

## TERMS OF AGREEMENT

### DEFINITIONS

The expressions set out below shall have the meanings ascribed thereto:

- **"Call-Off Order"** means an official order in such form as may be issued by ESPO or the End User Establishment to the Contractor in respect of the supply of Goods/Services/Services.
- **"Commencement Date"** means 3<sup>rd</sup> December 2013 (or as otherwise advised).
- **"Confidential Information"** means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, intellectual property rights, know-how, personnel, customers and contractors/suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.
- **"Contract"** means the agreement entered into between ESPO/the End User Establishment and the Contractor embodying the letter of acceptance, Call-Off Orders, these conditions of contract, the Contractor's Tender, the Specification and Price Schedule.
- **"Contractor" or "Company"** means the operating entity that is selected to provide the Goods/Services / Services under the End User Agreement.
- **"Default"** means any breach of the obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this End User Agreement and in respect of which such party is liable to the other.
- **"EIR"** means The Environmental Information Regulations (EIR) 2004.
- **"End User Establishment"** means the authority that places a Call-Off Order with the Contractor for the supply of Goods/Services (this includes ESPO and eligible End User Establishments).
- **"ESPO"** means Eastern Shires Purchasing Organisation.
- **"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.
- **"Framework Agreement"** means the overarching contractual agreement between ESPO and the Contractor under which individual Call-Off Orders are placed by the End User Establishment with the Contractor for the supply of Goods/Services.
- **"Goods/Services"** means any products that are to be provided by the Contractor under the End User Agreement.

• **"Invitation to Tender"** means the Invitation to Tender issued to the Tenderer in response to a request following the publication of an OJEU notice for the procurement of Goods/Services.

• **"Parent Company"** means any company which is the ultimate holding company of the Contractor or any other company of which the ultimate holding company of the Contractor is also the ultimate holding company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term "holding company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto.

• **"Premises"** means the location occupied by the End User Establishment at which the Goods/Services are to be delivered.

• **"Price Schedule"** means the prices submitted within the price schedule in this invitation to Tender and subsequently reproduced for publication by ESPO.

• **"Representative"** means a Representative of the End User Establishment or the Contractor (as appropriately nominated).

• **"Rebate"** means a payment made by the Contractor to ESPO based on a percentage of total sales conducted under the End User Agreement. The Rebate payment is to be made once a year or at a time agreed with representatives of ESPO.

• **"Requests for Information"** shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR.

• **"Specification"** means the characteristics of the Goods/Services that the Contractor shall supply to meet the requirements of the End User Establishment

• **"Tender"** means the Tenderer's / Contractor's completed Tender submitted in response to the Invitation to Tender.

• **"Tenderer"** means an organisation that submits a completed Tender in response to this Invitation to Tender document.

• **"Term"** means the total period that the End User Agreement is in force from the Commencement Date.

For the avoidance of doubt in the event of any inconsistency between these End User Agreement Conditions of Contract and the End User Establishments call-off order conditions, then the End User Establishments call-off order conditions shall prevail.

In the event of any breach thereof, the End User Establishment shall be entitled to determine any arrangement made pursuant to such tender and to claim damages accordingly.

### 1 INTERPRETATIONS

- 1.1. The End User Agreement (and any subsequent Call-Off Orders from the End User Agreement) shall be governed by and construed in accordance with English law, and the English courts shall have

jurisdiction over any dispute or difference which shall arise out of or in connection with the End User Agreement/Call-Off Orders.

- 1.2. A reference to any act of parliament, or to any order, regulation, statutory instrument or the like shall be deemed to include a reference to any amendment or re-enactment of the same.

- 1.3. In the End User Agreement, unless the contrary intention appears:

- 1.3.1. words importing the masculine gender include the feminine gender, and
- 1.3.2. words in the singular include the plural and vice-versa; and
- 1.3.3. words importing a written notice or instruction include information transmitted by electronic means.

- 1.4. Headings are included for ease of reference of the End User Agreement Conditions of Contract and shall not affect the interpretation or construction of the End User Agreement.

### 2 SCOPE AND TERM OF THE END USER AGREEMENT

#### 2.1. NOT USED

- 2.2. The End User Agreement governs the overall relationship of ESPO and the Contractor with respect to the supply of Goods/Services.

- 2.3. The End User Agreement Conditions of Contract set out the terms on which the Contractor will service the End User Agreement.

- 2.4. The call-off order conditions will set out the terms that will apply to all Call-Off Orders that are entered into under the End User Agreement.

- 2.5. The Contractor shall supply the Goods/Services in accordance with the End User Agreement Conditions of Contract and the call-off order conditions.

#### 2.6. NOT USED

#### 2.7. NOT USED

#### 2.8. NOT USED

#### 2.9. NOT USED

### 3 FORM OF CONTRACT

#### 3.1. NOT USED

- 3.2. The End User Agreement will come into force on the Commencement Date and shall continue for the period of the End User Agreement unless terminated or determined earlier as provided for by these End User Agreement Conditions of Contract.

#### 3.3. NOT USED

### 4 DISCREPANCIES BETWEEN DOCUMENTS

- 4.1. The Contractor shall inform End User Establishment immediately if it becomes aware of any ambiguities or discrepancies between the End User Agreement/Call-off order conditions documents giving full details.

- 4.2. Any ambiguities or discrepancies found within the End User Agreement/Call-off order conditions document shall be resolved by ESPO who shall issue to the Contractor appropriate instructions.

- 4.3. Copyright in the End User Agreement/Call-off order conditions shall vest so far as it lawfully can in ESPO but the Contractor may obtain or make at its own expense any further copies required for use by the Contractor in the supply of the Goods/Services.

- 4.4. No third parties shall acquire any rights under this End User Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

#### 5 SUPPLY OF GOODS/SERVICES, SERVICES

- 5.1. Goods/Services Standard
- 5.1.1. The Contractor shall at all times during the performance of the End User Agreement and subsequent Call-Off Orders supply the Goods/Services to the End User Establishments satisfaction and in accordance with the requirements of each Call-Off Order, the specification and the Call-off order conditions.
- 5.1.2. The Contractor shall make good on the same day of its occurrence (or a time to be mutually agreed with the End User Establishment) any damage resulting from or arising out of the supply of the Goods/Services. In the event of the Contractor failing to make good such damage, the End User Establishment shall, within 1 week after giving written notice to the Contractor or after such shorter time as may be reasonable if the proposed work is urgently needed, be entitled to arrange for making good of any damage and in this event, the cost shall be a debt from the Contractor and shall be recoverable accordingly.
- 5.1.3. Where necessary the End User Establishment may require the Contractor to co-operate, liaise with, and co-ordinate its activities with those of any other Contractor(s) engaged by the End User Establishment and the Contractor shall comply with all such instructions reasonably given.
- 5.2. Call-Off Orders
- 5.2.1. Where the End User Establishment wishes to purchase Goods/Services from the Contractor under the End User Agreement it shall issue a Call-Off Order detailing the Goods/Services required based on the Contractor's Tender and the Specification. For the avoidance of doubt, the End User Establishment shall not be liable to pay for any Goods/Services delivered without a supporting Call-Off Order.
- 5.2.2. **NOT USED.**

#### 6 SUSPENSION AND RECTIFICATION

- 6.1. Notwithstanding any other provisions in the End User Agreement, where in the End User Establishments opinion: the Contractor has in any respect failed to meet the End User Agreement standard; the continuing provision of the Goods/Services represents a risk to any person or property; and/or the Contractor is in any other way in breach of any of its obligations under the End User Agreement, the End User Establishment shall be entitled to suspend delivery of the Goods/Services immediately and without liability to the Contractor (including without obligation to pay the Contractor) until such time as the matters raising the need for suspension of the Goods/Services have been resolved to the End User Establishment satisfaction.

