

Call off Terms and Conditions

This document sets out the terms and conditions of supply, applicable to all Call off Contracts under LASER Framework reference Y22013. It sets the obligations of the Retailer and Participating Authority and forms part of the overall Call Off Contract and Order. Any variation to the Call Off Contract and Order will be carried out in line with Clause 19 Variation Procedures and will be copied to the Contracting Authority. The other parts of the overall Agreement are:-

- **Call off Contract and Order**
- **Terms and Conditions of Supply**
- **Framework Agreement**

These Terms are agreed between:

- (1) **the Participating Authority**, and
- (2) The water Retailer

1. INTERPRETATION AND DEFINITIONS

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings in these Terms and Conditions only and not in relation to any document that these Terms and Conditions may sit within or alongside:

Additional Charges	Services provided by the Retailer beyond the scope of the Participating Authority's Specification of this contract
Agreement	Means Framework Agreement
Authorised Representatives	means officers nominated by the Parties to manage and supervise the provision of the Goods, Works and/or Services.
Award Criteria	means the award criteria to be applied to tenders for Services to be procured under this Framework as set out in Clause 6.
Business Day	the period of 08:00 to 18:00 hours on any day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;
Call-off Contract	means the contract which sets out the Terms and Conditions of Supply (at schedule xx) these Terms, any other terms and conditions stated and obligations through which Goods, Works and/or Service are provided by the Supplier to the Participating Authority and is Ordered following a mini-competition or Direct Award under this Framework.
Call-off Contract and Order	Means the Call-off Contract
Call-off Terms and Conditions	means the Terms and Conditions of Supply and any special terms and conditions noted in the Call-off Order and Contract.
Chargeable Additional Services	Services provided by the Retailer beyond the scope of the Participating Authority's Specification of this contract.
Contracting Authority	means Kent County Council acting through Commercial Services Kent Ltd (Commercial Services AKA LASER).
CMOS	means the Central Market Operating System
Commercially Sensitive Information	means any Confidential Information comprised of information:- (a) which is provided in writing by the Supplier to the Contracting Authority in confidence and designated as Commercially Sensitive Information; and/or (b) that constitutes a trade secret.
Controller	means a person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.
Customer	Means the Participating Authority
Customer Detail Sheet	means the document relating to the order form containing customer detail and specification requirements
Data Loss Event	means a breach in security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal or commercial data. This includes breaches that are the result of both accidental and deliberate causes.

Data Protection Impact Assessment	otherwise known as a “DPIA”, this is a process that organisations use to identify data protection risks and put procedures in place to reduce them. A DPIA will; (note this list is not exhaustive) include information about the nature, scope, context and purposes of the processing; assess how necessary the processing is and what compliance measures are in place to keep data safe; identify and assess risks to individuals; identify measures that can be put in place to reduce those risks.
Data Protection Legislation	means all applicable laws and regulations relating to processing of personal data and privacy, including Data Protection Act 2018
Data Subject	means the identified or identifiable living individual to whom personal data relates.
Data Subject Access Request	enables individuals to find out what personal data is held about them, why it is held and who it is disclosed to
Default Tariff	the maximum tariff that can be applied by the Retailer for the provision of the Services as set out in documentation issued by a Regulator from time to time;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with
Framework	Refers to Framework Y22013 or Framework Agreement
GDPR	means the Regulation (EU) 2016/679 (General Data Protection Regulation) and any subordinate legislation made under such regulation from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
Goods/ Works/Services	shall mean the goods/services/works to be provided by the Supplier in accordance with the terms of the individual Order/Individual Call-off Contract under this Framework.
Information	has the meaning given under Section 84 of the Freedom of Information Act 2000.
Information Commissioner’s Office	means the UK’s independent authority set up to uphold information rights in the public interest, promoting openness.

