

Supply Chain Contract effective from the date of contract signing by both parties between

BiP Solutions Limited

(registered number SC086146) and having its registered office at Medius, 60 Pacific Quay, Glasgow,
G51 1DZ

&

Department of Health and Social Care

on behalf of

The Secretary of State for Health and Social Care

whose principal place of business is

39 Victoria Street, London, SW1H 0EU

Terms & Conditions

1. Consequences of Accepting this Agreement

1.1. Please read carefully the Terms and Conditions as set out in this Agreement before accepting them.

1.2. By accepting this Agreement with BiP Solutions Ltd (hereinafter “BiP”), either by clicking on a box indicating Your acceptance, whether as part of a registration process or online purchase, or by executing an Order Form that references this Agreement, You agree to be bound by the Terms and Conditions as set out in this Agreement.

1.3. You acknowledge that You are entering this Agreement on behalf of the organisation, company, or other legal entity as identified in the registration process or applicable Order Form, whether You are a Buyer or a Supplier. You represent that You have the authority to bind such entity and affiliates to these Terms and Conditions, in which case the terms “You” and “Your” shall refer to such entity and its affiliates. If You do not have such authority, or if You do not agree with these Terms and Conditions, You must not accept this agreement and may not use the Service.

1.4. You will be deemed to have accepted these Terms and Conditions by signing up to the Partnership.

2. Definitions

2.1. **“Affiliate”** – means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. Control, for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

2.2. **“Buyer”** – means the organisation or legal entity co-ordinating or running a Procurement Exercise.

2.3. **“Helpdesk”** – means the facility provided by BiP to handle support queries and issues raised by Users.

2.4. **“Malicious code”** – means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.

2.5. **“Order Form”** – means the ordering documents for registrations or purchases hereunder, including any addenda, that are entered into between You and BiP from time to time. Order Forms shall be deemed to be incorporated herein by reference and include but are not limited to electronic forms online, hard copy, electronically scanned hard copy, or facsimile.

2.6. **“Partnership”** – means the agreement between an organisation and BiP for added value services to be provided based upon the supply chain system. These consist of such things as a microsite, reporting, buyer and supplier engagement, event support and any other services agreed between the parties in writing or through a relevant proposal.

2.7. **“Procurement Exercise”** – means a procurement process that may involve a Pre-Qualification Questionnaire (PQQ), a Request for Information (RFI), an Invitation to Tender (ITT), an Invitation to Negotiate (ITN), an Invitation to Participate in Dialogue (ITPD), an Invitation to Submit Final Offer (ITSFO), Invitation to Submit Final Tender (ITSFT), a Best And Final Offer (BAFO), a Request for Proposal (RFP), a Request for Quotation (RFQ); an electronic Auction or an electronic Contract. This list of individual artefacts used in procurement exercise processes is indicative only and is a non-exhaustive representation of commonly used terminology. Buyer Organisations may have their own, unique terminology to be applied on a case by case basis

2.8. **“Registration Information”** – means information required by BiP and provided by You in order to obtain access to the Service, whether registering for the free elements of the Service or placing an order for paid-for Services.

2.9. **“Supplier”** – means an organisation or legal entity responding to and participating in a Procurement Exercise, whether by invitation or otherwise, with the objective of providing goods and / or services to the Buyer.

2.10. **“Security Information”** – means any information that includes but is not limited to any user identifications, passwords, or any other unique identification data, or other security procedures that control access to any equipment, computer hardware systems or networks, computer software or applications, or any other services accessed or used by You in the use of the Services.

2.11. **“Service”** and **“Services”** – means those Services that You registered for or purchased under an Order Form/Partnership agreement and includes the online, web-based applications and system provided by BiP under the name CompeteFor via <http://www.competefor.com> and any other names and URLs as may be added or superseded and any associated offline components but excluding Third Party Applications.

2.12. **“Supplier List”** – means a list which is created and maintained by a Buyer via the Service and contains the names and details of Suppliers in which the Buyer has an interest.

2.13. **“System”** means the electronic brokerage system operated by BiP and currently known as CompeteFor (run on behalf of TfL) as well as any other name which may supersede this one, for use by Buying Organisations and Suppliers in order to match the needs of Buying Organisations to Suppliers who can potentially meet those needs.

2.14. **“Third Party Applications”** – means online, web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications.

2.15. **“User Guide”** – means the online user guide for the Service.

2.16. **“Users”** – means individuals who are authorised by You to use the Services and who have supplied user identifications and passwords by You (or by BiP at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, or third parties with which You contract business.

2.17. **“Working Days”** – means Redacted in line with FOIA Sec 41

2.18. **“You” or “Your”** – means the company or organisation or other legal entity for which You are accepting this Agreement, and affiliates of that entity. For the avoidance of doubt, “You” shall be deemed to include NHP staff and DHSC Consultants (where such consultants are working on NHP business).

2.19. **“Your Data”** – means all electronic data or information submitted by You to the Services

2.20. Any use of the above terminology or other words in the singular, plural or capitalisation are taken as interchangeable and therefore as referring to the same.