#### 6.2. NOT USED

#### 7 THE CONTRACTOR'S OBLIGATIONS

- 7.1. The Contractor shall forthwith comply with any and all written instructions issued to it by the End User Establishment in respect of any matter relating to the supply of the Goods/Services, save that any instructions involving a fundamental change to the basis on which the Contractor tendered will be dealt with as variations.
- 7.2. Where the Contractor has referred to specific qualifications, licences, certificates, standards or memberships in their Tender, it shall inform ESPO and (if applicable) the End User Establishment immediately should these be withdrawn, lost or in any other way restricted.
- 7.3. Where ESPO deem that such withdrawal, loss or restriction affects the Contractor's ability to provide the Goods/Services it shall be entitled to remove the Contractor from the End User Agreement with immediate effect without any further liability to ESPO and / or the End User Establishment.

#### 8 MONITORING AND REPORTING

- 8.1. The Contractor shall:
- 8.1.1. appropriately manage the supply of Goods/Services for all Call-Off Orders by the End User Establishment under the End User Agreement;
- 8.1.2. **NOT USED**
- 8.1.3. on reasonable notice grant the End User Establishments internal and external auditors access to any relevant data or documentation relating to the End User Agreement (including but not limited to aspects regarding reliability, quality of repair, courteousness and professionalism of staff, training provisions, handling of enquiries and complaints and the volume and value of business conducted under the End User Agreement and any other financial and statistical information required) for the purpose of carrying out an audit.

#### 9 CONTRACTOR'S PERSONNEL

- 9.1. The Contractor shall select, employ, train, furnish and deploy in and about the performance of the End User Agreement only such persons as are of good character and who are appropriately skilled and experienced.
- 9.2. The Contractor and the Contractor's sub-contractors, staff and agents shall comply with all reasonable requirements of the End User Establishment.
- 9.3. The Contractor shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of clauses 9.1 and 9.2 above.
- 9.4. The Contractor, its agents, sub-contractors and suppliers shall employ sufficient staff to ensure that the Goods/Services are supplied at all times, including periods such as staff holidays, absence through sickness or any other cause.

#### 10 WARRANTIES AND REPRESENTATIONS

- 10.1. The Contractor warrants and represents that:
- 10.1.1. all Goods/Services supplied for purchase under this End User Agreement will carry (as a minimum) a 12 month warranty period.
- 10.1.2. the Contractor has full capacity and authority and all necessary consents (including but not limited to where its procedures so require the consent of its parent company) to enter into and perform the End User Agreement and that the End User Agreement is executed by the duly authorised representatives of the Contractor;
- 10.1.3. the Goods/Services shall meet the requirements of the Specification and Tender;
- 10.1.4. Goods/Services shall not infringe any intellectual property rights of any third party;
- 10.1.5. the Goods/Services shall be supplied by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 10.1.6. the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this clause) in accordance with its own established internal procedures; and
- 10.1.7. save where the End User Establishment is hiring any equipment, the End User Establishment shall acquire title to the Goods/Services free from all encumbrances and the End User Establishment shall have the right to quiet possession of the Goods/Services.
- 10.1.8.

#### 11 INSURANCE AND INDEMNITY

- 11.1. Each party shall each indemnify the other against all damages, losses, costs, compensation or expenses arising from the death or injury of any person and against all loss or damage to any physical property, to the extent that the same are due to any act, default or negligence of that party, their sub-contractors, servants or agents and against all

actions, claims demands or proceedings in respect thereof or in relation thereto.

- 11.2. Without prejudice to its liability to indemnify the End User Establishment, the Contractor shall take out and maintain:
- 11.2.1. Public & product liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, be not less than £5,000,000.
- 11.2.2. Employer's liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, be not less than £10,000,000.
- 11.3. **Tenderers should note that insurance levels may need to be increased/additional insurances required (i.e. professional indemnity etc.) dependent on individual customer requirements.**
- 11.4. Subject always to clause 11.1; in no event shall either party be liable to the other for:
- 11.4.1. loss of profits, business, revenue, goodwill or anticipated savings; and/or
- 11.4.2. indirect or consequential loss or damage.
- 11.5. The provisions of clause 11.3 shall not be taken as limiting the right of the End User Establishment to claim from the Contractor for:
- 11.5.1. additional operational and administrative costs and expenses howsoever caused; and/or
- 11.5.2. expenditure or charges rendered unnecessary as a result of any default by the Contractor.
- 11.6. Subject to the provisions of clauses 11.1, 11.2, 11.3 and 11.5 the liability of either party for defaults shall be subject to the financial limits set out in this clause (save where such damages relate to a claim for personal injury, death or fraud where the party's liability shall be unlimited).

#### 12 CONFIDENTIALITY

- 12.1. Each party:
- 12.1.1. shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
- 12.1.2. shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the End User Agreement or except where disclosure is otherwise expressly permitted by the provisions of this End User Agreement.
- 12.2. The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the End User Establishment under or in connection with the End User Agreement:
- 12.2.1. is given only to such of its staff, sub-contractors and agents engaged in connection with the End User Agreement and only to the extent necessary for the performance of the End User Agreement;
- 12.2.2. is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-contractors or agents otherwise than for the purposes of the End User Agreement.
- 12.3. Where it is considered necessary in the opinion of the End User Establishment, the Contractor shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with the End User Agreement.
- 12.4. The Contractor shall ensure that its staff, sub-contractors and agents are aware of the Contractor's confidentiality obligations under this End User Agreement.
- 12.5. The Contractor shall not use any Confidential Information it receives from the End User Establishment otherwise than for the purposes of the End User Agreement.

