
Date: 20/10/23

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A Contract for Goods

Between

The Secretary of State for Justice

And

Bunzl Catering Supplies

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This contract is dated:

PARTIES:

- (1) THE SECRETARY OF STATE FOR JUSTICE of 102 Petty France, London, SW1H 9AJ acting as part of the Crown (the “**Authority**”);

AND

- (2) Bunzl Catering Supplies with registered company number 2902454 whose registered office is 1 Hook Road, Epsom, Surrey, KT19 8TY (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

WHEREAS

- A. Following a competitive tender process, the Authority wishes to appoint the Supplier to provide Catering Disposables and the Supplier agrees to provide those goods in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED:

A GENERAL

A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“**Affected Party**” means the Party seeking to claim relief in respect of a Force Majeure Event.

“**Affiliate**” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

“**Anti-Malicious Software**” means software which scans for and identifies possible Malicious Software in the ICT Environment.

“Approve”, “Approval” and “Approved” means the prior written consent of the Authority.

“Assessment Tool” means the modern slavery risk identification and management tool which can be found at:

<https://supplierregistration.cabinetoffice.gov.uk/msat>

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Associated Person” means as it is defined in section 44(4) of the Criminal Finances Act 2017.

“Authorised Representative” means the Authority representative named in a CCN who is authorised to approve Changes.

“Authority Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Authority; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Supplier or its Sub-Contractors for delivery of the Goods.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Supplier for the purposes of providing the Goods.

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Goods.

“Authority Technical Security Guidance” means the technical security guidance published by the Authority at:

<https://security-guidance.service.justice.gov.uk/#cyber-and-technical-security-guidance>

“Basware” means Basware eMarketplace, the procurement software used by the Authority for its financial transactions.

“BPSS” means the Government’s Baseline Personnel Security Standard for Government employees.

“Breach of Security” means an event which results in or could result in:

- (a) any unauthorised access to or use of the Authority Data, the Services and/or the Information Management System; and/or
- (b) the loss, corruption and/or unauthorised disclosure of any information or data (including Confidential Information and Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with the Contract.

“BS 8555” means the standard published to help organisations improve their environmental performance by the British Standards Institution.

“CCN” means a contract change notice in the form set out in Schedule 5.

“Certification Requirements” means the requirements described in paragraph 6 of Schedule 8.

“Change” means a change in the Specification, the Price or any of the terms or conditions of the Contract.

“Change in Law” means any change in Law which affects the Goods or the delivery of the Goods which comes into force after the Commencement Date.

“CHECK Service Provider” means an organisation which has been certified by the NCSC, holds “Green Light” status and is authorised to provide the IT Health Check services required by paragraph 7.1 of Schedule 8.

“Commencement Date” means the date specified in clause A5.1.

“Commercially Sensitive Information” means the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to:

- (a) the Price; and/or
- (b) the Supplier’s business and investment plans

which the Supplier has informed the Authority would cause the Supplier significant commercial disadvantage or material financial loss if it was disclosed.

“Comparable Supply” means the supply of goods to another customer of the Supplier which are the same or similar to any of the Goods.

“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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E3;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

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“**Contract**” means these terms and conditions, the attached Schedules, terms implied by law that are not excluded by this contract and any other provisions the Parties expressly agree are included.

“**Contracting Authority**” means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

“**Contracts Finder**” means the Government’s portal for public sector procurement opportunities.

“**Control**” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “**Controls**” and “**Controlled**” are interpreted accordingly.

“**Copyright**” means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“**CREST Service Provider**” means an organisation with a SOC Accreditation from CREST International.

“**Crown**” means the government of the UK (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “**Crown Body**” is an emanation of the foregoing.

“**Cyber Essentials**” means the Cyber Essentials certificate issued under the Cyber Essentials Scheme.

“**Cyber Essentials Plus**” means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme.

“**Cyber Essentials Scheme**” means the Cyber Essentials scheme operated by the NCSC.

“**Database Rights**” means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“**Default**” means any breach of the obligations or warranties of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“**DOTAS**” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable 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 and as extended to NICs by the National Insurance (Application of

Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“EEA” means the European Economic Area.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“End Date” means the date specified in clause A5.1.

“Equipment” means the Supplier’s equipment, consumables, plant, materials and such other items supplied and used by the Supplier in the delivery of the Goods.

“EU” means the European Union.

“Exit Day” means as it is defined in the Withdrawal Act.

“Extension” means as defined in clause A5.2.

“Financial Year” means the period from 1st April each year to the 31st March the following year.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier’s supply chain caused by the Covid 19 pandemic or the UK’s exit from the EU.

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

“General Change in Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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“**Goods**” means any goods supplied by the Supplier (or by a Sub-Contractor) under the Contract as specified in Schedule 1 including any modified or alternative goods.

“**Government**” means the government of the UK.

“**Government Buying Standards**” means the standards published here:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buyingstandards-gbs>

“**Greening Government Commitments**” means the Government’s policy to reduce its effects on the environment, the details of which are published here:

<https://www.gov.uk/government/collections/greening-government-commitments>

“**Halifax Abuse Principle**” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“**Higher Risk Sub-contractor**” means a Sub-Contractor which processes Authority Data where that data includes:

(a) the Personal Data of 1000 or more individuals in aggregate during the Term; or (b) any part of that data includes any of the following:

- i) financial information relating to any person;
- ii) any information relating to actual or alleged criminal offences; iii) any information relating to vulnerable people; iv) any information relating to social care;
- v) any information relating to a person’s employment; vi) Special Category Personal Data;

(c) the Authority, at its discretion designates a Sub-Contractor as a Higher Risk Subcontractor in any procurement document related to the Contract; or

(d) the Authority considers, at its discretion, that any actual or potential Processing carried out by the Sub-Contractor is high risk.

“**HMRC**” means HM Revenue & Customs.

“**ICT Environment**” means the Authority System and the Supplier System.

“**Incident Management Process**” means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse effect on the Authority Data, the Authority, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with paragraph 4 Information Security Approval Statement of Schedule 8 using the template set out in annex 3 of Schedule 8.

“**Information**” has the meaning given under section 84 of the FOIA.

“Information Assets” means definable pieces of information stored in any manner which are determined by the Authority to be valuable and relevant to the Goods.

“Information Assurance Assessment” means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with paragraph 4 of Schedule 8 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in **Error! Reference source not found.** of Schedule 8.

“Information Management System” means:

- (a) those parts of the Supplier System, and those of the Premises, which the Supplier or its Sub-contractors use to provide the parts of the Service which require Processing Authority Data; and
- (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources).

“Information Security Approval Statement” means a notice issued by the Authority which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that:

- (a) the Authority is satisfied that the identified risks have been adequately and appropriately addressed;
- (b) the Authority has accepted the residual risks; and
- (c) the Supplier may use the Information Management System to process Authority Data.

“Initial Term” means the period from the Commencement Date to the End Date.

“Intellectual Property Rights” means:

- (a) patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), Database Rights, domain names, semi-conductor topography rights, rights in Internet domain names, Know-How, trade or business names, moral rights, the right to sue for passing off, trade secrets and other rights in Confidential Information, in each whether registrable or not in any country;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed in (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction.

“ISO” means the International Organisation for Standardisation.

“ISO/IEC 14001” means the family of standards related to environmental management published by the ISO.

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“ISO/IEC 27001” means the family of standards related to information security management published by the ISO.

“ISO/IEC 27002” means the family of standards related to information security, cyber security and privacy protection published by the ISO.

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003.

“IT Health Check” means as it is defined in paragraph 7.1(a) of Schedule 8.

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“Law” means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply.

“Losses” means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Material Breach” means a breach (including an anticipatory breach):

- i) which has a material effect on the benefit which the Authority would otherwise derive from a substantial or material portion of the Contract; or
- ii) of any of the obligations set out in clauses D1, D2, D3, G3, I4 or paragraph 9 of Schedule 10.

“Medium Risk Sub-contractor” means a Sub-Contractor which processes Authority Data where that data:

- (a) includes the Personal Data of between 100 and 999 individuals (inclusive) in aggregate during the Term; and
- (b) does not include Special Category Personal Data.

“Modern Slavery Helpline” means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available by telephone on 08000 121 700 or online at:

<https://www.modernslaveryhelpline.org/report>

“Month” means calendar month.

“MSA” means the Modern Slavery Act 2015.

“NCSC” means the National Cyber Security Centre.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i) 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
 - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which 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 Commencement Date or to a civil penalty for fraud or evasion.

“Personal Data” means as it is defined in the UK GDPR.

“Personal Data Breach” means as it is defined in the UK GDPR.

“Premises” means the location where the Goods are to be supplied set out in the Specification.

“Price” means the price (excluding any applicable VAT) payable to the Supplier by the Authority under the Contract, as set out in Schedule 4 for the full and proper performance by the Supplier of its obligations under the Contract.

“Process” means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction and **“Processing”** is construed accordingly.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity;
- (b) to 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; (c) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act; ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;

- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Property” means the property, other than real property, issued or made available to the Supplier by the Authority in connection with the Contract.

“Purchase Order” the Authority’s order for the supply of the Goods.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the UK, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

“Regulations” means the Public Contracts Regulations 2015 (SI 2015/102).

“Regulatory Body” means a Government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

“Relevant Conviction” means a conviction that is relevant to the nature of the Goods or as listed by the Authority and/or relevant to the work of the Authority.

“Relevant Requirements” means all applicable Law 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.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Supplier is established.

“Remediation Plan” means as it is defined in paragraph 7.3(c)(i) of Schedule 8.

“Replacement Supplier” means any third party supplier appointed by the Authority to supply any goods which are substantially similar to any of the Goods in substitution for any of the Goods following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Required Changes Register” means the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in paragraph 5.2 of Schedule 8 together with the date by which such change shall be implemented and the date on which such change was implemented.

“Results” means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- (a) prepared by or for the Supplier for use in relation to the performance of its obligations under the Contract; or
- (b) the result of any work done by the Supplier or any Staff in relation to the provision of the Goods.

“Risk Register” means the risk register within the Information Assurance Assessment which is to be prepared and submitted for Approval in accordance with paragraph 4 of Schedule 8.

“Security Incident” means the access to the ICT Environment by an unauthorised person for any reason or the unauthorised alteration of the functionality of the ICT Environment.

“Security Management Plan” means the plan prepared by the Supplier using the template in Annex 3 of Schedule 8, comprising:

- (a) the Information Assurance Assessment;
 - (b) the Required Changes Register; and (c)
- the Incident Management Process.

“Security Policy Framework” means the Government’s security policy framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission’s Recommendation of 6 May 2003 available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

“Special Category Personal Data” means the categories of Personal Data set out in article 9(1) of the UK GDPR.

“Specific Change in Law” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

“Specification” means the description of the Goods to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Premises and the Quality Standards.

“SSCBA” means the Social Security Contributions and Benefits Act 1992.

“Staff” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any of its Sub-Contractors engaged in the performance of the Supplier’s obligations under the Contract.

“Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

“Supplier Software” means software which is proprietary to the Supplier, including software which is or will be used by the Supplier to provide the Goods and which is set out in Schedule 7.

“Supplier System” means the information and communications technology system used by the Supplier in providing the Goods including the Software, the Equipment and related cabling (but excluding the Authority System).

“Tender” means the Supplier’s tender submitted in response to the Authority’s invitation to suppliers for offers to supply the Goods.

“Term” means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

“Third Party IP Claim” has the meaning given to it in clause E1.5 (Intellectual Property Rights).

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Supplier to provide the Goods including the software and which is specified as such in Schedule 7.

“UK” means United Kingdom.

“UK GDPR” means the UK General Data Protection Regulation.

“Valid Invoice” means an invoice containing the information set out in clauses C1.3 or C1.4.

“VAT” means value added tax charged or regulated in accordance with the Value-Added Tax Act 1994.

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

“Welsh Language Scheme” means the Authority’s Welsh language scheme as amended from time to time and available at:

<http://www.justice.gov.uk/publications/corporate-reports/moj/2010/welsh-language-scheme>

“Withdrawal Act” means the European Union (Withdrawal) Act 2018.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa unless the context requires otherwise;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) the annexes and Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the annexes and Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (i) references to the Contract are references to the Contract as amended from time to time; and
- (j) any reference in the Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the Withdrawal Act shall be read as a reference to the EU References as they form part of domestic law by virtue of section 3 of the Withdrawal Act as modified by domestic law from time to time; and
 - (ii) any EU institution or EU authority or other such EU body shall be read as a reference to the UK institution, authority or body to which its functions were transferred.

A2 Authority Obligations

Save as expressly provided, the Authority’s obligations under the Contract are the Authority’s obligations in its capacity as a contracting counterparty and nothing in the Contract operates as an obligation on, or in any other way fetters or constrains, the Authority in any other capacity.

A3 Supplier's Status

- A3.1 The Supplier is an independent contractor and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Contract.
- A3.2 The Supplier shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead another person to believe that the Supplier is acting as the agent or employee of the Authority.

A4 Mistakes in Information

The Supplier is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Supplier in connection with the Goods and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A5 Term

- A5.1 The Contract starts on [1st of November 2023] (the “**Commencement Date**”) and ends on [31st of October 2026] (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.
- A5.2 The Authority may extend the term of the Contract until [31st of October 2028] (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

B. THE GOODS

B1 Basis of the Contract

- B1.1 In consideration of the Supplier's performance of its obligations under the Contract the Authority shall pay the Supplier the Price in accordance with clause C1.
- B1.2 The terms and conditions contained in the Contract apply to the exclusion of any other terms and conditions the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

B2 Samples

- B2.1 If requested by the Authority the Supplier shall provide the Authority with samples of Goods for evaluation by Industries, Catering, Retail, and Physical Education Services and Approval from the Commercial Contract Manager for core items added to the catalogue.
- B2.2 The Supplier shall ensure that the Goods are fully compatible with any equipment to the extent specified in the Specification.

- B2.3 The Supplier acknowledges that the Authority relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of the Supplier's obligations under the Contract.

B3 Delivery

- B3.1 Unless otherwise stated in the Specification, if the Goods are delivered by the Supplier, delivery is completed when the Goods are signed for by the Authority.
- B3.2 Except where otherwise provided in the Contract, delivery includes the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Authority or duly authorised person reasonably directs.
- B3.3 The Authority is deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause B4.7.
- B3.4 The issue by the Authority of a receipt note for delivery of the Goods does not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.
- B3.5 Any access to the Premises and any labour and equipment provided by the Authority in connection with delivery is provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.
- B3.6 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Supplier and its Sub-Contractors shall at all times comply with the security requirements of the Authority.
- B3.7 The Authority is under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B3.8 The Authority is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such overdelivered Goods it shall give notice to the Supplier to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods remains with the Supplier unless they are accepted by the Authority. Any items missing from the order shall be remedied within 5 working days at no extra cost to the authority.

- B3.9 Unless expressly agreed to the contrary, the Authority shall not accept delivery by instalments. If the Authority specifies or agrees to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.
- B3.10 Timely supply of the Goods is of the essence of the Contract, including in relation to commencing the supply of the Goods within the time agreed or on a specified date. If the Supplier fails to deliver the Goods within the time promised or specified in the Specification, the Authority is released from any obligation to accept and pay for the Goods and may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.
- B3.11 If, in delivering the Goods, the Supplier is required to visit Authority Premises which are prisons, the Supplier shall comply with Schedule 9.

B4 Quality

B4.1 The Supplier shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice and all applicable Laws; and
- (c) shall comply with the standards and requirements set out in Schedule 10.

B4.2 The Supplier shall ensure the Goods:

- (a) correspond with their description;
- (b) conform with the Specification;
- (c) conform, if applicable, with any sample which has been Approved;
- (d) operate in accordance with the relevant technical specifications;
- (e) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- (f) conform in all respects with all applicable Laws; and
- (g) are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Authority.

B4.3 The Authority may inspect and test the Goods at any time on reasonable notice. The Supplier shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection and testing.

