

**Crown Commercial Service**

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**Supply Contract**

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**Department For Education (DfE) Contract Ref: CON\_12486**

**THIS AGREEMENT is made on the 14/12/2021**

**PARTIES:**

- (1) **The Department for Education** [acting as part of the Crown] (the "**Purchaser**"); and
- (2) **Rexel UK Limited**, which is a company, incorporated in and in accordance with the laws of **England & Wales** (Company No. **00434724** whose registered office address is at Eagle Court 2, Hatchford Brook, Hatchford Way, Sheldon, B26 3RZ (the "**Supplier**").

**BACKGROUND**

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for supply of building materials for the benefit of public sector bodies.
- (B) The Supplier was appointed to the framework and executed the framework agreement which is dated 27<sup>th</sup> July 2021 (the "**Framework Agreement**").
- (C) On the 03/12/2021 the Purchaser, acting as part of the Crown, and in the Framework Agreement is identified as a "Contracting Authority", invited the Supplier along with other framework suppliers to tender for the Supplier's Air Filtration Devices in accordance with the Call Off Procedure (as defined in the Framework Agreement).

On the 08/12/2021 the Supplier submitted a tender response and was subsequently selected by the Purchaser as the winner.]

- (D) The Supplier has agreed to supply the Products in accordance with the Contract and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. The Purchaser will pay the Supplier the amount due in accordance with the Conditions.
2. The Supplier will supply and deliver and install (if applicable) the Products in accordance with the Conditions.

**Executed under hand**

For and on behalf of the Supplier:		For and on behalf of the Purchaser:	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	
Additional Supplier signatories (if required)			
Signature:			
Name:			
Role:			
Date:			

**PARTICULARS**

Products specification and quantity:

&lt;Redacted under S.43 of the FOIA&gt;

**HEPA Filtration Equipment Specification - FINAL**

HEPA Filtration			
Design Parameters	Room type 1 ("unit 1")	Room type 2 ("unit 2")	Room type 3 ("unit 3")
Number of occupants	Up to 8	Up to 16	Up to 32
Equivalent Ventilation Rate (l/s/person)	6.25	6.25	6.25
Clean Air Delivery Rates* <sup>1</sup> (l/s)	50	100	200
Clean Air Delivery Rates* <sup>1</sup> (m <sup>3</sup> /hr)	180	360	720
Noise			
Sound power level limit, L <sub>WA</sub> , of a single unit at set point to achieve required flow rate / [dBA] <sup>2</sup>	≤ 43 dB L <sub>WA</sub>	≤ 46 dB L <sub>WA</sub>	≤ 49 dB L <sub>WA</sub>
Filtration			
Filtration to EN 1822:2019/ISO 29463 classification	HEPA H13 /ISO35H as the minimum		
- %age of airflow filtered	100%		
Pre-Filtration	ISO Coarse 60% (as specified by ISO 16890:2016)		
Replacement coarse and HEPA filters	Assuming 8 hours a day operation, 6 months' supply of filters provided. Maintenance requirements are to be specified and any associated risk assessments and user manuals supplied.		
Features			
Mountings	Free Standing - Floor Mounted Item's maximum dimensions (width, height, depth) to be provided.		
Desirable Length of Power lead	4m		
Power requirements	Mains Powered with 13A 240v Power Supply		
Ease of maintenance	Tools required for changing filters are provided and associated procedures and safety protocols are clearly described for changing filters (or lamps if included).		
Certification			
Pre-filter efficiency	Pre filter efficiency performance to ISO 16890:2016		
HEPA filter classification	HEPA filter classification to EN 1822:2019/ISO 29463		

Acoustics Performance	<ul style="list-style-type: none"> <li>UKAS-accredited (or equal and approved) acoustic laboratory test evidence that demonstrates that the sound power level from all units combined, measured with at least Engineering level accuracy according to BS EN ISO 3740: 2019 and associated series of Standards, meets the values identified above.</li> <li>This should identify the flow rates and associated sound power level for different operational conditions.</li> <li>If accredited laboratory tests are not available at the current time, alternative credible test data will be required as an interim for verification and validation of any claims made while awaiting UKAS accredited tests.</li> </ul>
Ultraviolet technology (if installed in the enclosed air cleaning unit) No other technologies will be accepted	<ul style="list-style-type: none"> <li>If the product emits UV, it must comply with BS EN 62471 (Photobiological safety of lamps and lamp systems).</li> <li>3rd party certification (e.g., external independent competent laboratory tests highlighting safety (non-ozone producing and no UV leakage as illustrated by a Risk Group Zero rating (Control of Artificial Optical Radiation at Work Regulations)))</li> <li>Independent biological performance documentation evidencing efficiency of microbial removal/reduction</li> <li>Provide details of UV dose and whether the UVGI is applied to the air stream or to a filter.</li> </ul>
Conformity Assessment	UKCA or CE marking and associated UK/EU Declaration of Conformity
<b>Sensors and controls</b>	
Sensor	Automatic Filter Sensor (i.e., filter performance warning) and pressure sensors to support optimal operation.
Controls	<ul style="list-style-type: none"> <li>The devices shall be under the control of the user</li> <li>User shall be able to set the device to automatically stop in hour increments up to 8 hours</li> </ul>
<b>Miscellaneous</b>	
Warranty	<ul style="list-style-type: none"> <li>Warranties must be provided in case of breakage or system failure that is not the fault of the consumer. Such Warranties must be to suit the operational life for the consumables, and these must be no less than 1 year.</li> </ul>
Deleterious Risks	<ul style="list-style-type: none"> <li>All solutions should be designed and demonstrates it, insofar as is reasonably practicable, obviates any: <ul style="list-style-type: none"> <li>Ozone Production or other harmful chemical by-products</li> <li>UV-C Leakage and any associated direct exposure to skin and eyes</li> <li>Damage to the surrounding environment</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Electrical Risk or Inefficient electricity consumption</li> <li>○ Fire risk</li> <li>• Item must be physically robust and tamper proof</li> <li>• Item must be suitable for an educational setting</li> </ul>
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**NOTES:**

\*1 The clean air delivery rate (CADR) is a commonly used metric that can be useful for comparing devices. In the absence of this test-derived data, the CADR can be estimated from the product data sheet:

$$CADR = \eta_f \times \dot{Q}$$

where  $\eta_f$  is the fractional removal efficiency of particles that pass through the device and  $\dot{Q}$  is the volumetric flow rate of air through the device (e.g. m<sup>3</sup>/hr).

\*2 The intentions of the performance requirement is that the sound pressure level,  $L_{Aeq}$ , in any space (from all units combined) does not exceed 40 dB  $L_{Aeq}$ . If N units are required, the limit for each is reduced by 10\*Log(N) dB. E.g., if two units are required (N = 2) the limit for each is 3 dB less than the values indicated in the table.

**Products to be installed:**

No; Products must be available to “plug and play” from out of the box.

**Test certificates or Products guarantees or warranties required:**

- (A) Minimum of 1 year warranty per device
- (B) All consumables/filters and any other products necessary for the device to function for a minimum period of 6 months (1,000 hours) is to be included with the device
- (C) Confirmation of delivery through signature upon receipt from the delivery location (school/educational setting)
- (D) The Supplier is to replace faulty items or “dead on arrival” (“DOA’s”) within a reasonable time of receipt of the returns documentation completed by the educational setting within 3 working days
- (E) The Supplier will provide a contact number and/or web access to educational settings so that they can arrange collection of any faulty items (or to arrange redelivery)
- (F) Conformance to the Product specification via evidence of the following is required:
  - i) Sound power level limit (acoustics performance) to UKAS-accredited (or equal and approved) acoustic laboratory test evidence demonstrating that the sound power level from all units combined (to meet the Room Type specification) is measured with at least engineering level accuracy recording to BS EN ISO 3740:2019 and associated series of standards
    - i. Where this is not available, alternative credible test data is to be supplied whilst verification/validation of any claims made while awaiting UKAS accredited tests
  - ii) Clean air delivery rates
  - iii) Filtration to EN 1822:2019/ISO29463 classification
  - iv) Pre filtration to ISO Coarse 60% as specified by ISO 16890:2016
  - v) Pre filter efficiency performance to ISO 16890:2016
  - vi) HEPA filter classification to EN 1822:2019/ISO 29463
  - vii) For products emitting UV
    - i. Compliance to BS EN62471
    - ii. 3rd party certification (e.g., external independent competent laboratory tests highlighting safety (non-ozone producing and no UV leakage as illustrated by a Risk Group Zero rating (Control of Artificial Optical Radiation at Work Regulations)))
    - iii. Independent biological performance documentation evidencing efficiency of microbial removal/reduction
    - iv. Provide details of UV dose and whether the UVGI is applied to the air stream or to a filter
  - viii) UKCA or CE marking and associated UK/EU declaration of conformity
  - ix) Warrant that the Product obviates any of the deleterious risks identified in the specification

**Price:**

A combination of the below Products will be supplied to achieve the optimum price and quality for educational settings. The Purchaser reserves the right to adjust the % split of the device models.

