

## ANNEX 1 Terms and Conditions

### 1. Purpose and scope

- 1.1 The purpose of these Terms and Conditions is to govern the contractual relations between the Customer and/or Framework Purchaser and the Supplier with regards to the Agreement and any Call-Off Contract (as applicable). The Terms and Conditions should be read in conjunction with the applicable Purchase Order.
- 1.2 For the avoidance of doubt, Call-Off Contracts may only be entered into between a Supplier and a Framework Purchaser during the term of the Agreement.

### 2. Interpretation

- 2.1 In the interpretation of these Terms and Conditions, unless the context otherwise requires:
- (a) a reference to a “Party” or “Parties” shall, in the context of a provision relating to a Call-Off Contract, be interpreted to include the Supplier, the Framework Purchaser and the Customer;
  - (b) any obligation in these Terms and Conditions not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done; and
  - (c) defined terms in these Terms and Conditions have the meanings given to them in the Agreement or otherwise defined below.
- 2.2 In the Agreement and/or Call-Off Contract, the following words and expressions will have the following meanings unless the context otherwise requires:
- “*Goods*” means the goods in respect of which instructions regarding collection, shipment, delivery and/or storage are specified in a Purchase Order.
- “*Supplier Personnel*” means the Supplier’s employees, permitted agents, suppliers and sub-contractors.

### 3. Services

- 3.1 On request of the Customer and/or the Framework Purchaser the Supplier shall provide the following services:
- (a) transport and logistics services, including (i) the arrangement of cargo movement of the Goods; (ii) chartering flights; (iii) the arrangement of export and import of the Goods (including, where specified in the Purchase Order, obtaining customs approval); (iv) the management of tax exemption for the Goods (and retention of associated documentation); (v) visual external Goods inspection; (vi) pre-alert for shipment, packing and cargo consolidation; and (vii) the storage of the Goods;

- (b) value added services, including contract management, project management, technology integration/interfaces, reverse logistics, light assembly or kitting, and access to the Supplier's online platform (where applicable) to enable the Customer and/or Framework Purchaser to order, manage and track the Services; and
  - (c) any additional services that the Parties have agreed in writing and/or as described in a Purchase Order.
- 3.2 The Framework Purchaser shall issue all necessary instructions in its Purchase Order to the Supplier in respect of the Services to be performed under each Call-Off Contract (including transportation, delivery, ancillary, and/or of logistical services, including goods shipping priority and any customs clearance requirements).
- 3.3 In respect of any freight services to be provided under a Call-Off Contract:
  - (a) The Purchase Order shall provide instructions regarding the pick-up or receipt of the Goods, the nominated destination and any additional requirements (including goods shipping priority, customs clearance requirements and routing requirements).
  - (b) The Services shall be supplied at the destination specified in the Purchase Order and on the date or within the period specified in the Purchase Order, or otherwise instructed by the Framework Purchaser.
  - (c) No partial deliveries shall take place unless written approval has been obtained from the Framework Purchaser.
  - (d) The Supplier shall accept changes to Purchase Orders provided reasonable written notice is provided by the Framework Purchaser.
  - (e) The Supplier shall carry out a visual external inspection of the Goods when picking up the Goods at the location specified in the Purchase Order. Where any defects are identified by the Supplier during this visual inspection, this shall be notified to the Framework Purchaser within a reasonable time of the defect being identified, along with documentary evidence (including photographs).
  - (f) The Framework Purchaser shall not be deemed to have accepted any Services until the Framework Purchaser has had reasonable time to inspect them following performance and has confirmed its acceptance in writing to the Supplier.
- 3.4 In respect of any storage services to be provided under a Call-Off Contract:
  - (a) This shall include the provision of storage facilities during the transit of the Goods and at the final destination.
  - (b) If requested by the Framework Purchaser, the Supplier shall provide the Framework Purchaser with fourteen days of free storage at the final destination (as defined in the Purchase Order).
- 3.5 Customs **[Note to Tenderers: to be discussed]**

- (a) For the avoidance of doubt the Supplier shall act in the name and on behalf of the Framework Purchaser for the purposes of this sub-clause.
- (b) Where nominated under the Purchase Order, the Supplier shall (i) collate all required documentation and permits to ensure that the Goods are cleared for export and import into the destination country; and (ii) be responsible for ensuring the timely execution of export and import activities to enable the Goods to be delivered to the nominated final destination post-customs clearance.
- (c) Where nominated under the Purchase Order to manage customs clearance, the Supplier shall be responsible for payment of all customs duties related to the export and import of the Goods. The Framework Purchaser shall reimburse the Supplier for all validly incurred customs duties incurred during the export and import activities at cost in accordance with Clause 11.4, provided that the Supplier has provided documentary evidence of the same.
- (d) Where not nominated under the Purchase Order to manage customs clearance:
  - (i) the Supplier shall collate all documentation related to the Goods order and shipment and shall make this documentation available to the Framework Purchaser prior to the Goods being shipped; and
  - (ii) the Supplier shall not initiate physical transportation of the Goods until the Framework Purchaser has indicated that all relevant documentation has been received and customs clearance has been granted.

3.6 As part of the performance of the Services, the Supplier acknowledges and agrees that it may owe obligations to the Customer (where the Framework Purchaser is not the Customer) as specified in these Terms and Conditions.

#### **4. Insurance**

***[Note to Tenderers: clause is under review by SCI's insurance brokers]***

- 4.1 During the term of this Agreement, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover such heads of liability as may arise under or in connection with this Agreement.
- 4.2 If so required in a particular Purchase Order, the Supplier shall take out and maintain additional insurance (including but not limited to product liability insurance), in accordance with the relevant Purchase Order. For the avoidance of doubt, the price of procuring and maintaining any additional insurance requested in a Purchase Order shall be deemed to be included in the Price.
- 4.3 Any insurance taken out pursuant to a Purchase Order shall be taken out with an insurance company known to be creditworthy at the time of coverage and (subject to any requirements of the Purchase Order) shall cover:

- (a) the value of the Goods in question;
  - (b) any foreseeable risks in light of the nature and location of the Services and the Goods in question; and
  - (c) any particular risks identified by the Framework Purchaser.
- 4.4 The Supplier shall, prior to commencing any Services under a Call-Off Contract, provide the Customer and/or Framework Purchaser with a certificate of currency evidencing the insurance cover required under this Agreement and/or any Call-Off Contract.