3. Service Licence

3.1. This Licence constitutes a legal contract between You and BiP and governs Your use of the System, whether you are a Buyer or a Supplier.

3.2. Commencement of Your Partnership grants You a Licence to use the Services detailed in Clause 5 as a named User

3.3. This Licence applies to any BiP Service programs (including, but not limited to, cgi scripts, registration wizard, html code, BiP databases and BiP content and information programs) to which You subscribe as set out in the Partnership or as may otherwise be agreed in writing by the parties from time to time.

3.4. You agree that Your registrations or purchases hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by BiP regarding future functionality or features.

4. Grant of Licence

4.1. Upon acceptance of these Terms and Conditions BiP grants Your organisation the right to have a non-exclusive, non-transferable Licence to Use the Service for a minimum period of one year or other term as may be agreed commencing on the date of the agreed Partnership for the Service which is received by BiP and thereafter for successive periods unless and until terminated in accordance with the terms of this Licence.

4.2. You acknowledge that this licence is granted to You as a named User on behalf of the organisation or entity identified within the Partnership agreement and neither this Licence nor the

Service may be transferred, sub-licensed or otherwise assigned. Any export of the Service is subject to the requirements and restrictions of applicable laws and regulations. You may configure the Service for Your own Use provided it is in support of Your authorised Use.

4.3. For the purposes of this Licence, “Use” shall mean to use the Service by accessing the Service from Your computer hardware, or by copying, transmitting, accessing or loading the same into the temporary memory of Your computer hardware and printing or copying any information or data accessed using the Service as required by You.

4.4. The Service to which this Licence relates may be used solely for business use and only by a person or persons named and nominated by You as specified in the applicable Partnership agreement or as otherwise notified by You to BiP and agreed in writing between the parties from time to time (“Users”). In compliance with these Terms and Conditions the information entered or accessed by the User may be printed out or copied for business use only.

4.5. You shall not be entitled to use, re-use, distribute or make available information or data accessed or copied using the Service to any third parties other than Your Users and / or those entities with which You collaborate strictly within the legitimate scope of the Service.

4.6. Your rights to use the Service shall be limited to those specified in this Licence. Any other use of the Service is not permitted.

4.7. Neither the Service nor information therein will be corrupted, changed, altered, amended or varied or damaged, destroyed, deleted, or decimated or otherwise modified to create other products or services or derivative works by or on behalf of You.

4.8. Neither You nor any User may vary, modify, adapt, translate, reverse engineer, decompile or disassemble the Service (or any part of the same) except as permitted by applicable law. Neither You nor any Users shall be permitted to copy the Service, in whole or in part, except to the extent permitted in terms of this Licence or by applicable law.

4.9. You shall not store or save any information or data in or using the Service that is not directly pertinent to Your tendering process or the legitimate scope of the Service.

4.10. You shall not, whether for a fee or free of charge, use, re-use, transfer, share, link to or frame, distribute or make available information or data accessed or copied using the Service to any third parties other than Users and shall not Use the Service in any manner to provide computer or consultancy or computer bureaux services to any third parties or otherwise to rent, lease, loan, resell for profit, redistribute, sub-lease, sub-Licence or create works based upon the Service or any part of the same.

4.11. You grant an irrevocable royalty-free unrestricted Licence to use, copy, modify, amend, update, re-use, publish, disseminate and distribute any and all information and data entered into the Service by You at any time during the term of this Licence where such information is made available to the public or meant for publication or already in the public domain.

4.12. All notices under this Licence shall, unless otherwise indicated, be validly served if sent by first class certified, registered or recorded delivery post or facsimile transmission to the address or facsimile number of the other party as notified from time to time by the other party to the party serving notice, being as at the date of this Licence in the case of BiP the address and facsimile number specified below and being in the case of You the address and facsimile number specified through communication. Notices shall be deemed to have been served if sent by post within 48

hours of sending or if sent by facsimile transmission on receipt of a successful transmission report provided that a copy of such notice is confirmed by first class certified, registered or recorded delivery post sent the same day.

5. The Service

5.1. The System facilitates pre Procurement Exercises for Buyers and their Suppliers, which allows Buyers to compile a shortlist of suppliers and take this into an e-sourcing platform of their choice or offline to evaluate, before ultimately awarding the contract to the winning supplier/s.

5.2. The System provides tools for Users to publish and share information, as well as access an easily searchable database of suppliers.

5.3. The specific details of the Partnership offering are included within Annex 1 below.

5.4. If you are a Supplier, You acknowledge and accept that by registering on the System your details and Supplier Profile shall be made available for all Buyers to search upon.

5.5. BiP is committed to delivering a quality service to You and BiP's Customer Services department operate a Helpdesk as part of the Service. The Helpdesk is available to Buyers and Suppliers and may be contacted by:

- a. Phoning Redacted in line with FOIA Sec 41
- b. Emailing at Redacted in line with FOIA Sec 41 during Working Days.
- c. Writing to Redacted in line with FOIA Sec 41

5.6. BiP has a Customer Service Charter can be viewed at <http://www.bipsolutions.com/pdf/bipcustomercharter.pdf>.

6. Terms of Business for Paid-For Services

6.1. Except as otherwise specified herein:

- 1. Fees are quoted in pounds sterling (GBP).
- 2. Fees are payable in pounds sterling (GBP).
- 3. Fees are based on Services purchased, and not actual usage.
- 4. Payment obligations are non-cancellable and fees paid are non-refundable.