The total cost is £611,115.00 and the cost breakdown is as follows:

**<Table redacted under S.43 of the FOIA>**

**<Redacted under S.43 of the FOIA>**

**Payment method:**

## Invoicing

1. Payment terms are 30 days from date of invoice, invoiced weekly as per the deliveries made within that period (supported by the management information outlined)
2. Invoices to be issued electronically via pdf with supporting spreadsheet as per Obligation 1 (management information requirements)
  - PODS available to DfE via weblink or on request
3. Rebate scheme for Dyson supplied Products to be made via an agreed payment method.

## Invoice Address:

Commercial Directorate, Operations Group  
Bishops Gate House, Feethams, Darlington DL1 5QE  
[Accountspayable.dfe@education.gov.uk](mailto:Accountspayable.dfe@education.gov.uk)

## Delivery Address:

Delivery schedule to be provided by the Department for Education

## Delivery Date(s):

The entirety of the quantity of Products to be supplied under this Agreement shall be delivered by 14th January, if requested by the Purchaser via instruction/provision of the delivery addresses within 5 working days of the date of this Agreement.

## Passes for access to Purchaser's Premises

No passes required. Packages to be delivered to the reception of each delivery address where a signature will be obtained.

## Notice Details:

Purchaser: <Redacted under S.40 of the FOIA>

Address: Commercial Directorate, Operations Group  
Bishops Gate House, Feethams, Darlington DL1 5QE

E-mail: <Redacted under S.40 of the FOIA>

Supplier: Rexel

Address: Eagle Court 2, Hatchford Brook, Hatchford Way, Sheldon, B26

E-mail: <Redacted under S.40 of the FOIA>

Contract End Date: 12 months from last contract signature

## Purchaser's Authorised Representative:

<Redacted under S.40 of the FOIA>

Senior Representatives:  
For the Purchaser:

<Redacted under S.40 of the FOIA>



**For the Supplier:**

**<Redacted under S.40 of the FOIA>**

**Insurances:**

Public Liability (if higher than required under the Framework Agreement):

- £10,000,000 for each and every occurrence

Product Liability (if higher than required under the Framework Agreement):

- £10,000,000 for each and every occurrence

Professional Indemnity (if higher than required under the Framework Agreement):

- £1,000,000 for each and every occurrence

**Governing Law and Dispute Resolution**

Law: England & Wales

Litigation: Courts of England & Wales

Dispute Resolution: Negotiation, mediation, arbitration and Litigation applies as per the below Clause 34 Resolving Disputes

The below clause 34. RESOLVING DISPUTES will be applied, with clauses here to take precedence over clause 34. DISPUTE RESOLUTION:

**34. RESOLVING DISPUTES**

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Buyer refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

1. determine the Dispute
2. grant interim remedies
3. grant any other provisional or protective relief

34.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do

everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier cannot suspend the performance of the Contract during any Dispute.

## **SPECIAL CONDITIONS**

1. The Purchaser and Supplier have agreed to include an aggregate cap on the Supplier's liability under this Agreement as follows:
  - 1.1 Nothing in this Agreement terms shall limit or exclude the Supplier's liability for:
    - (a) death or personal injury caused by the Supplier's negligence, or the negligence of the Supplier's employees, agents or subcontractors (as applicable);
    - (b) fraud or fraudulent misrepresentation.
    - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
    - (d) defective products under the Consumer Protection Act 1987;
    - (e) any other matter that cannot be excluded or limited by law.
  - 1.2 Subject to paragraph 1.1 above, the Supplier shall not be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
    - (i) loss of profit, business, revenue, capital, anticipated savings and/or goodwill; or
    - (ii) any indirect or consequential loss;arising under or in connection with this Agreement.
  - 1.3 Subject to paragraphs 1.1 and 1.2 above, the Supplier's total liability to the Purchaser for all losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £5,000,000 (five million pounds) in the aggregate.
2. All delivery dates specified are subject to the Purchaser providing a full address and unique identifier per location together with required volumes per location at least 5 working days in advance of the delivery date.
3. Implementation and importance of delivery schedule accuracy
  - 3.1. Agreeing the implementation plan ("Delivery Dates")
    - 3.1.1. The implementation plan ("Delivery Dates" in the section above) is the delivery schedule submitted in the invitation to tender and the Supplier will use best endeavors to ensure adherence to this schedule.
  - 3.2. Following the implementation plan
    - 3.2.1. The Supplier shall perform its obligations in respect of delivery in accordance with the approved implementation plan (delivery schedule)
    - 3.2.2. Changes to any dates shall only be made via a variation to the Agreement agreed between both parties save where such date change has occurred due to circumstances outside of the Supplier's best control.
    - 3.2.3. Where the Supplier is responsible for the failure to achieve the overall project delivery date (once such date is confirmed) this shall constitute a material default of this Agreement.
  - 3.3. Delays
    - 3.3.1. If the Supplier becomes aware that there is, or is likely to be, a delay it shall:
      - Notify the Purchaser in writing within 1 working day of becoming aware, explaining the likely impact of the delay
      - Use all reasonable commercial endeavors to mitigate the effects of the delay, including complying with the Purchaser's reasonable instructions
      - Where the Supplier does not meet the overall project delivery dates (once such date is confirmed), the Purchaser shall reserve the right to cancel all or part of that order at the Purchaser's discretion and seek alternative supply from a different Supplier

## **Obligations**

The below table outlines the obligations of each party under certain areas to support contract delivery

All obligations must be provided from one party to the other as part of the implementation

**<Table redacted under S.43 of the FOIA>**

4. Service Levels and Key Performance Indicators

- 4.1. The Supplier shall, at all times, provide the Goods and/or Services in such a manner that the Service Levels outlined in Schedule 2 (Service Levels) are achieved.
- 4.2. If the level of performance of the Supplier of any element of the provision by it of the Goods and/or Services during the Term of the Agreement:
  - 4.2.1. is likely to or fails to meet any Service Level Performance Measure
  - 4.2.2. the Supplier shall immediately notify the Purchaser in writing and the Purchaser, in its absolute discretion and without prejudice to any other of its rights howsoever arising, may: (a) require the Supplier to immediately take all remedial action that is commercially reasonable to mitigate the impact on the Purchaser and to rectify or prevent a service level failure from taking place or recurring; and (b) if the action taken under (a) above has not already prevented or remedied the Service Level Failure, the Purchaser shall be entitled to instruct the Supplier to provide and comply with a rectification plan.
  - 4.2.3. Approval and implementation by the Purchaser of any rectification plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Purchaser.
5. The Supplier will adhere to the returns policy it has outlined in its tender submission dated 8<sup>th</sup> December 2021 in response to the invitation to tender received from the Supplier on 3<sup>rd</sup> December 2021.
6. The Supplier understands the importance of getting the Products to the Purchaser at the required time. However, the Supplier shall not be liable for any failures outside of its reasonable control (including for example, COVID-19 and Brexit related delays).
7. Any claims relating to wrong or faulty Products will only be accepted if it can be demonstrated that the Products do not perform as set out in the Product specification spreadsheet.
8. The Purchaser acknowledges that the specifications of the actual Products listed in the Particulars (as at the date of the Agreement) conform to the required Products Specification, set out the Particulars, and further acknowledges that the evidence required has been provided in line with item F (Test certificates or Products guarantees or warranties required) of the Products Specification section

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the words or expressions that begin with capital letters shall have the precise meanings as set out below:

1.1.1 **'Auditor'** is:

- (a) the Purchaser's internal and external auditors;
- (b) the Purchaser's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Purchaser to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

1.1.2 **'Authorised Representative'** means a person authorised by the Purchaser and stated in the Particulars or such other person as the Purchaser shall notify to the Supplier in writing to perform such role;

1.1.3 **'Commercially Sensitive Information'** means the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the Supplier, the charges for the goods or services, its IPR or its business or which the Supplier has indicated to the Purchaser that, if disclosed by the Purchaser, would cause the Supplier significant commercial disadvantage or material financial loss.

