



Form of Award



FORM OF AWARD

Award Reference: Y20011 Software Products and Associated Services 2

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Position: Divisional Director Strategic Frameworks & Bids

Name of Supplier and Registration Number if applicable:

Bytes Software Services

Registration Number: (0)1616977

Registered Address: Bytes House, Randalls Way, Leatherhead, Surrey, KT22 7TW

Telephone: 01372418500

Fax:



Authorised to sign for and on behalf of the Customer

Date: 17.03.2023

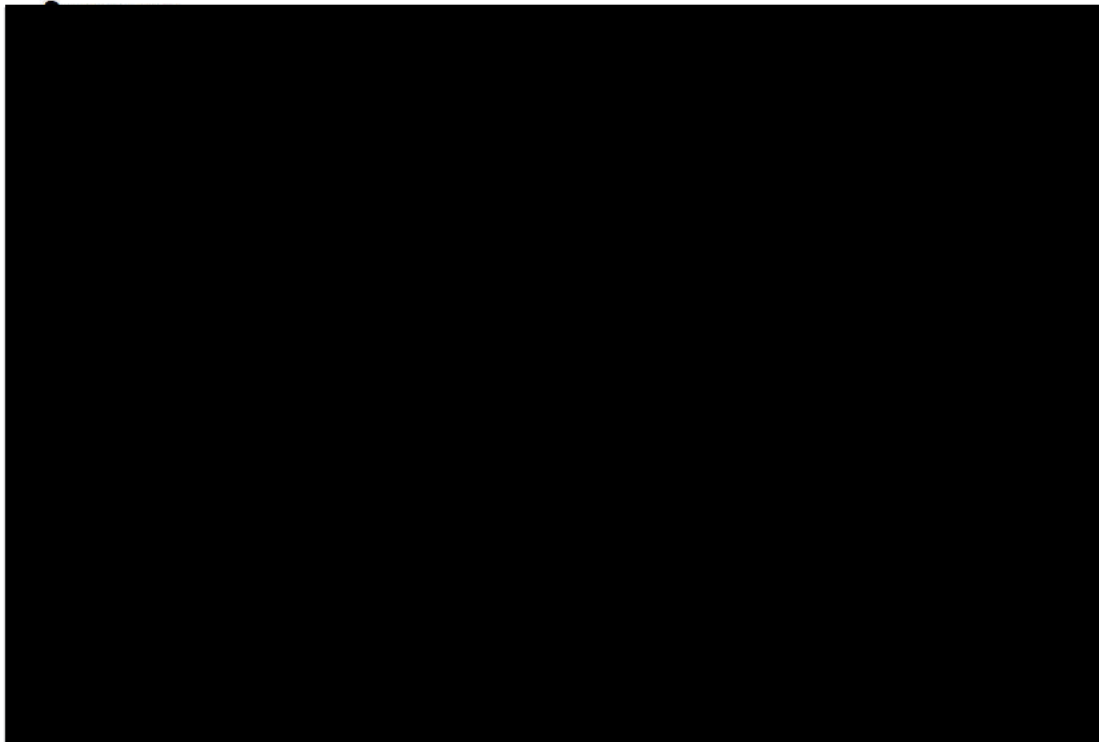
Signature:

A handwritten signature in black ink, appearing to be 'EMMA ROBERTS', written in a cursive style.

Name: EMMA ROBERTS

Position: Procurement Manager

APPENDIX A



Individual Contract Terms and Conditions Y20011

These Individual Contract Terms and Conditions will apply to all Orders/Individual Contracts



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Section One – Individual Contract Award

During the course of the Framework Agreement, Customers/Participating Authorities will

[REDACTED]

whether they conduct a Further Competition or choose to Direct Award with any of the awarded Suppliers. The Customer will determine the requirement, specification and award, based on the Most Economically Advantageous Tender (MEAT)

Further Competition – Re-opening competition with all the capable Suppliers awarded on the Framework Agreement to determine the most appropriate Supplier for a defined period of time or project.

In accordance with The Public Contract Regulations 2015 the Customer may choose to implement, amend or provide alternative terms and conditions to those contained within the Software Products and Associated Services 2 Individual Contract Terms and Conditions. Any such amendments or alternative terms and conditions will be contained within the Further Competition documents and/or the Order/Individual Contract.

In order to adhere to 'The Public Contracts Regulations 2015' when re-opening competition under this Framework Agreement the Participating Authority should follow the steps below:

1. The Participating Authority/Customer must invite all Suppliers on the Framework Agreement who are deemed capable of delivering the particular requirement.
2. The Participating Authority/Customer shall be responsible for formulating a specification/product brief containing full details of the work/products required.
3. The Participating Authority/Customer will send the specification/product brief to all Suppliers quoting the Framework Agreement reference number. A reasonable and proportionate time limit should be set for the submission of fully completed Tender responses.
4. Responses received must be kept in a secure place, unopened and unread, until the designated closing date and time for final submissions has passed. Responses received after the specified date and time should be rejected unopened.

5. The submitted response shall be evaluated in accordance with the criteria stated in the original specification/product brief. The headline criteria used must be the same as the headline criteria used for the original Framework Agreement or part thereof,

individual need.

Headline Assessment Criteria
Price
Quality of Service/Added Value

Direct Award – Placing an Order with any capable Supplier awarded on the Framework Agreement, without re-opening competition, following the criteria set out below.

Regulation 33(8)(a) of the Public Contracts Regulations 2015 (PCR 2015) sets out the criteria for making a Direct Award where a Framework Agreement is concluded with more than one Supplier:

- all the terms governing the provision of the works, services and supplies concerned are set out in the Framework Agreement, and
- the objective conditions for determining which of the Suppliers on the Framework Agreement shall perform them are set out in the procurement documents.

In accordance with the above Regulation, Direct Award Orders may be placed under this Framework Agreement provided the Customer can meet any one of the following objective conditions:

- Customer [REDACTED] following their own due diligence they can identify the Supplier that offers best value for their requirement
- The Supplier is able to supply the required Goods/Services within the Customers timescales
- The Supplier scored the highest mark for Price/Quality in the Framework Agreement evaluation

- Goods/Services required are unique/exclusive to one Vendor/Supplier
- Continuity of existing Goods/Services from an awarded Supplier



The Customer/Participating Authority awarding under Direct Award shall

- Develop a clear statement of requirements;
- Apply the relevant Direct Award Criteria as set out in this document in order to establish, which Supplier provides the Most Economically Advantageous Solution;
- On the basis set out above, award the Individual Contract with the successful Supplier by sending (including electronically) a signed Form of Direct Award or the Customers own Order form, clearly stating
 - Participating Authority's Order number
 - Framework Agreement reference number
 - Full details of their requirement including delivery information
 - Name and full details of establishment to whom delivery is to be made
 - Agreed Contract Price