- 12.6. The provisions of clauses 12.1 and 12.2 shall not apply to any Confidential Information received by one party from the other:
- 12.6.1. which is or becomes public knowledge (otherwise than by breach of this clause);
  - 12.6.2. which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
  - 12.6.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 12.6.4. is independently developed without access to the Confidential Information; or
  - 12.6.5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA (Freedom of Information Act 2000), or the EIR (Environmental Information Regulations 2004) pursuant to clause 12.
- 12.7. Nothing in this clause shall prevent the End User Establishment from:
- 12.7.1. disclosing any Confidential Information for the purpose of the examination, audit and certification of the End User Establishment's accounts;
  - 12.7.2. disclosing any Confidential Information obtained from the Contractor to any person engaged in providing any Goods/Services to the End User Establishment for any purpose relating to or ancillary to the End User Agreement; (provided that in disclosing information under this clause the End User Establishment discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence).
- ### 13 DATA PROTECTION ACT 1998
- 13.1. In this clause "personal data" means personal data as defined in the Data Protection Act 1998 which is supplied to the Contractor by the End User Establishment or obtained by the Contractor in the course of performing the End User Agreement.
- 13.2. The Contractor shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998.
- 13.3. The Contractor shall not disclose personal data to any third parties other than:
- 13.3.1. to staff, sub-contractors and agents to whom such disclosure is reasonably necessary in order to perform the End User Agreement; or
  - 13.3.2. to the extent required under a court order (provided that disclosure under clause 13.3.1 is made with the approval of the End User Establishment and subject to written terms no less stringent than the terms contained in this clause and that the Contractor shall give notice in writing to the End User Establishment of any disclosure under clause 13.3.2 immediately it is aware of such a requirement).
- 13.4. The Contractor shall indemnify and keep indemnified the End User Establishment against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause by the Contractor and/or any act or omission of any staff, sub-contractor or agent.
- 13.5. The Contractor is required to comply with the obligations set out in Principle Seven of the Data Protection Act 1998.
- ### 14 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)
- 14.1. The Contractor acknowledges that the End User Establishment are subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the End User Establishment (at the Contractor's expense) to enable the End User Establishment to comply with these information disclosure requirements.
- 14.2. The Contractor shall, and ensure that its sub-contractors shall:
- 14.2.1. transfer any request for information to the End User Establishment as soon as practicable after receipt and in any event within two working days of receiving a request for information; and
  - 14.2.2. provide the End User Establishment with a copy of all information in its possession or power in the form that the End User Establishment requires within seven working days (or such other period as the End User Establishment may specify) of the End User Establishment requesting the information; and
  - 14.2.3. provide all necessary assistance as reasonably requested by the End User Establishment to enable the End User Establishment to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 14.3. The End User Establishment shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;
- 14.3.1. is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and
  - 14.3.2. is to be disclosed in response to a request for information and in no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the End User Establishment.
- 14.4. The Contractor acknowledges that the End User Establishment may be obliged under the FOIA or the EIR to disclose information;
- 14.4.1. without consulting the Contractor; or
  - 14.4.2. following consultation with the Contractor and having taken its views into account.
- 14.5. The Contractor shall ensure that all information produced in the course of the End User Agreement or relating to the End User Agreement is retained for disclosure and shall permit the End User Establishment to inspect such records as requested from time to time.
- 14.6. The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the End User Establishment may nevertheless be obliged to disclose Confidential Information in accordance with this clause 14.4.
- ### 15 SOCIAL RESPONSIBILITY
- 15.1. The Contractor agrees that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.
- 15.2. The Contractor shall in all matters arising in the performance of the End User Agreement comply with the provisions of the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995 and any regulations made hereunder.
- 15.3. The Contractor shall in all matters arising in the performance of the End User Agreement comply with the provisions of the Employment Equality (Age) Regulations 2006.
- 15.4. The Contractor must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2002 and shall ensure that they perform their responsibilities under this End User Agreement with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups.
- 15.5. The Contractor shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, and any other persons involved in, or receiving Goods/Services in the performance of the End User Agreement and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.
- 15.6. The Contractor supplying Goods/Services should ensure that all its employees are eligible to work in the UK.
- 15.7. The cost (if any) to the Contractor of complying with this clause shall be inclusive of the prices quoted within this Tender.
- ### 16 WEEE DIRECTIVE (2002/96/EC)
- 16.1. Where applicable. Tenderers are required to be fully compliant with the Waste Electronic and Electrical Equipment Directive. Also Tenderers are to provide details of the producer compliance scheme to which they are accredited.
- ### 17 AGENCY
- 17.1. The Contractor shall not in any circumstances hold itself out as being the servant or agent of the End User Establishment otherwise than in circumstances expressly or impliedly permitted by the End User Agreement.
- 17.2. The Contractor shall not in any circumstances hold itself out as being authorised to enter into any agreements or contracts on behalf of the End User Establishment or in any other way to bind the End User Establishment to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or impliedly permitted by this End User Agreement.
- 17.3. The Contractor shall not in any circumstances hold itself out as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.
- ### 18 LEGAL PROCEEDINGS
- 18.1. Immediately upon becoming aware of the same, the Contractor shall notify the End User Establishment of an accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the End User Agreement and where requested to do so by the End User Establishment shall assist with any legal proceedings or internal hearings giving evidence or providing documentation as necessary.
- ### 19 ANTI-CORRUPTION
- 19.1. The End User Establishment may terminate this Contract and recover all its loss from the Contractor if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:
- 19.1.1. offer, give or agree to give to anyone any personal inducement or reward in respect of this or any other the End User Establishment Contract (even if the Contractor does not know what has been done); or
  - 19.1.2. commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
  - 19.1.3. commit any fraud in connection with this or any other the End User Establishment Contract whether alone or in conjunction with contractors or employees.
- 19.2. Any clause limiting the Contractor's liability shall not apply to this clause.
- ### 20 FORCE MAJEURE
- 20.1. For the purposes of the End User Agreement the expression "force majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available.
- 20.2. Any act, event, omission, happening or non-happening will only be considered force majeure if it is not attributable to the wilful act, neglect or failure to

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take reasonable precautions of the affected party, its agents or employees.

20.3 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to force majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such force majeure event.

20.4 If either of the parties shall become aware of circumstances of force majeure which give rise to or which are likely to give rise to any such failure or delay on its part, it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

20.5 It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under the End User Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any End User Agreement, contract, supply arrangement, agreement or sub-contract or otherwise shall be regarded as a failure or delay due to force majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such End User Agreement, contract, supply arrangement, agreement or sub-contract or otherwise as a result of circumstances of force majeure.

20.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for force majeure hereunder.

#### 21 AMENDMENTS TO THE END USER AGREEMENT

21.1 This End User Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of End User Establishment and by a duly authorised representative of the Contractor on behalf of the Contractor.

#### 22 HEALTH & SAFETY

22.1 The Contractor shall fully comply with all relevant UK Health & Safety legislation, including the Working at Height Regulations 2005, and take into account and comply with individual site Health & Safety requirements and arrangements before commencing any work.

22.2 In all its activities, the Contractor must have regard to the health and safety of its own employees, the End User Establishments employees, and members of the public and others not in its employ. It is the Contractor's responsibility to provide suitable safety arrangements such as the erecting of barriers and signs necessary to safeguard the public and others and to take all reasonably practicable steps to ensure that they are not exposed to risks to their health and safety.

22.3 The Contractor must take all reasonable steps to ensure that all work is carried out with due regard to the health and safety of its own employees, agents and sub-contractors.

#### 23 USE OF BRAND NAMES

23.1 Where specific brand or trade names are mentioned within the item descriptions and specifications, this should not be taken to imply that other brands or makes of product would be unacceptable. Rather it is simply an indication of the brands currently being purchased and which have proved to be acceptable for the End User Establishment. Tenderers may offer alternative brands which meet the stated requirements.

23.2 Tenderers submitting offers do so on the understanding that, if nominated on the End User

Agreement, permission is granted for the use by the End User Establishment of the brand or trade names and/or literary descriptions that may be provided of products supplied or to be supplied in the communication of information about the End User Agreement to its member departments and/or other eligible users of the End User Agreement. Such communication may include, inter alia, the catalogues and other documents published periodically by the End User Establishment.