1.1.4 **'Conditions'** means these terms and conditions as may be varied by the Special Conditions;

1.1.5 **'Confidential Information'** means the Purchaser's Confidential Information and/or the Supplier's Confidential Information;

1.1.6 **'Contract'** means the agreement for the supply by the Supplier of quantities of the Products, formed of the Particulars and these Conditions;

1.1.7 **'Contracting Body'** means any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Purchaser;

1.1.8 **'Crown Body'** means any department, office or agency of the Crown;

1.1.9 **'Data Protection Legislation'** means (i) the GDPR, (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy, which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019;

1.1.10 **'DASVOIT'** means the Disclosure of Tax Avoidance Schemes: VAT and other indirect taxes contained in the Finance (No.2) Act 2017;

1.1.11 **'Delivery Address'** means the address for the delivery of the Products as identified in the Particulars or any other location notified by the Purchaser in writing;

1.1.12 **'Delivery Dates'** means the date(s) for completion of the delivery of the Products identified in the Particulars or any other dates notified by the Purchaser in writing;

- 1.1.13 **'Dispute'** means any dispute arising out of or in connection with the Contract;
- 1.1.14 **'DOTAS'** means the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
- 1.1.15 **'Environmental Information Regulations'** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;
- 1.1.16 **'FOIA'** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- 1.1.17 **'General Anti-Abuse Rule'** means:
- (a) the legislation in Part 5 of the Finance Act 2013 (as amended) and
  - (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions;
- 1.1.18 **'Halifax Abuse Principle'** means the principle explained in the CJEU Case C-255/02 Halifax and others;
- 1.1.19 **'Insolvent'** means in relation to the Supplier if:
- (a) a petition is presented, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction
  - (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise, composition or scheme of arrangement with its creditors or any class of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party; or
  - (c) any step (whether in or out of court) is taken, an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it (being a company); or
  - (d) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed, an administrative receiver; or
  - (e) a receiver (including an administrative receiver) appointed over the whole or any part of its property, assets or undertaking; or
  - (f) being an individual, it is the subject of a bankruptcy petition or order or enters into an individual voluntary arrangement, a deed of arrangement or any compromise, composition or scheme of arrangement with its creditors ; or
  - (g) any distress, execution, sequestration or other such process is levied or applied for in respect of the whole or any part of its property, assets or undertakings; or

- (h) any event occurs, or proceeding is taken, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (g) above;
- 1.1.20 **'Law'** means any and all requirements pursuant to any Act of Parliament, any instrument, rule or order made under any Act of Parliament, any subordinate legislation within the meaning of Section 21(i) of the Interpretation Act 1978, any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, or directives or requirements of any regulatory body with which the Supplier is bound to comply, mandatory guidance or code of practice, judgment of a relevant court of law, or any regulation or byelaw of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Project or Performance or the Products including without limitation any statutory provisions and any decision of a relevant authority or organisation thereunder which controls the right to develop the Site;
- 1.1.21 **'Material Breach'** means any substantial breach of the Contract by the Supplier where the Purchaser has served notice on the Supplier that it has four (4) weeks in which to rectify the breach and the Supplier fails to do so;
- 1.1.22 **'Occasion of Tax Non-Compliance'** means
  - (a) where any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of
  - (b) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
  - (c) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DAVOIT, DOTAS or VADR or any equivalent or similar regime and
  - (d) where any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of the Contract or to a civil penalty for fraud or evasion;
- 1.1.23 **'Performance'** means the manufacture, ordering of goods and materials for the Products and supply, delivery, unloading and (if applicable) installation of the Products and provision of all supporting information and documents for the purposes of the Contract;
- 1.1.24 **'Personal Data'** has the meaning given to it in the Data Protection Legislation;
- 1.1.25 **'Price'** means all sums payable to the Supplier for Performance and the Products which shall be as stated in the Particulars;
- 1.1.26 **'Products'** means all goods, materials and products to be supplied, delivered and (if applicable) installed as identified in this Agreement (including any component, part of or raw materials used in such goods);
- 1.1.27 **'Prohibited Act'** is
  - (a) to directly or indirectly offer, promise or give any person working for or engaged by the Purchaser or other Contracting Body or any other public body a financial or other advantage to induce that person to
    - (i) perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity;
    - (ii) directly or indirectly request, agree to receive or accept any financial or

other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

(iii) committing any offence under the Bribery Act 2010 (or any legislation repealed or revoked by such Act), under legislation or common law concerning fraudulent acts or defrauding, attempting to defraud or conspiring to defraud the Purchaser; or

(b) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;

1.1.28 **'Project'** means any construction works of which it is intended the Products will form a part or for which the Products will be used;

1.1.29 **'Purchaser Confidential Information'** means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the Purchaser, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

1.1.30 **'Purchaser's Premises'** are premises owned, occupied or leased by the Purchaser including any Site;

1.1.31 **'Relevant Requirements'** are all applicable Laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

1.1.32 **'Relevant Tax Authority'** means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Supplier* is established;

1.1.33 **'Request for Information'** means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations;

1.1.34 **'Requisite Consents'** means any and all relevant permissions, consents, approvals, licences, certificates and permits in relation to the Site or the Products and which term includes but is not limited to any modification, variation or amendment to any relevant Requisite Consent;

1.1.35 **'Senior Representatives'** means the persons named in the Particulars or such other person as a party shall notify to the other party in writing;

1.1.36 **'Site'** means any site which is the location of the Project;

1.1.37 **'Special Conditions'** means special conditions (if any) that may amend, modify or supplement these Conditions and which may be referenced or included by the Purchaser in the Particulars;

1.1.38 **'Supplier's Confidential Information'** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Subcontractors of the Supplier, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;

1.1.39 **'Supplier's Persons'** means the Supplier's contractors, consultants, suppliers, servants, agents, partners, workers and employees engaged in connection with the Contract;

1.1.40 **'VADR'** means the VAT disclosure regime under Schedule 11A of the Value Added Tax Act 1994 (VATA 1994) (as amended by Schedule 1 of the Finance (No. 2) Act 2005);



1.1.41 **'Variation'** means a variation, modification, omission, addition or other alteration (including but not limited to the nature, scope, quantity, subject matter, delivery arrangements, installation requirements or timing of Delivery Dates, or where a Term applies, additional orders for Products placed during the Term) to the Performance or the Products; and

1.1.42 **'Working Day'** means any day other than a weekend or public holiday.

1.2 In these Conditions, unless the context otherwise requires:

1.2.1 words in the singular shall include the plural and in the plural shall include the singular;

1.2.2 clause headings are inserted for convenience only and shall not affect the construction of these Conditions;

1.2.3 a reference to one gender shall include a reference to the other genders;

1.2.4 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time or it is in force as at the date of the Contract;

1.2.5 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time and/or as at the date of the Contract under that statute or statutory provision;

1.2.6 a reference to a 'person' includes any individual, firm, partnership, company and any other legal entity;

1.2.7 a reference to a party or the parties is a reference to a party or the parties to the Contract and references to a party shall include its successors in title and permitted assigns;

1.2.8 a reference to writing or written includes email, but not fax;

1.2.9 references to clauses or Schedules are to the clauses or Schedules of the Contract;

1.2.10 any words following the terms including, include, includes, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms and the use of the words 'other' or 'otherwise' shall not be construed as having a limiting effect.

## **2. BASIS OF THE CONTRACT**

2.1 The Supplier agrees to supply the Products in accordance with the Conditions and the Framework Agreement. Any terms and conditions of the Supplier are superseded, are of no effect and do not form part of or apply to the Contract in any circumstances unless and to the extent incorporated as Special Conditions.

2.2 The terms and conditions of the Contract may only be amended or varied in writing and signed by the Authorised Representative. Any other purported variation shall be of no effect.

2.3 Notwithstanding the date the Purchaser and the Supplier enter into the Contract, any Performance by or on behalf of the Supplier prior to the date of the Contract in anticipation of the Purchaser entering into the Contract with the Supplier shall be treated as forming part of the Performance under the Contract and shall be subject to the terms of the Contract. Any monies already paid as at the date of the Contract by the Purchaser to the Supplier in connection with Performance shall be treated as payments on account of the Price.