6.2. BiP will invoice You in advance for payment of the services.

6.3. Invoiced charges must be paid in full within 30 days of the invoice date.

6.4. Failure to pay invoices for paid-for Services will constitute a breach of contract, entitling BiP the rights to claim damages subject to Clause 18.

6.5. You are responsible for ensuring that BiP is provided with complete, accurate and up to date billing and contact information.

6.6. Unless otherwise stated, BiP's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added sales. You are responsible for paying all taxes associated with Your purchases hereunder. Where BiP has the legal obligation to pay or collect taxes for which You are responsible hereunder, the appropriate amount shall be invoiced to and paid by You, unless You provide BiP with a valid tax exemption certificate.

7. Term of Agreement

7.1. This Agreement commences on the date You accept it and continues until the end of the Partnership as detailed in Annex 1 below.

8. Termination

8.1. You are entitled to terminate this Licence at any time by notice in writing to BiP, however the remainder of the contracted period will still be required to be paid in full to BiP with termination not resulting in any refund for this period.

8.2. BiP shall be entitled, at its entire discretion and without any liability to You in respect of the same, to terminate this Licence or to suspend the provision or availability of the Service forthwith [without further notice to You] if You or any person nominated by You in terms of this Licence fails to comply with any of the terms stated herein or if an encumbrance takes possession or a receiver or a judicial factor is appointed over any of the property or assets of You or You becomes insolvent or apparently insolvent or makes any voluntary arrangement with its creditors generally, or becomes subject to an administration order or You goes into liquidation (except for the purposes of solvent amalgamation or reconstruction) or anything analogous to any of the foregoing under the laws of any jurisdiction outside Scotland occurs in relation to You. In such circumstances You may be subject to legal action for compensation regarding any infringement of the terms of this Licence or breach of copyright in respect of the Service.

8.3. Any termination or expiry of this Licence shall not affect the accrued rights and obligations of the parties at the effective date of termination or expiry of this Licence.

9. Other Restrictions

9.1. Any reference to a linked site or any specific third party product or service by name does not constitute or imply its endorsement by us, and You assume all risk with respect to its use. Under no circumstances shall BiP Solutions Ltd, nor its affiliates, agents, and suppliers, be liable for any damages, including without limitation, direct, indirect, incidental, special, punitive, consequential, or other damages (including without limitation lost profits, lost revenues, or similar economic loss), whether in contract, tort, or otherwise, arising out of the use or inability to use the materials available in this site or any linked site, even if we are advised of the possibility thereof, nor for any claim by a third party except in the case of death or personal injury caused by BiP's negligence.

9.2. You shall not copy, use, modify, transmit, distribute, reverse engineer, or in any way exploit copyrighted or proprietary materials available on this site, except as expressly permitted by BiP. Exporting, or extracting BiP data from this website into other databases is expressly prohibited as is the reselling of BiP information. All trademarks, service marks, and trade names in this site are the

marks of the respective owner(s), and any unauthorised use thereof is strictly prohibited. BiP shall not be liable for any errors, inaccuracies or delays in content, or for any actions taken in reliance thereon. BiP expressly disclaims all warranties, expressed or implied, as to the accuracy of any the content provided, or as to the fitness of the information for any purpose.

9.3. The rights and obligations of You under this Licence may not be transferred or assigned by You to any third party without the prior written consent of BiP. BiP shall deal with such requests promptly and shall not unreasonably withhold consent.

9.4. This Licence contains the whole Agreement between the parties in respect of the subject matter of this Licence and supersedes and replaces any prior written or oral agreements, representations or understandings between the parties relating to the subject matter. The parties confirm that they have not entered into this Licence on the basis of any representation that is not expressly incorporated into this Licence.

9.5. Nothing contained in this Licence shall be deemed to constitute or imply any legal partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Licence and neither party shall have, nor represent that it has, any authority to make any commitments on behalf of the other party.

9.6. BiP reserves the right to supplement, amend, vary or modify the System Terms and Conditions from time to time and Your continued use of the System will signify Your acceptance of any adjustment to these Terms and Conditions. You are therefore advised to reread this statement on a regular basis.

9.7. Services may be subject to limitations such as for example limits on disk storage space, on the number of calls made against the programming application interface and for services that enable You to provide public websites, on the number of page views by visitors to those website.

10. Fair and Acceptable Usage

10.1. BiP's fair and acceptable usage policy is designed to make sure the Services provided to You deliver value, are fast and are reliable. The following list details all the uses of the Services that BiP consider to be unfair or unacceptable. You must ensure that any use of the Services, by You or Your Users, complies with this policy. If You or Your Users using the Services contravene this policy, BiP may:

1. Give You notice to stop the unacceptable use(s); or
2. Terminate or suspend Your Services, with or without notice as we consider appropriate, under this Agreement.