23.3 In the event that the Contractor ceases (for any reason) to supply the said products within the terms of the End User Agreement (for example if the Contractor applies to make an unacceptable variation to the End User Agreement), or fails on expiry of the End User Agreement to secure an award on the new End User Agreement, the Contractor accepts that the End User Establishment gives no guarantee that brand or trade names previously published in the manner described in clause 23.2 above will be withdrawn or deleted except in the course of the normal publication and distribution procedures carried out by the End User Establishment.

23.4 The provisions of 23.2 and 23.3 above will prevail whether or not the Contractor is the owner of the brand(s) or trade name(s) concerned.

23.5 Where the Contractor is not the owner of the brand(s) or trade name(s) concerned the Contractor warrants that they have secured the owners' agreement to their use as described in 23.3 and 23.4 above and agrees to indemnify the End User Establishment against any expense, liability, loss, claim or proceedings whatsoever arises from the use by the End User Establishment of such brand(s) or trade name(s) for general information purposes as described in 23.3 and 23.4.

#### 24 VARIATION OF GOODS

24.1 For all contracted items, the Contractor will be required to continue to supply the same item throughout the duration of the Framework Agreement unless varied as per clause 24.2.

24.2 Any variation to the item tendered (including packaging) must be made in writing to the Director of ESPO at least 6 weeks in advance of the proposed operative date of such variation.

24.3 An application for variation of the item will only be considered where written confirmation has been sent to ESPO. (The onus will be on the Contractor to progress any application they make for a variation).

#### 25 VARIATION OF PRICES / DISCOUNTS

25.1 Prices/discounts quoted must remain firm for the first 12 months of the Framework Agreement or for the first 12 months after any Framework Agreement extension is invoked. Any application for variation thereafter must be made in writing to the Director of Eastern Shires Purchasing Organisation, Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES, at least 6 weeks in advance of the proposed operative date of such variation.

25.2 No variation in the price of any goods will be accepted unless the Director of ESPO has accepted the price variation in writing.

25.3 Any price reduction will have immediate effect on all new business and must be notified to ESPO within 48 hours of it being known to the Contractor. Price decreases derived from market forces will be passed onto the User Establishment at the earliest practicable opportunity.

25.4 The prices and rates so entered will be binding on both parties during the continuance of the Framework Agreement. Unless specifically otherwise agreed, goods shall be priced in accordance with the relevant Call-Off Order, regardless of the date on which delivery is effected.

25.5 Contractors will endeavour to keep prices competitive throughout the life of this Framework Agreement.

#### 26 REBATE FEE

26.1 As a local authority based organisation, ESPO have a statutory obligation to recover all the costs of its operation. By agreement with the member authorities of ESPO, costs are recovered by means of a retrospective Rebate as a condition of contract at the amount stated in this Invitation to Tender.

26.2 In order to assist ESPO to ensure that the Framework Agreement is continuously improved, Contractors are required to keep records of all Call-Off Orders from under the Framework Agreement throughout the duration of the Framework Agreement.

26.3 As and when required (in some cases quarterly, six monthly or annually) Contractors will be required to submit reports of all business conducted under the Framework Agreement by the End User Establishments during the preceding trading period. Books of accounts must be supplied to ESPO in support of trading reports if so requested by ESPO.

26.4 The Contractor shall make payment of the Rebate fee to ESPO within 30 days of receipt of a valid invoice for the Rebate fee.

26.5 The End User Establishment will endeavour to annotate any Call-Off Order with the relevant Framework Agreement reference number, however this cannot be guaranteed on all Call-Off Orders.

26.6 Any disputes relating to the Rebate fee value shall be resolved between ESPO and the Contractor.

26.7 For the avoidance of doubt the Rebate fee shall be payable on all Call-Off Orders and will continue to be payable for the full Term of each Call-Off Order and any extensions thereto.

26.8 Without prejudice to any other remedies available, ESPO reserves the right to recover from the Contractor any reasonable administration charges incurred in pursuing unpaid Rebate fees.

26.9 ESPO shall also be entitled to charge interest on all outstanding Rebate fees at a rate of 2% above the base lending rate of National Westminster Bank Plc.

26.10 If any Rebate fee shall be unpaid for a period of 3 months then ESPO may remove the Contractor from the Framework Agreement forthwith on giving notice in writing to the Contractor.

#### 27 RECOVERY OF SUMS DUE

27.1 Wherever under this End User Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the End User Establishment in respect of any breach of this End User Agreement), then the End User Establishment may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this End User Agreement or under any other agreement or contract with the End User Establishment.

27.2 Any overpayment by the End User Establishment to the Contractor, whether of the Price or of Tax, shall be a sum of money recoverable by the End User Establishment from the Contractor.

27.3 The Contractor shall make any payments due to the End User Establishment without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the End User Establishment to the Contractor.

#### 28 LOCAL GOVERNMENT REORGANISATION

28.1 The parties acknowledge that during the Term of this End User Agreement the local government structure may be subject to change. These administrative changes may give rise to the need to terminate this End User Agreement and/or seek its potential variation with any successor or assign of the End User Establishment.