## **3. GENERAL OBLIGATIONS AND WARRANTIES**

3.1 The Supplier warrants to the Purchaser that the Products:

3.1.1 will be of sound and satisfactory quality and fit for all purposes for which the Products are commonly supplied and/or for any special purposes which are notified to the Supplier;

- 3.1.2 will correspond with any specification provided to the Supplier by the Purchaser;
  - 3.1.3 will correspond with any sample provided by the Supplier;
  - 3.1.4 will be free from defects in design, material and workmanship;
  - 3.1.5 will comply with all and will not contravene any Requisite Consents or Law relating to the manufacture and sale of materials and goods, product safety, packaging, labelling and hazardous substances (including the appropriate British Standard and Codes of Practice or equivalent specification unless otherwise agreed);
  - 3.1.6 will comply with the general requirements of safety in terms of risk presented to the health and safety of persons.
- 3.2 The Supplier shall ensure that all product information relating to the Products provided by the Supplier and all product information provided to the Supplier by its suppliers and sub-contractors complies with the Code for Construction Product Information issued by the Construction Products Association.
- 3.3 So far as it is able, the Supplier will pass on to the Purchaser or procure for the Purchaser the benefits of any warranties or guarantees given by any third party supplier in relation to the Products.
- 3.4 Insofar as the Supplier is responsible for the design of the Products or any part thereof it warrants and undertakes to the Purchaser that it shall in carrying out such design exercise the reasonable skill and care to be expected of a properly qualified and competent designer experienced in producing goods of a similar size, scope and complexity as the Products.
- 3.5 If the Supplier is responsible for installation of the Products, the Supplier warrants that it will comply with its obligations under the Construction (Design and Management) Regulations 2015.
- 3.6 The Supplier warrants to the Purchaser that the Supplier has not used and will not use and has exercised and will continue to exercise the level of skill and care referred to in clause 3.4 to see that it has not specified and will not specify for use in the Products any substances and materials not in conformity with any relevant British Standards or Codes or Practice or which are generally known to the UK building industry at the time of specification or use to be deleterious to health and safety or to the durability of the Products in the particular circumstances in which they are used, or which are not used in accordance with the guidance contained in the publication "Good Practice in the Selection of Construction Materials" (2011, British Council of Offices).
- 3.7 The Supplier shall ensure that copies of any test certificates or product guarantees or warranties referred to in the Particulars (or otherwise required under any Law or by a regulatory body or as part of any Requisite Consents) are provided to the Purchaser upon delivery of the Products.
- 3.8 The Supplier shall ensure that all product information relating to the Products complies with the Code for Construction Product Information issued by the Construction Products Association.
- 3.9 The Supplier shall provide as built drawings, operating instructions, maintenance manuals, fabrication reports and the like are provided to the Purchaser upon delivery and/or installation (if applicable) of the Products.
- 3.10 The Supplier shall ensure that the Products will be safe and delivered in a safe manner and accompanied by comprehensive instructions as to the use, handling, installation, storage and safety of the Products including all information required for the Purchaser to comply with the Control of Substances Hazardous to Health Regulations 2002 as amended by the Control of Substances Hazardous to Health (Amendment) Regulations 2004.
- 3.11 The Supplier shall ensure that all duties and obligations under any Law which relate to the manufacture and/or use of the Products (including but not limited to any legal requirements imposed under the Factories Act 1961 or regulations made thereunder and the requirements of Section 6 of the Health and Safety at Work etc. Act 1974 as amended) are satisfied and keep the Purchaser indemnified against all penalties and liability of any kind for breach of any Law.

- 3.12 The Supplier shall use best endeavours to ensure that all spare and/or replacement parts, components and materials for the Products shall be available from the Supplier for twelve (12) years from date of delivery by the Supplier of the Products in question.

#### **4. PRICES AND PAYMENT**

- 4.1 In consideration of the satisfactory supply, delivery and installation (if applicable) of the Products, the Purchaser shall pay to the Supplier the Price in accordance with and subject to these Conditions. Subject to payments in respect of Variations pursuant to clause 5, the Price shall be:
- 4.1.1 Fixed, subject to any indexation adjustment in accordance with Schedule 12 of the Framework Agreement;
  - 4.1.2 exclusive of any applicable VAT (which shall be payable by the Purchaser subject to receipt of a VAT invoice); and
  - 4.1.3 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery and unloading of the Products to the Delivery Address and any duties or levies other than VAT.
- 4.2 The rates and prices stated in the Particulars are deemed to be sufficient to cover all the Supplier's obligations in relation to the Products and Performance whether express or implied and without prejudice to the generality of the foregoing where the Products (or any part thereof) or Performance is to be performed otherwise than at the Supplier's premises then the Supplier shall be deemed to have satisfied itself as to all local conditions requirements or difficulties or any other factors which may in any way affect the Performance or the Products.
- 4.3 No increase in the Price may be made without the prior written consent of the Purchaser signed by the Authorised Representative.
- 4.4 The Supplier may submit an invoice to the Purchaser:
- 4.4.1 after delivery of the Products (or where the Products are delivered in tranches, after delivery of each tranche); or
  - 4.4.2 where the Products are to be installed, after completion of the installation of the Products (or where the Products are delivered and installed in tranches, after installation of each tranche).
- 4.5 The Supplier shall provide a separate invoice for each individual delivery and installation (if applicable) to the Purchaser. The Supplier's invoice shall attach a copy of the receipted advice note as referred to in clause 10.7.
- 4.6 The Supplier's invoice shall set out:
- 4.6.1 the contract date and/or number;
  - 4.6.2 a description including quantity of the Products;
  - 4.6.3 a breakdown of the amount invoiced clearly showing the amounts charged for Products supplied;
  - 4.6.4 the total value of the invoice indicating the materials and labour element separately where applicable; and
  - 4.6.5 Value Added Tax shown separately.
- 4.7 The Purchaser shall be entitled to deduct from the Price:
- 4.7.1 the unit price for such proportion of the Products as may be defective and rejected by the Purchaser together with the costs of returning such Products to the Supplier;

- 4.7.2 any amount which is disputed by the Purchaser, pending resolution of such dispute.
- 4.8 The final date for payment of each invoice shall be thirty days after the invoice is received by the Purchaser.
- 4.9 If the Purchaser fails to pay a sum due to the Supplier by the final date for payment, simple interest shall be added to the unpaid sum from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of three per cent (3%) above the Bank of England Base Rate. The Parties acknowledge that the liability of the Purchaser under this clause is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.10 The Supplier must facilitate payment by the Purchaser of the Price under the Contract under any method agreed with the Purchaser in the Particulars. The Supplier must facilitate a change of payment method during the term of the Contract. The Supplier shall not charge the Purchaser any fees for the use of any payment method or for a change of payment method during the term of the Contract.

## **5. CHANGES/VARIATIONS**

- 5.1 The Purchaser may request Variations by way of an instruction to the Supplier in writing. If a Term applies the Purchaser may not request Variations for additional orders for Products after expiry of the Term.
- 5.2 Variations shall be valued by agreement between the Purchaser and the Supplier or, if they fail to agree, in accordance with the rates and prices in the Particulars or (if no applicable rates and prices exist) such prices as shall be fair and reasonable in the circumstances.
- 5.3 The Supplier shall carry out any Variations required by the Purchaser.
- 5.4 In the event a Variation results in any works, services, goods, materials, plant or equipment being omitted from the Contract, the Price shall be reduced by an appropriate sum in accordance with clause 5.2. The Purchaser shall not be liable to the Supplier for any costs, losses, damages or expenses accrued, suffered or incurred by the Supplier arising from such omission save for the reasonable costs of materials, goods and manufacture incurred by the Supplier prior to the instruction of the omission.

## **6. ASSIGNMENT/SUB-CONTRACTING/THIRD PARTIES**

- 6.1 The Supplier shall not sub-let all or any part of the Contract or assign or charge all or any part of the Contract or any rights or benefits under it without the Purchaser's prior written consent (such consent not to be unreasonably withheld or delayed).
- 6.2 The Supplier will remain responsible and liable for all the design, manufacture, supply, delivery, works, obligations and duties it sub-lets to a third party as if the Supplier had performed such design, manufacture, supply, delivery, works, obligations and duties itself. Any sub-letting of part or all of the Contract or any obligations or duties under it, whether or not the Purchaser has given its consent, shall not in any way relieve the Supplier from or reduce any of its obligations, duties and liabilities arising from or in connection with the Contract.
- 6.3 The Purchaser may assign the benefit of or any rights under the Contract to any department, office or agency of the Crown or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the Purchaser. No other assignment is permitted without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.
- 6.4 The Supplier shall not be entitled to contend that any person to whom the Contract is assigned in accordance with this clause is precluded from recovering under the Contract any loss incurred by such assignee resulting from any breach of the Contract (whenever happening), by reason that such person is an assignee and not a named party under the Contract or by reason that the Purchaser or any intermediate assignee or party escaped any loss by reason of the disposal of

any interest in the Project or that the Purchaser or any intermediate beneficiary has not suffered any or as much loss as such assignee.

