



- 2.3.1 the specific types and quantities of PPE required by each Hub Party;
  - 2.3.2 the single location to which the relevant quantities of PPE are to be delivered for the purposes of being received by the Hub Borough prior to onward distribution to other locations.
- 2.4 As part of the process described in paragraph 2.3 above, each of the Participating Boroughs will also confirm to the Hub Borough the extent of the Hub Borough's authority to proceed with the relevant order in response to any updated information in respect of relevant supply terms, including changes to stock availability/lead times and increases in prices.
- 2.5 The Hub Borough will be responsible for submitting, on behalf of itself and each of the Participating Boroughs, the relevant draft order form to LBE and then liaising with LBE to confirm the latest position in respect of the supply terms applicable to the items of PPE set out in the draft order form, including:-
- 2.5.1 changes to stock availability/lead times and/or pricing compared to information previously provided by LBE; and
  - 2.5.2 the particular Supply Contract under which the whole of the relevant PPE requirement can be sourced or (as applicable) the particular Supply Contracts under which different parts of the overall requirement can be sourced.
- 2.6 Based on this latest information, and taking into account the authority given to the Hub Borough under paragraph 2.4, the Hub Borough will (if necessary having liaised further with any Participating Borough to confirm how it wishes to proceed) confirm to LBE the details which are to be included in the relevant order form and the particular Supply Contract or (as applicable) Supply Contracts under which the relevant PPE requirement is to be sourced.
- 2.7 LBE will then be responsible for sourcing the relevant PPE requirement (as per the confirmed order from the Hub Borough) under the relevant Supply Contract or (as applicable) Supply Contracts. For these purposes, LBE will submit a suitable order to the relevant Supplier or (as applicable) Suppliers in accordance with the relevant Supply Contract terms and on the basis that LBE does so as the agent of the Hub Borough, with the intention that on acceptance of the relevant order by the relevant Supplier a call off contract for the supply of the relevant PPE on the terms of the relevant Supply Contract and the relevant order (the **Order**) will be formed directly between the relevant Supplier and the Hub Borough.
- 2.8 As between the Hub Borough and each of the Participating Boroughs, at the point at which a contract is formed with the Supplier on the basis of a particular Order:-
- 2.8.1 the Hub Borough will be committing to on-supply to each Participating Borough the relevant quantities of PPE (up to the relevant maximum requirements for that Participating Borough, as referable to the relevant confirmed order by the Hub Borough which LBE then used for the purposes of submitting the Order). The specific arrangements for physical distribution of these quantities of PPE will be those which are separately agreed between the Hub Parties, outside of this MoA, for these purposes;
  - 2.8.2 each Participating Borough will be committing to reimburse the Hub Borough, in accordance with the arrangements described in paragraph 3 below, for relevant amounts due to the Supplier in respect of these quantities of PPE (such reimbursement to operate, for the avoidance of doubt, on a straight cost pass through basis and without any margin being applied by the Hub Borough);
  - 2.8.3 the Hub Borough will not be treated as having given any warranties or other assurances to each Participating Borough in respect of these quantities of PPE and will not be accepting any liability to any Participating Borough in relation to the on-supply of any PPE, including as regards those matters referred to in paragraph 4.4 below.

### **3 Payment Terms**

- 3.1 Consistent with paragraph 2.7 above, for each Order, the relevant Supplier will be requested to issue to the Hub Borough (not LBE) all invoices applicable to that Order.
- 3.2 For each successful delivery of PPE in respect of which payment is required in accordance with the terms of the relevant Supply Contract, the relevant Order and the relevant invoice submitted to the Hub Borough, the Hub Borough will be responsible (as between LBE, the Hub Borough and the relevant Supplier) for paying the relevant Supplier within 24 hours of delivery or within such other timescales as may be applicable under the terms of the relevant Supply Contract.
- 3.3 For that proportion of each payment due from the Hub Borough which relates to PPE required by a Participating Borough rather than the Hub Borough itself, that Participating Borough will be responsible for reimbursing the Hub Borough within 5 (five) days of being provided with a copy of the relevant invoice from the Supplier and (if necessary) any separate VAT invoice issued by the Hub Borough.
- 3.4 For the purposes of paragraphs 3.2 and 3.3 above:-
- 3.4.1 the Hub Borough will, to the extent reasonably practicable, seek to ascertain whether PPE delivered to the Hub Borough has been supplied in accordance with the terms of the relevant Supply Contract and whether, by reference to the terms of the relevant Supply Contract, there is a requirement for payment to be made to the relevant Supplier in respect of the relevant delivery. For these purposes, the Hub Borough will, to the extent reasonably practicable, seek through the governance arrangements referred to in paragraph 5 to liaise with other Hub Parties prior to making a payment to the relevant Supplier. However, it will ultimately be for the Hub Borough to determine, at its discretion, whether there is a requirement for payment to be made to the relevant Supplier in respect of the relevant delivery;
- 3.4.2 to the extent that the Hub Borough, exercising this discretion, does pay the relevant Supplier in respect of the relevant delivery, each Participating Borough will be responsible for reimbursing the Hub Borough in accordance with paragraph 3.3, regardless of any issues that Participating Borough may have in respect of that delivery. In these circumstances, any relevant issues (including issues relating to defective PPE) will fall to be resolved in accordance with paragraph 4 below after payment has been made by the Participating Borough.