## **5. Performance of the Services**

5.1 The Supplier shall, and shall ensure the Supplier Personnel shall, perform the Services promptly and efficiently and to the Customer and/or Framework Purchaser's reasonable satisfaction, exercising all reasonable skill and diligence, and in accordance with:

- (a) the requirements of the Purchase Order, these Terms and Conditions and the Quality Technical Agreement (where applicable);
- (b) all applicable legislation, regulations, orders, statutory instruments, directives, subordinate legislation or any other legislation applicable in the jurisdiction (including environmental regulations and the International Labour Organisation's international labour standards on child labour and forced labour, and including obtaining all applicable statutory permits, consents and licenses);
- (c) the Good Distribution Practice rules and regulations, where applicable (set out in further detail in Clause 13);
- (d) generally accepted best practices in the freight services industry applicable to the Services (including the use of that degree of skill, care, diligence, prudence, foresight, efficiency and practice which would be expected from a leading service provider within such industry); and
- (e) all health and safety rules and regulations and any other security requirements that apply at any of the Customer and/or Framework Purchaser's premises and/or delivery premises.

5.2 The Supplier shall perform the Services:

- (a) using personnel who are suitably skilled, qualified and experienced to perform tasks assigned to them;
- (b) without doing or omitting to do anything which may cause the Customer and/or Framework Purchaser to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
- (c) without infringing the rights of any third party or causing the Customer and/or Framework Purchaser to infringe any such rights.

- 5.3 Unless otherwise specifically stipulated within the relevant Purchase Order, the Supplier shall not initiate physical transportation of the Goods to which a Purchase Order relates until the Framework Purchaser has confirmed in writing that all relevant documentation has been received from the Supplier and that the Supplier should initiate physical transportation.
- 5.4 The Supplier shall provide the Framework Purchaser with 14 days of import demurrage free time for ocean freight, during which time charges for storage of laden containers in the Supplier's care shall not be passed to the Framework Purchaser.
- 5.5 The Framework Purchaser shall notify the Supplier of any concerns relating to the Goods (including loss or damage to the Goods) within a reasonable time following delivery.
- 5.6 The Supplier shall immediately inform the Customer and/or Framework Purchaser in writing of any events that come to its attention that may be detrimental to the Customer and/or Framework Purchaser (including anything that may be detrimental to the Customer and/or Framework Purchaser's reputation) or may affect the Supplier's ability to perform its obligations (including the Services) in accordance with this Agreement and/or a Call-Off Contract.
- 5.7 The Supplier shall ensure that it has obtained all licences, clearances, permissions, authorisations, consents and permits necessary for the supply of the Services (and shall ensure that any Supplier Personnel have obtained the same) and if requested by the Customer and/or Framework Purchaser shall produce evidence of the same.
- 5.8 Without prejudice to Clause 7.9, the Supplier agrees to take reasonable steps to ensure that any goods it transports or stores pursuant to a Call-Off Contract are not transported or stored alongside any illegal or prohibited goods (including counterfeit goods or illicit drugs). The Framework Purchaser agrees that the Goods will not be counterfeit goods or illicit drugs.
- 5.9 The Supplier may sub-contract the performance of the Services, provided that:
- (a) it does not sub-contract the whole of the Services;
  - (b) the Supplier shall remain wholly responsible for performance of the Services in accordance with the Call-Off Contract, notwithstanding any such sub-contract; and
  - (c) the Supplier shall procure that each of its subcontractors complies with all provisions of the Agreement which apply to, or are relevant to, subcontracts (including, for the avoidance of doubt, the Mandatory Policies and Quality Technical Agreement).
- 5.10 For the avoidance of doubt:
- (a) in no case shall any subcontracting in any way affect the obligations of the Supplier under this Agreement and/or any Call-Off Contract; and

- (b) the Supplier shall be responsible and liable for the acts and omissions of each subcontractor (including its employees) to the same extent as if such acts or omissions were by the Supplier or its own employees.
- 5.11 The Supplier acknowledges and agrees that for audit and business purposes the Customer and/or Framework Purchaser may at any time request the Supplier to provide evidence that the provisions of this Agreement and/or any Call-Off Contract (including the Mandatory Policies) and the Quality Technical Agreement are being complied with by the Supplier and/or its subcontractors, and the Supplier shall provide such evidence and other details of subcontracts reasonably requested by the Customer and/or Framework Purchaser within three days of such request.
- 5.12 The Customer and/or Framework Purchaser reserves the right at any time to inspect work being undertaken in relation to the supply of the Services and inspect the premises where the Goods are being stored. The Customer and/or Framework Purchaser's inspector may adopt any reasonable means to satisfy himself or herself that the correct materials and/or care and skill are or have been used.
- 5.13 If following such inspection, the Customer and/or Framework Purchaser considers that the Services do not conform or are unlikely to comply with the Supplier's obligations under the Call-Off Contract, the Customer and/or Framework Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. The Customer and/or Framework Purchaser shall have the right to conduct further inspections after the Supplier has carried out its remedial actions.
- 5.14 Notwithstanding any such inspection, the Supplier shall remain fully responsible for the Services and any such inspection shall not reduce or otherwise affect the Supplier's obligations under the Call-Off Contract.
- 5.15 The Supplier Representative, Framework Purchaser Representative and Customer Representative (as identified in Clause 19.4) shall act as the principal points of contact for each Party. The Supplier Representative and the Customer Representative shall meet at least once a month or more frequently at the reasonable request of the Customer to discuss the performance of the Supplier's obligations under the Agreement and/or any Call-Off Contracts. Framework Purchaser Representative(s) may attend such meetings at the Customer's discretion.

#### Service Levels

- 5.16 The service levels set out in the table below (the *Service Levels*) shall be the minimum required service levels for any transaction carried out pursuant to this Agreement and/or a Call-Off Contract. **[Note to Tenderers: to be discussed]**

Category	Formula	Level
Quotations	Number of Quotations submitted by the Supplier in	99%

	full and on time in accordance with the Agreement, as a proportion of all Requests for Quotation.	
Temperature excursions	Number of incidents where the temperature at which Goods are stored or transported deviates from the temperature requirements specified in the Purchase Order.	Zero
Missing or damaged shipments	Number of packages lost or damaged during the performance of the Services, as a proportion of all shipments.	0%
DIFOT	Number of shipments delivered in full and on time at the nominated destination point as determined within the Purchase Order, as a proportion of all shipments.	95%
Invoices	Number of invoices submitted within two days of the completion of the Services, as a proportion of invoices submitted.	99%

- 5.17 The Supplier shall provide to the Customer all relevant data for each of the Service Levels in a true and accurate manner at the end of each calendar month or as otherwise requested by the Customer.
- 5.18 Without prejudice to the terms of the Quality Technical Agreement (where applicable), the Supplier shall perform its obligations under the Call-Off Contract so as to meet the Service Levels.
- 5.19 The Supplier acknowledges that its failure to meet a Service Level may have a material adverse impact on the business and operations of the Customer and/or a Framework Purchaser. If the Supplier fails to meet a Service Level under the Agreement and/or a Call-Off Contract, the Supplier shall:
- (a) promptly investigate the underlying causes of the failure to meet the Service Level and provide the Customer and/or the relevant Framework Purchaser with a report on its findings;
  - (b) take whatever action is reasonably necessary to minimize and mitigate the impact of the failure and to correct the causes of the failure and

provide the Customer and/or the relevant Framework Purchaser with a report on the status of any remedial actions; and

- (c) take all reasonable measures required to prevent the Service Level failure from reoccurring.