Insolvency Event	<p>means:</p> <p>(a) a party is unable or is deemed unable or admits inability to pay its debts as they fall due; or</p> <p>(b) a party enters into a composition, compromise, assignment or arrangement with any of its creditors, being a substantial creditor, (whether by way of a voluntary arrangement, scheme of arrangement, deed of compromise or otherwise); or</p> <p>(c) a moratorium is sought or declared in respect of a party or any indebtedness of a party or an application is made to court for protection from the creditors of a party; or</p> <p>(d) an administrator, liquidator (compulsory or voluntary other than a liquidator appointed in a solvent winding up for the purposes of amalgamation or reconstruction), provisional liquidator, receiver, administrative receiver, receiver and manager, voluntary arrangement supervisor, compulsory manager or other similar officer is appointed to or in respect of a party or the whole or a substantial part of the property, assets or undertaking of a party; or</p> <p>(e) a petition or application is presented or documents are filed or faxed with a court for the appointment of an administrator, liquidator or receiver to a party provided that if a party is contesting the winding-up petition in good faith and with due diligence the notice shall not be treated as having being given until a period of twenty days has expired since the presentation of the petition or application without it having been either discharged or struck out; or</p> <p>(f) a meeting is convened, a resolution is passed or notice is given of the intention to appoint an administrator, liquidator or receiver (including an administrative receiver and a receiver and manager) to a party; or</p> <p>(g) an order is made for the winding-up, administration or dissolution of a party; or</p> <p>(h) possession is taken of the whole or any substantial part of the property, assets or undertaking of a party; or</p> <p>(i) any other analogous step, process or procedure is taken</p> <p>in relation to a party in any jurisdiction, or a party becomes subject to the laws relating to insolvency, bankruptcy or liquidation in any jurisdiction.</p>
Margin	means the percentage margin referred to in Part 3 (Charges);
Market Arrangements Code	means the code of that name designated by the Ofwat ;
Ofwat	means the Water Services Regulation Authority
Operational Code	means the code named under the Water Services (Codes and Services) Directions 2007 (or any other direction which amends, replaces or adds to, or is made for the same subject matter as that direction), as in force from time to time;
Order	means an order for Goods, Works and/or Services served on the Retailer in accordance with the Ordering Procedures
Order Form	means a document setting out details of an Order to lead to Call-off Contract
Ordering Procedures	means the ordering and award procedures specified in Framework Schedule 6.

Participating Authority	means all public sector bodies permitted under the Public Contracts Regulations 2015 who access and use this Framework (including the Contracting Authority) via Contracting Authority and who shall take full responsibility for their own individual contracting processes. Those organisations who may wish to access this Framework Agreement include local authorities, the Police Service, the Fire Service, the NHS & NHS Trusts, port authorities, third sector organisations, academic centres (including Academies), publicly funded organisations and publicly owned private companies, operating within the geographic boundaries of the United Kingdom, Channel Islands and Northern Ireland (together referred to in this tender document as Participating Authorities or End Users)
Party or Parties	refer to the Retailer and/or the Participating Authority
Personal Data	means any information relating to a person (a 'data subject') who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.
Processor	means a person, public authority, agency or other body which processes personal data on behalf of the controller.
Property	(a) the premises which are (or are to be) connected to the public water supply system; and (b) in terms of providing sewerage or sewage disposal, means the premises which are (or are to be) connected to the sewerage system, both as set out in the Property Schedule of the Call off Contract Order and as may be amended or supplemented by agreement between the Retailer and the Customer in writing from time to time (and "Properties" shall be construed accordingly);
Property Schedule	means the list of Properties set out in the Appendix to the Call off Order;
Protective Measures	means appropriate technical and organisational measures to ensure the security of any data processing.
Regulator	means Ofwat or other regulatory body
Request for Information	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.
Retailer	means the appointed retailer of water and wastewater services in respect of the Properties under this Call off Contract and Order.
Retailer's Charges	means the Retailer's Charges for Services will be as set out in the Retailer's mini tender offer.
Services	means the retail services for the supply of water and sewerage services and meter services to, or the removal of any associated waste including surface water and trade from any Properties that the Participating Authority own, lease or otherwise occupy and / or the provision of any services in respect of new connections to any Property;
Staff	means all persons employed by the Retailer together with the Retailer's servants, agents, contractors and sub-contractors used in the performance of its obligations under these terms and any Call-off Contracts