- B4.4 If, following such inspection or testing, the Authority considers that the Goods do not conform or are unlikely to conform with the Supplier's undertakings in clauses B4.1 and B4.2, the Authority may enforce one or more of its rights set out in clause B4.7.
- B4.5 Notwithstanding any inspection or testing, the Supplier remains fully responsible for the Goods and any inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Authority may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- B4.6 If reasonably requested to do so by the Authority, the Supplier shall co-ordinate its activities in supplying the Goods with those of the Authority and other contractors engaged by the Authority.
- B4.7 Pursuant to clause B4.4, the Authority may by notice to the Supplier:
- (a) reject any of the Goods;
 - (b) have the Goods promptly, free of charge and in any event within 5 Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; and/or
 - (c) treat the Contract as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.
- B4.8 Any Goods rejected or returned by the Authority as set out in clause B4.7 shall be returned to the Supplier at the Supplier's risk and expense.
- B4.9 The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 3 months from the date of delivery. If the Authority within such period or within 25 Working Days thereafter gives notice to the Supplier of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.
- B4.10 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

B5 Risk and Ownership

- B5.1 Subject to clauses B4.4 and B4.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F2 (Contract Performance)), pass to the Authority on completion of delivery.

B5.2 Title in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F2), pass to the Authority on completion of delivery (or payment, if earlier).

B6 Non-Delivery

B6.1 On dispatch of any consignment of the Goods the Supplier shall send the Authority a note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

B6.2 If the Goods are not delivered to the Authority on the agreed date for delivery, the Authority shall, within 10 Working Days of that date give notice to the Supplier that the Goods have not been delivered and may:

- (a) request the Supplier to deliver substitute Goods free of charge by a date specified by the Authority;
- (b) refuse to take any subsequent attempted delivery;
- (c) subject to clause G1.3 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver; or
- (d) terminate the Contract with immediate effect.

B7 Labelling and Packaging

B7.1 The Supplier shall ensure that the Goods are labelled and packaged in accordance with the Contract.

B7.2 The Supplier shall comply with the Packaging (Essential Requirements) Regulations 2015 (SI 2015/1640). The container in which the Goods are held shall be labelled with the Supplier's name, the net, gross and tare weights, and contain a description of its contents.

B7.3 The Supplier shall remove and dispose of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.

B7.4 If no period for collection and disposal is specified by the Authority, the Supplier shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Authority may dispose of any packaging materials which have not been collected by the Supplier within those 10 Working Days or such other period specified by the Authority for collection. The Supplier is responsible for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.

B7.5 The Supplier shall:

- (a) use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
- (b) reuse the packaging and, where reuse is not practicable, recycle the materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications;
- (c) make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
- (d) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
- (e) if requested, provide the Authority with a description of the product packaging and evidence to satisfy the Authority that it is reusing, recycling and reviewing its use of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

B8 Training

If included in the Specification, the Price includes the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

B9 Equipment

B9.1 The Supplier shall provide all the Equipment and resource necessary for the supply of the Goods.

B9.2 The Supplier shall not deliver any Equipment to, or begin any work on, the Premises without Approval.

B9.3 All Equipment brought onto the Premises is at the Supplier's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Supplier demonstrates that such loss or damage was caused or contributed to by the Authority's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

B9.4 Equipment brought onto the Premises remains the property of the Supplier.

B9.5 If the cost of any Equipment is reimbursed to the Supplier such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Supplier will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of delivery of the Goods.

B9.6 The Supplier shall maintain all Equipment in a safe, serviceable and clean condition.

B9.7 The Supplier shall, at the Authority's written request, at its own cost and as soon as reasonably practicable: remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and replace such item with a suitable substitute item of Equipment.

B9.8 Within 20 Working Days of the end of the Term, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and shall leave the Premises in a clean, safe and tidy condition. The Supplier shall make good any damage to those Premises and any fixtures and fittings in the Premises which is caused by the Supplier or Staff.

B10 Staff

B10.1 The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.

B10.2 The Authority shall maintain the security of the Authority's Premises in accordance with its standard security requirements, including Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008, available to the Supplier on request. The Supplier shall comply with all security requirements of the Authority while on the Authority's Premises and ensure that all Staff comply with such requirements.

B10.3 The Authority may search any persons or vehicles engaged or used by the Supplier at the Authority's Premises.

B10.4 At the Authority's written request, the Supplier shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all people who may require admission to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B10.5 The Supplier shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with Disclosure and Barring Service (DBS) and Right to Work checks.

B10.6 The Supplier shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:

- (a) use reasonable endeavours to make available any Staff requested by the Authority to attend an interview for the purpose of an investigation; and
- (b) provide documents, records or other material in whatever form which the Authority may reasonably request, or which may be requested on the Authority's behalf, for the purposes of an investigation.

B10.7 The Supplier shall comply with PSI 10/2012 as amended from time to time and available from the Authority on request.

B11 Due Diligence

Save as the Authority may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting its Tender and to have completed due diligence in relation to all matters connected with the performance of its obligations under the Contract.

B12 Licence to Occupy

Not Applicable.

B13 Property

Not Applicable.

B14 Offers of Employment

B14.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party who are directly employed or engaged in connection with the provision of the Goods while such persons are employed or engaged and for a period of 6 Months thereafter.

B14.2 If either Party breaches the clause B14.1, it shall pay the other Party a sum equivalent to 20% of the annual base salary payable by the Party in breach in respect of the first year of person's employment.

B14.3 The Parties agree that the sum specified in clause B14.2 is a reasonable pre-estimate of the loss and damage which the party not in breach would suffer if there was a breach of clause B14.1.

C. PAYMENT

C1 Payment and VAT

- C1.1 The Supplier shall submit invoices to the Authority in accordance with this clause C1 and Schedule 4.
- C1.2 The Authority issues Purchase Orders using Basware and, unless Approved otherwise, the Supplier shall, when invited, register on Basware.
- C1.3 If the Supplier registers on Basware, a Valid Invoice is an invoice issued through Basware, unless the invoice contains:
- (a) additional lines not included in the relevant Purchase Order;
 - (b) line descriptions which have been materially altered so that they no longer match the equivalent description in the relevant Purchase Order; or
 - (c) Prices and/or volumes which have been increased without Approval.
- C1.4 If, with Approval, the Supplier does not register on Basware, a Valid Invoice is an invoice which complies with clauses 1.5 to 1.7.
- C1.5 Other than invoices submitted through Basware, all invoices submitted to the Authority must clearly state the word 'invoice' and contain:
- (a) a unique identification number (invoice number);
 - (b) the Supplier's name, address and contact information;
 - (c) the name and address of the department/agency in the Authority with which the Supplier is working;
 - (d) a clear description of the Goods being invoiced for;
 - (e) the date the Goods were provided;
 - (f) the date of the invoice;
 - (g) the amount being charged;
 - (h) VAT amount if applicable;
 - (i) the total amount owed;
 - (j) the Purchase Order number; and
 - (k) the amount of the invoice in sterling or any other currency which is Approved.
- C1.6 Other than invoices submitted through Basware, all invoices submitted to the Authority must meet the following criteria:
- (a) email size must not exceed 4mb;

- (b) one invoice per file attachment (PDF). Multiple invoices can be attached as separate files;
- (c) any supporting information, backing data etc. must be contained within the invoice PDF file;
- (d) not contain any lines for items which are not on the Purchase Order;
- (e) replicate, as far as possible, the structure of and the information contained in the Purchase Order in respect of the number of lines, line descriptions, price and quantity; and
- (f) if required by the Authority, be submitted in a structured electronic invoice in an Electronic Data Interchange or XML formats.

C1.7 Other than invoices submitted through Basware, all invoices submitted to the Authority must, if requested by the Authority, include:

- (a) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
- (b) the name of the individuals to whom the timesheet relates and hourly rates for each;
- (c) identification of which individuals are Supplier's staff and which are SubContractors' staff;
- (d) the address of the Premises and the date on which work was undertaken;
- (e) the time spent working on the Premises by the individuals concerned;
- (f) details of the type of work undertaken by the individuals concerned;
- (g) details of plant or materials operated and on standby;
- (h) separate identification of time spent travelling and/or meal or rest breaks; and
- (i) if appropriate, details of journeys made and distances travelled.

C1.8 The Authority shall not pay an invoice which is not a Valid Invoice.

C1.9 The Authority shall not pay the Supplier's overhead costs unless Approved and overhead costs include, without limitation: facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Goods.

C1.10 If the Authority pays the Supplier prior to the submission of a Valid Invoice this payment is on account of and deductible from the next payment to be made.

C1.11 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Supplier. All payments made by the Authority to the Supplier are on an interim basis pending final resolution of an account with the Supplier in accordance with the terms of this clause C1.

C1.12 The Supplier shall:

- (a) add VAT to the Price at the prevailing rate as applicable and show the amount of VAT payable separately on all invoices as an extra charge. If the Supplier fails to show VAT on an invoice, the Authority is not, at any later date, liable to pay the Supplier any additional VAT;
- (b) ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice; and
- (c) not suspend delivery of the Goods unless the Supplier is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C1.13 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause shall be paid by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C1.14 The Authority shall:

- (a) in addition to the Price and following receipt of a Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with the Contract; and
- (b) pay all sums due to the Supplier within 30 days of receipt of a Valid Invoice unless an alternative arrangement has been Approved.

C1.15 If the Authority fails to pay any undisputed invoices under the Contract, the Supplier may charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

C2 Recovery of Sums Due

- C2.1 If under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C2.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C2.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- C2.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C3 Price During Extension

Subject to Schedule 4 and clause F4 (Change), the Price applies for the Initial Term and until the end of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

D. PROTECTION OF INFORMATION

D1 Authority Data

- D1.1 The Supplier shall:
- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise Approved;
 - (b) preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
 - (c) not delete or remove any proprietary notices contained within or relating to the Authority Data;
 - (d) to the extent that Authority Data is held and/or Processed by the Supplier, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
 - (e) perform secure back-ups of all Authority Data and ensure that up-to-date backups are stored securely off-site. The Supplier shall ensure that such back-ups are made available to the Authority immediately upon request;
 - (f) ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework;

- (g) identify, and disclose to the Authority on request those members of Staff with access to or who are involved in handling Authority Data;
- (h) on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of data, and its procedures for reducing risk;
- (i) notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason; and
- (j) comply with Schedule 8 (Information Assurance & Security).

D1.2 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

- (a) require the Supplier (at the Supplier's cost) to restore or procure the restoration of Authority Data and the Supplier shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data, and be repaid by the Supplier any reasonable costs incurred in doing so.

D2 Official Secrets Acts and Finance Act

D2.1 The Supplier shall comply with:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

D3 Confidential Information

- D3.1 Except to the extent set out in this clause D3 or if disclosure or publication is expressly allowed elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- D3.2 The Supplier hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- D3.3 If required by the Authority, the Supplier shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Supplier shall maintain a list of the non-disclosure agreements completed in accordance with this clause D3.3.

- D3.4 If requested by the Authority, the Supplier shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed nondisclosure agreements as required by the Authority. The Supplier shall ensure that Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract.
- D3.5 The Supplier may disclose the Authority's Confidential Information only to Staff who are directly involved in supplying the Goods and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- D3.6 The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- D3.7 Clause D3.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.

D3.8 Nothing in clause D3.1 prevents the Authority disclosing any Confidential Information obtained from the Supplier:

- (a) for the purpose of the examination and certification of the Authority's accounts;
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) to Parliament and Parliamentary committees;
- (d) to any Crown Body or any Contracting Authority and the Supplier hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- (e) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E3.8 (d) and (e) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

D3.9 Nothing in clauses D3.1 to D3.6 prevents either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

D3.10 The Authority shall use reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause D3.8 is made aware of the Authority's obligations of confidentiality.

D3.11 If the Supplier does not comply with clauses D3.1 to D3.8 the Authority may terminate the Contract immediately on notice.

D3.12 To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods, the Supplier shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

D3.13 The Supplier shall:

- (a) immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods and will keep a record of such breaches;

- (b) use best endeavours to recover such Confidential Information or data however it may be recorded;
- (c) co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data; and
- (d) at its own expense, alter any security systems at any time during the Term at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with clause D3.12.

D4 Freedom of Information

- D4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- D4.2 The Supplier shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:
 - (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
 - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
 - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.
- D4.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the FOIA and/or the EIR.

D5 Publicity, Branding and Media

- D5.1 The Supplier shall not:
 - (a) make any press announcements or publicise the Contract or its contents in any way;
 - (b) use the Authority's name, brand or logo in any publicity, promotion, marketing or announcement of order; or
 - (c) use the name, brand or logo of any of the Authority's agencies or arms-length bodies in any publicity, promotion, marketing or announcement of orders

without Approval.
- D5.2 Each Party acknowledges that nothing in the Contract either expressly or impliedly constitutes an endorsement of any products or services of the other Party (including

the Goods and the ICT Environment) and each Party shall not conduct itself in such a way as to imply or express any such approval or endorsement.

D5.3 The Supplier shall use reasonable endeavours to ensure that its Staff and professional advisors comply with clause D5.1.

E. INTELLECTUAL PROPERTY

E1 Intellectual Property Rights

E1.1 All Intellectual Property Rights in:

- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Supplier by or on behalf of the Authority (together with the Results, the "**IP Materials**")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in His Majesty the King) and the Supplier shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Supplier of its obligations under the Contract.

E1.2 The Supplier hereby assigns:

- (a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials. This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier; and
- (b) to His Majesty the King, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials

and shall execute all documents and do all acts as are necessary to execute these assignments.

E1.3 The Supplier shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to supply the Goods grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be

non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Supplier or to any other third party supplying goods and/or services to the Authority ("**Indemnified Persons**");

- (c) not infringe any Intellectual Property Rights of any third party in supplying the Goods; and
 - (d) during and after the Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of clause E1.3, except to the extent that any such claim results directly from:
 - i) items or materials based upon designs supplied by the Authority; or
 - ii) the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.
- E1.4 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Authority.
- E1.5 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Supplier or Indemnified Person) arising from the performance of the Supplier's obligations under the Contract ("**Third Party IP Claim**"), provided that the Supplier shall at all times:
- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
 - (b) take due and proper account of the interests of the Authority; and
 - (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).
- E1.6 The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier is not required to indemnify the Authority under this clause in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause E1.3 (d) i) and ii).

- E1.7 The Authority shall not, without the Supplier's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.
- E1.8 If any Third-Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clause E1.3 (b) and G2.1 (g)) use its best endeavours to:
- (a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
 - (b) procure a licence to use the Intellectual Property Rights and supply the Goods which are the subject of the alleged infringement, on terms which are acceptable to the Authority
- and if the Supplier is unable to comply with clauses E1.8 (a) or (b) within 20 Working Days of receipt by the Authority of the Supplier's notification the Authority may terminate the Contract immediately by notice to the Supplier.
- E1.9 The Supplier grants to the Authority and, if requested by the Authority, to a Replacement Supplier, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Authority (or the Replacement Supplier) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Goods).

F. CONTROL OF THE CONTRACT

F1 Contract Performance

- F1.1 The Supplier shall immediately inform the Authority if any of the Goods are not being or are unable to be supplied, the reasons for non-supply, any corrective action and the date by which that action will be completed.
- F1.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter, the Authority may carry out a review of the performance of the Supplier (a "**Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to):
- a) the Supplier's delivery of the Goods;
 - b) the Supplier's contribution to innovation in the Authority; whether the Goods provide the Authority with best value for money; consideration of any changes which may need to be made to the Goods;
 - c) a review of future requirements in relation to the Goods; and
 - d) progress against key milestones.

- F1.3 The Supplier shall provide at its own cost any assistance reasonably required by the Authority to perform Reviews including the provision of data and information.
- F1.4 The Authority may produce a report (a "**Review Report**") of the results of each Review stating any areas of exceptional performance and areas for improvement in the provision of the Goods and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Supplier's obligations under the Contract.
- F1.5 The Authority shall give the Supplier a copy of the Review Report (if applicable). The Authority shall consider any Supplier comments and may produce a revised Review Report.
- F1.6 The Supplier shall, within 10 Working Days of receipt of the Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Review Report.
- F1.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Supplier's failure to meet its obligations under the Contract identified by the Review Report, or those which result from the Supplier's failure to meet the Authority's expectations notified to the Supplier or of which the Supplier ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.