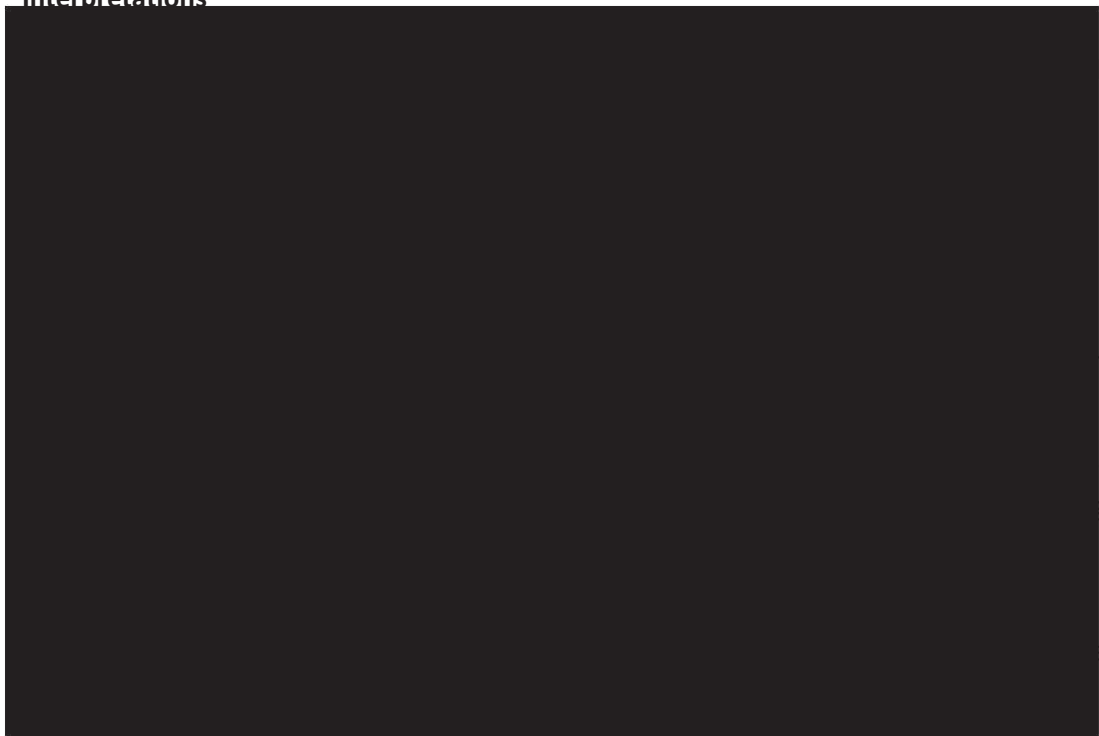
All Orders must be placed either via e-mail, fax, post or telephone. Suppliers are required to confirm receipt of Orders, within 24 hours. Any Orders place via telephone must be confirmed in writing (for the purpose of the Framework Agreement 'in writing' will include e-mail).

Orders placed in any other way should not be accepted.



Section Two - Definitions and Interpretations

Interpretations



- headings are included in the Framework Agreement for ease of reference only and shall not affect the interpretation of construction of the Framework Agreement;
- reference to a clause or schedule is a reference to the whole of that clause or schedule unless stated otherwise; and
- references to “writing” include typing, printing, photography, lithography, display on a screen, e-mail, fax, and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly.




At all times during the Framework Agreement period the Supplier shall be an independent Supplier and nothing in this Framework Agreement shall create or imply any form of employment, offer of employment, a relationship of agency, partnership or joint venture between the Contracting Authority and the Supplier, consequently neither the party to the Framework Agreement will act in the name of the other party unless specifically mentioned within the Framework Agreement.

Unless otherwise stated within the Framework Agreement between the parties, the obligation on the Contracting Authority is that stated under the Framework Agreement and nothing in the Framework Agreement shall act as an obligation upon or in any way constrain or hinder the Contracting Authority in any other capacity, nor shall the exercising of the [redacted] ties or powers of the Contracting Authority in any other capacity lead to a liability under [redacted] Framework [redacted] (including) on the part of the Contracting Authority to the Supplier.

2. Definitions

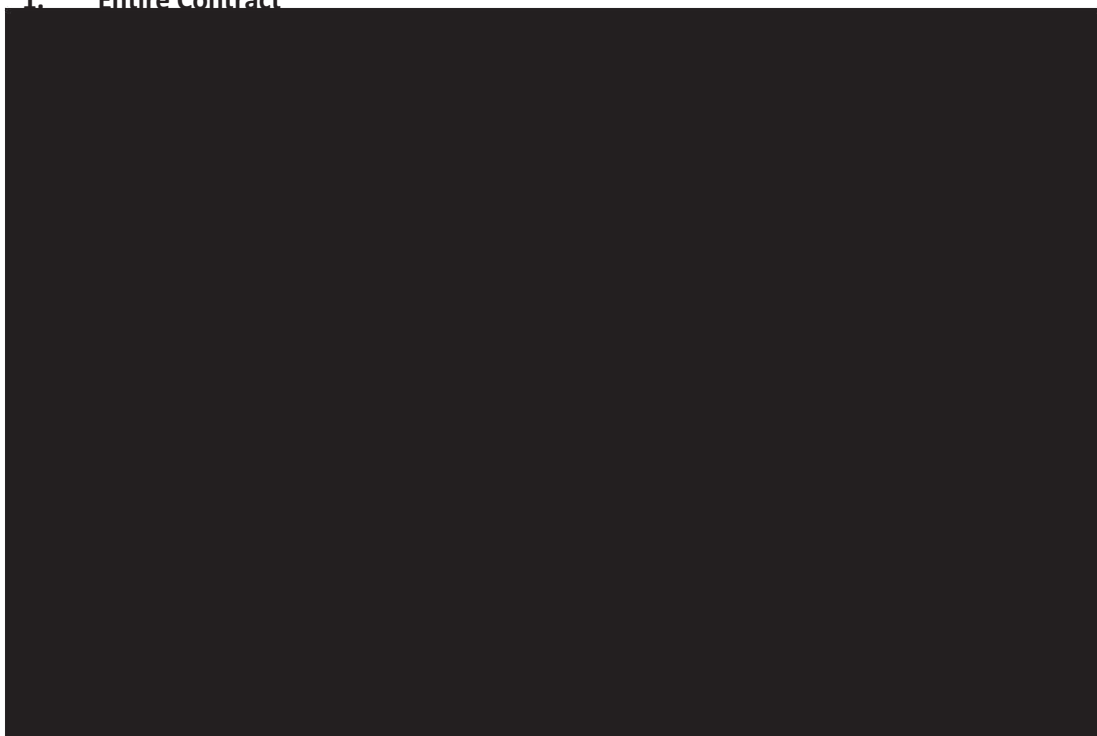
Academy	Means a school in England which is directly funded by independent
	Means any corporation, partnership, joint venture or other business entity in which the Supplier owns, directly or indirectly, stock or a capital or profit interest.
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Confidential Information	Means any information which has been designated as confidential by either party in writing or that might be considered as confidential for the reasons of business operations. This might include but not be restricted to business affairs, properties, assets, trading practices, developments, trade secrets, intellectual property, customers, personal and/or sensitive personal data within the Data Protection Act, but always subject to the Freedom of Information Act.
Contract Year	Means twelve (12) months from the official Framework Agreement start date.
Contracting Authority	Means the public sector body, in this instance Kent County Council (via KCS Professional Services), that has agreed to take responsibility for the Tender process, contract formation and overarching responsibility for the Framework Agreement
Controller	Determines the purposes and means of processing Personal Data to ensure contracts with Processors comply with the GDPR.
Cost Price	Means the buy-in price from an external supply chain
Customer(s)	Means a Participating Authority and/or any public sector bodies who, as define in Section One, can access and use the Framework Agreement and who shall take full responsibility for their own Individual Contracting processes.
Customer Access Agreement	Means the document completed and signed by the Customer and Contracting Authority, giving access to utilise the Framework Agreement
Data Loss Event	Means any event that results, or may result, in

	unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data, including
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	is liable to the other
Direct Award	Means a way to place an Order directly with a Supplier using the pre-determined criteria detailed in Schedule Three without re-opening competition.
Documentation	Means any document issued by either Party that is pertinent to the Framework Agreement and/or Individual Contract/Order. Such documents might include, but not be limited to, user guides and operating manuals.
Force Majeure	Means any act, event or cause beyond the reasonable control of either Party
Framework Agreement	Means the overarching Framework Agreement between the Contracting Authority and the Supplier from which Orders and Individual Contracts are made and that shall include all terms, conditions and requirements as stated, within and under which Individual Contracts may be entered into by Participating Authorities/Customers and the Supplier(s).
Framework Management Fee	Means the fee payable to the Contracting or Member Authority calculated as a percentage of the net invoice value of all Orders placed through the Framework Agreement.
Further Competition	Means the process by which Customers/Participating Authorities may obtain the Goods/Services through inviting competition among all capable Suppliers.
Goods/Services	Means the Goods or Services to be provided by the Supplier in accordance with the Framework Agreement terms, conditions and requirements and Individual

Novate/Novation	Whereby one party transfers all of their obligations, rights and benefits under a Contract to a third party on agreement of all parties. The original party is
	
Price	Means the Price paid from a Customer/Participating Authority to a Supplier for the Goods/Services, on submission of an accurate invoice.
Potential Supplier(s)	Means all suppliers that tender for this Further Competition
Processor	Means responsible for processing Personal Data on behalf of a Controller. Required to maintain records of Personal Data and processing activities. Has legal liability if responsible for a breach.
Protective Measures	Means appropriate technical and organisational measures which may include: encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it
Service Credit	Means amount to be paid to the Contracting Authority or Customer/Participating Authority if Supplier performances fails to meet the specified standards in the Service Level Agreement (SLA)
 Services 	Means the Services to be provided by the Supplier in accordance with the Framework Agreement terms, conditions and requirements and Individual Contract/Order.
Sub-Contractor	Means an arrangement where more than one supplying Party agree to cooperate to advance their mutual interests, or where a contractor is to provide an agreed portion of the Goods/Services which form part

Section Three – Compulsory Terms and Conditions

1. Entire Contract



Contract and any documentation referred to in those clauses of the Individual Contract the conflict shall be resolved in accordance with the following order of precedence: -

- a) Purchase Order/Form of Direct Award
- b) Individual Contracts Terms and Conditions
- c) Supplier Terms and Conditions

- 1.5 The Individual Contract may be executed in counterparts, each of which, when actioned, will constitute an agreement. All counterparts shall constitute the whole Agreement.

2. Due Diligence and Accuracy of Information

- 2.1 Both Parties must carry out their own due diligence process prior to Individual Contract commencement date.

- 2.2 Both Parties must satisfy itself of all relevant details relating to the suitability of the existing and future operating environment; operating processes and procedures and the working methods of the Customer/Participating Authority; ownership, functionality, capacity, condition and suitability of Customer/Participating Authority equipment for use in the provision of the Goods and/or Services and any existing Individual Contracts and liabilities which are to be Novated to the Supplier.



- 2.3 The Supplier must advise the Customer/Participating Authority, in writing, of each aspect of the operating environment that is not suitable for the provision of Goods and/or Services, the action needed to remedy each aspect and a timetable for and costs of those actions. For the purpose of this Clause 'in writing' includes e-mail. Each Party shall be liable to pay for costs, in event of a Default, incurred due to inaccuracies, discrepancies, omissions, and damage therein.

- 2.4 Both Parties shall be entitled to recover any additional costs resulting from any unsuitable aspects of the operating environment, misinterpretation of the



Contract. Any actions taken in relation to this Clause shall not prejudice or affect any right of action or remedy, which shall be accrued or hereafter be accrued to the Customer/Participating Authority. For the purpose of this Clause 'in writing' includes e-mail.

4. Prevention of Fraud

- 4.1 The Supplier shall take all reasonable steps necessary to ensure prevention of any fraud by employees of the Supplier (including all shareholders, directors and members) in connection with monies received from the Customer/Participating Authority.
- 4.2 The Supplier shall notify the Customer/Participating Authority as soon as practically possible, if it has reason to believe that fraud has occurred, or is likely to occur.
- 4.3 If the Supplier commits any fraud to this or any other Individual Contract in place with the Customer/Participating Authority then the Customer/Participating Authority may;
- 4.3.1 Terminate the Individual Contract with immediate effect, by giving the Supplier written notice.
 - 4.3.2 Recover from the Supplier any direct costs incurred resulting from the termination including sourcing from an Alternative Supplier, for the remainder of the Individual Contract period, any loss as a consequence of the breach of this clause.
- 4.4 This Clause shall apply during the Individual Contract period and for a period of two (2) years after the Individual Contract expiry date.

5. Warranties

The Supplier hereby represents and warrants to the Customer/Participating Authority that:



Supplier at the commencement date which have not been disclosed might reasonably have been expected to influence such decision.

5.6 The Goods and/or Services when delivered to the Customer/Participating Authority will:

- 5.6.1 be of a satisfactory quality and as is practicably possible be free from any defects in material or workmanship;
- 5.6.2 comply with the appropriate United Kingdom, EU or International standards and with all applicable statutory requirements and regulations;
- 5.6.3 the Goods and/or Services will be fit and sufficient for the purpose intended by the Customer/Participating Authority as specified in the Purchase Order/Individual Contract and will comply with all applicable laws and regulations in force in England and Wales;
- 5.6.4 the Goods and/or Services do not and will not infringe any intellectual property right of any third party.