## **6. Packaging and labelling**

### **6.1 Packaging**

- (a) If a Purchase Order provides that the Supplier is responsible for packaging and/or labelling, the Supplier shall ensure the Goods shall be packed, packaged, marked or countermarked so as to withstand transportation and/or storage performed under the Call-Off Contract, as well as successive handling that would reasonably arise during such operations.

### **6.2 Labelling**

- (a) The Supplier or Supplier Personnel shall inspect each parcel, item or load unit prior to shipping the Goods to ensure that clear labelling has been provided to allow immediate and clear identification of the shipper, consignee, of the place of delivery and of the nature of the Goods, and that the information on the labels shall match those appearing on the shipping document. If the Supplier or Supplier Personnel identifies any deficiencies in the labelling of the Goods it shall notify the Framework Purchaser immediately and will cooperate with staff on site to resolve the issue as quickly as possible.

### **6.3 Liability for defecting packaging or labelling**

- (a) Where a Purchase Order specifies that the Supplier is responsible for packing, packaging, labelling and/or marking, the Supplier shall be liable for all consequences arising from any defective packing, packaging, labelling or marking, insofar as any such consequences are not caused or contributed to by any acts or omissions by the Framework Purchaser.

## **7. Mandatory Policies, Sanctions and Export Control Laws**

7.1 The Supplier shall (and shall ensure that its directors and all Supplier Personnel shall) be aware of, understand, and adhere to the Mandatory Policies.

7.2 The Supplier shall take reasonable steps (including having in place adequate policies and procedures) to ensure it conducts its business (including its relationship with any contractor, employee, or other agent of the Supplier) in compliance with the Mandatory Policies, and shall upon request provide the Customer and/or Framework Purchaser with information confirming its compliance.

7.3 The Supplier shall notify the Customer and the Framework Purchaser as soon as it becomes aware of any breach, or suspected or attempted breach, of the

Mandatory Policies, and provide the Customer and Framework Purchaser with full details of any action taken in relation to the reported breach.

- 7.4 The Customer and/or Framework Purchaser shall have the right to require the Supplier to replace any Supplier Personnel if the individual concerned is alleged to have breached, or has breached, any of the Mandatory Policies.
- 7.5 The Supplier shall cooperate with the Customer and/or Framework Purchaser on any investigations into alleged breaches of the Mandatory Policies.
- 7.6 The Customer and/or Framework Purchaser may provide training or materials to the Supplier on protecting children and vulnerable populations from sexual exploitation and abuse, and on anti-harassment, intimidation and bullying. The Supplier shall, at the Customer and/or Framework Purchaser's request, share any training or materials with any Supplier Personnel who will come into direct contact with the Customer or Framework Purchaser's personnel, beneficiaries or members of the vulnerable population, through the performance of the terms of a Call-Off Contract.
- 7.7 The Supplier and any Supplier Personnel shall be subject to, and shall in relation to the Agreement and any Call-Off Contract act in accordance with, the IAPG Code of Conduct and any local or international standards which are applicable to the Goods or Services to be performed under a Call-Off Contract.
- 7.8 The Supplier represents and warrants to the Customer and the relevant Framework Purchaser that:
  - (a) it is not (and it will procure that all of its directors, affiliates and Supplier Personnel are not themselves) owned or controlled by any party that is targeted by any sanctions, export control, embargo, or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licences, orders, or requirements, in force from time to time, including without limit those of the EU, the UK, the US and the UN (*Sanctions and Export Control Laws*); and
  - (b) it is not aware of, and does not have any reason to suspect, any breach of Clause 7.10 or that performance of this Agreement and/or any Call-Off Contract would put either party at risk of breaching any Sanctions and Export Control Laws.
- 7.9 The Supplier and its affiliates or Supplier Personnel shall not in any way:
  - (a) engage in transactions with, or provide resources or support to armed groups, individuals and entities which are sanctioned, or individuals and organisations associated with terrorism, or otherwise be involved directly or indirectly with terrorism;
  - (b) be involved directly or indirectly in the manufacture or sale of arms;
  - (c) have any business relations with governments for any war related purpose; or
  - (d) transport any Goods together with any military equipment.

7.10 The Supplier shall (and shall also require that all of its directors, officers, affiliates and Supplier Personnel shall):

- (a) comply with all Sanctions and Export Control Laws, as applicable, and maintain policies and procedures designed to ensure continued compliance with such Sanctions and Export Control Laws;
- (b) obtain any licences, authorisations or permissions required under the Sanctions and Export Control Laws or other applicable laws that are required to export, import, supply, sell, transport, or broker any hardware, software, technology, support or assistance or service that is provided by or on behalf of the Supplier under this Agreement and/or any Call-Off Contract (including obtaining any required export licences required for the export of Goods by or on behalf of the Supplier to the Framework Purchaser or its agents at the relevant delivery address), and shall further inform the Customer and/or Framework Purchaser where any such hardware, software, technology, support or assistance or service provided is subject to controls or restrictions under the Sanctions and Export Control Laws and shall provide all relevant information that may be required by the Customer and/or Framework Purchaser to apply for or obtain any further licences, authorisations or permissions;
- (c) inform the Customer and/or Framework Purchaser where any Goods or Services are subject to controls or restrictions under the Sanctions and Export Control Laws;
- (d) not make any funds or economic resources available, directly or indirectly, to or for the benefit of, any person or entity that is currently listed under or otherwise directly or indirectly targeted by any Sanctions and Export Control Laws (including any funds or economic resources paid by the Supplier on behalf of the Customer and/or Framework Purchaser or received by the Supplier from the Customer and/or Framework Purchaser in accordance with this Agreement or any Call-Off Contract);
- (e) ensure that it provides to the Customer the names and dates of birth of its key staff in order that the Customer can screen these names against sanctions lists, using the Customer's third party screening provider. Before providing the names to the Customer, the Supplier must ensure that all its key staff have been informed that their names will be provided to the Customer for screening using a third party provider, and, if necessary, obtain their consent;
- (f) ensure that it regularly checks its staff, suppliers and sub-contractors against sanctions lists and immediately inform the Customer and/or Framework Purchaser of any apparent correlation; and
- (g) not do anything which would cause the Customer and/or any Framework Purchaser to be in breach of any Sanctions and Export Control Laws (including supplying items from any country of origin which would mean that any conceivable supply or use of these items would be restricted under the Sanctions and Export Control Laws).