F2 Remedies

- F2.1 If the Authority reasonably believes the Supplier has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, procure the supply of all or part of the Goods until such time as the Supplier has demonstrated to the Authority's reasonable satisfaction that the Supplier can supply the Goods in accordance with the Specification;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of some of the Goods only (whereupon a corresponding reduction in the Price shall be made) and thereafter procure a third party to supply those Goods;
 - (c) withhold or reduce payments to the Supplier in such amount as the Authority reasonably deems appropriate in each particular case; and/or
 - (d) terminate the Contract in accordance with clause H2.
- F2.2 Without prejudice to its right under clause C2 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Goods by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for those Goods.

- F2.3 If the Authority reasonably believes the Supplier has failed to supply all or some of the Goods in accordance with the Contract, professional or Good Industry Practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Supplier notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F2.4 If the Supplier has been notified of a failure in accordance with clause F2.3 the Authority may:
- (a) direct the Supplier to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
 - (b) withhold or reduce payments to the Supplier in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F2.5 If the Supplier has been notified of a failure in accordance with clause F2.3, it shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
 - (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in clause F2.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- F2.6 If, having been notified of any failure, the Supplier does not remedy it in accordance with clause F2.5 in the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Supplier.

F3 Transfer and Sub-Contracting

- F3.1 Except where both clauses F3.9 and F3.10 apply, the Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Supplier of any of its obligations or duties under the Contract.
- F3.2 The Supplier is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Supplier shall provide each SubContractor with a copy of the Contract and obtain written confirmation from them that they will provide the Goods fully in accordance with the Contract.

- F3.3 The Supplier shall ensure that Sub-Contractors retain all records relating to the Goods for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with clause F5 (Audit). If any Sub-Contractor does not allow the Authority access to the records, then the Authority shall have no obligation to pay any claim or invoice made by the Supplier on the basis of such documents or work carried out by the Sub-Contractor.
- F3.4 If the Authority has consented to the award of a Sub-Contract, the Supplier shall ensure that:
- (a) the Sub-Contract contains a right for the Supplier to terminate if the SubContractor does not comply with its legal obligations in environmental, social or labour law;
 - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F3.4 (a) in any Sub-Contract which it awards; and
 - (c) copies of each Sub-Contract are sent to the Authority immediately after their execution.
- F3.5 If the Authority believes there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or
 - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.

- F3.6 Unless Approved otherwise, if the total value of the Contract over the Term is, or is likely to be, in excess of £5,000,000, the Supplier shall, in respect of Sub-Contract opportunities arising during the Term from or in connection with the provision of the Goods:
- (a) advertise on Contracts Finder those that have a value in excess of £25,000;
 - (b) within 90 days of awarding a Sub-Contract, update the notice on Contracts Finder with details of the Sub-Contractor;
 - (c) monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder and awarded during the Term;
 - (d) provide reports on the information in clause F3.6 (c) to the Authority in the format and frequency reasonably specified by the Authority;
 - (e) promote Contracts Finder to its suppliers and encourage them to register on Contracts Finder; and
 - (f) ensure that each advertisement placed pursuant to F3.6 (a) includes a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder.
- F3.7 The Supplier shall, at its own cost, supply to the Authority by the end of April each year for the previous Financial Year:
- (a) the total revenue received from the Authority pursuant to the Contract;
 - (b) the total value of all its Sub-Contracts;
 - (c) the total value of its Sub-Contracts with SMEs; and
 - (d) the total value of its Sub-Contracts with VCSEs.
- F3.8 The Authority may from time to time change the format and the content of the information required under clause F3.7
- F3.9 Notwithstanding clause F3.1, the Supplier may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Supplier (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under clause F3.6 is subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F3.7 and F3.8.

- F3.10 If the Supplier assigns the right to receive the Price under clause F3.9, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F3.11 The Supplier shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority can make payment.
- F3.12 Clause C2 continues to apply in all other respects after the assignment and shall not be amended without Approval.
- F3.13 Subject to clause F3.14, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.
- F3.14 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.15, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F3.15 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.13 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Authority in clauses H1 and H2 are available to the Supplier in respect of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.
- F3.16 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- F3.17 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the Contract.

F4 Change

- F4.1 After the Commencement Date, either Party may request a Change subject to the terms of this clause F4.
- F4.2 Either Party may request a Change by notifying the other Party in writing of the Change by completing the Change Request Form set out in Schedule 5. The Party requesting the Change shall give the other Party sufficient information and time to assess the extent and effect of the requested Change. If the receiving Party accepts the Change it shall confirm it in writing to the other Party.
- F4.3 If the Supplier is unable to accept a Change requested by the Authority or if the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Supplier to fulfil its obligations under the Contract without the Change; or
 - (b) terminate the Contract immediately except where the Supplier has already delivered all or part of the Goods or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F4.4 A Change takes effect only when it is recorded in a CCN validly executed by both Parties.
- F4.5 The Supplier is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Supplier in addition to the warranties and representations set out in clause G2.
- F4.6 Clauses F4.4 and F4.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Change.

F5 Audit

- F5.1 The Supplier shall:
- (a) keep and maintain until 6 years after the end of the Term, or as long a period

as may be agreed between the Parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority;

- (b) on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract;
- (c) make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Goods;
- (d) allow authorised representatives of the Authority and/or the National Audit Office to examine the Supplier's records and documents relating to the Contract and provide such copies and oral or written explanations as may reasonably be required; and
- (e) allow the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes.

G. LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clauses D1 or D3 or Schedules 6 or 8; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

- G1.2 Subject to clauses G1.3 and G1.5, the Supplier indemnifies the Authority fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Goods or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.
- G1.3 Subject to clause G1.1 the Supplier's aggregate liability in respect of the Contract does not exceed £2,000,000.00 per annum.
- G1.4 Subject to clause G1.1 the Authority's aggregate liability in respect of the Contract does not exceed the Price payable in the previous calendar year of the Contract.
- G1.5 The Supplier is not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.6 The Authority may recover from the Supplier the following losses incurred by the Authority to the extent they arise as a result of a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional costs of procuring a Replacement Supplier for the remainder of the Term and or replacement deliverables which shall include any incremental costs associated with the Replacement Supplier and/or replacement deliverables above those which would have been payable under the Contract;
 - (d) any compensation or interest paid to a third party by the Authority; and
 - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.7 Subject to clauses G1.1 and G1.6, neither Party is liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill; or
- (b) indirect, special or consequential loss.

G1.8 Unless otherwise specified by the Authority, the Supplier shall, with effect from the Commencement Date for such period as necessary to enable the Supplier to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract including:

- (a) Not Applicable
- (b) cover for death or personal injury, loss of or damage to property or any other loss; and
- (c) employer's liability insurance in respect of Staff.

Such insurance policies shall be maintained for the duration of the Term and for a minimum of 6 years following the end of the Term.

G1.9 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If the Supplier does not have and maintain the insurances required by the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

G1.12 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Supplier warrants and represents on the Commencement Date and for the Term that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
- (b) in entering the Contract it has not committed any fraud;

- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Supplier shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence if the Supplier has not been in existence for 3 years) prior to the date of the Contract:
 - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G2.2 The Supplier confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Supplier hereby waives and releases the Authority in respect thereof absolutely.

G3 Tax Compliance

G3.1 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Authority:
 - i) details of the steps it is taking to address the Occasion of Tax NonCompliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

G3.2 If the Supplier or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Supplier shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Goods by the Supplier or any Staff.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a company and in respect of the Supplier:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) any event similar to those listed in clause H1.1 (a)-(f) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) he is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of section 2 of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

- (h) any event similar to those listed in clause H1.2 (a)-(g) occurs under the law of any other jurisdiction.

H1.3 The Supplier shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (“**Change of Control**”). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control

but is not permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (c) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (d) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (e) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (f) any event similar to those listed in clause H1.4 (a)-(e) occurs under the law of any other jurisdiction.

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (c) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (d) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (e) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (f) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (g) any event similar to those listed in clause H1.5 (a)-(f) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5 (a) are references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Default

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Supplier commits a Default and:

- (a) the Supplier has not remedied the Default to the satisfaction of the Authority within 20 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a Material Breach.

H2.2 If, through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier is liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

- H2.3 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Supplier may terminate the Contract with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C2.1 or to a Force Majeure Event.

H3 Termination on Notice

- H3.1 The Authority may terminate the Contract at any time by giving [90] days' notice to the Supplier.
- H3.2 The Supplier shall have the right to terminate the Contract at any time by giving twelve (12) Month's written notice to the Authority. Where the Supplier terminates the Contract under clause H3.2 they shall notify the Authority of their consideration to utilise this clause at least 3 (three) months prior to providing the written notice.

H4 Other Grounds

- H4.1 The Authority may terminate the Contract if:
- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - (b) the Supplier was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or
 - (c) the Supplier has not, in supplying the Goods, complied with its legal obligations in respect of environmental, social or labour law.

H5 Consequences of Expiry or Termination

- H5.1 If the Authority terminates the Contract under clause H2 and makes other arrangements for the supply of the Goods the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.
- H5.2 If the Contract is terminated under clause H2 the Authority shall make no further payments to the Supplier (for Goods supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause H5.
- H5.3 If the Authority terminates the Contract under clauses H3 or H4 the Authority shall make no further payments to the Supplier except for Goods supplied by the Supplier

prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Official Secrets Acts and Finance Act), E3 (Confidential Information), D4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery), H8 (Retendering and Handover), H9 (Exit Management), H10 (Knowledge Retention), I6 (Remedies Cumulative), and I12 (Governing Law and Jurisdiction).

H6 **Disruption**

- H6.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by Staff, the Supplier shall seek Approval for its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Supplier's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.
- H6.5 If the Supplier is unable to supply the Goods owing to disruption of the Authority's normal business, the Supplier may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

H7 **Recovery**

- H7.1 On termination of the Contract for any reason, the Supplier shall at its cost:
- (a) immediately return to the Authority all Confidential Information and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Supplier in good working order;
 - (c) immediately vacate any Authority Premises occupied by the Supplier;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods to the Replacement Supplier; and
 - (e) promptly provide all information concerning the supply of the Goods reasonably requested by the Authority for the purposes of adequately understanding the manner in which the Goods have been provided and/or for the purpose of allowing the Authority and/or the Replacement Supplier to conduct due diligence.
- H7.2 If the Supplier does not comply with clause H7.1 (a) and (b), the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

- H8.1 Within 21 days of being requested by the Authority, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future supply of the Goods.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future supply of the Goods.
- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Supplier indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Supplier is required to provide under clause H8.1.

- H8.5 The Supplier shall allow access to the Premises in the presence of an authorised representative, to any person representing any potential provider whom the Authority has selected to tender for the future supply of the Goods.
- H8.6 If access is required to the Supplier's Premises for the purposes of clause H8.5, the Authority shall give the Supplier 7 days' notice of a proposed visit and a list of all persons who will be visiting. Their attendance is subject to compliance with the Supplier's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Supplier shall co-operate fully with the Authority during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Authority, the Supplier shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the supply of the Goods. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H9 Exit Management

- H9.1 On termination of the Contract the Supplier shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Supplier in accordance with the procedure set out in clauses H9.2 to H9.5.
- H9.2 If the Authority requires a continuation of supply of the Goods on expiry or termination of the Contract, by engaging a third party to supply them, the Supplier shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of supply without disruption to routine operational requirements.
- H9.3 The following commercial approach shall apply to the transfer of the supply of Goods if the Supplier:
- (a) does not have to use resources in addition to those normally used to deliver the Goods prior to termination or expiry, there shall be no change to the Price; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Change to the Price based on the Supplier's rates either set out in Schedule 4 or forming the basis for the Price.
- H9.4 Not Applicable.
- H9.5 Not Applicable.

H10 Knowledge Retention

The Supplier shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Supplier to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Supplier shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Supplier shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

I. GENERAL

I1 Dispute Resolution

- I1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Supplier and the commercial director of the Authority.
- I1.2 Nothing in this dispute resolution procedure prevents the Parties seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.
- I1.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.
- I1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
 - (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement of the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a nonbinding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I1.6.

I1.6 Subject to clause I1.2, the Parties shall not start court proceedings until the procedures set out in clauses I1.1 and I1.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7;
- (b) if the Supplier intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority has 21 days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7; and
- (c) the Supplier may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I1.7, to which the Authority may consent as it sees fit.

I1.7 If any arbitration proceedings are commenced pursuant to clause I1.6:

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Supplier (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;

- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I1.7 (a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

I2 Force Majeure

- I2.1 Subject to this clause I2, a Party may claim relief under this clause I2 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- I2.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- I2.3 If the Supplier is the Affected Party, it is not entitled to claim relief under this clause I2 to the extent that consequences of the relevant Force Majeure Event:
 - (a) are capable of being mitigated but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of goods similar to the Goods, operating to the standards required by the Contract.
- I2.4 Subject to clause I2.5, as soon as practicable after the Affected Party issues the Force Majeure Notice and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued supply of the Goods affected by the Force Majeure Event.

- 12.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 12.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party is not entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party is liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Goods (or some of the Goods) continue to be supplied in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
- 12.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- 12.8 Relief from liability for the Affected Party under this clause 12 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause 12.7.

13 Notices and Communications

- 13.1 Subject to clause 13.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Jaggaer.
- 13.2 If it is not returned as undelivered a notice served in:
- (a) a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - (b) an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

13.3 Notices pursuant to clauses 12 (Force Majeure), 11 (Dispute Resolution) or 17 (Waiver) or to terminate the Contract or any part of the supply of Goods are valid only if served in a letter by hand, recorded delivery or special delivery.

13.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a) For the Authority:

Contact Name: N/A

Address: REDACTED; and

Email: REDACTED

(b) For the Supplier:

Contact Name: REDACTED;

Address: REDACTED; and

Email: REDACTED

14 Conflicts of Interest

14.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Authority, 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 Authority under the Contract. The Supplier will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.

14.2 The Authority may terminate the Contract immediately by notice and/or take or require the Supplier to take such other steps it deems necessary if, in the Authority's reasonable opinion, 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 Authority under the Contract. The actions of the Authority pursuant to this clause 14 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

15 Rights of Third Parties

15.1 Clause E7.3 confers benefits on persons named in it ("**Third Party Provisions**" and each person a "**Third Party Beneficiary**") other than the Parties which are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").

- 15.2 Subject to clause 15.1, a person who is not a Party has no right under the CRTPA to enforce the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 15.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- 15.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

16 Remedies Cumulative

Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy are not an election of such remedy to the exclusion of other remedies.

17 Waiver

- 17.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy do not constitute a waiver of that right or remedy and do not cause a diminution of the obligations established by the Contract.
- 17.2 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 13 (Notices and Communications).
- 17.3 A waiver of any right or remedy arising from a breach of the Contract does not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

18 Severability

If any part of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such part shall be severed and the remainder of the Contract shall continue in full effect as if the Contract had been executed with the invalid, illegal or unenforceable part eliminated.

19 Entire Agreement

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein and supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

110 Change in Law

- I10.1 The Supplier is neither relieved of its obligations to supply the Goods in accordance with the terms and conditions of the Contract nor entitled to an increase in the Price as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is reasonably foreseeable at the Commencement Date.
- I10.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause I10.1(b)), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:
 - (i) change is required to the Goods, the Price or the Contract; and
 - (ii) relief from compliance with the Supplier's obligations is required; and
 - (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods.
- I10.3 Any variation in the Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause I10.1(b)) shall be implemented in accordance with clause F4.

I11 Counterparts

The Contract may be executed in counterparts, each of which when executed and delivered constitute an original but all counterparts together constitute one and the same instrument.

I12 Governing Law and Jurisdiction

Subject to clause I1 (Dispute Resolution) the Contract, including any matters arising out of or in connection with it, are governed by and interpreted in accordance with English Law and are subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction does not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction does not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

SCHEDULE 1 – SPECIFICATION

1. General

- 1.1. The Authority serves the public by keeping in custody those committed by the courts. Its duty is to look after them with humanity and help them to lead lawabiding and useful lives after release from custody.
- 1.2. This document sets out a description of the product and delivery specifications for the goods and services which are required to be provided by the Supplier to achieve a high performing Catering Disposables contract.