5.7 Each of the representations and warranties contained in Clause 5 (hereinafter referred to as "Warranties") shall be construed as a separate representation or warranty and shall not be limited by the terms of any of the other warranties or by any other term of this Individual Contract.

5.8 The Supplier acknowledges that the Customer/Participating Authority has entered into this Individual Contract in reliance on the Warranties.

5.9 The Warranties shall continue in full force and effect notwithstanding delivery or payment for the Goods and/or Services and notwithstanding termination of this Individual Contract for any reason.

6. Duration of Individual Contract

In accordance with the 'Public Contract Regulations 2015' Individual Contracts based



IPRs for the purpose of fulfilling its obligations during the Individual Contract Period.

- 7.3 Where a Party acquires ownership of IPRs incorrectly under this Individual Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 7.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 7 or otherwise agreed in writing.
- 7.5 If there is an IPR Claim, the Supplier indemnifies the Contracting Authority and each Customer/Participating Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result. The Supplier will have sole control over defending any IPR claim.
- 7.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Customers/Participating Authority's sole option, either:
 - obtain for the Contracting Authority and the Customer/Participating Authority the rights in Clause 7.1 and 7.2 without infringing any third party IPR
 - replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Goods

Severance

Any provision of this Individual Contract that is, or may be, void or unenforceable shall, to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Individual Contract that shall remain in force to the fullest extent possible.

9. Waiver

No waiver or forbearance by either Party on any occasion (whether express or



12.1 The Customer/Participating Authority shall be entitled immediately to terminate this Individual Contract with the Supplier and to recover from the Supplier the amount of any loss resulting from such termination if:

12.1.1 the Supplier, or any person employed by the Supplier or acting on his behalf (whether with or without the knowledge of the Supplier) shall have offered to give or agreed to give to any person any gift or consideration at any time as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Individual Contract or any other Individual Contract with the Customer/Participating Authority or for showing or forbearing to show favour or disfavour to any person in relation to this Individual Contract or any other Individual Contract with the Customer/Participating Authority.

12.1.2 in relation to any Individual Contract with the Customer/Participating Authority the Supplier or persons employed by him or acting on his behalf shall have committed any offence under the Public Bodies Corrupt Practices Act 1889 the Prevention of Corruption Acts 1906 to 1916 or have given any fee or reward the receipt of which is an offence under the Local Government Act 1972 Section 117.

12.1.3 the Supplier, when tendering, fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person or persons before the time specified for the return of Tenders;

12.1.3.1 communicated to a person other than the Customer/Participating Authority the amount or the approximate amount of his Tender (except where the disclosure in confidence of the appropriate

amount of his Tender was essential to obtain insurance premium quotations required for the preparation of his Tender).



13.1.1 The Official Secrets Act 1911 to 1989; and

13.1.2 Section 182 of the Finance Act 1989

- 13.2 In the event that the Suppliers staff fail to comply with this Clause, the Customer/Participating Authority reserves the right to terminate the Individual Contract immediately, by giving written notice to the Supplier.

14. Confidentiality

- 14.1 Each Party shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Individual Contract or except where disclosure is otherwise expressly permitted by the provisions of this Individual Contract.

- 14.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer/Participating Authority under or in connection with the Individual Contract:

14.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Individual Contract as is strictly necessary for the performance of the Individual Contract and only to the extent necessary for the performance of the Individual Contract;

14.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants' otherwise than for the purposes of the Individual Contract.

14.3 Where it is considered necessary in the opinion of the Customer/Participating Authority, the Supplier shall ensure that staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection



14.6 Nothing in this Condition shall prevent the Customer/Participating Authority:

14.6.1 disclosing any Confidential Information for the purpose of:

14.6.1.1 the examination and certification of the Customer/Participating Authority's accounts; or

14.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer/Participating Authority has used its resources.

14.6.2 disclosing any Confidential Information obtained from the Supplier:

14.6.2.1 to any other department, office or agency of the Crown; or

14.6.2.2 to any person engaged in providing any services to the Customer/Participating Authority for any purpose relating to or ancillary to the Individual Contract;

14.6.2.3 provided that in disclosing information under sub-paragraph 14.6.2.1 or 14.6.2.2 the Customer/Participating Authority discloses only the information, which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Individual Contract/Purchase Order in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

14.8 In the event that the Supplier fails to comply with this Clause 14, the Customer/Participating Authority reserves the right to terminate the Individual Contract/Purchase Order by notice in writing with immediate effect.



with these information disclosure requirements.

15.2 The Supplier shall and shall ensure that its Sub-Contractors shall

15.2.1 transfer the request for information to the Customer/Participating Authority as soon as practicable after receipt and in any event within two (2) working days of receiving a request for information;

15.2.2 provide the Customer/Participating Authority with a copy of all information in its possession or power in the form that the Customer/Participating Authority requires within five (5) working days (or such other period as the Customer/Participating Authority may specify) of the Customer/Participating Authority requesting that information; and

15.2.3 provide all necessary assistance as reasonably requested by the Customer/Participating Authority to enable the Customer/Participating Authority to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.

15.3 The Customer/Participating Authority shall be responsible for determining at its absolute discretion whether:

 15.3.1 the information is exempt from disclosure under the Freedom of  Environmental Information Regulations;

15.3.2 the information is to be disclosed in response to a request for information, and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the

[REDACTED]

Information in accordance with Clause 15.4.

16. Rights of Third Parties

A person who is not a Party to this Individual Contract has no rights under the Individual Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Individual Contract but this does not affect any right or remedy of a third party that exists or is available apart from such Act.

17. Cumulative Remedies

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

18. Diversity

Throughout the duration of this Individual Contract the Supplier shall and in addition shall ensure that its Sub-Contractors shall discharge their obligations under this Individual Contract and supply the Goods and/or Services in accordance with their responsibilities under the Equalities Act 2010 encompassing the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability Discrimination Act 1995 and Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission and shall in addition discharge its obligations under this Individual Contract and provide the Goods and/or Services in a manner consistent with the Customer/Participating Authority's policies and guidelines.

19. Liquidated Damages

Individual Contracts/Orders will be subject to Liquidated Damages, where agreed in

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Managing Director determine in good faith that resolution through continued discussions does not appear likely within such twenty (20) working day period, then the Parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.

20.3 The specific format for the discussions shall be determined at the discretion of the Parties, but may include the preparation of agreed statements of fact or written statements of position.