- 28.2 The End User Establishment shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.
- 29 EQUALITY**
- 29.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Equality Act 2006, the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 30 APPRENTICESHIPS AND SKILLS TRAINING**
- 30.1 The Contractor is required to take all reasonable steps to employ apprentices, and report to the End User Establishment the numbers of apprentices employed and wider skills training provided, during the delivery of this End User Agreement.
- 30.2 The Contractor is required to make available to its employees working on the End User Agreement, information about the Government's Apprenticeship programme and wider skills opportunities.
- 30.3 The Contractor shall provide any appropriate further skills training opportunities for employees delivering the End User Agreement.
- 30.4 The Contractor shall provide a written report detailing the following measures in the regular contract management process reporting quarterly and be prepared to discuss apprenticeships at contract management meeting:
- 30.4.1 The number of people during the reporting period employed on the End User Agreement, including support staff and sub-contractors;
- 30.4.2 The number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;
- 30.4.3 The percentage of all employees taking part in an apprenticeship programme;
- 30.4.4 If applicable, an explanation from the Contractor as to why they are not managing to meet the specified percentage target;
- 30.4.5 Actions being taken to improve the take up of apprenticeships;
- 30.4.6 Other training/skills development being undertaken by employees in relation to this End User Agreement including:
- (a) Work experience placements for 14 to 16 year olds
- (b) Work experience / work trial placements for other ages
- (c) Student sandwich/gap year placements
- (d) Graduate placements
- (e) Vocational training
- (f) Basic skills training
- (g) On-site training provision/facilities.
- 31 GOVERNMENT BUYING STANDARDS**
- 31.1 As a minimum, all goods supplied under this framework agreement will be compliant to the MANDATORY Government Buying Standards in force at the time of purchase and all subsequent future amendments/revisions.
- 32 ENVIRONMENTAL ISSUES**
- 32.1 The Contractor shall at all times comply with current environmental legislation.
- 32.2 The Contractor shall perform the End User Agreement in accordance with the End User Establishment's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 32.3 All reasonable precautions shall be taken by the Contractor to protect the health of human beings, creatures and plants, to avoid the pollution of water, land and air and safeguard the environment.
- 32.4 All costs associated with the Contractor complying with the requirements of clause 32 shall be deemed to be included in the End User Agreement Price and the End User Establishment shall not be liable for any additional costs other than those already set out in the Pricing Schedule.
- 33 TECHNICAL ADVICE**
- 33.1 Contractors must be able to provide specific technical advice (specifications, performance, suitability etc.) for all items tendered for and general advice on the type of equipment available in the market place.
- 34 ALTERNATIVE ITEMS**
- 34.1 For purchased items, Contractors must be able to exchange or rectify faulty purchased equipment efficiently during the guarantee period.
- 35 GUARANTEE PERIOD**
- 35.1 For purchased items, Contractors must be able to exchange or rectify faulty purchased equipment efficiently during the guarantee period.
- 36 LOAN EQUIPMENT**
- 36.1 For purchased items, a free loan piece of equipment must be supplied as replacement in the event of a breakdown during the guarantee period
- 36.2 For rented items, a free loan piece of equipment must be supplied immediately as replacement in the event of a breakdown during the guarantee period
- 37 MARKETING SUPPORT**
- 37.1 It is important that all possible opportunities are used to promote the existence of the framework agreement to the mutual benefit of all parties.
- 37.2 This framework agreement will be listed in mini publications supporting the full catalogue (which will include a frameworks directory publication) and online catalogues – all of which are produced and maintained by ESPO.
- 37.3 ESPO is a non-profit making organisation and therefore in order to cover the marketing costs associated with the production of these catalogues the appointed contractor(s) may be expected to provide financial support.
- 37.4 All marketing literature is to be made available free of charge and be subject to proof reading by ESPO before being published.
- 37.5 No marketing literature can be distributed without approval in writing by ESPO.
- 37.6 Contractor(s) may be expected to provide catalogue support to ESPO on an annual basis for the life of the framework agreement.
- 38 PACKAGING**
- 38.1 All packaging and containers used in the delivery of goods shall be environmentally friendly, recyclable or reusable wherever possible.
- 38.2 The goods shall be packaged using the minimum amount of packaging necessary whilst ensuring they are suitably packaged to ensure protection during transit.
- 38.3 The goods shall be clearly labelled to ensure easy identification.
- 38.4 The successful contractor(s) will be issued a packaging questionnaire for all products they are awarded under this framework agreement. This will include but not be limited to outer pack quantities, labelling and bar coding.
- 39 QUALITY**
- 39.1 The Goods/Services provided shall conform in every respect to the End User Establishment's specification and Call-off Order requirements, and where the purpose for which they are required is indicated in the Call-Off Order either expressly or by implication, be fit for that purpose.
- 40 DELIVERY OR COLLECTION OF GOODS/SERVICES**
- 40.1 Delivery or collection of Goods/Services shall be directly as instructed by the End User Establishment.
- 40.2 Delivery to a carrier shall not be deemed to be delivery of the Goods/Services to the End User Establishment unless otherwise agreed.
- 40.3 Every delivery of the Goods/Services shall be accompanied by a delivery note addressed to the End User Establishment at the address named in the Call-Off Order.
- 40.4 Proof of delivery shall only be considered by the End User Establishment on production by the Contractor of a copy of the delivery note signed by an authorised officer of the End User Establishment.
- 40.5 The Contractor or the Contractor's employees and agents shall comply with all reasonable requirements of the End User Establishment at the place of delivery and in particular shall ensure that their vehicles are not reversed or manoeuvred at any establishment where children or vulnerable people are, or are likely to be, present without assistance from a responsible adult.
- 40.6 All deliveries shall be agreed with the End User Establishment. The timing of deliveries must coincide with normal working hours unless otherwise agreed between the Contractor and the End User Establishment.
- 40.7 Invoices shall be rendered to the End User Establishment unless otherwise instructed. Each invoice should clearly state the End User Establishments call-off purchase order number along with a description of the Goods/Services supplied and the associated charges.
- 40.8 Deliveries and exchanges of Goods/Services for whatever reason will be free of charge. Handling charges will not be accepted.
- 41 CHARGES**
- 41.1 In consideration of the supply of the Goods/Services in accordance with the terms of the End User Agreement and the Call-Off Order, the End User Establishment shall pay the charges calculated in accordance with the invoicing procedure and payment profile specified at time of placing the Call-Off Order.
- 41.2 Payment shall be made within 30 days of receipt by the End User Establishment (at its nominated address for invoices) of a valid invoice.
- 41.3 The charges are exclusive of Value Added Tax.
- 41.4 The End User Establishment shall pay the Value Added Tax on the charges at the rate and in the manner prescribed by law from time to time.
- 42 PROMPT PAYMENT CLAUSE**
- 42.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the End User Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.