- 6.5 So far as it is able, the Supplier will procure for any other party notified by the Purchaser to the Supplier the benefits of any warranties or guarantees given by any third party supplier in relation to the Products.

## **7. PURCHASER'S DRAWINGS AND INFORMATION**

- 7.1 No drawings, designs, specifications, know how or other information provided in connection with the Contract by the Purchaser or its servants or agents (including all features whether patented or patentable or not and whether separately or collectively shown) nor any other intellectual copyright matter so provided may be reproduced in whole or in part nor used for any purpose other than the execution of the Contract. All such drawings, designs and other matters are provided on loan only to the Supplier and the Supplier shall return them to the Purchaser following a request by the Purchaser.

## **8. INSPECTION AND TESTING**

- 8.1 The Purchaser and its representatives shall at all reasonable times be granted access to any premises (including those of the Supplier's suppliers) and be allowed to inspect and test (or on the Purchaser's request, re-inspect or re-test) the Products at any time prior to acceptance of delivery.
- 8.2 The Supplier shall make available (at its own expense where the requirement for the inspection or testing was indicated in the Particulars) all tools, instruments, apparatus, facilities, services and materials necessary for carrying out tests on the Products as may be required by the Purchaser.
- 8.3 Where reasonably practicable not less than fourteen (14) days' notice shall be given to the Purchaser that the Products or any part thereof are ready for inspection and/or testing.
- 8.4 Neither inspection, testing nor acceptance of any of the Products nor any waiver of any rights in respect thereof by the Purchaser shall release the Supplier in any respect from any of its obligations under the Contract or otherwise including without limitation its responsibility for any defects subsequently found in materials and/or workmanship.
- 8.5 Where following testing or inspection any Products appear to be defective, faulty or not in accordance with the Contract the Purchaser shall have the right to reject such Products and the provisions of clause 9 shall apply.
- 8.6 The Supplier shall deliver to the Purchaser certificates of analysis, tests, inspection or origin and information relating to the components, parts or raw materials used in the manufacturing of the Products as may be required by the Purchaser or by Law not later than the delivery of the Products to which they relate.
- 8.7 The Supplier's obligations under the Contract shall not be affected by:
- 8.7.1 any power or duty of the Purchaser or any other third party who has a material interest in the Project to grant or withhold approval of or object to any matter in connection with the Project or to inspect any part of the Site or the Products; or
- 8.7.2 the grant or failure to grant such approval or the making of or failure to make such objection or any such inspection of or failure to inspect any part of the Site or the Products.

## **9. MAKING GOOD DEFECTS AND RIGHT OF REJECTION**

- 9.1 If at any time prior to the date 12 months after the date of completion of delivery and unloading and (if applicable) installation in accordance with the provisions of the Contract (whichever is the later) the Purchaser or its representatives considers any of the Products or any installation (if applicable) of the Products to be defective in quality of material, workmanship or design and/or to be not in accordance with the Contract the Purchaser may reject any such Products or installation work. In the event of such rejection the Purchaser shall be entitled to require the Supplier at the

Supplier's cost to replace any Products in their entirety or make good such Products and/or installation work by repair or replacement.

- 9.2 If the Supplier fails to repair or replace any such Products and/or repair such installation work within a reasonable period of time, the Purchaser shall (without prejudice to any other rights it may have under the Contract) be entitled to procure substitute Products from a third party, or rectify any defects in the Products and/or installation work itself or engage a third party to carry out such rectification. The Supplier shall be responsible for any and all costs, losses, damages and expenses suffered or reasonably incurred by the Purchaser arising from or in consequence of the Supplier's failure to replace any Products or make good any Products and/or installation work.
- 9.3 Where the Purchaser rejects any Products it shall so notify the Supplier in writing and upon issuing such notification, property and risk in any such rejected Products shall revert to the Supplier and the Purchaser shall be entitled to a full refund of the Price relating to such rejected Products if the Purchaser has paid for such Products. If such Products have already been delivered, the Supplier shall make arrangements with the Purchaser for the collection of such Products at the Supplier's own expense.
- 9.4 The Purchaser's rights and remedies under these Conditions are in addition to the rights and remedies available to the Purchaser in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample incorporated into the Contract.
- 9.5 The terms of the Contract shall apply to any repaired or replacement Products supplied by the Supplier.

## **10. COMPLETION, DELIVERY AND INSTALLATION**

- 10.1 The Supplier shall complete, deliver to, unload at and (if applicable) install the Products at the Delivery Address by the Delivery Dates in accordance with these Conditions.
- 10.2 Where the Delivery Date of the Products is to be specified after entering into the Contract, the Purchaser shall give the Supplier reasonable notice of the Delivery Date.
- 10.3 The Supplier shall report any delay or anticipated delay to delivery and/or installation (if applicable) and its cause to the Purchaser as soon as reasonably practicable and shall keep the Purchaser fully informed with dates of anticipated actual delivery and installation and shall use all reasonable endeavours to eliminate and/or reduce such delay or cause of delay. The Purchaser acknowledges and agrees that the Supplier shall not be liable for any losses resulting from any failure to meet the Delivery Dates caused by factors outside of the Suppliers (or its supply chains') reasonable control.
- 10.4 The Supplier shall report any delay or anticipated delay to delivery and/or installation (if applicable) and its cause to the Purchaser as soon as reasonably practicable and shall keep the Purchaser fully informed with dates of anticipated actual delivery and installation and shall use all reasonable endeavours to eliminate and/or reduce such delay or cause of delay.
- 10.5 The Supplier shall provide at its own expense such bar charts, suggested programmes and progress data as the Purchaser shall reasonably request from time to time.
- 10.6 Any of the Products (or any instalment or part of them) ready for delivery before the Purchaser requires delivery shall be stored by the Supplier at its own risk and expense.
- 10.7 Unless otherwise provided in the Contract the Supplier shall be responsible for despatch delivery (including packaging, loading and if so required unloading) to the Delivery Address.
- 10.8 The Products upon delivery shall be accompanied by an advice note showing the Contract number, date of delivery, the quantity, weight and full description of the Products delivered. The Supplier shall upon delivery obtain a receipt for the Products signed by an authorised signatory of the Purchaser
- 10.9 Once the Purchaser has had a reasonable opportunity to inspect the Products following delivery

and installation (where applicable) and has not identified any defects or faults in the Products or installation (where applicable), the Authorised Representative shall sign the delivery note to confirm that delivery has been effected and accepted and installation completed (where applicable). Such acceptance shall however not be construed as confirmation by the Purchaser that the Products delivered are of the correct quality, quantity, specification, materials, design and/or workmanship or that installation is in accordance with the Contract and shall in no way diminish the liability of the Supplier under the Contract.

- 10.10 Where the Contract specifies that the Supplier is responsible for installing the Products, the Supplier shall be responsible for installation of the Products at the dates and times specified in the Contract and such installation or removal will be carried out and completed:

10.10.1 in a good and workmanlike manner;

10.10.2 in accordance with any relevant specification;

10.10.3 using suitably qualified personnel;

10.10.4 in accordance with accepted industry standards; and

10.10.5 in accordance with Law, Requisite Consents and the Purchaser's reasonable on site rules, regulations and requirements from time to time in force.

- 10.11 Where the Contract specifies that the Supplier is responsible for installing the Products, the Supplier shall immediately and at its own cost make good any damage it may cause in the course of installing the Products. The Supplier shall completely remove all rubbish, surplus materials and temporary equipment and clear the surrounding areas.

## **11. PACKING AND MARKING**

- 11.1 Where the Products consist of more than one item of goods then each separate item must be tagged and indelibly marked with the Contract number, if appropriate. All items shall be carefully packed and protected to protect against damage in transit in such a way as to facilitate rational and economical off-loading. All costs of packing, tagging, marking etc are included in the Price and no packaging is returnable by the Purchaser unless otherwise agreed by the Purchaser in writing signed by the Authorised Representative or specified in the Particulars. The Supplier warrants that all packing, packaging and marking complies with all Law.