Sub processor	means when a processor sub-contracts all or some of the processing to another processor, that processor is referred to as a sub-processor.
Term	means the term of the Call off Contract and Order
Terms and Conditions	means these terms and conditions of supply;
Transfer Date	means the date on which the relevant supply points for the Properties are effectively transferred to the Retailer on CMOS (for properties in England).
Unplanned Event	means any of the following: (a) breakdown, blockage, defect, fault or failure of plant equipment, apparatus, pipes, structures, or facilities forming part of a Wholesale's network; (b) shortage of, or limitation on the use of, water arising from weather or environmental conditions; (c) deficiency in the quality of water available for supply; (d) a water quality incident; or (e) any pollution from sewage, any unplanned discharge or flooding; or any other emergency;
Variation Procedure	means the procedure set out to present and progress changes.
Wholesale	means any wholesale supplier of water and wastewater services in respect of the Properties.
Wholesale Chargeable Services	means one off charges levied by the wholesaler to the retailer related to the provision of water services and the metering of this.
Wholesale Charges	means the amount(s) charged by a Wholesaler to The Retailer
Wholesale Contract	means the contract between the Retailer and a Wholesaler;
Wholesale Retail Code	means the code of that name issued by the Authority under sections 66DA and 117F of the Water Industry Act 1991;
Working Days	means any day other than a Saturday, Sunday or public holiday in England and Wales.

2 Services

- 2.1 The Retailer shall provide the Services to the Participating Authority from the Transfer Date for the duration of the Term in accordance with the Call off Contract and Order.
- 2.2 The Retailer shall provide the Services with reasonable skill and care and in accordance with applicable law at all times.
- 2.3 The Retailer has the right to make changes to the Services subject to the provision of reasonable written notice to the Participating Authority which are necessary to comply with
 - 2.3.1 any laws;
 - 2.3.2 the Market Arrangements Code and the Wholesale Retail Code;
 - 2.3.3 safety regulations and the directions of a Regulator.
- 2.4 The supply of Services may only be interrupted or suspended for the purposes of the relevant Wholesaler carrying out necessary maintenance, repair, replacement and inspection works. Where reasonably practicable the Retailer or Wholesaler will notify the Participating Authority in advance of such works.
- 2.5 The supply of Services may only be interrupted or suspended without notice if there is an Unplanned Event.

3 Charges

- 3.1 The Retailer's Charges for Services will be as set out in the Customer Detail Sheet, the Retailer's mini tender offer
- 3.2 Where the Retailer's Charges are based on the volume of water used:
 - 3.2.1 if AMR services are provided, this will be used to calculate the volume of water used;
 - 3.2.2 if AMR services are not provided:
 - 3.2.2.1 the Retailer will read the water meter at the Participating Authority's site to calculate the volume of water used, or the Retailer will accept meter reads provided to them by the Participating Authority;
 - 3.2.2.2 The Retailer will take at least one actual reading in each year of the Contract or more if required by either the Participating Authority's tender specification, or Relevant Laws;
 - 3.2.2.3 If the Retailer does not obtain an actual meter reading, the retailer will be entitled to estimate the volume of water used and an estimated meter reading may be used as the basis for calculating charges;

- 3.2.3 where estimated meter readings are used to calculate charges, an adjustment should be made to charges when an actual meter reading is next used to calculate the charges;
- 3.2.4 where accurate meter readings are not available (e.g. due to a fault with the meter), the Retailer may calculate charges by reference to average daily consumption recorded at the relevant Site during periods that they reasonably believe to best reflect consumption over the affected period and during which accurate meter readings are available
- 3.3 Where the Retailer's Charges are based on the rateable value of a Site, the Participating Authority will inform them of any change in the assessment of the rateable value of the Site and the date the change came into effect. The Retailer should adjust charges to take into account any change of this assessment from the date the change came into effect.
- 3.4 Regional Wholesalers may from time to time impose one off charges or claim money from the Retailer for Wholesale Chargeable Services. For example, a Regional Wholesaler may charge if the Participating Authority requests a change of meter or it may claim money from Retailers if damage is caused to their meter. The Participating Authority agrees to reimburse the Retailer for any charges or claims that a Regional Wholesaler may rightfully impose in relation to the Services provided to the Sites. The Retailer may add the agreed retailer uplift to these pass through charges to cover their administrative costs.
- 3.5 The Participating Authority may wish to procure Chargeable Additional Services from the Retailer. These services are outside of the Participating Authority's specification of this contract, and the charging structure will thus be settled by a separate agreement.
- 3.6 The Retailer is required to revise erroneous historic invoices up to either the maximum of stipulated in the Limitation Act of 1980 or the maximum permitted by the Water Regulator, whichever is shorter. This should be in the form of crediting erroneous invoices before invoicing on a new invoice, with new unique reference numbers.