10.2. You shall not use the Services for:

1. Unlawful, fraudulent, criminal or otherwise illegal activities.
2. Sending, receiving, publishing, posting, distributing, disseminating, encouraging the receipt of, uploading, downloading or using any material which is offensive, abusive, defamatory, indecent, obscene, unlawful, harassing or menacing or a breach of the copyright, trademark, intellectual property, confidence, privacy or any other rights of any person.

3. Knowingly or negligently creating, transmitting, storing, publishing or uploading any electronic material (including, without limit, files that contain viruses, corrupted files, Trojans or any other similar Malicious Code, scripts or similar software programs or instructions) which will or are designed, known or likely to delete, interrupt, damage, destroy, change, modify or limit the functionality of any computer software, hardware, telecommunications equipment or data or data files owned by BiP or any other User of or customer of BiP using the Service.
4. Activities that invade another's privacy, cause annoyance, inconvenience or needless anxiety to any person.
5. Activities that are in breach of any third party's rights, including downloading, installation or distribution of pirated software or other inappropriately licensed software, deletion of any author attributions, legal notices or proprietary designations or labels in any file that is uploaded, falsification of the origin or source of any software, document or other material.
6. Anything that may disrupt or interfere with BiP's network or Service or cause a host or the network to crash.
7. Launching "denial of service" attacks; "mailbombing" attacks or "flooding" attacks against a host or network.
8. Granting access to the Services to others who are not authorised Users, or in any way reselling or re-providing the Services to third parties.
9. Making excessive use of, or placing unusual burdens on the network, for example by sending or receiving large volumes of email, uploading excessively large files.
10. Circumventing the user authentication or security process of the host or network.

10.3. You are responsible for all uses made of the System through Your account and for any breach of this policy whether an unacceptable use occurs or is attempted, whether You knew or should have known about it, whether or not You carried out or attempted the unacceptable use alone, contributed to or acted with others or allowed any unacceptable use to occur by omission. You agree that BiP is not responsible for any of Your activities in using the Services.

10.4. There is no explicit limit on the monthly Service usage. However, if BiP feel that Your activities are so excessive that other customers are detrimentally affected, BiP may give You a written warning (by email or otherwise). In extreme circumstances, if the levels of activity do not immediately decrease after the warning, BiP may terminate or suspend Your Services.

11. Your Responsibilities

11.1. When registering your details with the Service You agree to:

- a. Provide true, accurate, current and complete information about You as prompted by the Service's registration form or Order Form (such information being the "Registration Information"); and
- b. Maintain and promptly update the Registration Data to keep it true, accurate, current and complete.

11.2. If You provide any Registration Information that is untrue, inaccurate, not current or incomplete, or we have grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate Your account and refuse any and all current or future use of the Service (or any portion thereof).

11.3. You shall at Your cost and expense, procure and use in connection with the Service all hardware, equipment, telephone installation, terminal, consumable or other equipment required to access and use the Service as notified by BiP to You from time to time.

11.4. You shall ensure that the hardware, equipment, telephone installation, terminal, consumable or other equipment used by You to access and use the Service meets the minimum standards and specifications notified by BiP to You from time to time.

11.5. You shall comply with such application specific requirements as may be notified by BiP to You prior to the commencement of this Licence in relation to the relevant part or parts of the Service to be provided to You.

11.6. You shall be liable for all costs relating to the connection and data transmission from Your computer systems to the Service together with any sum, fee, subscription, tax or other charge which may be required by access providers to the relevant telecommunications networks connecting Your computer systems to the Service.

12. Security Information

12.1. You are responsible for ensuring that the Security Information relating to Your Account remains confidential and secure so that the Services cannot be used by any unauthorised person.

12.2. You shall keep any and all Security Information issued to You by BiP from time to time secret and secure (including without limitation ensuring that the same are not stored on its computer systems in plain text) and shall not disclose the same or make the same available to any third party (other than authorised persons notified to BiP) or to the public.

12.3. You shall notify BiP immediately on becoming aware that any Security Information issued to You by BiP is disclosed to or become known by any unauthorised person.

12.4. You shall not use Security Information for any purpose connected with the improper use of the Services including accessing or attempting to access other parts of the Services for which You do not have access rights.

12.5. BiP shall not be responsible for any losses arising out of the unauthorised use of Your Security Information and You agree to indemnify and hold harmless BiP for any improper, unauthorised or illegal uses of the same.

13. Use of BiP Websites and Web-Based Elements of the Service

13.1. You may not use any 'deep-link', 'page-scrape', 'robot', 'spider' or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of any BiP websites, the Service or any materials, content, documents or data, or in any way reproduce or circumvent the navigational structure or presentation of the Service to obtain or attempt to obtain any materials, documents or information through any means

not purposely made available through the Service. BiP reserves the right to bar any such activity, including via software and other electronic means.

13.2. You may not attempt to gain unauthorised access to any portion or feature of the Service, or any other systems or networks connected to the Service or to any BiP server, or to any of the services offered on or through any BiP websites, by hacking, password 'mining' or any other illegitimate means.