## **12. LIENS**

- 12.1 The Supplier agrees to waive any right to exercise a lien upon the Products or upon any materials, component parts, work in progress and, relevant drawings and acknowledges that its sole remedy in the event of any breach by the Purchaser of its obligations under the Contract is to seek financial relief through the courts. As and when required by the Purchaser the Supplier shall give a certificate of waiver of lien, and of any other rights over the Products or to any injunctive or performance remedies to the Purchaser or to any third party nominated by the Purchaser.

## **13. SUSPENSION AND TERMINATION**

- 13.1 The Purchaser may instruct the Supplier to suspend Performance at any time and for any reason on reasonable notice. Where Performance has been suspended pursuant to this clause the Purchaser may at any time require the Supplier in writing to resume Performance of its obligations under the Contract in whole or in part and set reasonable new Delivery Dates for delivery of the Products and the Supplier shall as soon as reasonably practicable so resume Performance.
- 13.2 The Purchaser may terminate the Supplier's engagement under the Contract for convenience at any time by giving to the Supplier not less than seven (7) days' prior written notice. On expiry of such notice period, the Supplier's engagement under the Contract will terminate automatically.
- 13.3 In the event of termination under clause 13.2, the Supplier shall be entitled to invoice the Purchaser (to the extent not already invoiced) for all Products delivered to Delivery Address and installation works (if applicable) carried out up to the date of termination and the reasonable costs

of materials, goods and manufacture incurred by the Supplier prior to the notice of termination in relation to Products not yet delivered. The Purchaser shall not be liable to the Supplier for any losses, costs, damages, claims or expenses suffered or incurred by the Supplier arising from or in connection with such termination under clause 13.2 (and, without prejudice to the foregoing, the Purchaser shall not be liable to pay the Supplier any amounts in respect of loss of profit, loss of contract or loss of opportunity).

- 13.4 Without prejudice to the Purchaser's rights under clause 13.2, if any one or more of the following occurs then the Purchaser may give written notice to the Supplier to terminate the Supplier's engagement under the Contract and such termination shall take effect from the date of receipt by the Supplier of such notice:

13.4.1 Material Breach by the Supplier; or

13.4.2 a breach by the Supplier of the terms of any of clauses 17 or 18; or

13.4.3 the Supplier fails to progress the Contract at a rate of progress sufficient to meet the Delivery Dates; or

13.4.4 the Supplier refuses or fails to repair, replace or reinstate any defective Products or work; or

13.4.5 the Supplier fails to comply with any Law or Requisite Consents; or

13.4.6 the Supplier is Insolvent.

- 13.5 The Purchaser shall not be liable to the Supplier for any losses, costs, damages, claims or expenses suffered or incurred by the Supplier arising from or in connection with termination under clause 13.4 (and shall not be liable to pay any loss of profit, loss of contract, loss of opportunity). The Purchaser shall not be obliged to make any further payment to the Supplier once the Purchaser has given notice of termination under clause 13.4 until the Purchaser has received delivery of equivalent or replacement products to the Product from an alternative supplier or decided that it does not intend to order equivalent products from an alternative supplier. The Purchaser may deduct from any payment to the Supplier which is outstanding and/or to recover from the Supplier all additional costs and expenses which the Purchaser suffers or incurs in ordering and receiving delivery of equivalent or replacement products and any losses and/or damage arising from the termination.

- 13.6 In the event of any termination under clause 13.4, no forbearance whether by allowing an opportunity to rectify such default or breach or otherwise shall constitute a waiver of the Purchaser's rights to terminate. Termination of the Supplier's engagement under the Contract shall not affect the accrued rights and remedies available to either party as at the date of such termination.

- 13.7 If the Purchaser fails to pay any undisputed invoice by the within seven (7) days after the final date for payment, the Supplier may notify the Purchaser in writing. If the Purchaser does not pay the amount of the undisputed invoice by the date which is twenty one (21) days after the date of the Supplier's notice the Supplier may by further notice in writing terminate the Supplier's engagement under the Contract and such termination shall take effect from the date of receipt by the Purchaser.

- 13.8 In the event of termination under clause 13.7, the Supplier shall be entitled to invoice the Purchaser (to the extent not already invoiced) for all Products delivered to Delivery Address and installation works (if applicable) carried out up to the date of termination and the reasonable costs of materials, goods and manufacture incurred by the Supplier prior to the notice of termination in relation to Products not yet delivered plus profit thereon. Save as asset out in this clause 13.8 the Purchaser shall not be liable to the Supplier for any losses, costs, damages, claims or expenses suffered or incurred by the Supplier arising from or in connection with such termination under clause 13.7 (and, without prejudice to the foregoing, the Purchaser shall not be liable to pay the Supplier any amounts in respect of loss of profit, loss of contract or loss of opportunity).



- 13.9 In the event of termination pursuant to this clause 13, the Purchaser shall be entitled to request delivery of, and enter the Supplier's premises or any place where the Products are situated in whole or in part and take possession of, the whole or any part of the Products for which payment has been made by the Purchaser and remove the same and title thereto (insofar as the same shall not already be vested in the Purchaser) shall forthwith vest in the Purchaser.

#### **14. TITLE AND RISK**

- 14.1 Title and ownership in the Products and/or goods, materials or equipment forming part of the Product shall pass from the Supplier to the Purchaser on the earlier of:
1. 14.1.1 payment by the Purchaser for the Products; and
  2. 14.1.2 delivery of the Products.
- 14.2 The risk in the Products shall remain with the Supplier until completion of delivery and unloading and (if applicable) installation in accordance with the provisions of the Contract, whichever shall be later.
- 14.3 All Products and goods, materials or equipment forming part of the Products in which title has passed before delivery shall be:
- 14.3.1 clearly marked by the Supplier as the Purchaser's property and shall be stored separately from the Supplier's property;
  - 14.3.2 properly packaged to withstand freight handling and periods of storage as necessary; and
  - 14.3.3 insured in joint names with the Purchaser for their full replacement cost with a reputable insurer carrying on business in the United Kingdom and approved by the Purchaser.

#### **15. INDEMNITIES AND INSURANCES**

- 15.1 The Supplier shall be liable for and indemnify the Purchaser against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of reputation and all interest, legal and other reasonable professional fees, costs and expenses) accrued, suffered or incurred by the Purchaser arising out of or in connection with:
- 15.1.1 personal injury to or the death of any person arising out of or in the course of or caused by the Performance or supply of the Products, except to the extent that the same is due to any act or neglect of the Purchaser;
  - 15.1.2 any nuisance or interference with the rights of any third party (including rights of way, light, air or water) that are an avoidable consequence of the Performance or supply of the Products; and
  - 15.1.3 any loss, injury or damage to property (real or personal) arising out of or in connection with the Performance or supply of the Products and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Supplier or the Supplier's Persons.
- 15.2 The Supplier shall maintain insurance cover against such liabilities as are referred to below and shall provide to the Purchaser on reasonable request valid certificates of insurance in respect thereof or such other evidence of insurance as the Purchaser may reasonably require.
- 15.3 The Supplier shall have in force policies of insurance showing adequate cover with such insurers as the Purchaser may approve including:
- 15.3.1 insurance of the Products for their full replacement cost, such insurance to be maintained up until the point at which the Products have been delivered, unpacked, checked and accepted by and where the Products are being installed by the Supplier, such insurance shall also be maintained throughout the period of installation;

- 15.3.2 public liability insurance against all damage whether to persons or property belonging to the Purchaser or otherwise and whether occurring during the performance of the Supplier's obligations under the Contract or otherwise with a minimum cover as required under the Framework Agreement for each and every occurrence unless the Particulars specify a higher level of cover, such insurance to be maintained, up until the point at which the Products have been delivered, unpacked, checked and accepted by the Purchaser and where the Products are being installed by the Supplier, such insurance shall also be maintained throughout the period of installation;
- 15.3.3 product liability insurance with a minimum cover as required under the Framework Agreement for each and every occurrence unless the Particulars specify a higher level of cover, such insurance to be maintained for the period until twelve (12) years after the date on which the Products have been delivered, unpacked, checked and accepted by the Purchaser;
- 15.3.4 if the Supplier is responsible for design, professional indemnity insurance with a minimum cover as required under the Framework Agreement for each and every claim unless the Particulars specify a higher level of cover, such insurance to be maintained for the period until twelve (12) years after the date on which the Products have been delivered or (where applicable) installed.
- 15.4 The Supplier shall take out and maintain any other insurance which it is required to effect by law or statute and such other insurance which would be effected by a prudent supplier producing similar goods to the Products.