4 Changes to Pricing

- 4.1 The Retailer shall be permitted to vary Wholesale Charges in line with the market changes agreed by the Regulator having first served the Participating Authority with prior written notice of no less than 28 days of its intention to do so.
- 4.2 Where any Wholesale Charges which relate to a Property are varied as a consequence of any price review initiated or required by a Regulator, the Retail Charge should vary only in line with the fixed percentage of Wholesale charges set in the completed Customer Detail Sheet
- 4.3 Without prejudice to clauses 4.1 to 4.2, the Retailer may only alter the Charges to the minimum extent necessary to cover the increased costs if there shall

have occurred a material adverse regulatory or HM Government mandated change which has resulted from circumstances outside the Retailer's control, but excluding any increases arising from any negligence or failure on their part, including but not limited to fines or penalties or remedial action. The Retailer will provide the Participating Authority with no less than 30 days' written notice of their intention to do so.

5 Payment

- 5.1 If the Participating Authority query part of an invoice the Participating Authority is still liable to pay the Retailer the undisputed amount. Save in respect of any amounts which are disputed, all other amounts due under the Call-off Contract and Order from the Participating Authority to the Retailer shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.2 Without prejudice to clause 5.1, any payments that the Participating Authority make to the Retailer will be used to pay the oldest outstanding undisputed Charges first (if any).
- 5.3 Subject always to the provisions of clause 5.1, if the Participating Authority do not pay an invoice on time, the Retailer may contact the Participating Authority to inform the Participating Authority of the Participating Authority's payment default and ask the Participating Authority to make prompt payment of outstanding sums.
- 5.4 If the Participating Authority do not pay an invoice on time; the Retailer may elect to charge the Participating Authority interest at the rate of up to 8% per annum above the Bank of England's base interest rate, from the due date for such undisputed sum until the date of payment of such sum or otherwise in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

6 Meter Readings

- 6.1 If the Participating Authority think that the meter in any Property is not working correctly, the Participating Authority may ask the Retailer to arrange a test with the Wholesaler. If such test shows that the meter is working incorrectly (that is operating outside the prescribed limited of error) then the Retailer will request the Wholesaler adjust the Participating Authority's Charges in respect of any metered elements based on consumption in a comparable period where metering was believed to be accurate. Weekly reporting to the Participating Authority on progress between the Retailer and Wholesaler is expected to ensure contact to resolve is maintained.

7 Warranty

- 7.1 The Participating Authority warrants that they are (a) the owner of, (b) the occupier of or (c) a third party, who is otherwise entitled to be invoiced in respect of the Services at, each Property. The Participating Authority warrants they have the right and authority to enter into this Call Off Contract and Order in respect of the water utility bills, to the exclusion of all others.

- 7.2 In addition to Clause 7 of the Framework Terms and Conditions, The Retailer warrants it will supply the Services in a reliable and professional manner, will engage a sufficient number of competent personnel with appropriate skills, qualifications and experience and has, and will at all times have, the ability and capacity to meet such requirements to perform the Services in compliance with all applicable law and regulations.