2. Background:

- 2.1. There are approximately 84,000 prisoners across Prison Sites in England and Wales. In most prisons, one member of the governors' senior management team has day-to-day oversight of catering. The operating environment in which the catering service exists is pressured and critical, therefore the products and suppliers must be reliable and of sound quality to support the continuity of service.
- 2.2. Inadequate and poor-quality products can contribute to serious operational issues, complaints and dissension, with a risk to the Authority's goal of maintaining good order.
- 2.3. Due to security, the Authority has very specific delivery requirements. The opening of prison gates to admit deliveries constitutes a security risk. In order to mitigate this risk, a key objective of the overarching Prison Service Strategy is to minimise the number of deliveries into prisons. There are a number of factors to consider when achieving this:
 - 2.3.1. Time - Prisons have certain times when they have the necessary resource to accept a delivery, particularly if the delivery of goods is of a high volume. The resource available may consist of catering staff and prisoners so delivery times must be pre-agreed to account for this.
 - 2.3.2. Space - There are limitations to the physical size of lorries making deliveries in some cases due to security restrictions. Delivery vehicles must be locked into the outer gates before the inner gates are opened. Many prisons are of a Victorian build and have low arches or turning circles, which again impede deliveries in larger vehicles.
 - 2.3.3. Cost - There is a resultant cost from resources used to open the gates for each delivery, therefore the number of vehicles going into the prisons should be reduced where possible.
 - 2.3.4. Performance - Due to the above factors and the inherent security issues involved, a reliable and consistent delivery service is paramount. It is fundamental requirement of this contract that deliveries meet the agreed requirements.

3. Scope:

- 3.1. At present, there are 108 Public Prison Sites in England and Wales - see <http://www.justice.gov.uk/contacts/prison-finder> for a full list. These comprise of the Publicly run prisons, and will normally be single drop delivery to a designated area.
- 3.2. The size, make-up and location of the prison population are subject to substantial change and often at very short notice. The supplier must acknowledge this and quickly adjust to the subsequent impact on the nature and volume of the Goods and Services it is expected to provide to meet future needs.
- 3.3. The supplier shall deliver ordered goods to all publicly run prisons. During the term of the contract awarded as a result of this procurement, the Authority may require additional deliveries for additional sites. If the Authority develops additional delivery requirements, these will fall within the remit of this Catering Disposables contract.
- 3.4. The number of Prison Sites and delivery points may fluctuate over the period of the contract. The supplier must be able to deliver to any extra sites as required. Any extra Prison Site or delivery point will have a specified delivery window which must be accommodated by the supplier.
- 3.5. There may be a need for His Majesty's Courts and Tribunal Services and the Ministry of Justice Headquarters to place orders on this contract. The supplier must ensure they can deliver to these sites. The delivery addresses of these sites will be provided at the time of order and will not be outside of England and Wales.

4. Detailed Requirements:

- 4.1. The requirements below have all been identified as essential. The supplier must deliver these requirements as a minimum.

Requirement	Details
1. Goods	
1.1 Core Product Range	The supplier shall deliver all products as detailed in Appendix A under the core range section. These must comply with the quality standards and technical specifications set out in Appendix B.

1.2 Non-Core Products	The supplier shall, on request, provide quotes and deliver a range of non-core products which will be agreed in discussion with the requestor. All products must comply with the quality standards set out on Appendix B.
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1.3 Product Range Changes	The supplier should handle changes/requests to the catalogue throughout the duration of the contract. These changes will be agreed in advance with the Authority in line with Clause F4 within the Contract Terms and Conditions.
1.4 Substitute Products	<p>Where the supplier has failed to ensure adequate stock provision of core range product to fulfil an order within the contracted time frames then they should immediately contact the Authority's requisitioner and advise earliest delivery date for the order and agree a plan to maintain the service being provided by those goods not available. The supplier should make every effort to supply the goods ordered.</p> <p>Where a substitute product is required due to lead times, it must always be of equal quality or higher to the originally ordered product, and be compliant with any Quality Standards and Technical Specifications as identified in Appendix B. The substitute will be a direct product alternative and the Prison Establishment Catering Manager must be contacted to gain confirmation they agree the substitute product.</p> <p>The substitute product shall also be supplied in volume equivalent to the originally ordered product and will be charged at the same price or less of the ordered product.</p>
1.5 Product Shortages	Where the supplier is unable to supply the correct quantity of product ordered, they shall make a recovery delivery to the affected Prison Establishment(s) within 48 hours. .. The Prison Establishment Catering Manager and operational contract manager must be contacted to inform them of the shortage and planned delivery timeframe.

1.6 Product Returns and Recall	<p>Where the supplier delivers incorrect items or a substitute product that is not acceptable to the Prison, the supplier will be notified by the establishment within 48 hours by phone or email, this will be collected by the supplier the following working day, or as agreed with the establishment, but under no circumstances should not exceed 3 working days and the Prison shall not be liable to pay for the incorrect or unacceptable products.</p> <p>Where the supplier becomes aware of an issue with its products and need to recall a delivered order, this must be communicated to the Prison staff and to the Authority Contract Manager. All product recalls must be collected from the Authority as soon as possible, and the Prison shall not be liable to pay for the recalled products or transport cost.</p>
1.7 Product Labelling and Packaging	Goods shall be labelled and packaged to allow identification of the product against the delivery note and order placed for reconciliation and receipting of the order for prompt payment.
1.8 Sustainable Packaging	<p>Delivery/external product packaging (e.g. that is associated with secondary and tertiary packaging) shall be made from a recycled material and fully recyclable within mainstream waste management systems.</p> <p>Contractors should engage with the MoJ to identify opportunities to introduce reusable packaging, or to offer packaging 'take back' schemes, in support of greater 'closed loop' circularity models, or with respect to other innovations such as material reduction / light weighting.</p>
2. Delivery	
2.1 Core Deliveries	Delivery must be made to all Public prisons in England and Wales as listed in Appendix C.
2.2 Non-Core Deliveries	<p>Delivery must be made to all Public prisons in England and Wales as listed in Appendix C.</p> <p>.</p>

2.3 Changes to the Prison Estate	Should there be changes to the prison estate, the supplier must be able to deliver to any extra sites within one month of being notified by phone, email or meeting. This includes new Public prisons being built, and additional requisition points within Sites. The supplier should deliver in line with all applicable restrictions at all times. The supplier is obliged to confirm 5 working days prior to initial delivery that all requirements will be met.
2.4 Vehicles	Vehicles must be of a suitable size to meet restrictions at prison gates. This will vary depending on each establishment. See Appendix C for delivery information.
2.5 Transport Equipment	The supplier shall ensure that the equipment used to transport the goods (i.e. cage or pallet), is loaded appropriately to prevent damage to any of the goods or injury to any person. Delivery vehicles must meet all required safety standards, including the ability to safely unload goods using their own appropriate equipment. (Prisons will not unload from vehicles, and ownership is accepted once goods are unloaded at the agreed receipt point from the delivery vehicle)

2.6 Delivery Security Procedures	The supplier shall adhere to prison security requirements when making a delivery. This includes, but not limited to, disarming any dashcams or Bluetooth enabled equipment. Full details of these security requirements can be found in Appendix D.
2.7 Delivery fees	Deliveries shall be free of charge
2.8 Delivery Schedule	Delivery must be made within the time windows specified by each establishment. A reliable and consistent delivery service is paramount, and any changes to delivery times/days must be agreed in advance by the Authority and supplier. Proposed delivery windows can be found in Appendix C. The delivery windows will become firm within mobilisation.

2.9 Lead Times	<p>The supplier shall deliver all Core Products within 5 working days of the order being received, where a specific 'need-by' date is stated by the Authority on their purchase orders which is over the 5-day lead time requirement, the supplier shall deliver on this date.</p> <p>The supplier shall deliver all Non-Core Products within 10 working days of the order being placed. Where a Non-Core Product is made to order, the 10-working day requirement will not apply. Lead times will be discussed on individual products and agreed when orders are placed.</p>
2.10 Drivers Handbook	The supplier must comply with the Drivers Handbook – see Appendix D
2.11 Unloading Deliveries	<p>Deliveries must be unloaded by the supplier's representative at the agreed delivery point at each Prison Establishment as referred to in appendix D. This may include prison stores or directly to the kitchens, unless otherwise stated.</p> <p>Under no circumstances should prisoners or prison staff unload goods from the supplier's vehicle.</p> <p>Delivery should facilitate the easy checking of goods, where goods are received un-checked due to volume both parties should sign "received unchecked"</p>
2.12 Delivery Paperwork	All deliveries must be accompanied by a delivery note for the prison staff to sign. No Bluetooth enabled equipment such as sign on glass

	handsets can be used in prisons as these pose a security risk. This is set out in the Drivers Handbook – see Appendix D
3. Service	
3.1 Key Supplier Staff	The supplier will ensure an appropriate Account Manager and Customer Services contacts are identified for the Authority. All will have sufficient experience and knowledge within the supplier's organisation and an understanding of the Authority's requirement and characteristics.

3.2 Customer Services	<p>The customer services team will provide first line support to HMPPS staff by email and telephone. They will have clear understandings of the contract obligations and the critical nature of the supply. All calls/emails recording orders and/or complaints will be recorded on a customer services log and any complaints will be monitored and resolved as per the timescales in KPI 3 (See Appendix H).</p> <p>The customer service team should always contact prison staff by telephone in the first instance, any agreed resolution resulting from telephone conversations should always be confirmed in writing via email. Any emails customer services receive in normal working hours Mon – Fri, 9-5pm shall be replied to within 2 hours.</p>
3.3 Demand Control	<p>The supplier shall continually monitor, forecast and optimise both its quantity of stock and range of products to account for periods of major variability, including but not limited to religious festivals, national holidays and seasonality. Where the supplier becomes aware (or reasonably would be expected to be aware of): stock failures; substitutions; vehicle delivery delays; quality concerns or any other potential point for complaint, they will ensure Prison Sites are contacted and informed of these issues prior to the expected delivery. Initial attempts at contact shall be via telephone, and followed by written confirmation i.e. e-mail.</p>
3.4 SERP and Escalation	<p>The supplier shall agree and maintain with the Authority a robust Service Error Recovery Process (SERP) and escalation system to ensure any issues or complaints are dealt with appropriately. This will be agreed in the contract mobilisation phase.</p> <p>The processes will be communicated by the supplier to their personnel and the Authority, and all parties will be aware of their obligations as part of this contract.</p>
3.5 Information Requests	<p>The supplier will provide information requested by the Authority with regards to the Goods supplied under the Contract to aid with</p>

	<p>Parliamentary Questions and Freedom of Information requests. These may have short deadlines which must be adhered to.</p>
4. Order Management	
4.1 Order Processing	<p>Orders will be processed the same day when received before office closing hours.</p>

4.2 Order Format	The supplier shall be able to process purchase orders sent via the Authority's e-Procurement system. This is a Basware system. See Appendix E for details.
4.3 Catalogues	The supplier must maintain the Authority's catalogue via the Basware system. This includes uploading product information, making any agreed amendments, and adding photos of products.
4.4 Order Portal	The supplier should use the authorities preferred portal system. The system used is Basware as stated in appendix E. This portal will allow for payment by Government Procurement Card.
4.5 Order Accuracy	The supplier will enter orders accurately and ensure a checking system is in place. Where an order is input incorrectly by the supplier, they shall resolve this within 24 hours of being notified, at no extra cost or detriment to the Authority.
4.6 Order Checking	The supplier will check orders have been placed correctly and in what appear to be appropriate volumes. Where volumes look to be incorrect then this should be questioned with the Authority's requisitioner.
5. Payments	
5.1 Invoicing format	Invoices must be created and sent via the Basware system. This allows for auto-invoice creation linked to the purchase order. See Appendix E for details.
5.2 BACS Payment	The supplier must be able to receive payment from the Authority by BACS transfer.
5.3 Card Payment	When required or considered beneficial to both parties, the supplier will be able to take payment by Government Purchase Card
6. Quality	

6.1 Quality Standards	The supplier shall adhere to the most up-to-date UK quality standards for goods supplied.
6.2 Quality Improvements	The supplier will strive to improve the quality of their operations and products and report any enhancements to the Authority.
6.3 Product Quality Testing	<p>The Authority will review products should persistent complaints be received.</p> <p>The supplier shall provide samples of all products at no additional cost to the Authority.</p>
7. Health and Safety	
7.1 Health and Safety Hazards	The supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract.
7.2 Product Testing	The supplier shall ensure the necessary tests, certificates and examinations have been made against the supplied products, so they are safe and without risk to health.
7.3 Health and Safety Laws	The supplier shall take all measures necessary to comply with the requirements of all Laws (including, without limitation, the Health and Safety at Work Act 1974) which may apply to the supplier in the performance of the Services and/or the delivery of the Goods.
8. Innovation	
8.1 Product Review	The supplier will formally review their products supplied to the Authority annually upon the commencement date of the contract, looking for any innovations or product developments they can offer. The review should include a section wholly focusing on the sustainability of the Core Product list, with a proposal advising how the Authority can improve environmental performance throughout the Contract.

	The supplier shall also offer any ad-hoc innovations or efficiencies throughout the contract life. Where Core Products are not being purchased for 3 months consistently, the supplier shall propose removing them from the contract to streamline the catalogue. The supplier shall also prepare a report quarterly analysing non-Core requests and make recommendations to the Authority.
8.2 Logistics	In collaboration with the Authority, the supplier shall offer innovative ideas on how to realise any logistical efficiencies within the restrictions of the prison estate at quarterly review meetings.
8.3 Rehabilitation Initiatives	The supplier must seek opportunities to collaborate with the Authority to help with prisoner rehabilitation. This can for example include providing jobs for ex-prisoners either directly or within the industry. To be discussed at quarterly review meetings.
9. Authority Standards and Policies	
9.1 PSI's, PSO's and Policy Frameworks	Prison Service Orders (PSO's) are long-term mandatory instructions that are intended to last for an indefinite period. Prison Service Instructions (PSI's) are mandatory instructions that have a definite expiry date and are also used to introduce amendments to PSOs. The supplier shall at all times maintain strict compliance with the most current PSO's, PSI's and Policy Frameworks. All new prison and probation operational policies are published as policy frameworks. A large number of existing live policies are available as prison service instructions (PSIs), prison service orders (PSOs) and probation instructions (PIs) and as these policies are reviewed and updated, they will be reissued as policy frameworks. They can be found at Prison & Probation Policy Frameworks - GOV.UK (www.gov.uk)
9.2 Sustainability	The supplier shall perform the contract in accordance with the Authority's Sustainable Operations Policy and other environmental policies, which include to conserve energy, water, wood, paper and other resources, reduce waste arising, reduce waste to landfill, increase recycling 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. The most recent publication can be found at https://www.gov.uk/government/publications/greening-governmentcommitments-2021-to-2025
10. Governance, Performance and Pricing Methods	

10.1 Contract Review Meetings	The supplier shall comply with the obligations, processes and principles as stated in Appendix G in regard to regular contract review meetings.
10.2 Contract Management Information	The supplier shall provide management information (MI) as specified in Appendix G. MI Reports shall be produced in-line with the Authority's standard template.
10.3 Contract Performance	The supplier shall report on Key Performance Indicators as outlined in Appendix G.
10.4 Price Adjustments	Price adjustments will take place as required in line with the process specified in Appendix H.
11. Post Contract Award Documents	
11.1 Mobilisation Plan	<p>The supplier will have a mobilisation plan in place to prepare operations transition for the Contract commencement date. It is vital the transition into the Contract is seamless.</p> <p>The supplier will be required to work with the outgoing supply to minimise the financial impact of contract change. The authority will need to see the mobilisation plan one month after contract signature</p>
11.2 Business Continuity and Disaster Recovery Plan	The supplier must send a Business Continuity and Disaster Recovery Plan and last tested date to the Authority before the Contract commencement date.

5. Core Product Range and Charges

5.1. The below Products make up the Core Product Range

REDACTED

5.2. Non-Core Product Range

5.2.1. The Authority will require a range on Non-Core Products which will be ordered via a 'Non-Catalogue Request'. The requisitioner will contact the Contractor for a quote for the goods before seeking approval from the MoJ Commercial team. Every effort will be made by the Authority to use the Core Products.

5.2.2. Suggested Non-Core Products could include but not limited to: sized items not on catalogue, specialist food service items etc.