20.4 Proposals and information exchanged during the informal proceedings described in this Clause between the Parties shall be privileged, confidential and without prejudice to a Party's legal position in any formal proceedings. All such proposals and information, as well as any conduct during such proceedings, shall be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings.

20.5 In the event that the Parties fail to agree the resolution of the dispute at the end of the mediation, and the Dispute Resolution Procedure has been exhausted, either Party may then invoke legal proceedings to seek determination of the dispute.

20.6 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Individual Contract until a dispute has been resolved.

20.7 Nothing in the Dispute Resolution Procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

20.8 Any dispute difference or question between the Parties to this Individual Contract with respect to any matter or thing arising out of or relating to this Individual Contract

which cannot be resolved by negotiation and except in so far as may be otherwise provided in this Individual Contract shall be referred to arbitration under the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment

[REDACTED]

Agreement.

- 22.3 The Supplier shall comply with the Modern Slavery Act 2015
- 22.4 The Supplier undertakes, warrants and represents that neither the Supplier nor any of its officers, employees, agents or Sub-Contractors has:
- 22.4.1 committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");
 - 22.4.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 22.4.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 22.5 The Supplier shall notify the Contracting Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Sub-Contractors have, breached the Modern Slavery Act 2015.

23. Title and Risk

[REDACTED] Risk in the Goods shall not pass to the Customer/Participating Authority unless and until a delivery note has been signed by an authorised officer of the Customer/Participating Authority. If the Goods are rejected by the Customer/Participating Authority for any reason at any time after delivery has been affected then risk in the Goods shall revert to the Supplier immediately upon the

Customer/Participating Authority notifying the Supplier of such rejection of the Goods.

Purchase Order number. Incorrect invoices will be returned unpaid for correction and resubmission. In such cases the payment terms will take effect not from the invoice date but from the date of receipt at the correct address of a correctly presented invoice.

- 24.4 All disputed invoices (whether paid or outstanding) are to be resolved by the Supplier within thirty (30) days of written notification of any problem, any unresolved disputes will result in a Service Credit of 10% of the invoice value for each week thereafter. Six (6) months from invoice date, if the invoice is still not resolved, the disputed invoice will be written off or credited by the Supplier.
- 24.5 Should the customer fail to pay undisputed invoices on three consecutive occasions, the Supplier may give the Customer thirty (30) days' notice that it will cease/withhold Services, until such time as the outstanding values are paid.
- 24.6 The Customer/Participating Authority shall only make payment after delivery of all the Goods and/or Services specified in the relevant Individual Contract/Purchase Order and where delivery is by instalments payment shall be made after delivery of each instalment and after receipt by a duly authorised officer of the Customer/Participating Authority of a detailed invoice showing correct invoice value (and where VAT is payable, a VAT invoice) clearly stating the Individual Contract/Purchase Order Number as appropriate.

Where the provisions of Clause 24.6 have been complied with payments will normally be made by the Customer/Participating Authority within thirty (30) days of the tax point of the invoice(s). The Customer/Participating Authority reserves the right to withhold payment where the provisions of Clause 24.1 have not been complied with.

- 24.8 The Contracting Authority shall not be held responsible for payments due from individual Customers, Member Authorities and/or Participating Authorities.

26.3 In the event of any industrial action or anticipated delay the Supplier will seek acceptance of alternative plans to ensure supply to the Individual Contract. If the proposals are deemed as insufficient to ensure Individual Contract delivery, this will be deemed as a Material Breach and the Individual Contract may be terminated in accordance with Clause 31.7.

26.4 If the disruption is caused by direction of the Customer/Participating Authority then the Customer/Participating Authority will make an allowance to the Supplier of any proven expense, for direct cost, that has been agreed by the Customer/Participating Authority, as a direct result of the disruption.

27. Transfer and Sub-Contracting

27.1 The Customer/Participating Authority reserves the right to reject the use of any particular Sub-Contractor. In the case of rejection the Customer/Participating Authority will notify the Supplier of its reasoning in writing. Reasons for rejection include, but are not limited to, a Sub-Contractor banned from entering premises, financial risk, criminal prosecutions pending etc.

If a Sub-Contractor is appointed this does not release the Supplier from any liability to the Customer/Participating Authority, in respect of the Sub-Contracted Services and the Supplier shall be responsible for the acts, defaults, or neglect of any Sub-Contractor or their agents or employees in all respects as if they were the acts, defaults or neglect of the Supplier or their agents or employees.

27.2 The Supplier shall not Assign, Novate, sub-contract or in any way dispose of the Individual Contract or any part of it without written prior approval from the Customer/Participating Authority, which will not be unnecessarily withheld.

27.3 The Supplier shall be responsible for all acts, and omissions of its Sub-Contractors.

27.4 Where approval has been given to the Supplier to engage Sub-Contractors, a copy of

[REDACTED]

27.7 If the rights and obligations are Novated or otherwise disposed of under the Individual Contract relating to Clause 27.5 to a body which is not a Contracting body or if there is a change in the legal status of the Customer/Participating Authority, such as it ceases to be a Contracting Authority, in the remainder of the Clause both bodies will be referred to as '**the Transferee**': -

27.7.1 the rights of termination of the Customer/Participating Authority in Clause 31 shall be available to the Sub-Contractor in the event of, respectively, the bankruptcy or insolvency or Default of the transferee; and

27.7.2 the transferee shall only be able to Novate, or otherwise dispose of its rights and obligations under the Individual Contract or any part thereof with the previous consent in writing of the Supplier.

27.8 The Customer/Participating Authority may disclose to any transferee any Confidential Information of the Supplier, which relates to the performance of the Suppliers obligations under the Individual Contract. In such circumstances the Customer/Participating Authority shall authorise the transferee to use such Confidential Information only for the purpose relating to the performance of the Suppliers obligations under the Individual Contract and for no other purposes and shall take all steps to ensure that the transferee gives a Confidential Information undertaking in relation to the Confidential Information.

27.9 Each of the Parties shall, at its own cost, carry out, or use reasonable endeavours to carry out, whatever further actions, including the issue of further documentation that the other Party requires, from time to time, for the purpose of giving the other Party the full benefit of the provisions of the Individual Contract.

28. Acceptance of Conditional Tender

28.1 If an Individual Contract is entered into following the submission and acceptance of a

[REDACTED]

[REDACTED]

Section Four – Part Compulsory Terms and Conditions

29. Escalation Process



Parties shall agree to follow the Dispute Resolution Procedure (Clause 20).