8 Liability

- 8.1 Nothing in the Call Off Contract and Order shall limit or exclude a party's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1 neither party shall have any liability to the other whether in contract tort, negligence, breach of statutory duty, or otherwise:
- 8.2.1 for any loss of revenue, loss of profit, loss of contract, business interruption or for any indirect or consequential loss arising under or in connection with the provision of Services to the Participating Authority, howsoever it is caused, even if it could have reasonably been foreseen, and whether it is caused by negligence or breach of contract or not.
- 8.3 The Retailer's total liability to the Participating Authority howsoever arising under or in connection with the Call Off Contract and Order shall be limited to the lower of (i) total amount of Charges paid by the Participating Authority to the Retailer in the previous 12 month period and (ii) the sum of £5,000,000.
- 8.4 Subject to clause 8.3 if any act or failure to act by a Wholesaler other than as a result of The Retailer's act or failure to act causes any loss or damage to the Participating Authority, The Retailer's liability to the Participating Authority (if any) is limited to the amount (if any) that the Retailer may claim from that Wholesaler.
- 8.5 This clause 8 continues to apply following termination of the Call off Contract and Order, and Framework Agreement.

9 Access to The Participating Authority's Premises

- 9.1 The Retailer (or any Wholesaler) may require access to the Property in relation to the provision of the Services or in relation to the metering equipment. The Retailer will provide the Participating Authority with reasonable notice when such access is required, with the exception of meter reading at non-sensitive sites when notice would not typically be provided. Sensitive sites, including but not limited to schools providing special needs learning and blue light properties such as police or ambulance stations, are likely to allow entrance by appointment only and this requirement must be accommodated for all access requests at these sites, including meter reading. The

Participating Authority agree to take reasonable steps to allow the Retailer (or any Wholesaler) with such access required.

- 9.2 The Participating Authority shall allow a Regulator (or any other network operator) access to the Participating Authority's premises and the Participating Authority acknowledge that in an emergency the Participating Authority may be required to stop using water or disposing of waste.

10 Moving or Leaving

- 10.1 The Participating Authority may end this Call Off Contract and Order with the Retailer for individual supply points if the Participating Authority are leaving a property, by informing the Retailer in writing at least 14 days before the Participating Authority move. If the Participating Authority do not do so, this Call Off Contract and Order will continue in force for the property, and the Participating Authority will continue to be liable for the Charges until the date falling 14 days after either (i) the Participating Authority inform the Retailer in writing that the Participating Authority have left the property; or (ii) the Retailer become aware that another person has taken a supply at that property, whichever is earlier or when this Call Off Contract and Order terminates.
- 10.2 If reasonably requested and subject to clause 10.1 The Participating Authority should attempt to give the Retailer an accurate final meter reading, which the Retailer will check. If the Participating Authority do not provide an accurate final reading the Participating Authority will be responsible for payment of Charges relating to any difference between the meter reading upon which the Retailer based the final invoice or estimated invoice and the next meter reading.

11 Data Protection (GDPR)

- 11.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer and the Retailer are independent Controllers, whereby as Controllers they shall be responsible for complying with the data protection principles in the UK and take appropriate technical and organisation measures to ensure processing is carried out in line with UK Data Protection Legislation.
- 11.2 The Retailer shall notify the Customer without undue delay if it considers that any of Customer's instructions infringe the Data Protection Legislation.
- 11.3 The Retailer shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer include:
- 11.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 11.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- 11.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 11.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 11.4 The Retailer shall, in relation to any Personal Data processed in connection with its obligations under the Call off Contract and Order:
 - 11.4.1 process that Personal Data only in accordance with such agreement as stated in Clause 11,1, unless the Retailer is required to do otherwise by Law. If it is so required the Retailer shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 11.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - a) nature of the data to be protected;
 - b) harm that might result from a Data Loss Event;
 - c) state of technological development; and
 - d) cost of implementing any measures;
 - 11.4.3 ensure that:
 - a) its Staff do not process Personal Data except in accordance with the Call of Contract and Order;
 - b) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - I. are aware of and comply with the Retailer's duties under this Clause 11;
 - II. are subject to appropriate confidentiality undertakings with the Retailer 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 Customer or as otherwise permitted by the Call Off Contract and Order; and
 - IV. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 11.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - a) the Customer or the Retailer has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or Article 37) as determined by the Customer;
 - b) the Data Subject has enforceable rights and effective legal remedies;

- c) the Retailer complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
- d) the Retailer complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

11.4.5 at the written direction of the Customer delete or return Personal Data (and any copies of it) to the Customer on termination of the Call Off Contract and Order unless the Retailer is required by Law to retain the Personal Data.