5.2.3. Off contract spend will be reviewed and any products purchased regularly will be considered for addition to the contract which would then be agreed with the supplier. If agreed to add to the contract, this will be managed via a contract change.

6. Quality standards and Technical Specification

6.1. Quality Standards

6.1.1. The Contractor must provide the Authority with credible data sheets to ensure that all Products provided meet current UK Government guidance on packaging and disposable single use products.

6.1.2. The names of Product must comply with current Industry descriptions, in that it should either correspond to a customary name or to a name sufficiently precise to inform of the true nature of the use, and to enable it to be distinguished from products with which it can be confused.

6.1.3. Manufactured and packaged Products should comply with the Food Safety Act 1990 and all relevant current Regulations and additionally any subsequent amendments.

6.1.4. All materials used shall be of sufficient quality to deliver the specification ('fit for purpose'), suitable for use in food preparation and storage, and free from insect infestation or any other contamination.

6.1.5. All products supplied that come into direct contact with food must adhere to Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (legislation.gov.uk)

7. Sustainable Specifications

- 7.1. None of the supplied products shall be manufactured from expanded polystyrene (EPS) or CPLA.
- 7.2. Where possible the products should be widely recycled i.e. collected by 75% of more local authority collections (not reliant on specialist processes)
- 7.3. Card/paper based biodegradable products without a plastic lining are preferred to allow for easy waste disposal.
- 7.4. Plastic items made from 1-2 polymers are preferred to aid recycling.
- 7.5. Where possible the products should be manufactured from as high a proportion of recycled material as possible. For plastics, products manufactured from at least 30% recycled content are preferable, unless the plastic product is polypropylene where it does not meet food standards to be made of recycled content.
- 7.6. The supplier must be able to provide evidence of all accreditations / certifications noted to products (e.g. FSC certification / level of post-consumer recycle content).
- 7.7. Crop residue-based materials, like bagasse, maize and PLA, to be certified under ISCC Plus or RSB Global Wood, paper and other forestry-based products to be certified by FSC or PEFC. Where evidence is not required as part of the tender response (e.g. data sheets) certifications will be required during mobilisation.

8. Finished Product

- 8.1. The product shall be of good quality in sound condition upon delivery, ready for immediate use (no assembly required).
- 8.2. All products are to be supplied in suitable approved pack sizes as specified in the finance response template.

9. Packaging and Logistics

- 9.1. The supplier shall ensure packaging used to deliver the products shall be durable to ensure sufficient protection of product in transit, and in storage.
- 9.2. The supplier shall support the Authority in its target to have only 5% of waste sent to landfill, reduce raw material use, waste generation and GHG emissions (CO2 emissions) associated with its supply of goods and services through use of appropriate packaging materials. Further information can be found in the Governance schedule in Appendix F.

9.3. Supplier shall support the authority in promoting the use of post-consumer recycled content in application to packaging and logistics ie high proportion of recycled content in boxes used for delivery packaging.

9.4. All packing tape used shall be paper tape (recyclable within the cardboard waste stream).

9.5. All vehicles shall be clean and free from infestation. The Supplier should seek to define and use optimal route management technology, driver training, and preferably low, or zero – emission vehicles, to support reduction of GHG emissions associated with deliveries. GHG emissions of deliveries will be monitored through the life of the contract, through contract management reporting.

9.6. As per section 4.1 paragraph 1.6 of the Schedule 1 Specification, if the delivered product is not to the quality agreed, then the customer will have the right to return the goods and either demand a correct replacement or source from an alternative supplier. Any costs incurred by the customer will be borne by the defaulting Contractor.

10. Hygiene

10.1. Goods should be packaged to allow them to be stored and used directly in food preparation areas where required.

11. Delivery Schedule

REDACTED

Delivery Driver's Handbook

REDACTED

Schedule 2: Contract Management

1. Reporting Contract Performance

1.1. The Contractor shall provide the Products to the standards set out in the Specification and in compliance with this Contract including those required to meet the Performance Thresholds applicable to the Key Performance Indicators.

1.2. The Contractor shall meet or exceed the Performance Thresholds in respect of each Key Performance Indicator and shall measure its performance against each Key Performance Indicator in monthly reporting periods which shall correspond to calendar months.

1.3. Not later than seven (10) Working Days following the end of each calendar month, the Contractor shall provide to the Authority a report summarising its performance against the Key Performance Indicators in the preceding month (the "Monthly KPI Report"). The Monthly KPI Report shall be in such format as agreed between the Parties prior to the contract start date and may be subject to alteration from time to time in agreement with both parties, and shall include as a minimum, the following information:

1.3.1. Key Performance Indicator, actual performance achieved over the relevant monthly measurement period;

1.3.2. A summary and explanation of all Performance Failures that occurred during the relevant monthly measurement period; and

1.3.3. For each Key Performance Indicator, actual performance achieved over the previous three (3) monthly measurement periods prior to the most recent monthly measurement period.

1.3.4. The data will be submitted in a format agreed by the Authority, the template for which will be provided during the contract mobilisation period.

1.3.5. The Authority shall be entitled to raise/request, and the Contractor shall provide responses to, any additional questions and/or any further information in order to evidence and verify the Contractor's performance against Key Performance Indicators.

1.4. For the avoidance of doubt, any delay by the Authority in exercising its rights and remedies under this Schedule (including where such delay is connected with the pending outcome of an investigation) shall not be construed as a waiver nor prevent the Authority from exercising its rights or remedies at a later date (with retrospective effect, where applicable).

1.5. The Contractor should report any KPI failures within seven (7) working days following any monthly period and provide a rectification plan for all KPI failures within ten (10) working days to the Operational Contract Manager following the notification to the Authority. Rectification actions should be appropriately timebound and agreed by the Authority. Any amends to the Rectification Plan should be submitted in writing within five (5) working days of receipt of the proposed plan. If no

amends are submitted, the Authority accepts the proposed Rectification Plan by default. Failure of any KPI for 3 consecutive months may trigger termination of the contract.

1.6. The contractor must notify the Authority immediately should 3 consecutive monthly failures occur.

2. Key Performance Indicators (KPIs), Performance Thresholds and Performance Failures

2.1. The Contractor shall report on the below KPI's.

KPI No	KPI Description	KPI Definition	Performance Threshold	Reporting	Calculation
KPI1	Product Compliance	The total Products delivered to sites matches total Products in the final accepted Order (i.e. they meet the technical specification defined in the contract and there are no defects etc) within the relevant month.	Target: 99.00%	Monthly KPI Report	The % shall be calculated as follows: <ul style="list-style-type: none"> total number of Products delivered in accordance with the terms of the Specification within the month in question across all Sites expressed as a % of total number of Products ordered within the month in question across all Sites.
			Minor Failure: 97.00%-98.99%		
			Serious Failure: 94.00%-96.99%		
			Severe Failure: 90.00%-93.99%		
KPI2	Deliveries at correct time	All deliveries across all Sites made on scheduled date and within 5 working days of order received (for Core Products) and 10	Target: 99.00%	Monthly KPI Report	The % shall be calculated as follows: <ul style="list-style-type: none"> total number of individual deliveries completed within 5 working days of order acceptance
			Minor Failure:		
		working days for Non-Core products	97.00%-98.99%		(for items in the Core Product list)

			<p>Serious Failure:</p> <p>94.00%-96.99%</p>		<ul style="list-style-type: none"> total number of individual deliveries completed within 10 working days of order acceptance (for items in the Non-Core Product list) <p>expressed as a % of total number of individual deliveries scheduled from accepted orders within the month in question across all Sites</p>
			<p>Severe Failure:</p> <p>90.00%93.99%-</p>		
KPI3	Product complaint resolution	Supplier to ensure all complaints are resolved to the reasonable satisfaction of the relevant Authorised User within 2 weeks of being lodged	<p>Target: 99.00%</p> <p>Minor Failure: 97.00%-98.99%</p> <p>Serious Failure: 94.00%-96.99%</p> <p>Severe Failure: 90.00%93.99%-</p> <p>10% will be deducted for each working day delay</p>	Monthly KPI Report	<ul style="list-style-type: none"> Complaint must be logged by the Supplier. <p>A log of complaints must be sent to CCD on a monthly basis, showing the date, the complaint raised, which complaints have been closed and which complaints are ongoing and reason for non-closure.</p>

KPI4	Social Value	Supplier to report on the % of products that have moved into a higher sustainable tier	100%	Annual KPI Report	<p>The Supplier must provide the Social Value report annually, within 7 working days of the anniversary of the Contract Commencement Date. The report must include:</p> <ul style="list-style-type: none"> • The total number of product switches from lower tiers to higher tiers including volume. • The % basket split in the materials hierarchy and year on year difference. • Product switches outside the materials hierarchy that has delivered an environmental benefit e.g. the authority will now recycle or reuse the product..
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2.2. The Contractor is required to meet or exceed the KPI Performance Target Thresholds. If the Contractor fails to meet the KPI Performance Target Thresholds, a summary of the Performance Failures shall be provided to the Authority in the monthly KPI report.

2.3. The Contractor will provide an explanation for each Performance Failure. Where a Performance Failure is deemed by the Authority as out of the Contractor's control, no action shall be taken. All other Performance Failures shall require corrective action by the Contractor.

2.4. The Authority will review Performance Failures requiring corrective action every quarter.

2.5. Please refer to Appendix F paragraph 2.1 for rectification of service failures.

2.6. Repeated minor failures over three consecutive months or any repetition of severe failures for KPI's will constitute a termination event to be used at the discretion of the authority.

2.7. The supplier is required to provide management information one month in arrears* to the authority on a monthly basis using the Custodial Contract Directorate Key Performance Indicator (KPI) and email to;
ccd.governanceandrisk@justice.gov.uk by the 10th working day of the month.
Example: January KPI information to be sent by the 10th working day of February

3. Monitoring and Review

3.1. The Contractor will be required to provide the following Management Information monthly (and as requested by the Authority within five (5) working days) in a report-style format. Each monthly report should be added to an overall master copy of MI so each month can be viewed separately but all MI to date can be viewed in the same place.

3.2. Both a monthly and an annual summary of the below information will be required for the End of Year Review.

MI Requirement	Frequency	Detail
Contract Spend	Monthly	Information breakdown: <ul style="list-style-type: none">• Total monthly contract spend• Total monthly spend by product• Total monthly spend by prison/ account number
Order Volumes	Monthly	Information breakdown: <ul style="list-style-type: none">• Total number of orders placed within the month• Total number of each product ordered within the month• Total number of each catalogue item ordered within the month by prison• Total number of orders containing substitute products within the previous month• Total number of orders where deliveries were made with product shortages• Total number of orders where products were either rejected or returned due to being incorrect, of inadequate quality, or not delivered at the correct time
Deliveries	Monthly	<ul style="list-style-type: none">• Total number of deliveries made within the previous month• Total number of deliveries made on time (within the prison specific delivery window)

Customer Service	Monthly	<ul style="list-style-type: none"> Log of all contact made by the Authority to Customer Services. This must record the date of contact, prison name and staff name, nature of the call, and issue resolution date
Summary Report	Monthly	<ul style="list-style-type: none"> Narrative of overall contract performance in period, trends and key issues, including KPI performance
Innovation	Annually	<ul style="list-style-type: none"> Details of any proposed continuous improvement / innovation / efficiency recommendations made, implemented and outstanding for MoJ consideration
Sustainability	Annually	<ul style="list-style-type: none"> Details of annual improvements with respect to sustainability performance. The content and format of the Sustainability report will include but is not limited to (1) Ethical supply chain audit (2) Local community benefits (3) Logistical operations becoming more energy efficient (4) Environmental benefits including reducing waste and increasing recycling within the Contractor's organisation or product range.

4. Governance

4.1. This section describes the approach to governance arrangements to be adopted by the Parties in meeting the requirements of the Contract. The governance approach includes:

- 4.1.1. How the Parties will manage the relationship between them;
- 4.1.2. the specific governing structures under which the Parties will operate;
- 4.1.3. and the principles by which the relationship, communication and all other aspects of this Contract will be managed

4.2. The governance arrangements set out in this document are intended to provide sufficient flexibility to ensure that the relationship between the Parties can be updated, revised and maintained throughout the Contract Period.

5. Governance Principles

5.1. A contract review meeting will be held between the Authority and the Contractor on a quarterly basis by the key contract manager and a commercial representative, final personnel in attendance will be agreed at contract mobilisation (or more frequent as required by the Authority) with at least two weeks' notice to discuss the following

- 5.1.1. The Management Information including KPI performance
- 5.1.2. Agree any rectifications required in the event of any KPI service failure

- 5.1.3. Review the status of contractual obligations
- 5.1.4. Review of the product range
- 5.1.5. Any issues raised by the Authority and/or the Contractor in the last quarter
- 5.1.6. Any changes to the contract that have been requested by either party
- 5.1.7. Ideas for efficiency/sustainability/innovation/potential savings

5.2. The Quarterly meetings will take place with the Authority's Contract Manager and the Contractor's Account Manager (or a delegate will attend the meeting in his/her place and wherever possible is sufficiently briefed and prepared). Additional representatives may be required at the Quarterly meetings, this will be confirmed prior to the meeting taking place.

5.3. The final Quarterly meeting of the contract year will also incorporate an end of year review in which the supplier will present annual progress on:

- 5.3.1. KPI Review of the closing contract year, including any actioned rectifications
- 5.3.2. Modern Slavery Assessment Score
- 5.3.3. Continuous improvement under the contract
- 5.3.4. Product Review/innovations
- 5.3.5. Social value (as determined by KPI4)
- 5.3.6. Market changes
- 5.3.7. Opportunities for the coming year

5.4. The Authority shall be responsible for:

- 5.4.1. scheduling meetings;
- 5.4.2. setting the agenda for meetings and circulating to all attendees in advance of such meeting;
- 5.4.3. ensuring that minutes for meetings are recorded and disseminated electronically to the appropriate persons and to all meeting participants within ten (10) Working Days after such meeting, or prior to the next meeting, whichever comes first;

5.5. The Authority and Contractor should attempt to resolve any issues raised at the quarterly meeting as soon as possible.

5.6. If a Change is to be made to the Contract, such Change shall be dealt with in accordance with the Change Control Procedure.

5.7. Meetings are to be held virtually, however where a physical meeting is required, each Party shall pay its own costs and expenses in relation to attendance at meetings.