# DEALING DIRECT

## CONTRACTS & FRAMEWORKS

## Framework 209 Issue No. 1

### Event & Festival Equip & Services

- 43 NOT USED**
- 44 VALUE OR QUANTITY OF PURCHASE**
- 44.1 The estimated total annual value or quantity of purchase where appropriate will be shown in the contract schedule, but user establishments are not bound by this estimate and may purchase more or less.
- 45 ADDITIONAL PRODUCTS**
- 45.1 Similar products different from those listed in this tender may be ordered from time to time from the Contractor at agreed prices.
- 45.2 NOT USED.**
- 46 SAMPLES AND DEMONSTRATIONS.**
- 46.1 Samples and demonstrations are not required at this stage, but may subsequently be requested by ESPO and/or the End User Establishment on a free of charge basis.
- 47 POWER TO PURCHASE GOODS ELSEWHERE**
- 47.1 In the case of failure by the Contractor to deliver Goods demanded from him within the period limited for delivery or in the case of Goods delivered by him not being of good quality or in accordance with Specifications or sample or of the stipulated sort, weight or measure or in the case of Goods being delivered without a correct delivery note, the End User Establishment may purchase elsewhere unless the Contractor shall himself forthwith supply Goods that shall be sufficient and satisfactory and any excess of costs so incurred by the End User Establishment over the contract price together with all charges and expenses attending the purchase, shall be recoverable by the user establishment from the Contractor.
- 48 SEVERABILITY**
- 48.1 If any provision of this End User Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this End User Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.
- 48.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this End User Agreement, ESPO and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.
- 49 WAIVER**
- 49.1 The failure of either party to insist upon strict performance of any provision of this End User Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this End User Agreement.
- 49.2 A waiver of any default shall not constitute a waiver of any subsequent default.
- 49.3 No waiver of any of the provisions of this End User Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of this clause.
- 50 ASSIGNMENT**
- 50.1 NOT USED**
- 50.2 The Contractor will not sub-let the End User Agreement except where otherwise provided by this End User Agreement.
- 50.3 NOT USED**
- 50.4 The Contractor shall be responsible of the acts, defaults, and neglects of any sub-contractor, its agent or servants as fully as if they were the acts, defaults or neglects of the sub-contractor, its agents or servants.
- 51 COMMUNICATIONS**
- 51.1 Any notice which either party is required to give to the other shall be given in or confirmed in writing and shall be sufficiently served if sent to the other party at its address specified in this agreement either by:
- 50.1.1 hand, or
- 50.1.2 first class post or recorded delivery, or
- 50.1.3 facsimile, or
- 50.1.4 electronic mail transmission
- 51.2 For the purposes of clause 51.1 above the address of each party shall be:
- 51.2.1 [End User Establishment address]
- 51.2.1 [Contractor address]
- 51.3 Either party may change its address for service by notice as provided in this clause.
- 52 LAW AND JURISDICTION**
- 52.1 This End User Agreement shall be considered as a Contract made in England and according to English law and subject to the exclusive jurisdiction of the English courts to which both parties hereby submit.
- 52.2 NOT USED**
- 53 BUSINESS CONTINUITY**
- 53.1 The Contractor will maintain in place throughout the End User Agreement business continuity arrangements and will review those arrangements at appropriate intervals and if necessary update them, so as to ensure as far as reasonably practical that in the event of unexpected circumstances, either within or external to the Contractor's organisation, delivery of the Goods/Services to the End User Establishment is subject to a minimum of disruption
- 54 CONTACT WITH CHILDREN AND/OR VULNERABLE ADULTS**
- 54.1 In order to ensure adequate compliance with the requirements of the Protection of Children Act 1999 and the Safeguarding Vulnerable Groups Act 2006, the following clause shall apply in all contracts where the principal obligation of the contractor is to effect delivery of Goods/Services to a site and does not require any element of site working:
- 54.2 Neither the Contractor nor any sub-contractors are to have direct contact with children or vulnerable adults during any delivery or attendance at the premises. The Contractor shall ensure that those engaged in undertaking the duties under this contract, including employees, servants, agents and others are of suitable standing and good character.
- 54.3 In all other cases where Contractors are required to work within the premises, then the following clause shall apply:
- 54.4 The Contractor shall comply with the End User Establishments requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997. The Contractor shall ensure that all employees, servants or agents engaged by him in the discharge of his obligations under this End User Agreement who may be required to work within school premises, or other sites occupied by children and/or vulnerable adults shall be appropriately checked by the Disclosure And Barring Service (DBS), the Certificate to be of the "Standard" or "Enhanced" category and shall upon request by the End User Establishment, produce evidence of such satisfactory disclosure and registration.
- 54.5 The Contractor shall not be required to obtain a DBS disclosure for employees who will only have contact with children or vulnerable adults on an ad hoc or irregular basis for short periods of time and who will be escorted at all times whilst on the premises.
- 55 INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**
- 55.1 The Contractor shall fully indemnify and hold the End User Establishment harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other intellectual property rights including any wrongful use of Confidential Information by the use or possession of any Goods/Services / equipment or software or any part thereof provided by the Contractor or licensed by the contractor to the End User Establishment under the End User Agreement subject to:
- 55.1.1 The End User Establishment promptly notifying the Contractor of any alleged infringement and, subject to sub-clause 55.1.3 below, allowing the Contractor at their own expense to conduct all negotiations for settlement or litigation;
- 55.1.2 The End User Establishment making no admission without the Contractors written consent unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation;
- 55.1.3 the conduct by the Contractor of such negotiations or litigation shall be conditional upon the Contractor having given the End User Establishment such reasonable security as the End User Establishment may require for the compensation, damages, costs and expenses for which the End User Establishment may become liable. The End User Establishment at the Contractors expense shall give the Contractor all available assistance.
- 55.2 If the Goods/Services become, or in the Contractors reasonable opinion are likely to become, subject to any such action for infringement then, in addition to the indemnity under sub-clause 55.1.1 above, the Contractor shall at its own expense negotiate to obtain the right for the End User Establishment to continue to use the infringing Goods/Services, if necessary by replacing, removing or modifying them, but without reducing their quality or ability to meet the End User Establishments requirements as specified by the End User Agreement.
- 55.3 The Contractor shall indemnify the End User Establishment against all losses, costs, damages and expenses whatsoever during the period that the End User Establishment is deprived of the use of the Goods/Services by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by the issue of a 'change request' which shall not entitle the Contractor to any addition to the charges or any extension of any lead times.
- 56 NOT USED**
- 57 TRANSFER AND SUB-CONTRACTING**
- 57.1 This End User Agreement is personal to the Contractor.
- 57.2 The Contractor shall not assign, novate, sub-contract or otherwise dispose of this End User Agreement or any part thereof without the prior consent in writing of the End User Establishment.
- 57.3 Notwithstanding any sub-contracting permitted hereunder, the Contractor shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.
- 58 OBSERVANCE OF STATUTORY REQUIREMENTS**
- 58.1 The Contractor shall comply with all statutory and other provisions (including health and safety legislation) to be observed and performed in connection with the End User Agreement and shall indemnify the End User Establishment against any breach thereof and in particular the Contractor shall indemnify in full the End User Establishment, its servants and agents against any and all actions, claims, demands, proceedings, damages, costs, charges, expenses and fines whatsoever arising out of the Contractors failure to comply with its obligations.
- 59 EUROPEAN AND BRITISH STANDARDS**
- 59.1 All Goods/Services/Services must comply with any relevant EU Directive(s), British Standard Specification(s) or British Standard Code(s) of

Practice in force during the existence of the End User Agreement. Any reference in this Invitation to Tender document to British or European Standards or certification bodies shall be taken to include all amendments, revisions, updates and any other equivalent standards or certification bodies, respectively.

### 60 COSHH / CHIP / ROHS / REACH REGS

- 60.1 The Contractor, upon receipt of the Acceptance of Tender, shall forward to ESPO (where applicable to the Goods being supplied) copies of the appropriate Product Data Sheet(s) in compliance with the Control of Substances Hazardous to Health Regulations 1988, and the Chemicals (Hazard Information and Packaging) Regulations 1993.
- 60.2 In the case of Goods ordered by and delivered directly to the End User Establishments, all appropriate product data sheets must be forwarded to them upon their individual request.
- 60.3 Where a product is declared as being RoHS (Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008) compliant, the Contractor will be required to provide technical documentation or other information in order to demonstrate compliance.
- 60.4 Where a product is compliant to REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) regulation, the Contractor will be required to provide technical documentation or other information in order to demonstrate compliance.

### 61 REJECTION AND REPLACEMENT OF GOODS/SERVICES

- 61.1 The Contractor shall provide immediate replacement of Goods/Services which in the opinion of the End User Establishment, are not in accordance with Specifications or sample or are any way faulty or substandard. All workmanship is to be thoroughly sound and cleanly finished. Should any fault develop which in the opinion of the End User Establishment, are directly attributable to inferior workmanship of faulty materials the Contractor shall at his own expense be required to make good or replace immediately the defective parts to the satisfaction of the End User Establishment. This clause does not affect the statutory rights of the End User Establishment.

### 62 NOT USED

### 63 PRODUCTION

- 63.1 It is essential that problems concerning deliveries, production delays and changes to product range are dealt with in a proactive manner so that the End User Establishment can react to minimise the detrimental effects. The End User Establishment reserves the right to refuse substitution of products without prior consultation.

- 63.2 The Contractor will be responsible for ensuring that the appropriate contact at the End User Establishment is kept informed of developments including up to date product information and prices.