11.5 Subject to Clause 11.4, the Retailer shall notify the Customer without undue delay if it:

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

11.5.2 receives a request to rectify, block or erase any Personal Data;

11.5.3 receives any other request, complaint or communication relating to any Party's obligations under the Data Protection Legislation;

11.5.4 receives any communication from the Information Commissioner or any other Regulator in connection with Personal Data processed under the Call Off Contract and Order;

11.5.5 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

11.5.6 becomes aware of a Data Loss Event.

11.6 The Retailer's obligation to notify under Clause 11.5 shall include the provision of further information to the Customer in phases, as details become available.

11.7 Taking into account the nature of the processing, the Retailer shall provide the Customer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 11.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

11.7.1 the Customer with full details and copies of the complaint, communication or request;

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

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

11.7.4 assistance as requested by the Customer following any Data Loss Event;

- 11.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 11.8 The Retailer shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 11. This requirement does not apply where the Retailer employs fewer than 250 staff, unless:
- 11.8.1 the Customer determines that the processing is not occasional;
- 11.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- 11.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 11.9 The Retailer shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 11.10 The Retailer shall designate a data protection officer if required by the Data Protection Legislation.
- 11.11 Before allowing any Sub-Processor to process any Personal Data related to the Call Off Contract and Order, the Retailer must:
- 11.11.1 notify the Customer in writing of the intended Sub-Processor and processing;
- 11.11.2 obtain the written consent of the Customer;
- 11.11.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 11 such that they apply to the Sub-Processor; and
- 11.11.4 provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require.
- 11.12 The Retailer shall remain fully liable for all acts or omissions of any Sub-Processor.
- 11.13 The Participating Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 11 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call-off Contract and Order) or where there is a change in the Law necessitating such a change.
- 11.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to the Retailer amend this Call-off Contract and Order to ensure that it complies with any guidance issued by the Information Commissioner's Office.

12 FREEDOM OF INFORMATION

- 12.1 The Retailer acknowledges that the Participating Authority (where applicable) are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Participating Authority to enable the Participating Authority to comply with their Information disclosure obligations.
- 12.2 The Retailer shall and shall procure that its sub-contractors shall:

- 12.2.1 Transfer to the Participating Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 12.2.2 Provide the Participating Authority with a copy of all Information in its possession, or power in the form that the Participating Authority requires within five Working Days (or such other period as the Participating Authority may specify) of the Participating Authority request; and
 - 12.2.3 Provide all necessary assistance, as reasonably requested by the Participating Authority, to enable the Participating Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 12.3 The Participating Authority shall be responsible for determining in their absolute discretion and notwithstanding any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 12.4 In no event shall the Retailer respond directly to a Request for Information unless expressly authorised to do so by the Participating Authority.
- 12.5 The Retailer acknowledges that (notwithstanding other provisions) the Participating Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the supplier or the Goods, Works and/or Services:
- 12.5.1 In certain circumstances without consulting the Retailer; or
 - 12.5.2 Following consultation with the Retailer and having taken their views into account

13 Non-Discrimination and Modern Slavery

- 13.1 The Retailer shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
- 13.2 The Retailer shall take all reasonable steps to secure the observance of Clause 13.1 by all servants employees or agents of the Retailer and all suppliers and sub-contractors employed in the execution of any Call Off Contract and Order.
- 13.3 The Retailer shall comply with the Modern Slavery Act 2015
- 13.4 The Retailer undertakes, warrants and represents that neither the Retailer nor any of its officers, employees, agents or subcontractors:
- 13.4.1 has committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");
 - 12.4.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

- 12.4.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 13.5 The Retailer shall notify the Contracting Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached any requirement noted above.