7.11 No provision of the Agreement or any Call-Off Contract shall give rise to an obligation on either Party that would constitute a breach of Council Regulation (EC) No 2271/96 (as amended) or other equivalent blocking or anti-boycott laws applicable from time to time.

## **8. Warranties**

8.1 The Supplier warrants and undertakes to the Customer and the Framework Purchaser that:

- (a) the Services will be performed by appropriately qualified and trained personnel, with reasonable care, skill and diligence and to such high standards of quality as it is reasonable for the Customer and/or Framework Purchaser to expect in all the circumstances;
- (b) it has all authorisations from all relevant third parties to enable it to supply the Services without infringing any applicable law, regulation, code or practice or any third party's rights;
- (c) it has all necessary internal authorisations to approve the execution and performance under any Call-Off Contract;
- (d) information provided by the Supplier to the Customer and/or Framework Purchaser at any stage during the tender, negotiation or quotation process in respect of this Agreement and/or any Call-Off Contract was complete and accurate in all material respects at the time it was supplied and any amendments or changes to the previously supplied information will be provided to the Customer and/or Framework Purchaser without delay;
- (e) it will not and will procure that none of the Supplier Personnel will accept any commission, gift, inducement or other financial benefit from any supplier or potential supplier of the Customer or Framework Purchaser; and
- (f) none of its directors or officers or any Supplier Personnel have any interest in any supplier or potential supplier of the Customer or Framework Purchaser or is a party to, or are otherwise interested in, any transaction or arrangement with the Customer or Framework Purchaser.

8.2 In case of any situation constituting or likely to lead to a breach of a warranty or undertaking in this Agreement, the Supplier shall:

- (a) notify the Customer and/or Framework Purchaser in writing and without delay of such breach or likely breach; and
- (b) take all reasonable and necessary steps to avoid the likely breach or rectify the breach.

## **9. Liability**

9.1 Unless otherwise provided in the Agreement and/or Call-Off Contract, neither the Customer and/or Framework Purchaser nor the Supplier shall be liable to

the other Party for any indirect or consequential loss or damage, including loss of profits.

9.2 The Supplier shall be liable for any direct loss and damage which the Customer and/or Framework Purchaser may suffer as a result of any failure by the Supplier and/or the Supplier Personnel to comply with the Supplier's obligations under this Agreement and/or any Call-Off Contract. Such direct loss may include:

- (a) where the Goods are medicinal or pharmaceutical goods (including, for the avoidance of doubt, any Goods to which Clause 13 applies), any loss or damage arising as a result of a failure to keep the Goods at the required temperature as specified in the Purchase Order or otherwise in accordance with the Quality Technical Agreement;
- (b) the costs of engaging an alternative supplier to perform the outstanding obligations of the Supplier under any Call-Off Contract; and/or
- (c) losses and expenses incurred as a result of any breach by the Supplier or Supplier Personnel of the Supplier's obligations under the Agreement and/or a Call-Off Contract or its/their failure to take any action notified by or on behalf of the Customer and/or Framework Purchaser to the Supplier or Supplier Personnel which would have prevented a breach of those obligations.

9.3 The Supplier's liability under a Call-Off Contract shall not exceed:

- (a) in respect of any customs and/or indirect taxation operations, whether undertaken by the Supplier or its sub-contractors, shall not exceed a total of USD 750,000 per shipment; and
- (b) in respect of damage caused to the Customer and/or a Framework Purchaser's property shall not exceed the value of such property.

9.4 The aggregate liability of the Customer and all Framework Purchasers in connection with this Agreement and all Call-Off Contracts entered into pursuant to this Agreement shall not exceed USD 1,250,000 in the aggregate.

#### 9.5 **Indemnity**

Subject to the provisions of Clause 9, the Supplier shall keep the Customer and the Framework Purchaser indemnified in full against any and all actions, liabilities, losses, costs, damages, expenses, claims, suits and proceedings, including any interest, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer and Framework Purchaser arising out of or in relation to:

- (a) any deviations from temperature control and product handling requirements under (i) the Purchase Order; (ii) the Good Distribution Practice rules (referred to in Clause 13.2) and/or (iii) the Quality Technical Agreement agreed pursuant to Clause 13.5, that result in or lead to the loss, deterioration, damage and/or contamination of any medical or pharmaceutical products;
- (b) breach of any warranty given by the Supplier in Clause 8;

- (c) any act of negligence or other act or omission of the Supplier or any Supplier Personnel;
- (d) personal injury, death or damage to property caused to the Customer and/or Framework Purchaser or their employees or staff arising out of, or in connection with, defects in the supply of the Services, to the extent that the defect in the Services is attributable to the acts or omissions of the Supplier and/or Supplier Personnel;
- (e) any claim made against the Customer and/or Framework Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier and/or Supplier Personnel;
- (f) any claim made against the Customer and/or the Framework Purchaser by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of a Call-Off Contract by the Supplier and/or Supplier Personnel; and
- (g) any claim made against the Customer and/or the Framework Purchaser by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the performance of the Services, to the extent that the defect in the Services is attributable to the acts or omissions of the Supplier and/or Supplier Personnel.

#### 9.6 **Exceptions to limitations on liability**

Notwithstanding Clause 9, a Party's liability cannot be excluded or limited under this Agreement and/or any Call-Off Contract for: (a) fraud or fraudulent misrepresentation, gross negligence or wilful misconduct; (b) death or personal injury caused by its negligence or the negligence of its employees, agents or sub-contractors; (c) any breach of the Supplier's obligations under Clause 16 and/or the Data Processing Annex; (d) where the Goods are medicinal or pharmaceutical products, any breach of the Supplier's obligations to store and/or transport the Goods in accordance with temperature requirements specified in a Purchase Order or otherwise in accordance with the Quality Technical Agreement; and (e) any other liability that cannot be excluded by law.