5.8. Purpose and Remit post Supply Commencement date includes the following but not limited to:

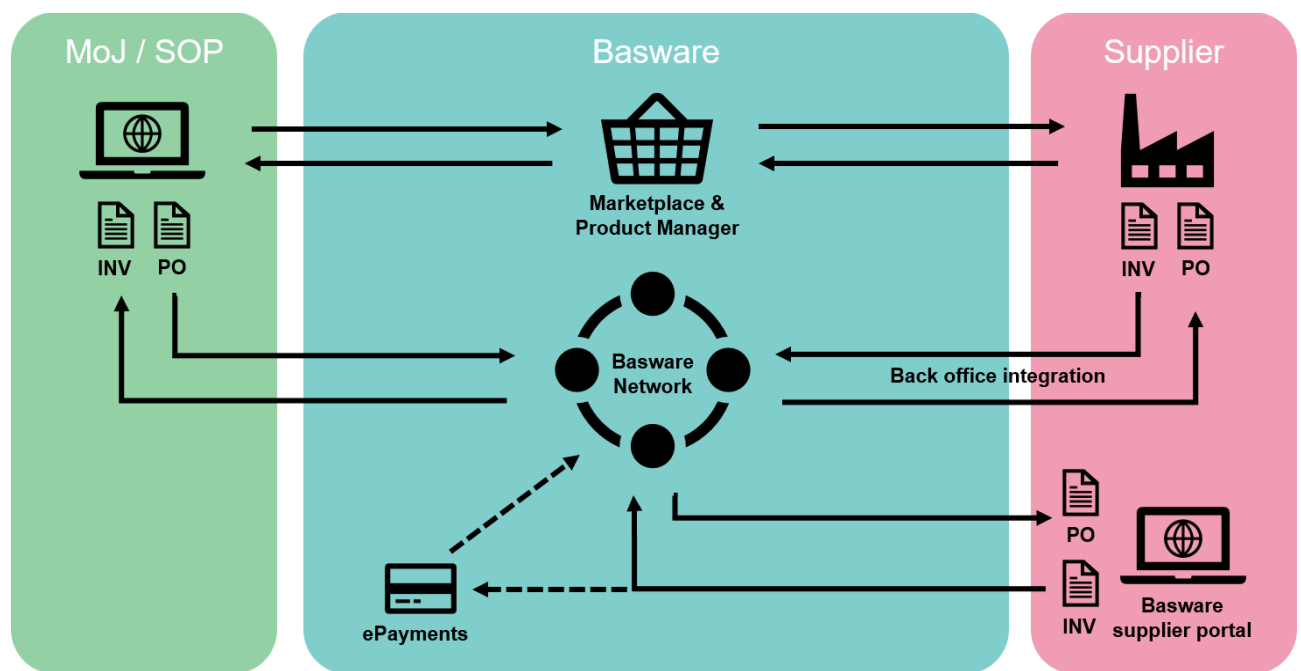
- 5.8.1. To ensure that the Contract is operated throughout the Contract Period in a manner which optimises the value for money and operational benefit derived by the Authority while recognising the Contractor's imperative to derive a commercial benefit from the Contract;
- 5.8.2. To ensure appropriate rectification plans are instigated to address delivery and performance issues;
- 5.8.3. To identify specific performance issues and risks and ensure appropriate action plans are instigated to address gaps in performance;
- 5.8.4. To instigate and approve utilisation of appropriate resources, identify key issues, remedial action groups and other task based activities to address any escalated contractual issues requiring attention;
- 5.8.5. To review any price adjustments and any areas for potential commercial improvements (e.g. innovative ideas and Product Range adjustments etc);
- 5.8.6. To monitor performance of the Contract ensuring that all requirements relevant to Commercial and Contract Management performance of the Contract are reviewed on a monthly basis;
- 5.8.7. To ensure and agree that the commercial and contract requirements between the Authority and the Contractor are clearly understood and managed appropriately;
- 5.8.8. To review the commercial aspects of all Change Requests issued and specifically consider whether the proposed Change:
- 5.8.9. has an impact on other areas or aspects of the Contract and / or documentation;
- 5.8.10. has an impact on the ability of the Authority to meet its agreed business needs;
- 5.8.11. will raise any risks or issues;
- 5.8.12. will provide value for money in consideration of any changes to the Pricing and Payment Schedule, Key Performance Indicators and any other areas of the Contract which may be affected;
- 5.8.13. Reporting on supply chain and SME status of suppliers %

SCHEDULE 3 – BASWARE

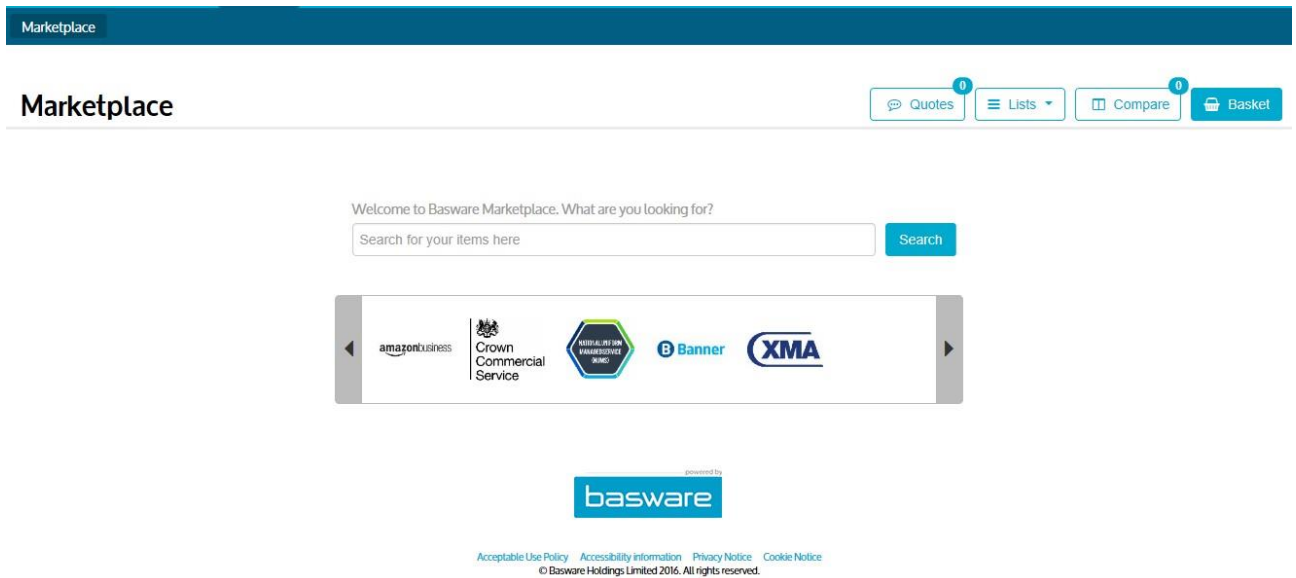
- 1. Background
 - 1.1. Basware is a third-party, cloud-based eMarketplace and invoicing platform which integrates into common Enterprise Resource Planning (ERP) applications such as Oracle. Integrated into the MoJ's Single Operating Platform (SOP), Basware offers extended Purchase to Pay (P2P) functionality for MoJ, resource savings through better invoice handling and improved purchasing compliance. The solution also gives access to the Basware eMarketplace, a network of circa 45,000 suppliers, leading to potential savings through increased competition

2. Solution overview 2.1. Basware is accessed via the normal requisitioning process in the MoJ's SOP system. Basware exists as a 'store' and requisitioners 'punch-out' to the platform. Once inside, users can shop from supplier catalogues (much like Amazon). A Purchase Order (PO) will be auto-created in Basware for transmission to the supplier. The supplier can initiate invoicing directly from the platform by 'flipping' the corresponding PO. This sends the invoice back into SOP for matching and payment. Additionally, there is the option to add a virtual Government Procurement Card (GPC) is a Visa based purchasing and payments system (not a credit card). It is designed to be simple to use, easy to control and to speed up the process of obtaining goods and services, to enable immediate payment of invoices know as 'ePayments'.

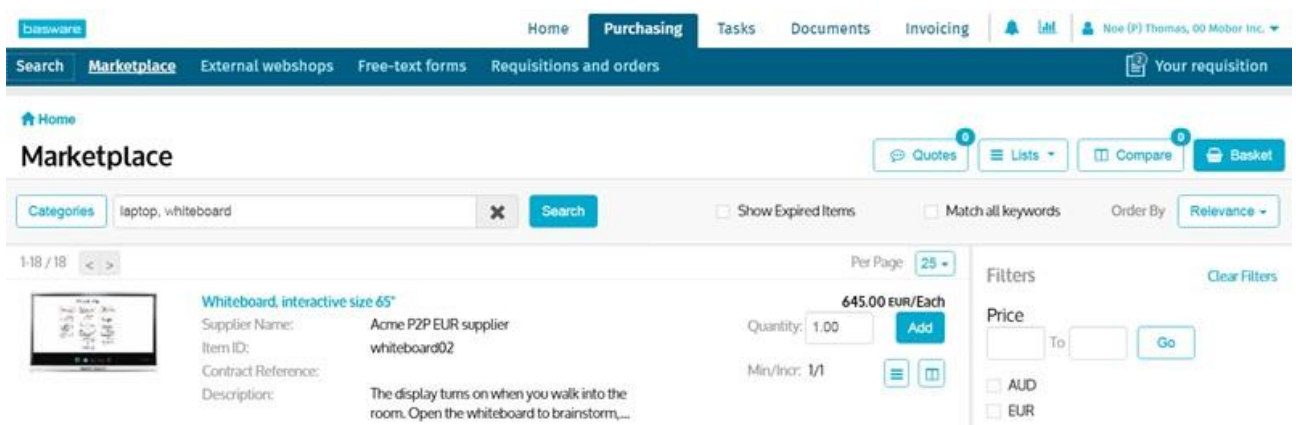
3. System Map



Home/landing page for requisitioners



Searching for a catalogue item



4. Benefits

4.1. Basware offers benefits to users of the solution:

4.2. For suppliers

- 4.2.1. Catalogue content is self-managed, reducing the risk of price discrepancies;
- 4.2.2. PO 'flip' functionality should reduce invoicing matching issues, speeding up payment to suppliers;
- 4.2.3. ePayments offers immediate invoice settlement (where appropriate, transaction fee applies);
- 4.2.4. Free and available to all suppliers, regardless of the technical capabilities of their finance systems.

5. Supplier transaction methods

- 5.1. Suppliers can interact with the solution in several ways, from simply receiving orders and submitting invoices, to managing multiple catalogues, and settling

invoices via ePayments. Each supplier will be different in what functionality is able or suitable to be utilised. The table below details four main ways suppliers can transact with MoJ via Basware and the options available within each method:

Receive orders	Submit invoices	Provide content
Email via supplier portal	PO 'flip' via supplier portal	Supplier managed catalogues
Back-office integration	Structured eInvoice via supplier portal	Supplier punch-out
	Back-office integration	Buyer managed on behalf of supplier
	ePayments	

SCHEDULE 4 – PRICES and INVOICING

Part 1

1. Introduction and Purpose

- 1.1. This Pricing and Payment document shall determine the pricing mechanisms associated with the Contract, including the product prices and the price adjustment processes. Payment of invoices shall be in accordance with this document and the Conditions of Contract. In addition to the clauses set out hereinafter, the Contractor shall take all reasonable steps to minimise inflationary pressures, whilst maximising cost price reductions.

2. Product Unit Price

- 2.1. At the Commencement Date of the contract, the Product Unit Prices are set out as per Supplier's tendered bid. These Product Unit Prices shall be the sole source of remuneration for the Contractor and are fully inclusive. The Contractor shall have no recourse to the Authority for any additional costs associated with the performance of this Contract.
- 2.2. The Product Unit Prices shall be fixed from the Commencement Date of the contract for a minimum of 6 months until 30/04/2024.
- 2.3. The Product Unit Prices apply uniformly to all the Authorities Sites and delivery points as identified in Appendix C – Delivery Points.
- 2.4. The Contractor shall ensure that invoice prices are set at the Point of Order, and represent a "Price Ordered, Price Paid" model. For the avoidance of doubt, the Point of Order is represented by receipt of a valid Authority Purchase Order. If the Unit Price is adjusted in line with the price adjustment mechanism as described in Section 3 between the point of order and the point of delivery, this adjustment shall not be applied to the Contractor's invoice price, once a valid Authority Purchase Order has been issued in advance of the change to the Unit Prices.
- 2.5. Where the pack size of a product changes, or replacement products are sourced due to Supplier failure or discontinued lines, the price per 'each' will not exceed the price agreed on existing product list.

3. Price Adjustment

- 3.1. Product Unit Prices shall be adjusted in line with CPI Any price adjustment request must be submitted to the Authority in writing no less than 3 months prior to the revised prices being implemented.
- 3.2. The Contractor will provide robust evidence to support the requested revision based on commodity information including materials, labour and energy. This includes but is not limited to:
 - 3.2.1. Supplier invoices
 - 3.2.2. Supplier letters
 - 3.2.3. Market data
 - 3.2.4. evidence other supply routes have been considered and alternative suppliers have been approached with quotes sought to switch
- 3.3. Any increase in price must be supported by evidence showing a sustained change in cost over a 3-month period or more.
- 3.4. The price review will be submitted to detail price changes per product by the case.
- 3.5. Any product line which fluctuates less than 5% (either increase or decrease) will be rejected by the Authority.
- 3.6. The Contractor can initiate the Price Adjustment at any time after the first 6 months of the first contract year.
- 3.7. No more than 3 reviews can be requested in any 12 month period.
- 3.8. Where additional information is required by the Authority to verify the price adjustment, this must be provided by the Contractor within 5 working days.
- 3.9. Upon agreement of a price adjustment, a Contract Change Notice shall be generated in alignment with the Change Control Procedure. A completed CCN, signed by both parties, should be in place no less than 10 working days prior to revised pricing being implemented.
- 3.10. Product Unit Price changes at the price adjustment will not exceed Headline CPI taken from the Office for National Statistics unless full justification is provided. The Authority will need to see robust evidence of any price increases above CPI.
- 3.11. The Contractor must pass on any product price reductions at the price adjustment review.

- 3.12. The Product Unit Price may only be amended to any accuracy of 1 pence. Therefore, where the result of the indexing process indicates an adjustment of 0.5 pence or above it shall be amended up to the nearest penny and where it indicates an adjustment of less than 0.5 pence it shall be rounded down.

Part 2

1. Invoice Requirements

- 1.1. Other than invoices submitted through Basware, all invoices submitted to the Authority shall:
- 1.1.1. clearly state the word 'invoice' and contain the following information:
 - a. a unique identification number (invoice number);
 - b. the Supplier's name, address and contact information;
 - c. the name and address of the department/agency in the Authority with which the Supplier is working;
 - d. a clear description of the services, works or goods being invoiced for;
 - e. the date the goods or service were provided;
 - f. the date of the invoice;
 - g. the amount being charged;
 - h. VAT amount if applicable;
 - i. the total amount owed;
 - j. the Purchase Order number; and
 - k. the amount of the invoice in sterling or any other currency which is Approved.
 - 1.1.2. if submitted by email meet the following criteria:
 - a. email size must not exceed 4mb;
 - b. one invoice per file attachment (PDF). Multiple invoices can be attached as separate files; and
 - c. any supporting information, backing data etc. shall be contained within the invoice PDF file and
 - 1.1.3. unless approved:
 - a. not contain any lines for items which are not on the Purchase Order; and
 - b. replicate, as far as possible, the structure of and the information contained in the Purchase Order in respect of the number of lines, line descriptions, price and quantity.
- 1.14 If required by the Authority, the Supplier shall submit a structured electronic invoice in an Electronic Data Interchange (EDI) or XML formats

SCHEDULE

5 - CHANGE CONTROL

Change Request Form

(For completion by the Party requesting the Change)

Contract Title:	Party requesting Change:
Name of Supplier:	
Change Request Number:	Proposed Change implementation date:
Full description of requested Change (including proposed changes to wording of the Contract where possible):	
Reasons for requested Change:	
Effect of requested Change	
Assumptions, dependencies, risks and mitigation (if any):	
Change Request Form prepared by (name):	
Signature:	
Date of Change Request:	

Contract Change Notice (“CCN”)

(For completion by the Authority once the Change has been agreed in principle by both Parties. Changes do not become effective until this form has been signed by both Parties.)

Contract Title:		Change requested by:	
Name of Supplier:			
Change Number:			
Date on which Change takes effect:			
Contract between: The [Secretary of State for Justice]/[The Lord Chancellor] [delete as applicable] and [insert name of Supplier]			
It is agreed that the Contract is amended, in accordance with Regulation 72 of the Public Contracts Regulations 2015, as follows: [Insert details of the variation (including any change to the Price and deliverables/obligations) based on the information provided in the Change Request Form and any subsequent discussions/negotiations, cross referencing the wording of the original Contract, as previously changed (if applicable), where possible] Where significant changes have been made to the Contract, information previously published on Contracts Finder will be updated.			
Words and expressions in this CCN shall have the meanings given to them in the Contract. The Contract, including any previous CCNs, shall remain effective and unaltered except as amended by this CCN			
Signed for and on behalf of [the Secretary of State for Justice]/[the Lord Chancellor]		Signed for and on behalf of [insert name of Supplier]	
Signature		Signature	
Name		Name	
Title		Title	
Date		Date	

6 - COMMERCIALY SENSITIVE INFORMATION

- 1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the

SCHEDULE

Contract following a Request for Information pursuant to clause D4 (Freedom of Information).

- 2 In this Schedule 6 the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 6 applies.
- 4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

SUPPLIER'S COMMERCIALY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY
Schedule 1 – 5.1 supplier pricing	20/10/23	1/11/23 – 31/10/28
Bunzl business continuity plans	20/10/23	1/11/23 – 31/10/28
Bunzl employee details	20/10/23	1/11/23 – 31/10/28

SCHEDULE

7 - SUPPLIER AND THIRD PARTY SOFTWARE

Not Applicable

SCHEDULE

8 – INFORMATION SECURITY & ASSURANCE

1. General

1.1 This Schedule 8 sets out:

- (a) the security requirements in annex 1, with which the Supplier must comply;
- (b) the tests which the Supplier shall conduct on the Information Management System during the Term; and
- (c) the Supplier's obligations to:
 - (i) return or destroy Authority Data on the expiry or earlier termination of the Contract; and
 - (ii) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in paragraph 9; and
 - (iii) report Breaches of Security to the Authority.