13.3. You may not probe, scan or test the vulnerability of any BiP websites, and/or the Service or any connected network, nor breach any of BiP's security or authentication measures. You may not reverse look-up, trace or seek to trace any information on any other user of or visitor to any BiP website or the Services, or exploit the Service or any service or information made available or offered by or through BiP's website, in any way where the purpose is to reveal any third party information. You agree that You will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of BiP's websites, Service or other systems. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Service. You agree that You will not make or attempt any denial of service attacks against BiP.

14. Links to Third Party Sites

14.1. The System may present links to third party websites not owned or operated by BiP. BiP is not responsible for the availability of these sites or their content. You agree that BiP is not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with Your use of or reliance on any content of any such site or goods or services available through any such site.

15. Log Files

15.1. BiP uses IP addresses to analyse trends, administer the System, track Users' movement and activity, and gather broad demographic information for aggregate use.

15.2. For the purposes of systems administration, detecting usage patterns, troubleshooting and support of audits, our web servers automatically log standard access information and certain User activities.

16. Cookies

16.1. Like most interactive websites, the System uses cookies to enable us to retrieve User details for each visit. Cookies are used in some areas of the System to enable the functionality of this area and ease of use for those Users visiting.

17. Promotions and Advertising

17.1. BiP may present advertisements or promotional materials on or through the Service and on any BiP websites. Your participation in any promotional event is subject to the Terms and Conditions

associated with that event. Your dealings with, or participation in promotions by any third party advertisers on or through the Service are solely between You and such third party. You agree that BiP shall not be responsible or liable for any loss or damage of any kind incurred by You as the result of any such dealings or as the result of the presence of such third parties on the Service.

18. Consequences of Breach of These Terms

18.1. In the event that BiP considers or determines, in their complete discretion, that You have breached, violated or contravened any provision of this Agreement or has otherwise demonstrated inappropriate conduct in the use of the Service, BiP reserve the absolute right, at its sole discretion to:

- a. Warn You that You have violated the Licence and ask You to discontinue such conduct; and/or
- b. Discontinue Your membership of the Service and / or any other related services, including paid for content / features; and/or
- c. Take measures (including terminating, suspending or restricting Your use of the Service) to prevent You from using the Service or linking to or accessing the website; and/or
- d. Terminate this Licence with immediate effect.

18.2. If BiP terminates this Agreement or suspends Your account for any of the reasons set forth in this Agreement, BiP shall have no liability or responsibility to You, and BiP will not refund any amounts that You have previously paid.

19. Intellectual Property Rights

19.1. Subject to the limited rights expressly granted hereunder, BiP and its licensors reserves all rights, title and interest in the Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein. You acknowledge that the copyright and any other intellectual property rights (including without limitation rights in relation to inventions, patents, utility models, designs rights and registered designs, database rights, and trade marks (unregistered and registered) in and to the information and data, databases, images, content, style, “look and feel” and function of the Service, in whole or in part, is and shall remain at all times owned exclusively by BiP and its licensors, which includes the European Commission.

19.2. You shall not, and shall ensure that Your Users shall not, delete or in any manner alter any copyright, trade mark and other proprietary rights notices of BiP or its licensors which appear on the Service or accompany materials and You shall ensure that such notices are reproduced on all copies (in any form, electronic or otherwise) made by You or any Users of the Service (or any part of the same) or information or data accessed using the Service.

19.3. You own all rights, title and interest in and to all of Your Data.

19.4. BiP shall have a royalty free, worldwide, transferable, sub-licensable, irrevocable, perpetual Licence to use or incorporate into the Services any suggestions, enhancement requests, recommendations, or other feedback provided by You, including Users, relating to the operation of the Services.

19.5. If BiP receives a notice alleging that You have engaged in behaviour that infringes BiP's or any other party's intellectual property rights, or reasonably suspects the same, BiP may suspend or terminate Your account without notice to You. If BiP suspends or terminates Your account under this paragraph, it shall have no liability or responsibility to You, including for any amounts that You have previously paid.

20. Confidentiality

20.1. As used herein, Confidential Information means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data. BiP's Confidential Information shall include the Services. Confidential Information of each party shall include the Terms and Conditions of this Agreement and all Partnership documents, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party.

20.2. Confidential Information (other than Your Data) shall not include any information that:

- a. Becomes generally known to the public without breach of any obligation owed to the Disclosing Party.
- b. Was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party.
- c. Is received from a third party without breach of any obligation owed to the Disclosing Party.
- d. Was independently developed by the Receiving Party.

20.3. Except as otherwise permitted in writing by the Disclosing Party:

- a. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any confidential information of the Disclosing Party for any purpose outside the scope of this Agreement; and
- b. The Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

20.4. Without limiting the above, BiP shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Your Data. BiP shall not:

- a. Modify Your Data.
- b. Disclose Your Data except as compelled by law in accordance with Clause 22.5 (Compelled Disclosure) or as expressly permitted in writing by You; or

- c. Access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.

