant upon them; and
  - 1.6.3 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.7 The Supplier shall update the Continuous Improvement Plan as and when required by the Authority.
- 1.8 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall be borne by the Supplier.
- 1.9 Should the Supplier's costs in providing the Deliverables to the Contracting Authorities be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Contracting Authorities by way of a consequential and immediate reduction in the Charges for the Deliverables.

## **SCHEDULE 16 (SSQ RESPONSE)**

**[Insert Supplier SSQ Response]**