### 10. **Force majeure**

10.1 For the purposes of this Clause 10, the following terms shall have the following meanings:

- (a) A ***Force Majeure Event*** means the occurrence of an event after the date of the relevant Call-Off Contract was entered into which:
  - (i) is directly or indirectly outside the reasonable control of the affected party; and

- (ii) prevents, hinders or delays the fulfilment by the affected party of all or a substantial part of its obligations under the Call-Off Contract,

and shall include government intervention, an act of war and other hostilities, storm, fire, flood, riot, epidemics, pandemics, earthquake, destruction by lightning, drought, explosion, prolonged break-down of transport, telecommunication or electric current, port or airport congestion, general labour disturbance such as but not limited to boycott, strike and lock-out (except if in relation to solely the Supplier and/or its subcontractors' employees). For the avoidance of doubt, a Force Majeure Event shall not include:

- (iii) any consequences of the COVID-19 pandemic that were foreseeable at the date of the Call-Off Contract and/or could have been prevented, overcome or remedied through the exercise of diligence and reasonable care at the time of conclusion of the relevant Call-Off Contract;
- (iv) financial hardship; and/or
- (v) any change in circumstances that arises as a result of the affected party's fault or negligence.

10.2 Neither the Supplier nor the Framework Purchaser will be liable to the other for failure to carry out any of its duties under a Call-Off Contract to the extent to which the failure is caused by a Force Majeure Event, provided that:

- (a) the affected party could not have prevented, overcome or remedied the adverse effects of the Force Majeure Event through the exercise of due diligence and reasonable care;
- (b) the affected party has taken all reasonable precautions, due care and steps to prevent and avoid the Force Majeure Event;
- (c) it has taken all reasonable steps to overcome and mitigate the effects of the event as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
- (d) it has notified the other party immediately on becoming aware of the Force Majeure Event, and provides written confirmation and reasonable evidence of the Force Majeure Event within 72 hours of becoming aware of it; and
- (e) the adverse effects of the Force Majeure Event have not been caused or exacerbated by:
  - (i) a result of a failure by the affected party to implement business continuity plans;
  - (ii) negligence by the affected party's personnel (including subcontractors);

- (iii) failure by the affected party's personnel (including subcontractors) to perform (unless that personnel is itself prevented from performing its obligations to the Supplier as a direct result of the Force Majeure Event); and/or
  - (iv) failure of software used by the affected party.
- 10.3 The relief afforded to an affected party under Clause 10.2 shall only extend for so long as the Force Majeure Event subsists.
- 10.4 In respect of subclauses (a) and (b) of Clause 10.2 above, the Supplier acknowledges that:
  - (a) the areas in which the Customer and/or Framework Purchaser operate are, by their nature, often politically, socially, economically or environmentally unstable and are therefore at high risk of a Force Majeure Event; and
  - (b) as such, a greater level of diligence and care is required when performing the Services under the Call-Off Contract in these areas.
- 10.5 As soon as either the Supplier or the Framework Purchaser becomes aware that a Force Majeure Event has occurred or is likely to occur, that party will immediately notify the other party. The Framework Purchaser and the Supplier will, within 24 hours of such notification, meet and will mutually agree on what action needs to be taken to avoid or mitigate the effects of the Force Majeure Event.
- 10.6 The Supplier will make all reasonable arrangements for ensuring the continuity of the Services during a Force Majeure Event and the Framework Purchaser will pay to the Supplier a proportion of the Price due in respect of the Services to reflect the Services actually rendered during such time period.
- 10.7 If the affected party fails to fulfil obligations due to a Force Majeure Event for more than 30 days after the affected party has served notice to the other party specifying the Force Majeure Event, the other party may terminate the relevant Call-Off Contract by prior written notice, and the Framework Purchaser and the Supplier shall agree (acting reasonably) the portion of the Price to be paid to the Supplier in respect of the Services that had been performed by the Supplier before this time.
- 10.8 If due to a Force Majeure Event additional costs are incurred by the Supplier in order to preserve the Goods whilst in transit or whilst under its custody, the Supplier will inform the Framework Purchaser before such costs are incurred (if possible) and in any event as soon as practicable of such costs and, if such costs cannot be avoided, the Framework Purchaser and the Supplier agree that these costs shall be borne by the Framework Purchaser, provided that the Supplier provides the Framework Purchaser with all the supporting documents justifying such costs and provided the same are reasonable.
- 10.9 In case of a Force Majeure Event the Supplier will promptly inform the Framework Purchaser of any alternative reshipment solutions that can reasonably be organized and of the associated costs. The Framework Purchaser

and the Supplier will discuss in good faith such alternative solutions and the Supplier will only act upon prior agreement of the Framework Purchaser, including as regards the associated costs.

## **11. Payment terms**

- 11.1 On completion of the Services under a Call-Off Contract, the Supplier shall send an invoice for the Price to the Framework Purchaser, stating the relevant Purchase Order reference number. For the avoidance of doubt, the Services will be deemed completed when the Framework Purchaser has accepted the Services in accordance with Clause 3.3(f).
- 11.2 All invoices and their supporting documents shall be issued in electronic form by the Supplier to the Framework Purchaser to the e-mail address included in the relevant Purchase Order.
- 11.3 Invoices provided by the Supplier shall be supported by documents evidencing the invoiced amount, document(s) evidencing proof of delivery (including proof of delivery document and the bill of lading) and shall be in USD (unless otherwise specified on the Purchase Order). For the avoidance of doubt, any communications between the Framework Purchaser and the Supplier in respect of invoices shall include the relevant Purchase Order reference number.
- 11.4 Each undisputed invoice shall be payable by the Framework Purchaser within 45 days of the date of receipt of the relevant invoice. Payment terms in connection with taxes and duties shall be agreed between the Framework Purchaser and the Supplier on a case-by-case basis in each Purchase Order.
- 11.5 The Framework Purchaser may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under a Call-Off Contract.

## **12. Title and risk**

- 12.1 Notwithstanding any other provision of this Agreement, title to the Goods shall at all times remain with the Framework Purchaser. The Supplier shall not create any liens, pledges, charges, mortgages or other security interests or encumbrances over such Goods.
- 12.2 The liability for any loss or damage to the Goods shall pass to the Supplier from the moment such Goods are loaded onto a vehicle for transport to their specified destination and (subject to Clause 12.3 below) shall remain with the Supplier until the Services have been accepted by the Framework Purchaser in accordance with Clause 3.3(f).
- 12.3 Where the Supplier provides storage in accordance to Clause 3.4(b), liability for any loss or damage to the Goods shall remain with the Supplier until such period of free storage has expired.