20.5. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a part, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

20.6. You shall keep and shall procure that all of Your employees or agents or representatives shall keep secret and confidential both during and after the term of this Licence all information relating in any way to the business affairs, software, computer systems, suppliers, customers, accounts, finances or business methods of BiP or technical information relating to the Service coming into its possession during the period of this Licence and in contemplation of it provided that such information is not:

- a. in the public domain through no act or default of You or its officers, employees or agents;
- b. known to You prior to its receipt and at its free disposal.
- c. received from a third party who owes an obligation of confidence in respect of that information; or
- d. is not information which You are required by law to disclose to any court or other relevant authority.

20.7. You shall itself and shall procure that all of its employees or agents or representatives use such information only for the purposes of this Licence and for no other purpose whatsoever, and in particular shall not use such information to develop other services which may compete with the Services being provided under this Licence.

21. Patents and Trademarks

21.1. All trademarks, service marks, trade names, slogans, logos, and other indicia of origin that appear on or in connection with the Service are the property of BiP and/or its affiliates. You may not copy, display or use any of these marks without prior written permission of the relevant owner. The Service and/or portions of the Service may be protected under patent law and may be the subject of issued patents and/or pending patent applications.

22. Modifications to System

22.1. BiP reserves the right at any time and from time to time to modify the System, (or any part thereof) with or without notice to You, without any liability to You or to any third party. This includes continuing the service offered and accepted under different branding from that of CompeteFor if such circumstances were to arise.

22.2. BiP reserves the right to vary the free and paid for content/features of the Service and does not guarantee that the content/features of the Service provided free of charge will remain free of charge and does not guarantee that the content /features of the Service provided subject to payment will remain a paid-for service.

23. Limited Warranty

23.1. BiP warrants to You that for the term of the Licence:

- a. the Service will perform with normal use substantially in accordance with the accompanying material;
- b. the use of the Service by You in accordance with the terms of this Licence will not infringe the copyright or database rights of any third party;
- c. BiP will use its reasonable endeavours to ensure that all information and data made available to You using the Service will be [accurate and up-to-date];
- d. BiP will use reasonable skill and care in making the Service and the information and data available to You 24 hours each day Monday to Friday (excluding Bank Holidays in England) excluding routine and scheduled maintenance during the subscription period. However, BiP will not be liable if for any reason the Service is not available at any particular time or for any reasonable period;
- e. BiP will take all reasonable steps to prevent any unauthorised access to all and any commercially sensitive data stored or input by You and Your Users using the Service (except to the extent that any unauthorised access is obtained as a result of the act, omission or negligence of You or any such User). This warranty shall not apply if and to the extent that any breach of warranty has resulted directly or indirectly from:
 - i. Any unauthorised use or modifications to the Service or any information or data accessed using the Service;
 - ii. Use of the Service otherwise than in accordance with the terms of this Licence and the accompanying material.
- f. BiP shall use its reasonable endeavours to issue to You new passwords and other unique identification data or security procedures within one day (Monday to Friday (excluding bank holidays in England)) of receipt of notification from You under Clause 14.1 and 14.3.

23.2. In processing Your or Your Users personal data as part of the Service, the parties acknowledge that BiP is processing such personal data as data processor and shall only process such personal data in accordance with the instructions of You and shall take appropriate technical and organisational measures in respect of against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to such personal data.

24. No Other Warranties

24.1. BiP and its licensors disclaim all other warranties, representations, guarantees and conditions, express or implied, in each case whether implied by statute statutory or otherwise which are hereby expressly excluded to the extent permitted by law.

24.2. For the avoidance of doubt, neither BiP nor its licensors warrant the quality or accuracy of any information or documentation provided in, resulting from or transmitted using the Service [except to the extent warranted in Clause 23].

24.3. There is no warranty by BiP or any other party or person that the functions contained in the Service will meet Your requirements or that the operation of the Service will be uninterrupted or error free.

24.4. You assume all responsibility for the selection of the Service to achieve Your intended results, and for the installation use and results obtained from it.

25. End User Remedies

25.1. BiP's entire liability and Your exclusive remedy in the event that a valid claim is made by You to BiP within the terms of the aforesaid warranty shall be, at BiP's option, the repair, reinstatement or replacement of the Service within a reasonable time.

25.2. If any provision of this Licence, not being of a fundamental nature, is held by a court of competent jurisdiction to be illegal, void or unenforceable, it shall be severed and the validity or enforceability of the remainder of this Licence shall not be affected.

25.3. Failure by either party to exercise any right or remedy under this Licence shall not be construed as a bar to or as a waiver of such right or remedy in respect of any future

26. Liability

26.1. If a valid claim is made by You to BiP within the terms of the warranty at Clause 23, BiP shall use its best endeavours to repair, upgrade or replace the Service as soon as reasonably practicable without any further liability to You provided always that written notice of such claim is received by BiP within thirty (30) days of the date on which You become aware of circumstances giving rise to such claim.

26.2. Neither BiP nor its licensors shall be liable to You or any third party for any unavailability, delays, inaccuracies, errors or omissions howsoever occasioned or for any non-performance or failure in or defective or delayed performance of the Service except to the extent that the same arises directly from the negligence of BiP or its licensors.