Escalation Path relating to Product or Service Delivery Failure

Level	Customer	Supplier	Timescales for Completion
1	Authorised Representative of Ordering / Customer	Local Account Manager	Ten (10) working days from notification
2	Authorised Representative of Customer responsible for Ordering Body/Authority	Regional Account Manager or Sales Director	Ten (10) working days from notification to enact
3	Authorised Representative of Contracting Authority	Company Director	Fifteen (15) working days from notification

30. Liability

These Clauses 30.1 and 30.2 cannot be changed

30.1 The liability of both Parties for:

30.1.1 death or injury resulting from its own or that of its employees' agents or ; and

30.1.2 all damage suffered by either Party as a result of the implied statutory undertakings as to title quiet possession and freedom from encumbrances

Shall **not** be limited.

30.2 In order to cover its liabilities the Supplier shall maintain, and require that any permitted Sub-Contractors maintain, as a minimum throughout the Individual Contract Period;



30.2.6 The Supplier is responsible for comprehensively insuring all fleet items including vehicles maintained by the Supplier against third party claims and for accidental damage, fire, theft or loss whilst in the custody or control of the Supplier.

30.2.7 any other insurances required under any applicable legislation or at time of Individual Contract.

30.3 The following provisions, and the provisions of Clauses 39.2.1.1 to 39.2.1.5 set out both Parties liability (including any liability for the acts and omissions of its employees, agents and Sub-Contractors) in respect of.

29.2.1 any breach of its contractual obligations arising under this Individual Contract; and

29.2.2 any representation statement or tortuous act or omission including negligence arising under or in connection with this Individual Contract

30.4 Any act or omission on the part of either Party, its employees, agents or Sub-Contractors falling within Clause 30.3 shall for the purposes of this Clause 30 be known as an 'event of Default'.

30.5 The Supplier shall not be liable to the Customer/Participating Authority in respect of any even [redacted] profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer/Participating Authority as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer/Participating Authority incurring the same.

- 30.6 If a number of events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Individual Contract.



Supplier shall be recoverable from the Supplier or, at the Customer/Participating Authority option, deducted from any money owed to the Supplier.

- 30.10.2 require the Supplier to effect and provide evidence of suitable cover within seven (7) working days of notification.

- 30.10.3 cancel this Individual Contract with immediate effect.

31. Termination

- 31.1 The Customer/Participating Authority may terminate the Individual Contract with justifiable cause, which will be determined by the Parties, on giving the Supplier sixty (60) days' written notice.

- 31.2 The Customer/Participating Authority shall be entitled immediately to terminate the Individual Contract and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier is in Material Breach of any of the terms of this Individual Contract.

- 31.3 The Customer/Participating Authority may terminate the Purchase Order/Individual Contract at any time before all of the Goods and/or Services are delivered by giving written notice and thereafter:

- 31.3.1 the Supplier shall cease to be bound to deliver and the Customer/Participating Authority shall cease to be bound to receive delivery of any further Goods and/or Services;

- 31.3.2 the Customer/Participating Authority shall cease to be bound to pay that part of the Price that relates to the Goods and/or Services that have not been delivered, unless a termination fee (which cannot exceed the value of



- 31.5.2 where no notification has been made, the date that the Customer/Participating Authority becomes aware of the Change of Control;

But shall not be allowed to terminate where an approval was granted prior to the Change of Control.

Termination on Default

- 31.7 The Customer/Participating Authority may terminate the Individual Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if: -

31.7.1 The Supplier has not remedied the Default to the requirements of the Customer/Participating Authority within twenty (20) working days, or such period as may be specified by the Customer/Participating Authority, after issue of a written notice stating the Default and requesting the Default to be remedied; or

31.7.2 the Default is not capable, in the reasonable opinion of the Customer/Participating Authority, of remedy; or

31.7.3 the Default is a Material Breach of the Individual Contract. In the event of a Material Breach the Customer is entitled to claim reasonable costs from the Supplier

- 31.8 If the Customer/Participating Authority fails to pay the Supplier undisputed sums of money when agreed by Individual Contract, the Supplier shall notify the Customer/Participating Authority in writing of such failure to pay. If the

Customer/Participating Authority fails to pay such undisputed sums then: -

31.8.1 Interest on payment shall not be subject to the Late Payment of Commercial



31.11 All termination or coming to an end of this Individual Contract shall be without prejudice to any claims for prior breach of this Individual Contract and all of the conditions which expressly or impliedly have effect after termination of this Individual Contract for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

Framework Agreement

31.12 Individual Contracts will continue to run even if the Framework Agreement is terminated unless terminated by the Customer/Participating Authority under this Clause 31 Termination.

Termination by the Supplier

31.13 The Supplier shall have the right to terminate the Individual Contract /Purchase Order, by giving ninety (90) days' notice:

31.13.1 if any software becomes unable of accepting upgrades, patches etc or the ongoing service invoices are not paid within the agreed time period and process, or any other fundamental changes to the requirement, not agreed by the Supplier.

Consequences of Termination

31.14 Where the Customer/Participating Authority terminates the Individual Contract under Clause Termination on Default (31.7 – 31.11) and then makes other arrangements for the supply of the products the Customer/Participating Authority may recover the reasonable costs, from the original Supplier, incurred to make those arrangements and any additional costs incurred during the remainder of the original Contract Period.

Where the Individual Contract is terminated under the Clause Termination on Default (31.7 – 31.11) no further payments shall be payable to the Supplier by the Customer/Participating Authority, until the Customer/Participating Authority has

32.4 Compliance with Clause 32.1 and 32.2 shall be within five (5) working days from termination of the Individual Contract.

33. Data Protection and GDPR

33.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer/Participating Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do must be determined by the Contracting Authority and/or Customer/Participating Authority and may not be determined by the Supplier.

33.2 The Supplier shall notify the Contracting Authority and/or Customer/Participating Authority without undue delay if it considers that any of the Contracting Authority and/or Customer/Participating Authority's instructions infringe the Data Protection Legislation.

33.3 The Supplier shall provide all reasonable assistance to the Contracting Authority and/or Customer/Participating Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority and/or Customer/Participating Authority, include:

33.3.1 a systematic description of the envisaged processing operations and the purposes of the processing;

33.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.



33.4.3 ensure that:

- (i) the Supplier personnel do not process Personal Data except in accordance with this Individual Contract;
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Contracting Authority and/or Customer/Participating Authority or as otherwise permitted by this Individual Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

33.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Contracting Authority and/or Customer/Participating Authority has been obtained and the following conditions are fulfilled:



- (i) the Contracting Authority and/or Customer/Participating Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Contracting Authority and/or Customer/Participating Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best



- 33.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 33.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Individual Contract;
 - 33.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 33.5.6 becomes aware of a Data Loss Event.
- 33.6 The Supplier's obligation to notify under Clause 33.5 shall include the provision of further information to the Contracting Authority and/or Customer/Participating Authority in phases, as details become available.
- 33.7 Taking into account the nature of the processing, the Supplier shall provide the Contracting Authority and/or Customer/Participating Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 33.5 (and insofar as possible within the timescales reasonably required by the Customer/Participating Authority) including by promptly providing:
- 33.7.1 the Contracting Authority and/or Customer/Participating Authority with full details and copies of the complaint, communication or request;
 - 33.7.2 such assistance as is reasonably requested by the Customer/Participating Authority to enable the Contracting Authority and/or Customer/Participating

Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

33.7.3 the Contracting Authority and/or Customer/Participating Authority, at its

[REDACTED]

33.8.3 the Contracting Authority and/or Customer/Participating Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

33.9 The Supplier shall allow for audits of its Data Processing activity by the Contracting Authority and/or Customer/Participating Authority or the Contracting Authority and/or Customer/Participating Authority's designated auditor.