### 64 NOT USED

### 65 FLEXIBILITY

- 65.1 The Contractor is expected to comply with reasonable requests of the End User Establishment for minor variations in the timing for the provision of the Goods/Services and to undertake such additional tasks as may be necessary to ensure the smooth running of any delivery. The types of event that might be expected to give rise for the need for flexibility will include Environmental Health Officer visits, breakdown of essential equipment, Health and Safety risks and access times including school holidays.

### 66 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 66.1 Where a complaint is received [or a problem is indicated in any Satisfaction Survey relating to this

End User Agreement] about the standard of Goods/Services/Services or about the way any Goods/Services/Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of this End User Agreement and any Call-Off Orders placed under the End User Agreement, then the ESPO Buyer responsible for managing the End User Agreement shall take all reasonable steps to ascertain whether the complaint is valid. If the ESPO Buyer so decides, he/she may uphold the complaint, or take further action in accordance with the provisions of Clause 69 of this End User Agreement.

- 66.2 In the event that ESPO is of the reasonable opinion that there has been a material breach of this End User Agreement by the Contractor, or the Contractor's performance of its obligations under this End User Agreement has failed to meet the requirement set out in this End User Agreement and any Call-Off Order placed under the End User Agreement, then the End User Establishment may, without prejudice to its rights under Clause 69 of this End User Agreement, do any of the following:

66.2.1 make such deduction from the price to be paid to the Contractor as the End User Establishment shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Goods/Services/Services as the Contractor shall have failed to provide or performed adequately;

66.2.2 without terminating this End User Agreement, itself provide or procure the provision of part of the Goods/Services/Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the End User Establishment that the Contractor will once more be able to provide such part of the Goods/Services/Services in accordance with the End User Agreement and associated Call-Off Order;

66.2.3 without terminating the whole of this End User Agreement, terminate this End User Agreement in respect of part of the Goods/Services/Services only (whereupon a corresponding reduction in the price shall be made) and thereafter itself provide or procure a third party to provide such part of the Goods/Services/Services; and/or

66.2.4 terminate, in accordance with Clause 69, the whole of the End User Agreement.

- 66.3 The End User Establishment may charge to the Contractor any cost reasonably incurred by the End User Establishment and any reasonable administration costs in respect of the provision of such part of the relevant Goods/Services/Services by the End User Establishment or by a third party to the extent that such costs exceed the price which would otherwise have been payable to the Contractor for such part of the relevant Goods/Services/Services and provided that the End User Establishment uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods/Services/Services.

- 66.4 If the Contractor fails to provide any of the Goods/Services/Services to the reasonable satisfaction of the End User Establishment and such failure is capable of remedy, then the End User Establishment shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the End User Establishment may direct.

- 66.5 In the event that:

66.5.1 the Contractor fails to comply with Clause 66.4 above and the failure, is materially adverse to the interests of the End User Establishment or prevent the End User Establishment from discharging a statutory duty; or

66.5.2 the Contractor persistently fails to comply with Clause 66.4 above, and such failures, taken as a whole, are materially adverse to the commercial interests of the End User Establishment; the End User Establishment reserves the right to terminate this End User

Agreement by notice in writing with immediate effect.

- 66.6 The remedies of the End User Establishment under this Clause may be exercised successively in respect of any one or more failures by the Contractor.

### 67 REMEDIES CUMULATIVE

- 67.1 Except as otherwise expressly provided by this End User Agreement, all remedies available to either Party for breach of this End User Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### 68 TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

- 68.1 The End User Establishment may terminate this End User Agreement by notice in writing with immediate effect where:

68.1.1 the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

68.1.2 the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or

68.1.3 the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or a petition is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

68.1.4 where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

68.1.5 or any similar event occurs under the law of any other jurisdiction.

- 68.2 The End User Establishment may only exercise its right under Clause 68.1.1 within six (6) months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify ESPO immediately when any change of control occurs.

- 68.3 The Contractor shall notify the End User Establishment immediately when any change of control occurs. ESPO may only exercise its right under Clause 68.1.1 within six (6) months of:

68.3.1 being notified that a change of control has occurred; or

68.3.2 where no notification has been made the date that the End User Establishment becomes aware of the change of control; but shall not be permitted to do so where an approval was granted prior to the change of control of the Contractor.