26.3. Without prejudice to the foregoing generality, neither BiP nor its licensors shall be liable to You or any third party for any unavailability, delays, inaccuracies, errors or omissions howsoever occasioned or for any non-performance or failure in or defective or delayed performance of the Service caused by any failure by You to comply with any of its obligations under Clause 10 or caused by any information or data supplied to BiP by any third party.

26.4. Neither BiP nor its licensors shall be liable for any indirect, special or consequential loss, or loss of profits, loss of revenue, loss of business, business stoppage or interruption, computer failure or malfunction, loss of use, contracts, data, management time, anticipated savings or profits, goodwill, reputation or for any economic or financial loss whatsoever and howsoever suffered, whether or not

caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations under this Licence, even if BiP has been advised of the possibility of such damages.

26.5. In no event shall either party have any liability to the other party for any lost profits or revenues or for any indirect, special, incidental, consequential, cover or punitive damages however cause, whether in contract, tort, or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

26.6. Neither BiP nor its licensors shall be liable for any indirect, special or consequential loss, loss of profits, loss of revenue, loss of business, loss of use, loss of contracts, loss of anticipated savings or for any indirect economic or financial loss whatsoever and howsoever suffered, even if BiP has been advised of the possibility of such damages.

26.7. Neither BiP nor its licensors shall be liable to You for any total or partial failure, interruption or delay in performance of BiP's obligations under this Licence resulting from any cause arising from or attributable to acts, events or omissions beyond the reasonable control of BiP, including but not limited to act of governmental departments, Act of God, flood, fire, explosion or earthquake, strikes, lock-outs, or industrial disputes, telecommunications or Internet connection faults or failures, or failures of third party information suppliers.

26.8. Neither BiP nor its Licensors shall be responsible or liable for the content of any Data published or transmitted by any User.

26.9. Without limiting the general nature of sections Privacy and No Warranties, BiP is not responsible or liable for:

- a. Any content, including without limitation, any infringing, inaccurate, obscene, indecent, threatening, offensive, defamatory, tortious, or illegal content; or
- b. Any third party conduct, transmissions or data.

26.10. Without limiting the general nature of sections Desktop Software and Privacy, BiP is not responsible or liable for:

- a. Any viruses or other disabling features that affect your access to or use of the System and Services;
- b. (i) a malfunction of computer hardware or software other than the Licensed Software,
(ii) any modification of or change to the Licensed Software
(iii) any combination, operation or use of the System with other systems or other software other than those described herein or the Documentation
- c. Any delays or failures You may experience in initiating, conducting or completing any transmissions or transactions in connection with the System and Services in an accurate or timely manner
- d. Any loss of User Data, including without limitation, damaged or lost User files, through use of the Service
- e. Any damages or costs of any type arising out of or in any way connected with your use of any software and Services available from third parties through links

26.11. Subject to Clauses 26.1, 26.2, 26.5, 26.4, 26.4, 21.6 and 26.13, the maximum total aggregate liability of BiP or its licensors under, arising from or in connection with this Licence or the Use of the Service, whether arising in contract, delict (including negligence), quasi-delict or otherwise, shall not exceed the total value of fees paid or payable by You under this agreement within the relevant contract year.

26.12. You shall be liable to BiP and its licensors for any reasonable costs of any content, information or data entered or instructions received by BiP (whether or not from You) or otherwise or for any loss of any Content, information or data or profits suffered or incurred by BiP [or its licensors] as a result of any breach by You of Clause 12.1 until You shall have notified BiP of the same in accordance with Clause 12.3.

26.13. Notwithstanding the foregoing, nothing in this Licence shall be deemed to exclude, restrict or limit BiP's or its licensors' liability for death or personal injury resulting from its or their negligence or any liability for fraudulent misrepresentation or any other liability which may not lawfully be limited or excluded under applicable law.

26.14. Nothing in this Licence shall exclude or limit BiP's liability for death or personal injury or any other liability that cannot be lawfully excluded under any applicable law.

27. Privacy and Cookies

27.1. This website uses cookies to store information on your computer. Most of these cookies are essential to make the site work and have already been set. Others help us to improve by giving us some insight into how the site is being used. Our Privacy Policy details the cookies that we set and the information they store.

27.2. By using our site you are also accepting our Privacy Policy. Our Privacy Policy can be found here:

<https://www.bipsolutions.com/privacy-policy/>

27.3. By accepting this agreement you are also accepting our Data Subject Access Request Policy. Our Data Subject Access Request Policy can be found at Appendix A. BiP reserves the right to make such modifications as may be required by legislation or regulation. BiP will provide the updated document in advance of the effective date with as much notice as reasonably practical.

28. Changes to the service

28.1. BiP may change the software and service or delete remove features at any time and for any reason.

29. Force Majeure

29.1. BiP will not be liable for any delay in performing or failure to perform its obligations under this Licence due to any cause outside of BiP's reasonable control. Such delay or failure shall not constitute a breach of this Licence and the time for performance of the affected obligation shall be extended by such period as is reasonable.