33.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

33.11 Before allowing any Sub-Processor to process any Personal Data related to this Individual Contract, the Supplier must:

33.11.1 notify the Contracting Authority and/or Customer/Participating Authority in writing of the intended Sub-Processor and processing;

33.11.2 obtain the written consent of the Contracting Authority and/or Customer/Participating Authority;

33.11.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 33 such that they apply to the Sub-Processor; and

33.11.4 provide the Contracting Authority and/or Customer/Participating Authority with such information regarding the Sub-Processor as the Contracting Authority and/or Customer/Participating Authority may reasonably require.

33.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

33.13 The Contracting Authority and/or Customer/Participating Authority may at any time, on no less than thirty (30) working days' notice, revise this Clause by replacing it with any applicable Controller to Processor standard Clauses or similar terms forming part

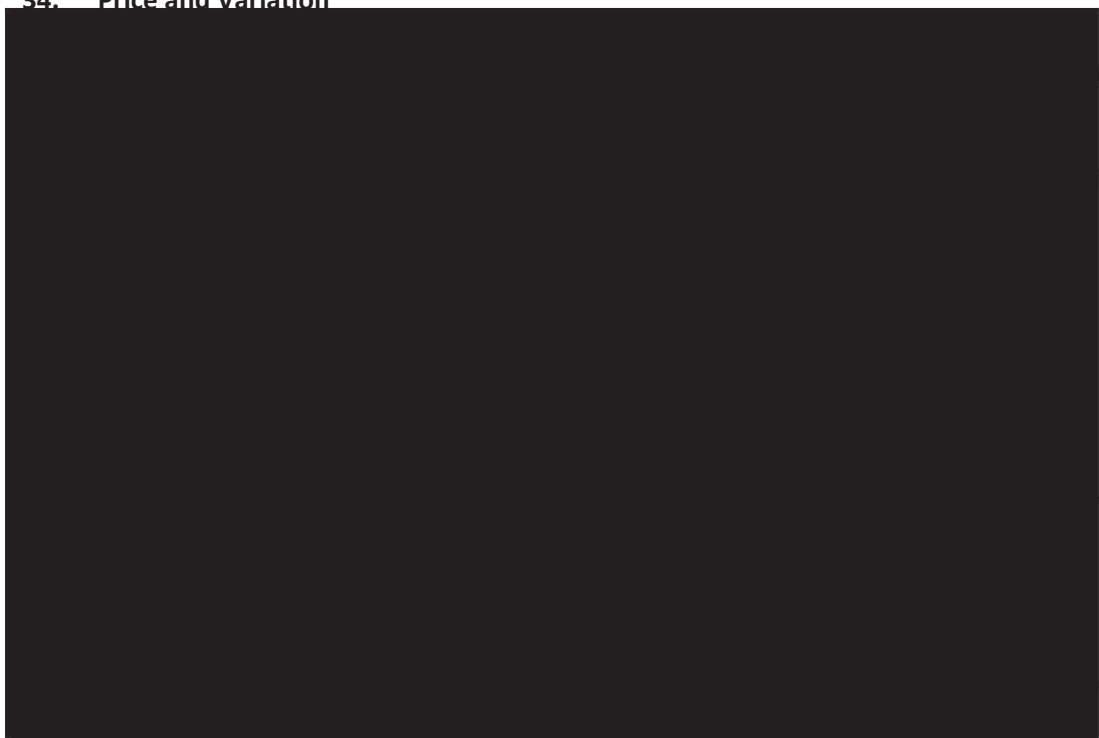
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Section Five – Non-Compulsory Terms and Conditions

34. Price and Variation



34.3.2 where all or part of the Individual Contract Prices are reduced as a result of a reduction in the Framework Agreement Prices

35. Delivery

- 35.1 The Supplier shall provide the Goods and/or Services, on the date(s) specified in the Individual Contract/Purchase Order.
- 35.2 The Goods and/or Services shall be delivered in the manner and quantity specified by the Customer/Participating Authority in the Individual Contract/Purchase Order.
- 35.3 The Supplier shall, where applicable, be responsible for arranging carriage of the Goods and/or Services at the entire cost and risk of the Supplier.
- 35.4 The Supplier shall use all reasonable endeavours to deliver the Goods and/or Services to the premises stated in the Individual Contract/Purchase Order (and/or, in the case of electronic delivery of Goods and/or Services, to the email address or other electronic location as agreed) and/or to supply the Services by any delivery date specified on the Individual Contract.

5. The Goods and/or Services shall be deemed not to have been delivered unless and until the Customer/Participating Authority has signed a delivery note acknowledging delivery (and, if specified on the Individual Contract/Purchase Order, installation) of the Goods and/or Services; (and for the avoidance of doubt where the Goods and/or Services are to be delivered by instalments the relevant delivery note for deemed delivery shall be the one signed on delivery of the final instalment) or, in the case of electronic delivery of Goods, the Supplier receives confirmation of receipt.

35.6 The Supplier shall notify the Customer/Participating Authority immediately on becoming aware that it may be unable to deliver or install the Goods and/or Services

[REDACTED]

Customer/Participating Authority shall have the right to reject such Goods and/or Services within a reasonable time and to purchase Goods and/or Services elsewhere as near as practicable to the same specification and conditions as circumstances shall permit without prejudice to any other right which the Customer/Participating Authority may have against the Supplier; and the making of payment shall not prejudice the Customer/Participating Authority right of rejection.

35.9 The Customer/Participating Authority shall have the right to require the Supplier, at the Supplier's own risk and expense, to collect and replace any rejected Goods and if the Supplier does not remove the rejected Goods within the advised timescale the Customer/Participating Authority shall be entitled to arrange for the removal of the Goods and to charge the cost of the removal to the Supplier.

35.10 In the event that the Customer/Participating Authority rejects any Goods it may (at its absolute discretion):

35.10.1 terminate this Individual Contract/Purchase Order or any part thereof without prejudice to its existing rights and remedies; and/or

35.10.2 recover as a debt due from the Supplier all extra costs and expenses arising from or in connection with the rejection of the Goods including, but not limited to, the cost of purchasing alternative as close to the specification as possible Goods and/or Services from elsewhere.