## **13. Requirements for medical and pharmaceutical products**

- 13.1 This Clause 13 shall apply where the Goods to be transported under a Call-Off Contract are medical and/or pharmaceutical products and/or goods.

- 13.2 The Supplier warrants that it is and shall remain compliant with the Good Distribution Practice rules and regulations, including EU Commission guideline 2013/C 343/01 and the Medicines and Healthcare products Regulatory Agency Rules and Guidance for Pharmaceutical Manufacturers and Distributors, for the transportation of any medical and/or pharmaceutical products. The Supplier shall ensure that all Goods are consistently stored, transported and handled under suitable conditions, as required by the applicable regulatory or legal requirements or product specification and/or as set out in the applicable Purchase Order.
- 13.3 Where required under a Purchase Order, the Supplier shall ensure that, during the performance of the Services, the Goods are transported and/or stored in accordance with any temperature requirements specified in the Purchase Order. If at any point during the performance of the Services the temperature deviates from these requirements, the Supplier shall inform the Framework Purchaser immediately and shall take all necessary steps (at its own cost) to ensure the temperature returns to the required level. If the Framework Purchaser decides, in its reasonable opinion, that the Goods cannot be used following any such temperature excursion, the Framework Purchaser shall be entitled to refuse the Services (and, for the avoidance of doubt, will not be required to pay for such Services) and the Supplier shall be liable in accordance with Clause 9.
- 13.4 The Supplier shall provide, on request of the Framework Purchaser, all data relating to shipments of medical and/or pharmaceutical products carried out on behalf of the Framework Purchaser for up to and including 24 months from the closure of the relevant Purchase Order. This data shall include, but not be limited to, information on the shipment providers and temperature controls applied during the transportation of the Goods.
- 13.5 Upon request by the Customer (and in any case no later than 10 days of such a request), the Supplier shall complete and return to the Customer a technical agreement for the transport and delivery of pharmaceuticals and medical supplies, in the form included in Annex 7 to the Agreement. The Customer may require the Supplier to provide further information and/or make amendments to the technical agreement. The Supplier shall further update the technical agreement to incorporate the Customer's comments and/or instructions and resubmit the technical agreement to the Customer for its review within 10 days of receiving the Customer's comments. The process in this Clause 13.5 may be repeated as often as is necessary until the Customer is satisfied with the technical agreement.
- 13.6 For the avoidance of doubt, the Quality Technical Agreement is a document that must be agreed prior to physical transportation of Goods under a Call-Off Contract, where the Goods to be transported are pharmaceutical or medical supplies.

## **14. Audit**

- 14.1 The Supplier agrees to allow the Customer and/or Framework Purchaser's employees, agents, professional advisers or other duly authorized representatives to inspect and audit all of the Supplier's documents and other

information (including in electronic format) and including information regarding the Supplier's current and former personnel and other relevant personal data held by the Supplier, for the purpose of making audits, examinations, excerpts and transcriptions and for the purpose of verifying compliance with the requirements of this Agreement.

- 14.2 The Supplier agrees to extend the rights in Clause 14.1 to duly authorised representatives of the European Commission, the European Court of Auditors and the European Anti-Fraud Office (*OLAF*), the United States Government, the Controller General of the United States and any other representatives instructed by the Customer or a donor organisation of the Customer to perform an audit of the Supplier's operations. The Supplier shall ensure that it has informed each person whose personal data is being provided to/accessed by any person or entity pursuant to this Clause, of the information shared and the purpose of sharing such data before providing/allowing access to the data and, where necessary, obtained such person's consent.

## 15. Name, branding and logo

- 15.1 Neither the Customer and/or Framework Purchaser nor the Supplier will use the other Party's name, branding or logo other than in accordance with the other Party's written instructions or authorisation.
- 15.2 The Supplier will not make any announcement or publicity statement relating to the Customer, a Framework Purchaser, this Agreement and/or a Call-Off Contract or its subject matter without the Customer or Framework Purchaser's prior written consent (except as required by law or by any legal or regulatory authority).

## 16. Data processing

- 16.1 For the purposes of this Clause 16 and the Data Processing Annex in Annex 4 of the Agreement, the following expressions shall have the following meanings:
- (a) ***Applicable Privacy Laws*** means all applicable: (i) data protection laws, rules and regulations, including the UK GDPR, the Data Protection Act 2018 and, to the extent it continues to be applicable to any processing contemplated by this Agreement and/or a Call-Off Contract, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time; and (ii) applicable direct marketing and advertising laws;
  - (b) ***Customer Personal Data*** means any Personal Data made available by the Customer and/or Framework Purchaser to the Supplier under or in connection with the Agreement and/or any Call-Off Contract, processed by the Supplier on the Customer and/or Framework Purchaser's behalf under or in connection with this Agreement and/or any Call-Off Contract;
  - (c) ***Data Processing Annex*** means the data processing details appended as Annex 4 to the Agreement;

- (d) **EU Customer Personal Data** means any Customer Personal Data that is subject to the GDPR;
- (e) **GDPR** means the General Data Protection Regulation (2016/679);
- (f) **Personal Data** shall have the meaning given to it in Applicable Privacy Laws;
- (g) **UK Customer Personal Data** means any Customer Personal Data that is subject to the UK GDPR; and
- (h) **UK GDPR** has the meaning given to it in section 3(1) (as supplemented by section 205(4)) of the UK Data Protection Act 2018.

16.2 The Parties acknowledge that in respect of all Personal Data (including Customer Personal Data), the Customer and/or Framework Purchaser (as applicable) is the data controller and the Supplier (or its affiliate(s) or Supplier Personnel, if applicable) is the data processor. The Parties acknowledge that the Data Processing Annex sets out details about the Customer Personal Data processed by the Supplier in connection with this Agreement and/or any Call-Off Contract.