## **16. EQUALITY AND DIVERSITY**

- 16.1 The Supplier shall perform its obligations under the Contract in accordance with:
  - 16.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - 16.1.2 any other requirements and instructions which the Purchaser reasonably imposes in connection with any equality obligations imposed on the Purchaser at any time under applicable equality Law;
- 16.2 The Supplier shall take all necessary steps, and inform the Purchaser of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

## **17. BRIBERY ACT COMPLIANCE**

- 17.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the date of the Contract:
  - 3. 17.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act or
  - 4. 17.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 5. 17.2 During Performance the Supplier shall not:
  - 6. 17.2.2 commit a Prohibited Act and
  - 7. 17.2.3 do or suffer anything to be done which would cause the Purchaser or any of the Purchaser's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

8. 17.3 In Performance the Supplier shall:
9. 17.3.1 establish, maintain and enforce, and requires that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act,
10. 17.3.2 keeps appropriate records of its compliance with the Contract and make such records available to the Purchaser on request; and
11. 17.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Purchaser on request) to prevent it and any Supplier's people or any person acting on the Supplier's behalf from committing a Prohibited Act.
12. 17.4 The Supplier shall immediately notify the Purchaser in writing if it becomes aware of any breach of clause 17.1, or has reason to believe that it has or any of its people or subcontractors have
13. 17.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act,
14. 17.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act or
15. 17.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
16. 17.5 If the Supplier makes a notification to the Purchaser pursuant to clause 17.4, the Supplier shall respond promptly to the Purchaser's enquiries, co-operates with any investigation, and allow the Purchaser to audit any books, records and/or any other relevant documentation in accordance with the Contract.
17. 17.6 If the Supplier breaches Clause 17.4.3, the Purchaser may by notice require the Supplier to remove from Performances any person whose acts or omissions have caused the Supplier's breach.

## **18. MODERN SLAVERY ACT**

- 18.1 The Supplier shall comply and shall ensure that each of its employees, suppliers, sub-contractors, servants and agents shall comply with the Modern Slavery Act 2015.
- 18.2 The Purchaser may terminate the Supplier's engagement under the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 18.
- 18.3 The Supplier shall permit the Purchaser and its third party representatives, on reasonable notice, but without notice in case of any reasonably suspected breach of the Supplier's breach of this clause 18, to have access to and take copies of the Supplier's records and any other information (or those of the Supplier's Persons) and to meet with the Supplier or Supplier's Persons to audit the Supplier's compliance with its obligations under this clause 18.

## **19. ADMITTANCE TO PURCHASER'S PREMISES**

- 19.1 The Supplier shall submit to the Purchaser details of people who are to be employed by it and its sub-contractors and suppliers to deliver, unload and install the products. The details shall include a list of names and addresses, the capabilities in which they are employed, and other information required by the Purchaser.
- 19.2 The Purchaser may instruct the Supplier to take measures to prevent unauthorised persons being admitted to the Purchaser's Premises.

- 19.3 The employees of the Supplier and its sub-contractors and suppliers shall carry a Purchaser's pass and comply with all conduct requirements from the Purchaser whilst they are on the parts of the Purchaser's Premises identified in the Particulars.
- 19.4 The Supplier shall submit to the Purchaser for acceptance a list of the names of the people for whom passes are required. On acceptance, the Purchaser shall issue the passes to the Supplier. The Supplier shall return each pass to the Purchaser when the person no longer requires access to that part of the Purchaser's Premises or after the Purchaser has given notice that the person is not to be admitted to the Purchaser's Premises.
- 19.5 The Supplier shall not take photographs of the Purchaser's Premises or of work carried out in connection with the Products unless it has obtained the acceptance of the Purchaser.
- 19.6 The Supplier shall take the measures needed to prevent its and its sub-contractors' and supplier's employees servants and agents taking, publishing or otherwise circulating such photographs.

## **20. LEGISLATION AND OFFICIAL SECRETS**

- 20.1 The Supplier shall comply with Law in Performance under the Contract.
- 20.2 The Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to the Contract. The Supplier shall notify its employees and its sub-contractors and suppliers of their duties under these Acts.

## **21. CONFLICTS OF INTEREST**

- 21.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of its personnel are placed in a position where (in the reasonable opinion of the Purchaser) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or its personnel and the duties owed to the Purchaser under the Contract.
- 21.2 The Supplier shall promptly notify and provide full particulars to the Purchaser if such conflict referred to in clause 21.1 arises or may reasonably be foreseen as arising.
- 21.3 The Purchaser may terminate Supplier's engagement under the Contract for Material Breach and/or to take such other steps the Purchaser deems necessary where, in the reasonable opinion of the Purchaser, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Purchaser under the Contract.

## **22. PUBLICITY AND BRANDING**

- 22.1 The Supplier shall not:
- 22.1.1 make any press announcements or publicise the Contract in any way; or
- 22.1.2 use the Purchaser's name or brand in any promotion or marketing or announcement of the Contract
- without approval of the Purchaser.
- 22.2. The Purchaser is entitled to publicise the Contract in accordance with any legal obligation upon the Purchaser, including any examination of the Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## **23. FREEDOM OF INFORMATION**

- 23.1 The Supplier acknowledges that unless the Purchaser has notified the Supplier that the Purchaser is exempt from the provisions of the FOIA, the Purchaser is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The Supplier shall cooperate with and assist the Purchaser so as to enable the

Purchaser to comply with its information disclosure obligations.

**23.2 The Supplier shall:**

23.2.1 transfer to the Purchaser 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,

23.2.2 provide the Purchaser with a copy of all information in its possession, or power in the form that the Purchaser requires within five Working Days (or such other period as the Purchaser may specify) of the Purchaser's request,

23.2.3 provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser 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; and

23.2.4 procure that its sub-contractors and suppliers do likewise.

23.3 The Purchaser may determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

23.4 The Supplier shall not respond directly to a Request for Information unless authorised to do so by the Purchaser.

23.5 The Supplier acknowledges that the Purchaser may, acting in accordance with Cabinet Office Freedom of Information Code of Practice, be obliged to disclose information without consulting or obtaining consent from the Supplier or despite the Supplier having expressed negative views when consulted.

23.6 The Supplier shall ensure that all information is retained for disclosure throughout the period for which the Supplier retains liability under the Contract and shall permit the Purchaser to inspect such records as and when reasonably requested from time to time.

**24. CONFIDENTIALITY**

24.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each Party shall

24.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;

24.1.2 not disclose the other Party's Confidential Information to any other person without prior written consent;

24.1.3 immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information; and

24.1.4 notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

24.2 The clause above shall not apply to the extent that

24.2.1 such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

24.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- 24.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 24.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 24.2.5 it is independently developed without access to the other party's Confidential Information.
- 24.3 The Supplier may only disclose the Purchaser Confidential Information to the people who are directly involved in Performance and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality. The Supplier shall not, and shall procure that the Supplier's people do not, use any of the Purchaser Confidential Information received otherwise than for the purposes of the Contract.
- 24.4 The Supplier may only disclose the Purchaser Confidential Information to Supplier's people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Supplier's people causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with the Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Supplier's people, the Supplier shall provide such evidence to the Purchaser as the Purchaser may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Supplier's people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Supplier's people in connection with obligations as to confidentiality.
- 24.5 At the written request of the Purchaser, the Supplier shall procure that those members of the Supplier's people identified in the Purchaser's request signs a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 24.7 Nothing in the Contract shall prevent the Purchaser from disclosing the Supplier's Confidential Information
- 24.7.1 to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Supplier's Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
  - 24.7.2 to a professional adviser, contractor, consultant, supplier or other person engaged by the Purchaser or any Crown Body (including any benchmarking organisation) for any purpose connected with the Contract, or any person conducting an Office of Government Commerce Gateway Review,
  - 24.7.3 for the purpose of the examination and certification of the Purchaser's accounts,
  - 24.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchaser has used its resources,
  - 24.7.5 for the purpose of the exercise of its rights under the Contract or
  - 24.7.6 to a proposed successor body of the Purchaser in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,
- and for the purposes of the foregoing, disclosure of the Supplier's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Purchaser under this clause 24.7.
- 24.8 The Purchaser shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the Supplier's Confidential Information is disclosed pursuant to the above clause is made aware of the Purchaser's

obligations of confidentiality.