### 69 TERMINATION ON DEFAULT

- 69.1 The End User Establishment may terminate this End User Agreement, or terminate the provision of any part of this End User Agreement by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- 69.1.1 the Contractor has not remedied the Default to the satisfaction of the End User Establishment within twenty-five (25) working days, or such other period as may be specified by the End User Establishment, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 69.1.2 the Default is not, in the opinion of the End User Establishment, capable of remedy; or
- 69.1.3 the Default is a material breach of the End User Agreement.
- 69.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with this End User Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the End User Establishment for any costs charged in connection with such Default of the Contractor.
- 69.3 The Contractor may terminate this End User Agreement if the End User Establishment is in material breach of its obligations to pay undisputed charges by giving the End User Establishment ninety (90) days' notice specifying the breach and requiring its remedy. The Contractor's right of termination under this Clause 69.3 shall not apply to non-payment of the charges or price where such non-payment is due to the End User Establishment exercising its rights under Clauses 0 and 66.2.1.
- ## 70 TERMINATION ON FINANCIAL STANDING
- 70.1 The End User Establishment may terminate this End User Agreement and End User Establishments may terminate Call-Off Orders by serving notice on the Contractor in writing with effect from the date specified in such notice where (in the reasonable opinion of the End User Establishment), there is a material detrimental change in the financial standing and / or the rating of the Contractor (the minimum level of which is specified in the Specification attached hereto) which:
- 70.1.1 adversely impacts on the Contractor's ability to supply the Goods/Services under this End User Agreement; or
- 70.1.2 could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Goods/Services under this End User Agreement.
- ## 71 BREAK
- 71.1 The End User Establishment shall have the right to terminate this End User Agreement, or to terminate the provision of any part of this End User Agreement at any time by giving three (3) Months' written notice to the Contractor. The End User Establishment may extend the period of notice at any time before it expires.
- ## 72 CONSEQUENCES OF TERMINATION
- 72.1 Where the End User Establishment terminates this End User Agreement under Clause 69, or terminates the provision of any part of this End User Agreement under that Clause, and then makes other arrangements for the provision of Goods/Services/Services, the End User Establishment shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the End User Establishment throughout the remainder of the Term or any Extension. Where this End User Agreement is terminated under Clause 69, no further payments shall be payable by the End User Establishment to the Contractor until the End User Establishment has established the final cost of making those other arrangements.
- 72.2 Where the End User Establishment terminates this End User Agreement under Clause 71, the End User Establishment shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this End User Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 10.
- 72.3 The End User Establishment shall not be liable under Clause 72.2 to pay any sum which:
- 72.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- 72.3.2 when added to any sums paid or due to the Contractor under this End User Agreement, exceeds the total sum that would have been payable to the Contractor if this End User Agreement had not been terminated prior to the expiry of the Term.
- ## 73 DISRUPTION
- 73.1 The Contractor shall take reasonable care to ensure that in the execution of this End User Agreement and any Call-Off Orders placed it does not disrupt the operations of the End User Establishment, its employees or any other contractor employed by the End User Establishment.
- 73.2 The Contractor shall immediately inform the End User Establishment of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the End User Agreement.
- 73.3 In the event of industrial action by the staff or the Contractor's suppliers the Contractor shall seek approval to its proposals from the End User Establishment to perform its obligations under the End User Agreement.
- 73.4 If the Contractor's proposals referred to in Clause 73.3 are considered insufficient or unacceptable by the End User Establishment, then this End User Agreement may be terminated by ESPO by notice in writing with immediate effect.
- ## 74 RECOVERY UPON TERMINATION
- 74.1 Termination or expiry of this End User Agreement (save as otherwise expressly provided in this End User Agreement) shall:
- 74.1.1 be without prejudice to any rights and remedies or obligations accrued under this End User Agreement prior to termination or expiration and nothing in this End User Agreement shall prejudice the right of either party to recover any amount outstanding at such termination or expiry; and
- 74.1.2 not affect the continuing rights and obligations of the Contractor and the End User Establishment under clauses 10 (Warranties and Representations), 11 (Indemnity and Insurance), 12 (Confidentiality), 13 (Data Protection Act), 19 (Anti-Corruption), 27 (Recovery of Sums Due), 54.1 (Intellectual Property Rights), 67 (Remedies Cumulative), 69 (Termination on Default), 72 (Consequences of Termination) and 74 (Recovery on Termination).
- 74.1.3 At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the End User Establishment upon request all the End User Establishment Property (including but not limited to materials, documents, information, access keys) relating to this End User Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the End User Establishment may recover possession thereof and the Contractor grants licence to the End User Establishment or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 74.1.4 At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall provide assistance to the End User Establishment and any new contractor appointed by the End User Establishment to continue or take over the performance of this End User Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Contractor's default, the Contractor shall provide such assistance free of charge. Otherwise the End User Establishment shall pay the Contractor's reasonable costs of providing the assistance, and the Contractor shall take all reasonable steps to mitigate such costs.
- 74.2 The provisions of this Clause shall survive the continuance of this End User Agreement and indefinitely after its termination.
- ## 75 GENERAL
- 75.1 Tenderers should only consider the information contained within this invitation to tender, or otherwise communicated in writing by ESPO.
- 75.2 Information supplied by ESPO (whether in this document or otherwise) is supplied for general guidance in the preparation of tenders.
- 75.3 ESPO cannot accept responsibility for any inaccurate information obtained by tenderers.
- 75.4 Tenderers shall at (before the time and date specified for the return of the tender) communicate to any person the amount or approximate amount of the tender or proposed tender, except where the disclosure in confidence of the approximate amount of the tender is necessary to obtain insurance cover required for the purpose of the tender.
- 75.5 The tender shall be a bona fide tender and shall not be fixed or adjusted by or under or in accordance with any agreement or arrangement with any other person.
- 75.6 Tenderers shall not enter into any agreement or arrangement with any other person with the intent that the other person shall refrain from tendering or between you agree as to the amount of any other tender to be submitted.
- 75.7 ESPO shall not be liable for, or pay any direct or indirect costs howsoever incurred by tenderers in the preparation of their tenders, or for the costs of any post-tender clarification meetings, presentations, demonstrations or by tenderers who fail to respond by the tender closing date.
- ## 76 CANVASSING
- 76.1 Contractors should not, in connection with the proposed End User agreement:
- 76.1.1 offer any inducement, fee or reward to any member or officer of the End User Establishment.
- 76.1.2 do anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916; or
- 76.1.3 canvass any of the persons referred to in 76.1.1 in connection with this invitation to tender; or
- 76.1.4 contact any member or officer of the End User Establishment or any person acting as an advisor to the End User Establishment (except as authorised by this invitation to tender) about any aspect of the proposed End User agreement or for soliciting information in connection therewith.
- ## 77 REQUIREMENTS FOR TIMBER
- 77.1 All timber and wood-derived products supplied or used by the Contractor in performance of the Framework Agreement (including all timber and wood-derived products supplied or used by sub-contractors) shall comply with the Specification provided in this tender and any specific requirements at the time of placing the Call-Off Order.
- ## 78 REQUIREMENTS FOR PROOF OF TIMBER ORIGIN
- 78.1 If requested by ESPO and not already provided at the tender evaluation stage, the Contractor shall



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provide to ESPO evidence that the timber supplied or used in the performance of the Framework Agreement complies with the requirements of the Specification of the tender and the subsequent Call-Off Order.

78.2 ESPO reserves the right at any time during the execution of a Call-Off Order under the Framework Agreement and for a period of 6 years from final delivery of a Call-Off Order under the Framework Agreement to require the Contractor to produce the evidence required for ESPO inspection within 14 days of ESPO'S written request.

78.3 The Contractor shall maintain records of all timber and wood derived products delivered to and accepted by ESPO. Such information shall be made available to ESPO if requested, for a period of 6 years from final delivery of a Call-Off Order under the Framework Agreement.

### 79 INDEPENDENT VERIFICATION

79.1 ESPO reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT licence or equivalent, and is adequate to satisfy ESPO that the timber or wood-derived product complies with the tender and Call-Off Order Specification. In the event that ESPO is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will

- 79.1.1 verify the forest source of the timber or wood and;
- 79.1.2 assess whether the source meets the relevant criteria.

79.2 In this Framework Agreement, "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General

requirements for bodies operating product certification systems or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent.

### 80 END USER ESTABLISHMENTS RIGHT TO REJECT TIMBER

80.1 ESPO reserves the right to reject any timber or wood-derived products that do not comply with the Specification in the Tender and the Call-Off Order. Where ESPO exercises its right to reject any timber, the Contractor shall supply alternative timber, which does so comply, at no additional cost to ESPO and without causing delay to the Call-Off Order completion period.

81 NOT USED

82 NOT USED.

### 83 ACCEPTANCE & REJECTION

83.1 The end user will not hold themselves responsible or be liable for payment unless the product / service is ordered on an official Order signed by an authorised officer of the End User Establishment.

83.2 All Goods/Services and materials used shall, as far as practicable, have been checked for quality and durability.

83.3 The end user undertakes to carry out an initial inspection on the day of delivery.

83.4 The service user will accept delivery once the equipment has passed its initial inspection and will reject equipment found not to be suitable or otherwise fit for use, not in accordance with the

agreed specification, or is in any way faulty or substandard.

83.5 Any equipment that is rejected shall, at the option of the service user, be removed by and at the expense of the Contractor without delay after receipt of notice of rejection. The Contractor shall either replace or rectify the rejected equipment without delay and to the satisfaction of the service user.

### 84 SET-OFF AND COUNTERCLAIM

84.1 The End User Establishment may set-off against any sums due to the contractor whether under this End User agreement or otherwise any lawful set-off or counterclaim to which the End User Establishment may at any time be entitled.

### 85 NOT USED

### 86 ENTIRE AGREEMENT

86.1 This End User Agreement constitutes the entire understanding between the parties relating to the subject matter of this End User Agreement and, save as may be expressly referenced or referred to herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

86.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

86.3 References to clauses and sub-clauses are, unless otherwise provided, references to clauses of and sub-clauses to this End User Agreement.

SIGNED for and on Behalf of [Supplier]

SIGNED for and on Behalf of [insert customer name]

Name:

Name:

Signature:

Signature:

Date:

Date:

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