30. Consent to Electronic Communications and Solicitation

30.1. By registering with the System, You understand that BiP may send You communications or data from BiP regarding the Services, including but not limited to:

- a. Notices about Your use of the Services, including any notices concerning violations of use;
- b. Updates; and
- c. Promotional information and materials regarding BiP's products and services, via electronic mail.

30.2. BiP give you the opportunity to opt-out of receiving electronic mail from BiP by following the opt-out instructions provided in the message.

31. Communication

31.1. BiP has several different email addresses for different queries. These and other contact information can be found on the Contact Us link via the Service or via BiP's literature or via BiP's stated telephone, facsimile or mobile telephone numbers.

32. Freedom of Information

32.1. TfL is a public authority for the purpose of the Freedom of Information Act 2000 (the "FOI Act") and the Environmental Information Regulations 2004 (the "EIR") and TfL will, as a public authority, determine in its absolute discretion and be responsible for its response to any request for information made to it under the FOI Act and/or the EIR and shall not be liable to you or any other person for any loss suffered as a result of any bona fide disclosure of information under the FOI Act or the EIR.

32.2. You shall assist TfL at no additional charge in meeting any reasonable requests made to it in connection with the FOI Act, the EIR or any similar legislation, including (without limitation) sections 61 and 110 of the Greater London Authority Act 1999.

32.3. You shall not respond to any request made to you under the FOI Act or the EIR (or any similar legislation, including (without limitation) sections 61 and 110 of the Greater London Authority Act 1999) in respect of CompeteFor, but shall refer any such request to TfL immediately upon receiving such request.

33. Variation and Severability

33.1. BiP may revise the User Terms and Conditions of the System at any time. In the event that we make any substantial changes to those Terms and Conditions we will notify you by notice on the System or by such other means as we choose including emailing you to inform you of any such changes.

33.2. If any part of these Terms and Conditions is held to be void or unenforceable, such provision will be struck out and the remaining provisions will remain enforceable.

34. Law and Jurisdiction

34.1. These Terms and Conditions shall be governed by and construed in accordance with the laws of England and Wales and any disputes shall be subject to the jurisdiction of the courts of England and Wales, unless otherwise submitted by BIP Solutions Ltd.

Signed by the Parties or their duly authorised representatives on the date of this Agreement.

Signed by
duly authorised for and on behalf of
BiP Solutions Limited

Signed by
duly authorised for and on behalf of
NHP

Redacted in line with FOIA Sec 41



Annex One – Service and Financial Agreement

Redacted in line with FOIA Sec 41



Redacted in line with FOIA Sec 41



CompeteFor Microsite:

BiP will create a branded NHP partner site which will be incorporated into the CompeteFor.com web domain. This will strengthen your online presence and provide high visibility of supply chain opportunities and supplier development activity. The partner site will help you to:

- Provide local suppliers with easy access to real-time supply chain opportunities
- Provide guidance on how local and SME suppliers can engage with your organisation
- Explain how you are supporting and developing local and SME suppliers

- Present relevant news and announcements and forthcoming events
- Link to your main website and other corporate/programme resources
- Support responsible supply chain development
- Give visibility to your delivery of long-term social, economic and environmental benefits

Data collected through the partner site will provide comprehensive and robust management information for reporting purposes.

Supplier Engagement Services (Core):

As part of the implementation process, BiP can provide Buyer or Supplier Engagement Services or a combination of the two on your behalf to facilitate the transition of your suppliers to the portal.

A Client Relations Manager (CRM) will be assigned to help increase engagement. As part of the core service they will offer full demos of the system to interested buyers and suppliers.

Once implemented our CRM then monitors the opportunities flowing through the system and makes sure that opportunities posted are followed up by the award notice. Thus, cementing the tracking of opportunities and awards throughout the complete supply chain, all the way down.

CompeteFor Reporting:

A key feature of the CompeteFor Partnership is the ability to measure the success of the service through the provision of Management Information and reporting.

We will work with you to provide a set of standardised reports which fit the needs of your specific organisation or project.

We have a range of pre-prepared report types for both internal and external stakeholders. These reports have been developed over the years with partner users and are available to you to use as the basis of your reports.

The reports can be formatted to your requirements (MS Word, MS Excel, CSV, PDFs).

The reports can be automatically delivered at an agreed frequency and to an agreed distribution list.

Training & Helpdesk:

BiP will provide online training using practical examples to demonstrate how CompeteFor can benefit buyers and suppliers within the supply chain.

The training will guide your staff through the system and processes. Participants will complete practical exercises which will allow them to practise using the key processes and functions within the system.

We will also provide further support through the provision of a user Helpdesk to answer any ongoing queries and ensure the effective application of the service. The Helpdesk is available [REDACTED]

At all other times [REDACTED] support calls can be logged by sending an email or using the online feedback form.

Event Support:

This involves one member of the team attending an NHP organised event to provide support from a CompeteFor perspective. NHP can call off more than one team member, but this will either mean that there is an additional fee to pay or there will be attendance at fewer than five events (based upon the call off) on that given year. In addition to attendance by a member of the team, we can also bring some of our general collateral to give out to attendees at the event, as well as bring our CompeteFor pop up. Any bespoke collateral or additional requirements will require a separate proposal.