- 24.9 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.
- 24.10 The Purchaser may disclose the Supplier's Confidential Information
- 24.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
- 24.10.2 to the extent that the Purchaser (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

## **25. TAX COMPLIANCE**

- 25.1 The Supplier represents and warrants that at the date of the Contract, it has notified the Purchaser in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 25.2 If, at any point prior to the defects date, an Occasion of Tax Non-Compliance occurs, the Supplier shall
- 25.2.1 notify the Purchaser in writing of such fact within 5 days of its occurrence; and
- 25.2.2 promptly provide to the Purchaser details of the steps which the Supplier is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and such other information in relation to the Occasion of Tax Non-Compliance as the Purchaser may reasonably require.

## **26. FAIR PAYMENT**

- 26.1 The Supplier shall include in the contract with each sub-contractor or supplier:
- 26.1.1 a period for payment of the amount due to the sub-contractor or supplier not greater than 5 days after the final date for payment in the Contract; and
- 26.1.2 a provision requiring the sub-contractor or supplier to include in each sub-sub-contract the same requirement (except that the period for payment is to be not greater than 9 days after the final date for payment in the Contract).

## **27. RECORDS, DATA AND OPEN BOOK ACCESS**

- 27.1 The Supplier shall keep and maintain for the period for which the Supplier retains liability under the Contract full and accurate records and accounts of the operation of the Contract including the goods and services provided under it, any subcontracts and the amounts paid by the Purchaser.
- 27.2 The Supplier shall:
- 27.2.1 keep the records and accounts referred to in clause 27.1 in accordance with Law
- 27.2.2 afford any Auditor access to the records and accounts referred to in clause 27.1 at the Supplier's premises and/or provides records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any Auditor from time to time during Performance and the liability period under the Contract in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its sub-contractors and suppliers of any of the Supplier's obligations under the Contract including in order to:
- 27.2.2.1 verify the accuracy of any amounts payable by the Purchaser under the Contract

(and proposed or actual variations to them in accordance with the Contract);

27.2.2.2 verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with Performance;

27.2.2.3 identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Purchaser has no obligation to inform the Supplier of the purpose or objective of its investigations;

27.2.2.4 obtain such information as is necessary to fulfil the Purchaser's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

27.2.2.5 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchaser has used its resources;

27.2.3 subject to the Supplier's rights in respect of Supplier's Confidential Information, the Supplier shall provide the Auditor on demand with all reasonable co-operation and assistance in respect of:

27.2.3.1 all reasonable information requested by the Purchaser within the scope of the audit;

27.2.3.2 reasonable access to sites controlled by the Supplier and to any Supplier's equipment used in Performance;

27.2.3.3 access to the Supplier's personnel.

27.3 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 27, unless the audit reveals a default by the Supplier in which case the Supplier shall reimburse the Purchaser for the Purchaser's reasonable costs incurred in relation to the audit.

27.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Supplier and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Supplier is not a function exercisable under the Contract.

## **28. DATA PROTECTION**

28.1 The Purchaser and the Supplier shall comply with the provisions of Schedule 1.

## **29. WAIVER**

29.1 Any agreement by the Purchaser to waive any obligation or liability of the Supplier will only be effective if in writing, refers to the Contract and this clause and is signed by the Authorised Representative. Failure to exercise, or any delay in exercising any right or remedy by the Purchaser provided under the Contract or by law shall not constitute a waiver by the Purchaser of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy by the Purchaser.

29.2 Except as expressly set out in clause 29.1, no waiver, forbearance or release by the Purchaser or its employees, servants, suppliers or agents shall in any way derogate, limit or reduce the Supplier's duties and obligations in connection with the Contract.

## **30. FURTHER ASSURANCES**

30.1 The Supplier agrees to execute and deliver such documents and instruments and take such further actions as the Purchaser may, from time to time, reasonably request in order to effectuate



the purposes and to carry out the terms of the Contract.

### **31. SEVERANCE**

- 31.1 If any term or condition of the Contract is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable by law it shall be severed and deemed to be deleted from the Contract and the validity and enforceability of the remainder of the Contract shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of the Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.

### **32. NOTICES**

- 32.1 Any notice to be given under or in connection with the Contract shall be sent to the relevant party's contact details as referred to in the Particulars or such other contact details as may be notified in writing by either party from time to time. Subject to clause 32.2, a notice is deemed to be received:
- 32.1.1 if delivered personally, on delivery, provided delivery is between 9.00am and 5.00pm on a Working Day (otherwise, delivery will occur at 9.00am on the next Working Day); and
- 32.1.2 if sent by Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery, at the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm); and
- 32.1.3 if sent by email, at 9.00am on the first Working Day after sending.
- 32.2 In the case of a notice given pursuant to this clause 32 where this occurs:
- 32.2.1 after five (5) p.m. on a Working Day; and/or
- 32.2.2 on a day which is not a Working Day then the date of service shall be deemed to be the next Working Day

### **33. LIMITATION PERIOD**

- 33.1 Notwithstanding the manner in which the Contract has been entered into, the statutory contractual limitation period in respect of the Supplier's obligations and liabilities under the Contract shall extend to the expiration of twelve (12) years after the date of completion of Performance and delivery of all Products to the Purchaser under the Contract. For the avoidance of doubt, the provisions of the Limitation Act 1980 (and any subsequent amendment or re-enactment) relating to claims in contract are excluded and do not apply to claims, actions or proceedings by the Purchaser against the Supplier.

### **34. DISPUTE RESOLUTION**

- 34.1 If any dispute arises out of or in connection with the Contract it may be referred by either party to the Senior Representatives who will attempt to resolve it.
- 34.2 Either of the parties may elect (but will not be obliged) to refer a dispute which arises out of or in connection with the Contract to mediation.

### **35. GOVERNING LAW AND JURISDICTION**

- 35.1 The Contract shall be governed and construed in accordance with the law of England & Wales unless otherwise stated in the Particulars.
- 35.2 If stated in the Particulars, differences or disputes of whatever nature arising under the Contract shall be referred to and finally resolved by arbitration.

- 35.3 Unless otherwise stated in the Particulars the English and Welsh courts shall have exclusive jurisdiction (except for the purposes of enforcement of an English or Welsh court judgment or order in another jurisdiction) with regard to all matters arising from it.

## **SCHEDULE 1**

### **DATA PROTECTION**

The following definitions shall apply to this Schedule 1

**Agreement:** the Contract;

**Processor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

#### **1. GDPR CLAUSE DEFINITIONS:**

- 1.1 Data Protection Legislation : (i) the GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019;
- 1.2 Data Protection Impact Assessment : an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- 1.3 Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the Data Protection Legislation.
- 1.4 Data Loss Event : any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- 1.5 Data Subject Request : a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- 1.6 DPA 2018 : Data Protection Act 2018
- 1.7 GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019
- 1.8 Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing
- 1.9 Protective Measures: appropriate technical and organisational measures which may include: pseudonymisation and/or encryption of Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).
- 1.10 Sub-processor : any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

#### **2. DATA PROTECTION**

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Purchaser* is the Controller and the *Supplier* is the Processor unless otherwise specified in Schedule

- 2.2 The only processing that the Processor is authorised to do is listed in Annex A, part 2 by the Controller and may not be determined by the Processor.
- 2.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 2.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to Providing the Goods and Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Annex A, part 2 unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (v) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex A part 2);
    - (vi) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Controller;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 2.6 Subject to clause 2.5, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 2.7 The Processor's obligation to notify under clause 2.6 shall include the provision of further information to the Controller in phases, as details become available.
- 2.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 2.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer

than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 2.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub- processors.
- 2.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 2.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.16 Where the Parties include two or more Joint Controllers as identified in Schedule 1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 1 in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

**Annex A - Part 2: Schedule of Processing, Personal Data and Data Subjects Schedule 1**  
**Processing, Personal Data and Data Subjects**

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

1. The contact details of the Controller's Data Protection Officer are:  
**<Redacted under S.40 of the FOIA>**
2. The contact details of the Processor's Data Protection Officer are:  
**<Redacted under S.40 of the FOIA>**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the Controller, and the Supplier is the Processor in accordance with Clause 1.1.
Subject matter of the processing	The processing is needed to ensure that air filtration/cleaning devices can be delivered in the right quantities to the right settings.
Duration of the processing	The length of the contract.
Nature and purposes of the processing	The data being processed is to enable delivery of the devices to all educational settings.
Type of Personal Data being Processed	None
Categories of Data Subject	Educational settings.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The data will be destroyed/deleted 1-year after the completion of the contract so allow for the warranty period to expire.

**SCHEDULE 2**

**SERVICE LEVELS**

<Redacted under S.43 of the FOIA>