14 Term and Termination

- 14.1 The Term of the Call Off Contract and Order is fixed. On expiry of the Term (or any agreed extension of this Call Off Contract and Order), if a new contract is **not** in place then supply will continue with the Retailer under a deemed contract, the preferential terms of this Call Off Contract and Order expire and the Retailer is entitled to charge on a Default Tariff.
- 14.2 On termination of the Call Off Contract and Order (however arising), the following clauses shall survive and continue in full force and effect:
- 14.2.1 Clause 4 (Charges);
- 14.2.2 Clause 10 (Liability);
- 14.2.3 Clause 13 (Data Protection);
- 14.2.4 clause 14 (Term and Termination); and
- 14.2.5 clause 16 (General).
- 14.3 If the Participating Authority is subject to an Insolvency Event, the Retailer may immediately end Call of Contract and Order with the Participating Authority without further liability by notice and from the day on which the Participating Authority underwent an Insolvency Event.
- 14.4 The contract may be terminated by either party if the other party is in material breach of their obligations under this Call Off Contract and Order contract.
- 14.5 The Retailer is permitted to terminate the contract 60 days following the issue of a final notice for payment of an outstanding charge, when payment is not received from the Participating Authority and the charge is not in query.

15 Notices

- 15.1 Any notice or communications between the parties about or pursuant to the Call Off Contract and Order shall be in writing and must be sent by pre-paid recorded first class post or by email :

15.1.1 to The Retailer's registered office or such other address as may be notified to the Participating Authority by the Retailer from time to time; or

15.1.2 (in the case of communications to the Participating Authority) to the address or email address set out in the Call off Contract .

15.2 If communications are delivered in accordance with this clause 15 they shall be deemed to have been delivered, if sent by first class post or recorded first class post, two days after posting and if delivered by email (in the case of the Retailer only), on the day of delivery.

16 General

16.1 By signing the Call Off Contract the Participating Authority warrant that the Participating Authority have capacity to enter into the Call Off Contract and Order and full power and authority, and has taken all action necessary (including obtaining all necessary consents or approvals) to enter into and perform the Call Off Contract and Order and any other deeds, agreements or documents to be entered into pursuant to the Call Off Contract and Order.

16.2 The Call Off Contract and Order and the documents referenced in the definition of Agreement constitutes the entire agreement between the Participating Authority and the Retailer and supersedes all previous agreements, understandings and arrangements between the Participating Authority and Retailer, whether in writing or oral, in respect of its subject matter. Each party acknowledges that it has not entered into this Call Off Contract and Order in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Call Off Contract and Order except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Call Off Contract and Order.

16.3 If any provision or part-provision of the Call Off Contract and Order is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Call Off Contract and Order.

16.4 A person who is not a party to the Call Off Contract and Order shall not have any rights to enforce its terms.

16.5 Failure or delay by either party in enforcing or partially enforcing any provision of these conditions against the other shall not be construed as a waiver of any rights under these conditions.

16.6 Neither party shall assign or subcontract the Call Off Contract and Order to another person without written permission from the other party, not to be unreasonably refused.

16.7 In this Call Off Contract and Order:

16.7.1 references to any applicable laws (including to the Data Protection Laws and each of them) and to terms defined in such applicable laws shall be replaced with or incorporate (as the case may be) references to any applicable laws replacing, amending, extending, re-enacting or consolidating such applicable law (including the GDPR and any new Data Protection Laws from time to time) and the equivalent terms defined in such applicable laws, once in force and applicable; and

16.7.2 a reference to a law includes all subordinate legislation made under that law.

17 Jurisdiction

17.1 The Call Off Contract and Order and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

18 DISCONNECTION

18.1. In the event that any of the scenarios in Clause 18.2 arise, the Retailer will contact the Participating Authority as soon as reasonably possible if it is intended that they intend to stop providing services and disconnect the water supply. An explanation will be provided of the reasons for doing so.

18.2. The retailer reserves the right to stop providing the Services and disconnect the Participating Authority's water supply at any, or all, of the Premises, if:

18.2.1 Requested because any, or all, of the premises no longer require any water and/or sewerage services (as appropriate).

18.2.2 The Participating Authority is in breach of any legislation, including the Water Industry Act 1991 and any regulations made pursuant to, or consents issued under, that legislation;

18.2.3 Payment of the Charges is not made following notice in line with 14.5;

18.2.4 Disconnection is required in order to perform works on the network; or

18.2.5 Disconnection is required in order to prevent contamination.

18.3. The Retailer shall not be entitled to disconnect your supply if your Premises are of a type set out at Schedule 4A of the Water Industry Act 1991, which includes for the avoidance of doubt, premises used for the provision of medical or dental services, hospitals, care homes, educational establishments and prisons.