16.3 The Supplier shall:

- (a) process Customer Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Data Processing Annex, and only in accordance with the Customer and/or Framework Purchaser's written instructions from time to time, including with regard to transfers of UK Customer Personal Data outside the United Kingdom and EU Customer Personal Data outside the European Economic Area, and shall not process Customer Personal Data for any purpose other than those authorized by the Customer and/or Framework Purchaser;
- (b) prior to commencing any processing contemplated by this Agreement and/or any Call-Off Contract, immediately inform the Customer and/or Framework Purchaser if, in the Supplier's opinion, any instruction given by the Customer and/or Framework Purchaser to the Supplier infringes Applicable Privacy Laws;
- (c) ensure that all Supplier employees who have access to, or carry out any processing of, Customer Personal Data:
  - (i) are subject to binding confidentiality obligations in respect of the Customer Personal Data; and
  - (ii) only process Customer Personal Data in accordance with the Customer and/or Framework Purchaser's instructions (unless otherwise required to do so by European Union, European Union member state or UK law), including with regard to transfers of UK Customer Personal Data outside the United Kingdom and EU Customer Personal Data outside the European Economic Area;

- (d) 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 to the rights and freedoms of natural persons, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including to the extent appropriate:
  - (iii) the pseudonymisation and encryption of Customer Personal Data;
  - (iv) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - (v) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
  - (vi) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) at the Customer and/or Framework Purchaser's request, delete or return all Customer Personal Data and existing copies to the Customer and/or Framework Purchaser at the end of the provision of the Services under a Call-Off Contract (unless European Union, European Union member state or UK law requires the Supplier to retain the Customer Personal Data);
- (f) assist the Customer and/or Framework Purchaser in ensuring compliance with the Customer's and/or Framework Purchaser's security, data breach notification, impact assessment and consultation obligations under Applicable Privacy Laws, taking into account the nature of processing and information available to the Supplier;
- (g) maintain a written record of all categories of processing activities carried out on behalf of the Customer and/or Framework Purchaser that satisfied the requirements of Applicable Privacy Laws and make this record available on request to any relevant European Union, European Union member state or United Kingdom supervisory authority;
- (h) cooperate on request with any relevant European Union, European Union member state or United Kingdom supervisory authority;
- (i) notify the Customer and/or Framework Purchaser without undue delay after becoming aware of a breach of Customer Personal Data; and
- (j) make available to the Customer and/or Framework Purchaser all information necessary, and allow for and contribute to audits and inspections conducted by the Customer and/or Framework Purchaser or the Customer and/or Framework Purchaser's mandated auditor, to demonstrate the Supplier's compliance with its obligations imposed by Applicable Privacy Laws and the Agreement and/or the Call-Off Contract.

- 16.4 If the Supplier collects any Customer Personal Data on behalf of the Customer and/or Framework Purchaser, to ensure processing is fair to data subjects, it shall provide them with a data protection notice informing them of the identity of the data controller (the Customer and/or Framework Purchaser, as applicable), the identity of any appointed data protection representative, the purpose(s) for which their personal data will be processed and any other information which is necessary in the circumstances.
- 16.5 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of Customer Personal Data (including any data subject's data or any data subject's request for access to or rectification, erasure or portability of personal data, or for restriction of processing or objections to processing of, their personal data, in each case under Applicable Privacy Laws) or to either party's compliance with Applicable Privacy Laws and their data protection principles, it shall immediately notify the Customer and/or Framework Purchaser and provide it with full co-operation and assistance, including through any technical and organizational measures that may be necessary.
- 16.6 Unless a term elsewhere in the Agreement specifies otherwise, the Supplier must not authorise any third party or sub-contractor (including any Supplier Personnel) to process Customer Personal Data, unless: (i) the Customer and/or Framework Purchaser has given its prior written consent; and (ii) the Supplier enters into a written contract with the third party, sub-contractor or Supplier Personnel which places the same obligations as this Clause 16 and, with respect to data protection, as this Agreement and/or Call-Off Contract, provided that (a) the Supplier remains fully liable for the performance of the third party's, sub-contractor's or Supplier Personnel's obligations and (b) such written contract terminates automatically on the termination or expiry of the Agreement and/or Call-Off Contract.
- 16.7 The Parties shall comply with their respective obligations set out in the Data Processing Annex.
- 16.8 If the parties are required by Applicable Privacy Laws to put in place a data processing agreement (or another data protection agreement) for the processing of personal data as contemplated by this Agreement and/or a Call-Off Contract, the parties shall negotiate and agree in good faith an appropriate agreement.

## **17. Assignment**

- 17.1 Without prejudice to Clause 17.3, the Supplier shall not without the Customer's prior written consent assign, transfer, charge, novate or deal in any other manner with any or all of its interests or rights under the Agreement.
- 17.2 The Customer may at any time assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under the Agreement, including pursuant to a bona fide reorganisation or restructuring of the Customer and/or the Save the Children movement. The Customer shall inform the Supplier by serving notice within 10 working days.

- 17.3 The Supplier shall not without the Framework Purchaser's prior written consent assign, transfer, charge, novate or deal in any other manner with any or all of its interests or rights under a Call-Off Contract.
- 17.4 The Framework Purchaser may at any time assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under a Call-Off Contract, including pursuant to a bona fide reorganisation or restructuring of the Framework Purchaser and/or the Save the Children movement. The Framework Purchaser shall inform the Supplier by serving notice within 10 working days.

## **18. Confidentiality**

- 18.1 Each Party (***Receiving Party***) shall keep in strict confidence all technical or commercial information, price, know-how, specifications, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other Party (***Disclosing Party***), its employees, agents or sub-contractors, (the ***Confidential Information***).
- 18.2 Clause 18.1 shall not prevent disclosure by a Party to the extent it can demonstrate that: (i) disclosure is required by law or regulation; (ii) disclosure is of Confidential Information that was lawfully in the possession of that party without any obligation of secrecy before it was received or held by that party; (iii) disclosure is of Confidential Information that has previously become publicly available; or (iv) disclosure is required for the purpose of any judicial proceedings arising out of this Agreement and/or any Call-Off Contract.
- 18.3 The provisions of this Clause 18 shall survive the termination or expiry of this Agreement.

## **19. Notices**

- 19.1 Any notice under or in connection with:
- (a) the Agreement, shall be given in writing to the Supplier or Customer (as applicable) to the address specified in Clause 19.4 or to such other address as shall be notified from time to time in accordance with this Clause 19.1; and/or
  - (b) a Call-Off Contract specifically, shall be given in writing to the Framework Purchaser or Supplier (as applicable) to the address specified in Purchase Order or to such other address as shall be notified from time to time in accordance with this Clause 19.1,

and shall be sent by prepaid first-class post, by recorded delivery, or email. Any notices sent internationally shall be sent by prepaid first-class post or recorded delivery letter with a copy sent by email.

- 19.2 Any notice shall be deemed to have been duly received:
- (a) if sent by prepaid first-class post, on the second day (excluding Saturdays, Sundays and U.K. bank holidays) after posting;

- (b) if sent by recorded delivery, on the date that the courier's delivery receipt is signed; or
- (c) if sent by email, when actually received (or made available) in readable form.