2 Principles of Security

2.1 The Supplier acknowledges that the Authority places great emphasis on the confidentiality, integrity and availability of the Authority Data and, consequently on the security of:

- (a) the Premises;
- (b) the ICT Environment;
- (c) the Information Management System; and (d) the Services.

2.2 Notwithstanding the involvement of the Authority in assessing the arrangements which the Supplier implements to ensure the security of the Authority Data and the Information Management System, the Supplier is and remains responsible for:

- (a) the security, confidentiality, integrity and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Sub-Contractors; and
- (b) the security of the Information Management System.

2.3 The Supplier shall:

- (a) comply with the security requirements in annex 1; and

- (b) ensure that each Sub-Contractor that Processes Authority Data complies with the Sub-Contractor Security Requirements.

2.4 The Supplier shall provide the Authority with access to Staff responsible for information assurance to facilitate the Authority's assessment of the Supplier's compliance with its obligations set out in this Schedule 8 at reasonable times on reasonable notice.

3 Information Security Approval Statement

3.1 The Supplier shall ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule 8, including any requirements imposed on Sub-Contractors by annex 2, from the Commencement Date.

3.2 The Supplier may not use the Information Management System to Process Authority Data unless and until:

- (a) the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with paragraph 7.1; and
- (b) the Authority has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this paragraph 3.

3.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-Contractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of the Authority Data and the Information Management System.

3.4 The Supplier shall prepare and submit to the Authority within 20 Working Days of the Commencement Date, the Security Management Plan, which comprises:

- (a) an Information Assurance Assessment;
- (b) the Required Changes Register; and
- (c) the Incident Management Process.

3.5 The Authority shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within 20 Working Days of receipt and shall either issue the Supplier with:

- (a) an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Authority Data; or
- (b) a rejection notice, which shall set out the Authority's reasons for rejecting the Security Management Plan.

- 3.6 If the Authority rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Authority's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Authority for review within 10 Working Days or such other timescale as agreed with the Authority.
- 3.7 The Authority may require, and the Supplier shall provide the Authority and its authorised representatives with:
- (a) access to the Staff;
 - (b) access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with the Contract; and
 - (c) such other information and/or documentation that the Authority or its authorised representatives may reasonably require,

to assist the Authority to establish whether the arrangements which the Supplier and its Sub-Contractors have implemented in order to ensure the security of the Authority Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Authority in accordance with this paragraph 3 within 10 Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Authority with the access that it requires within 24 hours of receipt of such request.

4 Compliance Reviews

- 4.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Authority, at least once each year and as required by this paragraph 4.
- 4.2 The Supplier shall notify the Authority within 2 Working Days after becoming aware of:
- (a) a significant change to the components or architecture of the Information Management System;
 - (b) a new risk to the components or architecture of the Information Management System;
 - (c) a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in paragraph The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including: of annex 1 to this Schedule 8;
 - (d) a change in the threat profile;

- (e) a significant change to any risk component;
 - (f) a significant change in the quantity of Personal Data held within the Service;
 - (g) a proposal to change any of the Premises; and/or
 - (h) an ISO/IEC 27001 (at least ISO/IEC 27001:2013) audit report produced in connection with the Certification Requirements indicates significant concerns.
- 4.3 Within 10 Working Days of notifying the Authority or such other timescale as may be agreed with the Authority, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Authority for review and approval.
- 4.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost.

5 Certification Requirements

5.1

5.2 The Supplier shall ensure that each Higher Risk Sub-contractor is certified compliant with either:

- (a) the prevailing version of ISO/IEC 27001 by a UK Accreditation Service approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); or
- (b) Cyber Essentials PLUS

and must provide the Authority with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor is permitted to receive, store or Process Authority Data.

5.3 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.

5.4 The Supplier shall ensure that the Supplier and each Sub-Contractor who is responsible for the secure destruction of Authority Data:

- (a) securely destroys Authority Data only at Premises which are included within the scope of an existing certification of compliance with the prevailing published ISO/IEC 27001;
- (b) satisfies the Authority that their data destruction/deletion practices comply with UK GDPR and follows all relevant NCSC guidance; and

- (c) maintains an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.
- 5.5 The Supplier shall provide the Authority with evidence of its and Sub-Contractors' compliance with the requirements set out in this paragraph 5.4 before the Supplier or the relevant Sub-Contractor (as applicable) may carry out the secure destruction of any Authority Data.
- 5.6 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-Contractor ceases to be compliant with the Certification Requirements and, on request from the Authority, shall or shall procure that the relevant Sub-Contractor shall:
 - (a) immediately cease using the Authority Data; and
 - (b) procure that the relevant Sub-Contractor promptly returns, destroys and/or erases the Authority Data in accordance with the requirements set out in this paragraph 5.
- 5.7 The Authority may exempt, in whole or part, the Supplier or any Sub-Contractor from the requirements of this paragraph 5. Any exemption must be in writing to be effective. The Supplier shall include the exemption in the Security Management Plan.

6 Security Testing

- 6.1 The Supplier shall, at its own cost procure and conduct:
 - (a) testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("**IT Health Check**"); and
 - (b) such other security tests as may be required by the Authority.
- 6.2 The Supplier shall:
 - (a) complete all of the above security tests before:
 - (i) the Supplier submits the Security Management Plan to the Authority for review in accordance with paragraph 3; and
 - (ii) before the Supplier is given permission by the Authority to Process or manage any Authority Data
 - (b) repeat the IT Health Check not less than once every 12 Months during the Term and submit the results of each such test to the Authority for review in accordance with this paragraph 6.
- 6.3 In relation to each IT Health Check, the Supplier shall:
 - (a) agree with the Authority the aim and scope of the IT Health Check;
 - (b) promptly, and no later than 10 Working Days, following the receipt of each IT Health Check report, provide the Authority with a copy of the full report;

- (c) if the IT Health Check report identifies any vulnerabilities, the Supplier shall:
 - (i) prepare a remedial plan for approval by the Authority (each a "**Remediation Plan**") which sets out in respect of each vulnerability identified in the IT Health Check report:
 - (A) how the vulnerability will be remedied;
 - (B) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:
 - (1) within 3 Months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "medium";
 - (2) within one Month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "high"; and
 - (3) within 7 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "critical";
 - (C) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - (ii) comply with the Remediation Plan; and
 - (iii) conduct such further tests on the Service as are required by the Remediation Plan to confirm that the Remediation Plan has been complied with.
- 6.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Authority.
- 6.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall, within 2 Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique, provide the Authority with a copy of the test report and:
- (a) propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

- (b) where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Authority.
- 6.6 The Supplier shall conduct such further tests of the Supplier System as may be required by the Authority from time to time to demonstrate compliance with its obligations set out this Schedule 8 and the Contract.
- 6.7 The Supplier shall notify the Authority immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in paragraph 6.3.

7 Security Monitoring and Reporting

7.1 The Supplier shall:

- (a) monitor the delivery of assurance activities;
- (b) maintain and update the Security Management Plan in accordance with paragraph 4;
- (c) agree a document which presents the residual security risks to inform the Authority's decision to Approve the Supplier to Process and transit the Authority Data;
- (d) monitor security risk impacting upon the operation of the Service;
- (e) report Breaches of Security in accordance with the approved Incident Management Process; and
- (f) agree with the Authority the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Authority within 20 Working Days of the Commencement Date.

8 Malicious Software

8.1 The Supplier shall install and maintain Anti-Malicious Software or procure that AntiMalicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such AntiMalicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

8.2 If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational

efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

8.3 Any cost arising out of the actions of the Parties taken in compliance with paragraph 8.2 shall be borne by the Parties as follows:

- (a) by the Supplier where the Malicious Software originates from:
 - (i) the Supplier Software;
 - (ii) the Third Party Software supplied by the Supplier; or
 - (iii) the Authority Data whilst the Authority Data is or was under the control of the Supplier
- (i) unless, in the case of the Authority Data only, the Supplier can demonstrate that such Malicious Software was present in the Authority Data and not quarantined or otherwise identified by the Authority when the Authority provided the Authority Data to the Supplier; and
- (b) by the Authority, in any other circumstance.

9 Breach of Security

9.1 If either Party becomes aware of a Breach of Security it must notify the other in accordance with the Incident Management Process.

9.2 The Incident Management Process must, as a minimum, require the Supplier to do the following when it becomes aware of a Breach of Security or attempted Breach of Security:

- (a) immediately take all reasonable steps necessary to:
 - (i) minimise the extent of actual or potential harm caused by such Breach of Security;
 - (ii) remedy such Breach of Security to the extent possible;
 - (iii) apply a tested mitigation against any such Breach of Security; and
 - (iv) prevent a further Breach of Security in the future which exploits the same root cause failure;
- (b) as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

If any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with the Contract, then such remedial action must be completed at no additional cost to the Authority.

ANNEX 1: SECURITY REQUIREMENTS

1 Security Classification of Information

1.1 If the provision of the Services requires the Supplier to Process Authority Data which is classified as:

- (a) OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or
- (b) SECRET or TOP SECRET, the Supplier shall only do so where it has notified the Authority prior to receipt of such Authority Data and the Supplier shall implement additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2 End User Devices

2.1 The Supplier shall manage, and shall ensure that all Sub-Contractors manage, all enduser devices used by the Supplier on which Authority Data is Processed in accordance the following requirements:

- (a) the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
- (b) users must authenticate before gaining access;
- (c) all Authority Data is encrypted using an encryption tool agreed by the Authority;
- (d) the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
- (e) the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
- (f) the Supplier or Sub-Contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;
- (g) all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any prevailing ISO/IEC 27001

certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

- 2.2 The Supplier shall comply, and ensure that all Sub-Contractors comply, with the recommendations in NCSC Device Guidance and prevailing Authority Technical Security Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under the Contract.
- 2.3 Where there any conflict between the requirements of this 8 and the requirements of the NCSC Device Guidance and/or the Authority's Technical Security Guidance, the requirements of this Schedule 8 takes precedence.

3 Encryption

3.1 The Supplier shall ensure, and shall ensure that all Sub-contractors ensure, that Authority Data is encrypted:

- (a) when stored at any time when no operation is being performed on it; and
- (b) when transmitted.

3.2 Where the Supplier, or a Sub-Contractor, cannot encrypt Authority Data the Supplier shall:

- (a) immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
- (b) provide details of the protective measures the Supplier or Sub-Contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and
- (c) provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed protective measures as the Authority may require.

3.3 The Authority, the Supplier and, where the Authority requires, any relevant SubContractor shall meet to agree appropriate protective measures for the unencrypted Authority Data.

3.4 Where the Authority and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

- (a) the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and
- (b) the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Authority Data.

3.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain Authority Data, either Party may refer the matter to be determined in accordance with the dispute resolution procedure set out in clause I1.

4 Personnel Security

4.1 All Staff are subject to a pre-employment check before they may participate in the provision and or management of the Services which must include all pre-employment checks which are required by the BPSS including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record.

4.2 The Parties shall review the roles and responsibilities of the Staff who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting and a specific national security vetting clearance (for example a Counter Terrorist Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to systems which Process Authority Data or data which, if it were Authority Data, would be classified as OFFICIAL-SENSITIVE.

4.3 The Supplier shall not allow Staff who fail the security checks required by paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Authority has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services. The Supplier shall provide an up to date list of all Staff and their associated security clearance checks each month, including all Sub-contractor personnel and the personnel of any subcontractor of a Sub-contractor who in each case are involved in the management and/or provision of the Services.

4.4 The Supplier shall ensure that Staff are granted such access to Authority Data only as is necessary to enable the Staff to perform their role and to fulfil their responsibilities.

4.5 The Supplier shall ensure that Staff who no longer require access to the Authority Data (for example. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data revoked within one Working Day.

4.6 The Supplier shall ensure that Staff who have access to the Premises, the ICT Environment or the Authority Data receive regular training on security awareness that reflects the degree of access those individuals have to the Premises, the ICT Environment or the Authority Data.

4.7 The Supplier shall ensure that the training provided to Staff under paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Premises, the ICT Environment or the Authority Data ("phishing").

5 Identity, Authentication and Access Control

5.1 The Supplier shall operate an access control regime to ensure:

- (a) all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
- (b) all persons who access the Premises are identified and authenticated before they are allowed access to the Premises.

5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Premises so that such persons are allowed access only to those parts of the Premises and the Supplier System they require.

5.3 The Supplier shall retain records of access to the Premises and to the Supplier System and shall make such record available to the Authority on request.

6 Data Destruction or Deletion

6.1 The Supplier shall:

- (a) prior to securely sanitising any Authority Data or when requested the Supplier shall provide the Authority with all Authority Data in an agreed open format;
- (b) have documented processes to ensure the availability of Authority Data if the Supplier ceases trading;
- (c) securely erase in a manner agreed with the Authority any or all Authority Data held by the Supplier when requested to do so by the Authority;
- (d) securely destroy in a manner agreed with the Authority all media that has held Authority Data at the end of life of that media in accordance with any specific requirements in the Contract and, in the absence of any such requirements, as agreed by the Authority; and
- (e) implement processes which address the NCSC guidance on secure sanitisation.

7 Audit and Protective Monitoring

7.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data.

7.2 The Parties shall work together to establish any additional audit and monitoring requirements for the Information Management System.

7.3 The Supplier shall discuss with the Authority the retention periods for audit records and event logs which, when agreed with the Authority, shall be documented in the Security Management Plan.

8 Location of Authority Data

8.1 The Supplier shall not and shall procure that none of its Sub-Contractors Process Authority Data outside the UK without Approval.

9 Vulnerabilities and Corrective Action

9.1 The Parties acknowledge that from time to time vulnerabilities in the Information Management System may be discovered which, unless mitigated, will present an unacceptable risk to the Authority Data.

9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:

- (a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
- (b) Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

9.3 Subject to paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:

- (a) 7 days after the public release of patches for those vulnerabilities categorised as 'Critical';
- (b) 30 days after the public release of patches for those vulnerabilities categorised as 'Important'; and
- (c) 30 days after the public release of patches for those vulnerabilities categorised as 'Other'.

9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in paragraph 9.3 shall be extended where:

- (a) the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (for example, because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be

remedied by the Supplier within the timescales set out in paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

- (b) the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
- (c) the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.

9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Authority in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

10 Secure Architecture

10.1 The Supplier shall design the Information Management System in accordance with:

- (a) the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-designprinciples-digital-services-main>;
- (b) the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
- (c) the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
 - (i) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
 - (ii) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
 - (iii) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
 - (iv) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security

governance framework which coordinates and directs its management of the Services and information within it;

- (v) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- (vi) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;
- (vii) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (viii) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- (ix) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority's use of the Service;
- (x) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (xi) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (xii) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (xiii) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Subcontractors; and

- (xiv) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

- (d) the Authority's Technical Security Guidance

ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS 1 Application of Annex

- 1.1 This annex 2 applies to all Sub-Contractors which Process Authority Data.
- 1.2 The Supplier shall:
 - (a) ensure that those Sub-Contractors comply with the provisions of this annex 2; and
 - (b) keep sufficient records to demonstrate that compliance to the Authority.

2 Designing and managing secure solutions

- 2.1 The Sub-Contractor shall implement its solution to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-Contractor shall assess its systems against the NCSC Cloud Security Principles:

<https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloudsecurity/implementing-the-cloud-security-principles>

at its own cost to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-Contractor shall document that assessment and make that documentation available to the Authority on the Authority's request.

3 Data Processing, Storage, Management and Destruction

- 3.1 The Sub-Contractor shall not Process any Authority Data outside the UK. The Authority may allow the Sub-Contractor to Process Authority Data outside the UK and may impose conditions on that permission, with which the Sub-Contractor shall comply. Any permission must be in writing to be effective.
- 3.2 The Sub-Contractor shall, when requested to do so by the Authority:
 - (a) securely destroy Authority Data only on Premises which are included within the scope of an existing certification of compliance with ISO/IEC 27001 or later (at least ISO/IEC 27001:2013);

- (b) satisfy the Authority that its data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
- (c) maintain an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.

