

Schedule 15 - Sub-contractors

Part A – Supply Chain Rights and Protections

1 Appointment of Sub-contractors

- 1.1 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Contractor is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Contract in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Contractor any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 1.2 Unless it has obtained Approval, the Contractor shall advertise any Sub-contract to deliver any part of the Services:
- (a) in England on Contracts Finder (or any successor or replacement service); or
 - (b) in Wales on Sell2Wales (or any successor or replacement service).
- 1.3 When requesting Approval for sub-contracting any of its obligations under this Contract, the Contractor shall notify the Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 1.4 If requested by the Authority within ten (10) Working Days of receipt of the Authority's request the Contractor shall also provide:
- (a) a copy of the proposed Sub-contract or the Sub-contract; and
 - (b) any further information reasonably requested by the Authority.
- 1.5 The Contractor shall, as soon as reasonably practicable after appointing such Sub-contractor in accordance with this Schedule, provide to the Authority an up-to-date list of all of the Contractor's Sub-contractors that have been appointed in connection with the performance of the Services under this Contract, in a form substantially similar to the list annexed to this Schedule (or in such other form as notified to the Contractor by the Authority from time to time).

- 1.6 The Contractor notes and acknowledge that the inclusion of SMEs in the supply chain is an important policy driver for the Authority and when requesting Approval for a replacement Sub-contractor the Contractor notes that whilst the Authority would normally expect the replacement Sub-contractor to be an organisation of equal standing to the incumbent Sub-contractor, the Authority would consider favourably a request for a replacement Sub-contractor which was an SME.

2 Supply chain protection

- 2.1 The Contractor shall ensure that each Sub-contract (which in this paragraph includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) shall include:
- (a) provisions which will enable the Contractor to discharge its obligations under the Contract, including but not limited to adherence to the Tender Minimum Performance Levels and the Customer Service Standards and achievement of the RNOs;
 - (b) a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce any provisions under each Sub-contract which are capable of conferring a benefit on the Authority;
 - (c) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under each Sub-contract to the Authority or any Replacement Contractor without restriction (which for the avoidance of doubt shall mean without any need to obtain any consent or approval from any Sub-contractor) or payment by the Authority;
 - (d) obligations no less onerous on each Sub-contractor than those imposed on the Contractor under this Contract in respect of
 - (i) data protection requirements set out in clause E;
 - (ii) FOIA and Transparency Information requirements set out in clause E;
 - (iii) the obligation not to cause material adverse publicity or damage the reputation of the Authority set out in clause E;
 - (iv) the keeping of records in respect of the services being provided under the Sub-contract; and
 - (v) the conduct of audits set out in clause E
 - (e) provisions enabling the Contractor to terminate each Sub-contract on terms no more onerous on the Contractor than those imposed on the Authority under clause H of the Contract;
 - (f) provisions enabling the Contractor to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations under applicable Law, including but not limited to legal obligations in the fields of environmental, social or labour law;

- (g) provisions enabling the Contractor to terminate the Sub-contract if (in the opinion of the Authority), any Sub-contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of competition law and the Authority elects in its absolute discretion to require the Contractor to terminate the Sub-contract with immediate effect. For the avoidance of doubt, the Authority shall not be liable for any costs incurred by the Contractor (or the Sub-contractor) in connection with the termination of such Sub-contract;
- (h) a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services supplied under each Sub-contract without first seeking Approval;
- (i) a provision enabling the Contractor, the Authority or any other person on behalf of the Authority to itself supply or procure the supply or all or part of the services being supplied under each Sub-contract on substantially the same terms as are set out in clause B19;
- (j) requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (k) that if the Contractor or other party fails to consider and verify an invoice in accordance with sub-paragraph (j), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (l) after a reasonable time has passed;
- (l) requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (m) giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (n) requiring the Sub-contractor to include a clause to the same effect as this paragraph 2.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract; and
- (o) all such other provisions as may be required to be set out elsewhere in this Contract.

2.2 The Contractor shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed.

2.3 For the avoidance of doubt, the Authority does not expect that all the Terms and Conditions will be replicated through the supply chain and the Contractor shall ensure that each Sub-contract is drafted on the basis of good industry practice reflecting the nature of the services and of the Sub-contractor.

- 2.4 Notwithstanding any provision of Clause E4 (Confidential Information) if the Contractor notifies the Authority that the Contractor has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

3 Termination of Sub-contracts

- 3.1 The Contractor shall not terminate or materially amend the terms of any Sub-contract without Approval.
- 3.2 The Authority may require the Contractor to terminate a Sub-contract where:
- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause H1 (Termination by the Authority);
 - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;
 - (d) (in the opinion of the Authority), any Sub-contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of Law, the Authority may require the Contractor to terminate the Sub-contract with immediate effect; and/or
 - (e) the Authority has found grounds for exclusion of the Sub-contractor in accordance with paragraph 6.1,

for the avoidance of doubt, the Authority shall not be liable for any costs incurred by the Contractor (or the Sub-contractor) in connection with the termination of such Sub-contract.

4 Competitive Terms

- 4.1 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Contractor or the Staff in the supply of the Services, then the Authority may:
- (a) require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) subject to paragraph 3.1, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

- 4.2 If the Authority exercises either of its options pursuant to paragraph 4.1, then the Fees shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 4.3 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Authority making the relevant item available to the Contractor where this is necessary for the Contractor to provide the Services; and
 - (b) any reduction in the Fees taking into account any unavoidable costs payable by the Contractor in respect of the substituted item, including in respect of any licence fees or early termination charges.

5 Retention of Legal Obligations

- 5.1 Notwithstanding the Contractor's right to sub-contract pursuant to this Schedule 15, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

6 Exclusion of Sub-contractors

- 6.1 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- (a) if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;
 - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-contractor and the Contractor shall comply with such a requirement.

7 Advertising Sub-contracting Opportunities: Improving visibility of Sub-contract opportunities available to SMEs and VCSEs in the supply chain

- 7.1 The Contractor shall:
- (a) subject to paragraph 7.3, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Contract Period;
 - (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
 - (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - (d) provide reports on the information at paragraph 8.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and

- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 7.2 Each advert referred to at paragraph 7.1(a) above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- 7.3 The obligation at paragraph 7.1(a) shall only apply in respect of Sub-contract opportunities arising after the contract award date.
- 7.4 Notwithstanding paragraph 7.1, the Authority may by giving its Approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

8 Supply Chain Spend with SMEs: Management Charges and Information

- 8.1 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Authority which incorporate the data described in the MI Reporting template which is:
 - (a) the total contract revenue received directly on a specific contract;
 - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 8.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Contractor shall use the MI Reporting Template as provided to it by the Authority and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 8.3 The Contractor further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