### **4 PPE Delivery Issues**

- 4.1 If there is any shortfall in the quantity of PPE actually delivered, or capable of being delivered, or any delay in the delivery to the Hub Borough relative to the quantity and delivery timescales set out in the relevant Order, the Hub Borough, the Participating Boroughs and LBE will communicate the relevant details to each other and work together to see what can reasonably be done to mitigate any shortfall or delay. In addition, in these circumstances the Hub Borough, the Participating Boroughs and LBE will co-operate with one another in good faith with a view to ensuring that:-
- 4.1.1 where appropriate, quantities of any particular item of PPE actually received by any particular Hub Party (or, as the case may be, due to be distributed to a particular Hub Party following delivery by the relevant Supplier) are adjusted pro rata to the required quantities originally ordered for that Hub Party, including if necessary by way of one or more of the Hub Parties arranging for particular stocks of PPE to be re-distributed to one or more of the other Hub Parties;
- 4.1.2 any relevant contractual remedies which may be available against the relevant Supplier in respect of the shortfall or delay are pursued in a co-ordinated manner

that has been mutually agreed between LBE, the Hub Borough and the Participating Boroughs.

- 4.2 If any Hub Party considers that any PPE delivered by a Supplier is defective or otherwise not in conformity with the terms of the relevant Supply Contract and/or the relevant Order, the Hub Borough, the Participating Boroughs and LBE will co-operate with one another in good faith with a view to ensuring that any relevant contractual remedies which may be available against that Supplier in respect of the relevant defects or other issues are pursued in a co-ordinated manner that has been mutually agreed between LBE, the Hub Borough and the Participating Boroughs.
- 4.3 For the purposes of paragraphs 4.1 and 4.2 and the pursuit of any relevant contractual remedies which may be available against the relevant Supplier in the circumstances described in those paragraphs, LBE and each of the Hub Parties acknowledge and agree that:-
- 4.3.1 given the intention that orders for PPE will be placed via the Hub Borough and LBE, it may be the case that where a particular Hub Party is adversely affected by any of these circumstances, it will not benefit from contractual rights which it is able to enforce directly against the relevant Supplier;
- 4.3.2 if it is the case that only LBE and/or the Hub Borough is able to enforce relevant contractual rights against the relevant Supplier, LBE and/or the Hub Borough (as applicable) will after consultation with the affected Hub Party, and subject to the objective set out in paragraphs 4.1 and 4.2 that any remedies be pursued in a co-ordinated manner, use its reasonable endeavours to enforce the relevant rights for the benefit of the affected Hub Party.
- 4.4 For the avoidance of doubt, LBE will not have any liability to any of the Hub Parties, and the Hub Borough will not have any liability to any of the other Hub Parties, for any of the following:-
- 4.4.1 any non-availability or reduced availability of items of PPE under any Supply Contract and/or any increases in lead times or prices applicable to items of PPE which remain available under any Supply Contract;
- 4.4.2 any non-acceptance by a Supplier of an order for PPE;
- 4.4.3 any non-delivery or under delivery of PPE by a Supplier;
- 4.4.4 any PPE delivered by a Supplier being defective or otherwise not in conformity with the terms of the relevant Supply Contract and/or the relevant Order; and/or
- 4.4.5 any act or omission of a Supplier or any of its sub-contractors or other personnel.

## **5 Governance**

- 5.1 For an appropriate period of time agreed between LBE and each of the Hub Parties for these purposes, LBE and each of the Hub Parties will ensure that any matters arising for discussion or agreement in relation to the arrangements envisaged by this MoA are dealt with as part of the following wider governance activities relating to the pan-London response to the COVID-19 pandemic:-
- 5.1.1 daily telephone calls involving participants in the "London PPE Supply and Procurement Chain" group; and/or (as appropriate, according to the nature of the matter)
- 5.1.2 daily telephone calls involving participants in the "Strategic Command Group", including relevant chief executives and sub-regional leads.

## **6 Dispute Resolution**

- 6.1 In the event of any dispute arising between any of the parties to this MoA in relation to the arrangements envisaged by this MoA and, for whatever reason, it is not appropriate for that dispute to be dealt with through the “Strategic Command Group” discussions referred to in paragraph 5.1.2 above, the dispute will be referred to the chief executives of the relevant disputing parties for separate discussion and resolution.