4 Personnel Security

- 4.1 The Sub-Contractor shall perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the BPSS including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record.
- 4.2 The Sub-Contractor shall, if the Authority requires, at any time, ensure that one or more of the Sub-Contractor's staff obtains Security Check clearance in order to Process Authority Data containing Personal Data above certain volumes specified by the Authority, or containing Special Category Personal Data.
- 4.3 Any Sub-Contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

5 End User Devices

- 5.1 The Supplier shall manage, and shall ensure that all Sub-contractors manage, all enduser devices used by the Supplier on which Authority Data is Processed in accordance with the following requirements:
- (a) the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - (b) users must authenticate before gaining access;
 - (c) all Authority Data must be encrypted using an encryption tool agreed to by the Authority;
 - (d) the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - (e) the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
 - (f) the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on

the device and prevent any user or group of users from accessing the device;

- (g) all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 or later (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

5.2 The Supplier shall comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance and Authority Technical Security Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

5.3 Where there any conflict between the requirements of this **Error! Reference source not found.**8 and the requirements of the NCSC Device Guidance, the requirements of this Schedule 8 takes precedence.

6 Encryption

6.1 The Supplier shall ensure, and shall ensure that all Sub-contractors ensure, that Authority Data is encrypted:

- (a) when stored at any time when no operation is being performed on it; and
- (b) when transmitted.

6.2 Where the Supplier or a Sub-Contractor cannot encrypt Authority Data the Supplier shall:

- (a) immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
- (b) provide details of the protective measures the Supplier or Sub-Contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and
- (c) provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed protective measures as the Authority may require.

6.3 The Authority, the Supplier and, where the Authority requires, any relevant SubContractor shall meet to agree appropriate protective measures for the unencrypted Authority Data.

6.4 Where the Authority and Supplier reach agreement, the Supplier shall update the Security Management Plan to include:

- (a) the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and

- (b) the protective measure that the Supplier and/or Sub-Contractor will put in place in respect of the unencrypted Authority Data.

6.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain Authority Data, either Party may refer the matter to be determined in accordance with the dispute resolution procedure set out in clause 11.

7 Patching and Vulnerability Scanning

7.1 The Sub-Contractor shall proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

8 Third Party Sub-contractors

8.1 The Sub-Contractor shall not transmit or disseminate the Authority Data to any other person unless Approved.

8.2 The Sub-Contractor shall not, when performing any part of the Services, use any software to Process the Authority Data where the licence of that software purports to grant the licensor rights to Process the Authority Data greater than those rights strictly necessary for the use of the software.



Ministry of Justice

ANNEX 3: SECURITY MANAGEMENT PLAN TEMPLATE

Security Management Plan Template

Project ITT_7386 Bunzl Catering Supplies

Not Applicable.

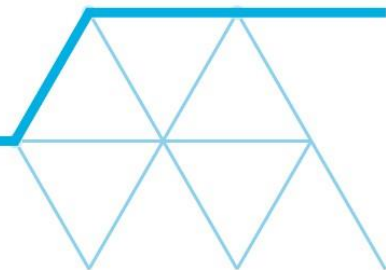
SCHEDULE 9 - PRISONS

ACCESS TO PRISONS

- 1 If Staff are required to have a pass for admission to a Authority Premises which is a prison, (a **Prison**) the Authority shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Any member of the Staff who cannot produce a proper pass when required to do so by any member of the Authority's personnel, or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to a Prison or be required to leave a Prison if already there.
- 2 Staff shall promptly return any pass if at any time the Authority so requires or if the person to whom the pass was issued ceases to be involved in the supply of the Goods. The Supplier shall promptly return all passes on expiry or termination of the Contract.
- 3 Staff attending a Prison may be subject to search at any time. Strip searches shall be carried out only on the specific authority of the Authority under the same rules and conditions applying to the Authority's personnel. The Supplier is referred to Rule 71 of Part IV of the Prison Rules 1999 as amended by the Prison (Amendment) Rules 2005 and Rule 75 of Part IV of the Young Offender Institution Rules 2000 as amended by the Young Offender Institution (Amendment) Rules 2005.
- 4 Searches shall be conducted only on the specific authority of the Authority under the same rules and conditions applying to the Authority's personnel and/or visitors. The Supplier is referred to Section 8 of the Prison Act 1952, Rule 64 of the Prison Rules 1999 and PSI 67/2011.

SECURITY

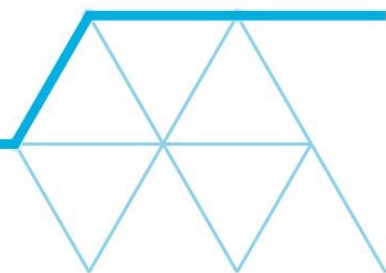
- 5 Whilst at Prisons Staff shall comply with all security measures implemented by the Authority in respect of staff and other persons attending Prisons. The Authority shall provide copies of its written security procedures to Staff on request. The Supplier and all Staff are prohibited from taking any photographs at Prisons unless they have Approval and the Authority's representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without Approval.
- 6 The Authority may search vehicles used by the Supplier or Staff at Prisons.
- 7 The Supplier and Staff shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible for security matters on the Authority's behalf, and when required by the Authority shall:



- 7.1 take all reasonable measures to make available for interview by the Authority any Staff identified by the Authority, or a person who is responsible for security matters, for the purposes of the investigation. Staff may be accompanied by and be advised by another person whose attendance at the interview is acceptable to the Authority; and
- 7.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind and in any form reasonably required by the Authority, or by a person who is responsible for security matters on the Authority's behalf, for the purposes of investigation as long as the provision of that material does not prevent the Supplier from supplying the Goods. The Authority may retain any such material for use in connection with the investigation and, as far as possible, may provide the Supplier with a copy of any material retained.

OFFENCES AND AUTHORISATION

- 8 In supplying the Goods the Supplier shall comply with PSI 10/2012 (Conveyance and Possession of Prohibited Items and Other Related Offences) and other applicable provisions relating to security as published by the Authority from time to time.
- 9 Nothing in the Contract is deemed to provide any "authorisation" to the Supplier in respect of any provision of the Prison Act 1952, Offender Management Act 2007, Crime and Security Act 2010, Serious Crime Act 2015 or other relevant legislation.



SCHEDULE 10 _ STATUTORY OBLIGATIONS AND CORPORATE SOCIAL RESPONSIBILITY

1 What the Authority expects from the Supplier

- 1.1 His Majesty's Government's Supplier Code of Conduct (the "**Code**") sets out the standards and behaviours expected of suppliers who work with government. The Code can be found online at:

[Supplier Code of Conduct- v2 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61254/supplier-code-of-conduct-v2.pdf)

- 1.1 The Supplier shall, and shall procure that its Sub-Contractors shall:

- 1.1.1 comply with its legal obligations, in particular those in Part 1 of this Schedule 10, and meet the standards set out in the Code as a minimum; and
- 1.1.2 use reasonable endeavours to comply with the standards in Part 2 of this Schedule 10.

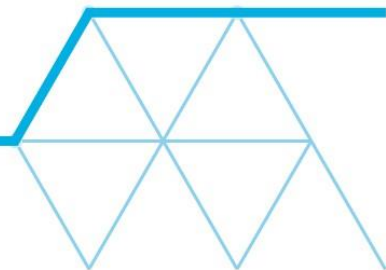
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PART 1 Statutory Obligations

2 Equality and Accessibility

- 2.1 The Supplier shall:

- (a) perform its obligations under the Contract in accordance with:
 - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Authority's equality, diversity and inclusion policy as given to the Supplier from time to time;
 - iii) any other requirements and instructions which the Authority reasonably imposes regarding any equality obligations imposed on the Authority at any time under applicable equality law; and
- (b) take all necessary steps and inform the Authority 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).



3 Modern Slavery

3.1 The Supplier shall:

- (a) not use, or allow Sub-Contractors to use, forced, bonded or involuntary prison labour;
- (b) not require any Staff to lodge deposits or identity papers with their employer;
- (c) allow, and ensure that any Sub -Contractors allow, Staff to leave their employer after reasonable notice;
- (d) make reasonable enquiries to ensure that its Staff and Sub-Contractors have not been convicted of slavery or human trafficking offences anywhere in the world;
- (e) have and maintain throughout the Term its own policies and procedures to ensure its compliance with the MSA and include in its Sub -Contracts anti-slavery and human trafficking provisions;
- (f) not use, or allow its Staff to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Staff and Sub-Contractors;
- (g) not use or allow to be used child or slave labour to be used by its Sub-Contractors;
- (h) if either Party identifies any occurrence of modern slavery in connection with the Contract, comply with the rectification process set out in clauses F2.4 to F2.6;
- (i) prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
- (j) maintain a complete set of records to trace the supply chain of all goods and services provided to the Authority in connection with the Contract;
- (k) report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Authority and to the Modern Slavery Helpline and other relevant national or local law enforcement agencies; and
- (l) implement a system of training for its employees to ensure compliance with the MSA.

3.2 The Supplier represents, warrants and undertakes throughout the Term that:

- (a) it has not been convicted of any slavery or human trafficking offences anywhere in the world; and
- (b) to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere in the world.



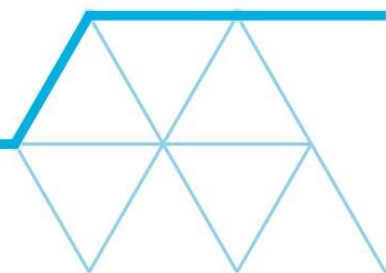
- 3.3 If the Supplier notifies the Authority pursuant to paragraph 3.1(i) of this Schedule 10, it shall respond promptly to the Authority's enquiries, cooperate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.
- 3.4 If the Supplier is in Default under paragraphs 3.1 or 3.2 of this Schedule 10 the Authority may by notice:
- (a) require the Supplier to remove from performance of the Contract any Sub -Contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract.

4 Income Security

- 4.1 The Supplier shall:
- (a) ensure that all pay and benefits paid for a standard working week meet, at least, national legal standards in the country of employment;
 - (b) provide all Staff with written and readily understandable information about their employment conditions in respect of pay before they enter employment and about their pay for the pay period concerned each time that they are paid;
 - (c) not make deductions from pay:
 - (i) as a disciplinary measure;
 - (ii) except where permitted by Law and the terms of the employment contract; and
 - (iii) without express permission of the person concerned and
 - (d) record all disciplinary measures taken against Staff.

5 Working Hours

- 5.1 The Supplier shall ensure that:
- (a) the working hours of Staff comply with the Law, and any collective agreements;
 - (b) the working hours of Staff, excluding overtime, is defined by contract, do not exceed 48 hours per week unless the individual has agreed in writing and that any such agreement is in accordance with the Law;
 - (c) overtime is used responsibly, considering:
 - (i) the extent;
 - (ii) frequency; and



- (iii) hours worked;
- (d) the total hours worked in any seven-day period shall not exceed 60 hours, except where covered by paragraph 5.1 (e);
- (e) working hours do not exceed 60 hours in any seven-day period unless:
 - (i) it is allowed by Law;
 - (ii) it is allowed by a collective agreement freely negotiated with a worker's organisation representing a significant portion of the workforce;
 - (iii) appropriate safeguards are taken to protect the workers' health and safety; and
 - (iv) the Supplier can demonstrate that exceptional circumstances apply such as during unexpected production peaks, accidents or emergencies;
- (f) all Supplier Staff are provided with at least:
 - (i) 1 day off in every 7-day period; or
 - (ii) where allowed by Law, 2 days off in every 14-day period.

6 Right to Work

6.1 The Supplier shall:

- (a) ensure that all Staff, are employed on the condition that they are permitted to work in the UK, and;
- (b) notify the authority immediately if an employee is not permitted to work in the UK.

7 Health and Safety

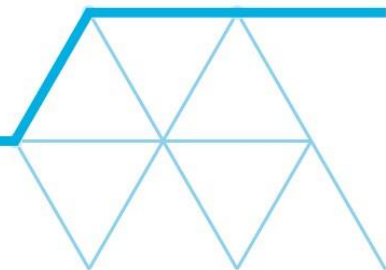
7.1 The Supplier shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Authority's Health and Safety Policy while at the Authority's Premises.


7.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Supplier shall instruct Staff to adopt any necessary safety measures in order to manage the risk.

8. Welsh Language Requirements

8.1 The Supplier shall comply with the Welsh Language Act 1993 and the Welsh Language Scheme as if it were the Authority to the extent that the same relate to the provision of the Goods.



9 Fraud and Bribery

- 9.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) 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.
- 9.2 The Supplier shall not during the Term:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Authority or any of its 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.
- 9.3 The Supplier shall, during the Term:
- (a) establish, maintain and enforce, and require that its Sub-Contractors 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;
 - (b) have in place reasonable prevention measures (as defined in section 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - (c) keep appropriate records of its compliance with its obligations under paragraphs 9.3(a) and 9.3(b) and make such records available to the Authority on request; and
 - (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.
- 9.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of paragraphs 9.1 and/or 9.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) 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; and/or
- 

- (c) 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

directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

- 9.5 If the Supplier notifies the Authority pursuant to paragraph 9.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.
- 9.6 If the Supplier is in Default under paragraphs 9.1 and/or 9.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract.
- 9.7 Any notice served by the Authority under paragraph 9.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract terminates).

PART 2 Corporate Social Responsibility

10 Zero Hours Contracts

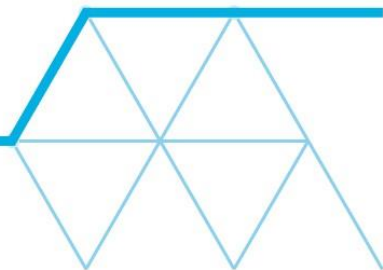
- 10.1 Any reference to zero hours contracts, for the purposes of this Contract, means as they relate to employees or workers and not those who are genuinely self-employed and undertaking work on a zero hours arrangement.
- 10.2 When offering zero hours contracts, the Supplier shall consider and be clear in its communications with its employees and workers about:
- (a) whether an individual is an employee or worker and what statutory and other rights they have;
 - (b) the process by which work will be offered and assurance that they are not obliged to accept work on every occasion; and
 - (c) how the individual's contract will terminate, for example, at the end of each work task or with notice given by either party.

11 Sustainability

- 11.1 The Supplier shall:
- (a) comply with the applicable Government Buying Standards;
 - (b) provide, from time to time, in a format reasonably required by the Authority, reports on the environmental effects of providing the Goods;
 - (c) maintain ISO 14001 or BS 8555 or an equivalent standard intended to manage its environmental responsibilities; and



- (b) perform its obligations under the Contract in a way that:
 - (i) supports the Authority's achievement of the Greening Government Commitments;
 - (ii) conserves energy, water, wood, paper and other resources;
 - (iii) reduces waste and avoids the use of ozone depleting substances; and
 - (iv) minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.



IN WITNESS of which the Contract is duly executed by the Parties on the date which appears at the head of page 1.

SIGNED for and on behalf of the Secretary
of State for Justice

Signature:


Zoe Matsell (Oct 20, 2023 16:56 GMT+1)


Name (block capitals):
Zoe Matsell

Position:
Commercial Deputy Director

Date:
Oct 20, 2023

SIGNED for and on behalf of the insert
name of Supplier

Signature:

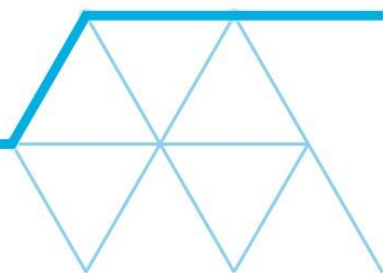

Helen Cockerham (Oct 20, 2023 16:30 GMT+1)

Name (block capitals):
Helen Cockerham

Position:
Managing Director - Bunzl Catering Supplies

Date:
Oct 20, 2023














Catering Disposables Contract Signature

Final Audit Report

2023-10-20

Created:	2023-10-20
By:	Chloe Querishi (chloe.querishi@justice.gov.uk)
Status:	Signed
Transaction ID:	CBJCHBCAABAAEu3_jMkGBABPTVssExulVYtqc37YYGrY

"Catering Disposables Contract Signature" History

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