19. Variation Procedure

19.1 INTRODUCTION

"Variation" shall mean any change (including revision of any dates or alterations or additions to the Call off Contract (or any part thereof) in the performance or delivery of the Goods, Works and/or Services (Original Call Off Contract and Orders) that does

not arise consequent upon a failure by the Retailer properly to carry out the Goods, Works and/or Services in accordance with the original Call Off Contract and Order and shall be without prejudice to the generality of the Retailer's obligations under the original Call Off Contract and Order.

19.2 PROCEDURE FOR PROPOSING A VARIATION

Either party may in writing, request a Change setting out a detailed description of the Change sought ("Change Request Form") in the form set out in Appendix i below.

Within ten Working Days (or sooner if the urgency of the situation so dictates) of sending the written Change Request, a response may be made confirming the effect such Change will have on the Goods, Works and/or Services and what adjustment, if any, will be required to the charges and any dates specified for performance or delivery of the Goods, Works and/or Services or any part or aspect of them.

Either party shall consider the Change Request at its own costs and without having any impact on the provision of the Goods, Works and/or Services.

In effecting the Change the Parties shall take the following into consideration:

- (a) A description of any further impact analysis work to be undertaken together with anticipated time scales and costs, if any.
- (b) A description of the impact of the Change or new requirement (as appropriate) quantified in terms of input required from each party, timescales, performance and cost.

No Change shall invalidate the Original Call Off Contract and Order. The Original Call Off Contract and Order shall continue in full force and effect (subject to any agreed Change).

Any Change involving an increase or decrease in the charges and/or any dates specified for delivery of the Services or any part of them shall be deemed to have been made with effect from the date of the relevant acceptance by all parties as aforesaid.

The form attached as Appendix i is to be completed whenever there is a modification, addition or amendment of the Goods, Works and/or Services set out under the original Call Off Contract and Order.

19.3 OBJECTIONS TO A VARIATION

In the event that one or more written objections to a variation are received, the relevant party may:

- Withdraw the proposed variation;
- Or propose an amendment to the variation.

19.4 VARIATIONS WHICH ARE NOT PERMITTED

In addition to these provisions, the Participating Authority may not propose any variation which:

- May prevent one the Retailer from performing its obligations under the Call-off Contract.
- Is in contravention of regulation 72 of the Public Contracts Regulations 2015.

Appendix i: Change Request Form

CCF NO / CONTRACT NUMBER. <i>(Sequential Number)</i>	TITLE:	DATE RAISED:
ORIGINATOR:		REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE BEING PREPARED AND DETAILS OF ANY RELATED CONTRACT CHANGES:		
DETAILED JUSTIFICATION FOR MAKING THE CHANGE:		
PROPOSED ADJUSTMENT TO THE PRICING WITH DETAILED COSTINGS RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL PRICING AND MEANS FOR DETERMINING THESE – THESE WILL BE BASED ON RETAILER'S COSTS PLUS ACCEPTABLE MARGIN):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY KEY PERFORMANCE INDICATORS AFFECTED:		
DETAILS OF IMPACT ON EXIT PLAN:		
DETAILS OF IMPACT ON SPECIFICATION:		
DETAILS OF IMPACT ON DOCUMENTATION:		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT:		
DETAILED RISK ASSESSMENT:		
APPROVED FOR SIGNATURE: Name Signature: Date:		

The Participating Authority and the Retailer, which entered into the Call off Contract CN [REDACTED], now wish to amend the [Terms] in the manner set out in Appendix i above.

IT IS AGREED as follows:

With effect from [date] the [Call off Contract] shall be amended as set out in this Change Control Notice.

Save as herein amended all other terms and conditions of the Original Call Off Contract and Orders shall remain in full force and effect.

Signed for and on behalf of the Participating Authority

By

Name

Title

Date.....

Signed for and on behalf of the Retailer

By

Name

Title

Date