19.3 This Clause 19 shall not apply to the service of any proceedings or other documents in any legal action.

19.4 For the purposes of this Clause 19, notices should be sent to the following addresses:

For the Customer:

[ • ]

Customer Representative: [ • ]

For the Framework Purchaser: The contact person and address specified in the relevant Purchase Order.

For the Supplier:

[ • ]

Supplier Representative: [ • ]

## **20. Termination**

20.1 the Framework Purchaser or the Supplier may terminate a Call-Off Contract, and either the Customer or the Supplier may terminate the Agreement, in whole or in part with immediate effect by giving written notice to the other party:

- (a) without prejudice to limbs (c) to (e) below, in the event of evidenced material or repeated breaches by the other party of its obligations under the Agreement and/or a Call-Off Contract (as applicable), where such breach is not remedied (and is capable of being remedied) within 30 days of written request from the terminating party;
- (b) the other party becomes insolvent or makes any voluntary arrangement with its creditors or (being an individual or corporate entity) becomes subject to an administration order or goes into liquidation or that party ceases, or threatens to cease, to carry on business, or is subject to any equivalent process in any jurisdiction;
- (c) the Customer and/or Framework Purchaser reasonably believes that continuing contractual relations with the Supplier may damage the reputation of the Customer and/or a Framework Purchaser;
- (d) the Customer and/or Framework Purchaser reasonably believes that the Supplier or Supplier Personnel has or is engaged in corrupt, fraudulent, collusive or coercive practices and/or has or is engaged in activities which are in breach of the Mandatory Policies; or

- (e) a party reasonably believes that any of the events set out in limbs (a) to (d) above (subject to the parties' ability to remedy breaches pursuant to Clause 20.1(a)) is about to occur in relation to the other party and notifies the other party accordingly.
- 20.2 The Customer may voluntarily terminate the Agreement at any time with two months' written notice to the Supplier.
- 20.3 In the event of termination or expiry of the Agreement:
  - (a) unless otherwise instructed by the Customer and/or a Framework Purchaser, the Supplier must complete the Services under all outstanding Call-Off Contracts in line with this Agreement and the relevant Call-Off Contract (and the Price and the Terms and Conditions shall continue to apply until final completion of the Services); and
  - (b) the Parties shall work together in good faith to ensure a smooth transition of any Services to a replacement supplier.
- 20.4 The Framework Purchaser may cancel the Services to be provided under a Call-Off Contract in whole or in part provided that:
  - (a) it provides reasonable written notice of such cancellation; and
  - (b) the Goods are not yet in transit.

For the avoidance of doubt, in the event that the Services are cancelled in accordance with this Clause 20.4, the terms of the Call-Off Contract shall continue to apply in respect of any Services that have already been carried out prior to the cancellation.

- 20.5 Termination or expiry of the Agreement and/or a Call-Off Contract shall not affect Clause 2 (*Interpretation*), Clause 5 (*Performance of the Services*), Clause 7 (*Mandatory Policies, Sanctions and Export Control Laws*), Clause 8 (*Warranties*), Clause 9 (*Liability*), Clause 13 (*Requirements for Medical and Pharmaceutical Products*); Clause 15 (*Name, Branding and Logo*), Clause 16 (*Data Processing*), and Clause 18 (*Confidentiality*) or any other clause expressed to survive termination or expiry, which shall continue without limit in time. Termination or expiry of the Agreement and/or a Call-Off Contract shall not affect any rights, liabilities or remedies arising under the Agreement and/or any Call-Off Contract prior to such termination.

## **21. Severance**

Should any provision of the Agreement and/or a Call-Off Contract be declared invalid, illegal or unenforceable, such provision shall not affect the validity and enforceability of the remaining parts of the Agreement and/or Call-Off Contract.

## **22. Jurisdiction and Governing Law**

- 22.1 This Agreement and any Call-Off Contract shall be governed by and construed in accordance with the law of England and Wales.

## **23. Dispute resolution**

- 23.1 The Parties agree to resolve all misunderstandings or disputes that might arise during the term of the Agreement in good faith and in a professional and constructive manner.
- 23.2 In the first instance, any dispute shall be referred to the relevant Supplier Representative and Customer Representative or Framework Purchaser Representative named in Clause 19.4 above, or as notified to the other party in writing (as appropriate).
- 23.3 All disputes, controversies or claims arising out of or in connection with this Agreement and/or any Call-Off Contract, including the breach, termination or invalidity thereof, shall be finally settled by the Courts of England and Wales.

## **24. Miscellaneous**

### **24.1 Further assurances**

For the term of the Agreement, each Party shall do or procure to be done all further acts and things, and execute or procure the execution of all other documents, as the other party reasonably requests, that may from time to time be reasonably required for the purpose of providing or procuring the provision of Services or otherwise are necessary to implement and give effect to this Agreement and/or a Call-Off Contract.

### **24.2 Variation**

Except as set out in these Terms and Conditions, any variation to this Agreement and/or a Call-Off Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by (i) in the case of the Agreement, the Customer and the Supplier; and (ii) in the case of a Call-Off Contract, the Framework Purchaser and the Supplier. The Customer reserves the right to conduct a formal review of the Agreement after twelve months. For the avoidance of doubt, no terms and conditions produced by the Supplier, including those forming part of the Supplier's Quotation, shall supersede or take precedence over this Agreement and/or a Call-off Contract.

### **24.3 Waiver**

No waiver of any right or remedy under the Agreement and/or a Call-Off Contract shall be effective unless it is in writing and signed by the relevant Party or Parties. No failure or delay by a Party in exercising any right or remedy under this Agreement and/or a Call-Off Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### **24.4 Independent Parties**

Neither (i) the Supplier nor (ii) the Customer and/or Framework Purchaser (as applicable) shall:

- (a) hold itself out as agent or partner of the other; and/or

- (b) shall have authority to act on behalf of the other or to bind, the other party in any way.

**24.5 Entire agreement**

The Agreement constitutes the entire agreement between the Customer and the Supplier in respect of the subject matter of the Agreement and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

The Call-Off Contract constitutes the entire agreement between the Supplier and the Framework Purchaser in respect of the Services to be provided pursuant to the Call-Off Contract and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**24.6 No partnership**

Nothing in the Agreement and/or Call-Off Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between (i) the Supplier and (ii) the Customer and/or Framework Purchaser (as applicable).

**24.7 Third party rights**

A person who is not a party to the Agreement and/or Call-Off Contract shall not have any rights under or in connection with it.