36. Technical Support

With effect from the acceptance date, as agreed between both Parties, the Supplier shall provide, in respect of all of the Goods and/or Services provided, a level of technical support as defined within the Individual Contract/Purchase Order.

37. Replacement and Substitution of Personnel



39.2 The Customer/Participating Authority and Supplier Indemnity shall be limited as follows:

39.2.1 Subject to Clause 30.1, the Supplier's total aggregate liability shall be one hundred and twenty-five per cent (125%) of the total value of the Order/Individual Contract for the duration of the Contract Period in respect of all direct liability loss damages costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Customer/Participating Authority as a result of or in connection with:

39.2.1.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in Clause 5;

39.2.1.2 any damage to property to the extent that such damage is caused by or relates to or arises from the Goods and/or Services;

39.2.1.3 any claim made against the Customer/Participating Authority in respect of any liability, loss, damage, Cost or expense sustained by the Customer/Participating Authority employees, Sub-Contractors or agents or by any third party to the extent that such liability loss damage cost or expense is caused by or relates to or arises from the Goods;



39.2.1.4 any negligent act or omission of the Supplier or its employees agents or Sub-Contractors in supplying and delivering the Goods and/or Services which causes financial loss to the

[REDACTED]

derend the indemnity claim.

40. Set-Off and Counterclaim

The Customer/Participating Authority may set off against any sums due to the Supplier, whether under this Purchase Order/Individual Contract or otherwise, any lawful set-off or counterclaim to which the Customer/Participating Authority may at any time be entitled.

41. Publicity

41.1 The Supplier shall not, without prior written permission of the Customer/Participating Authority advertise or publicly announce that the Supplier is undertaking work for any Customer/Participating Authority and shall take responsible steps to ensure that its servants, employees, agents, Sub-Contractors, Suppliers, professional advisors and consultants comply with this Clause.

41.2 The Customer/Participating Authority shall be entitled to publicise in accordance with legal obligation upon the Customer/Participating Authority, including any examination of the Individual Contract by an auditor.

41.3 The Supplier shall not do anything to damage the reputation of the Customer/Participating Authority or bring the Customer/Participating Authority into disrepute

42. Security

42.1 The Supplier shall comply with all reasonable requests from the Customer/Participating Authority whilst delivering to the Customer/Participating

Authority's premises or premises under the control or responsibility of the Customer/Participating Authority.



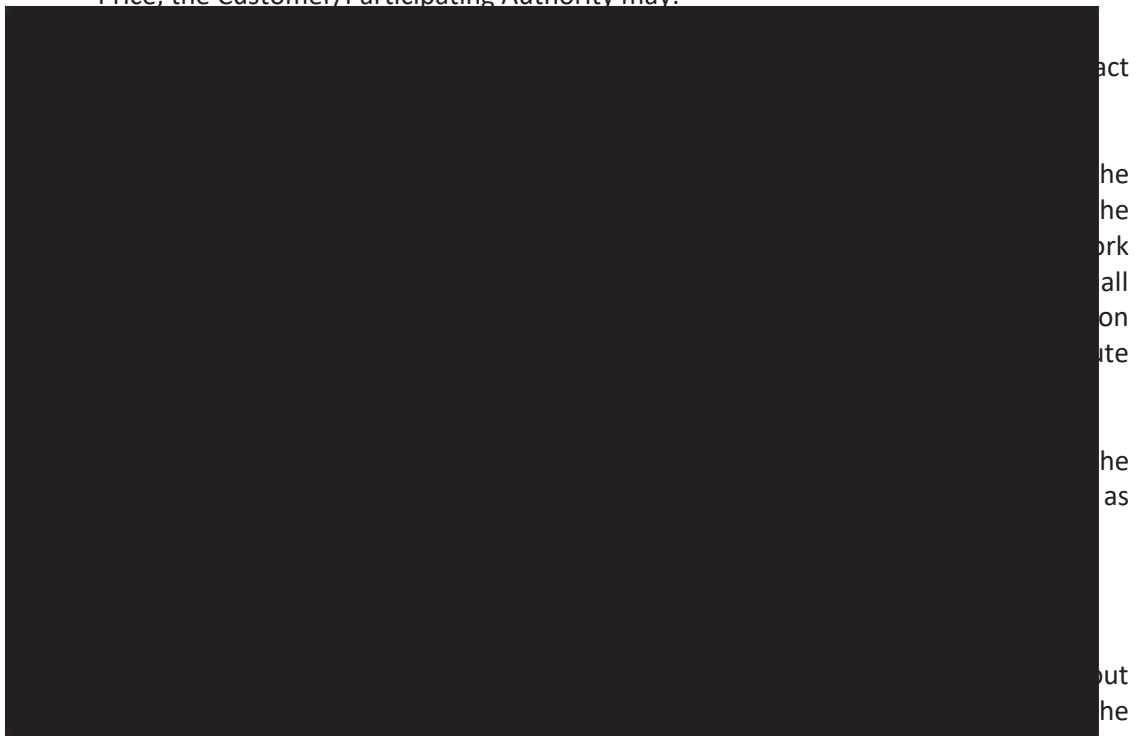
- 43.5 The Customer/Participating Authority will make all reasonable endeavours to ensure that any audit of the Supplier causes minimal delay or disruption to the Supplier. The Supplier accepts that direct control of the auditor is outside the control of the Customer/Participating Authority.
- 43.6 Subject to the Customer/Participating Authority's rights on Confidential Information the Supplier will provide the auditors with all reasonable assistance to complete the audit.
- 43.7 Both Parties agree that there will be no cost to either Party, unless a Material Breach is identified in which case the Supplier will reimburse the Customer/Participating Authority with all costs incurred in relation to that audit and subsequent action in relation to the identified Material Breach.

44. Variation

- 44.1 Subject to the provisions of this Clause 44, the Customer/Participating Authority may request a variation to Goods and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "variation".

- 44.2 The Customer/Participating Authority may request a variation by completing and sending [redacted] [redacted] at Appendix 1 ("Change Control Notice") to the Supplier giving sufficient information for the Supplier to assess the extent of the variation and any additional cost that may be incurred. The Supplier shall respond to a request for a variation within the time limits specified in the Change Control Notice. Such time limits shall be reasonable having regard to the nature of the Order.

- 44.3 In the event that the Supplier is unable to provide the variation to the Goods and/or Services or where the Parties are unable to agree a change to the Individual Contract Price, the Customer/Participating Authority may: -



materials or procedures used or about any other matter connected with the performance of the Suppliers obligations under the Individual Contract, then the Customer/Participating Authority shall take all reasonable steps to investigate the complaint. The Customer/Participating Authority may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 31.7 – 31.11 Termination - (Termination on Default) of the Individual Contract.

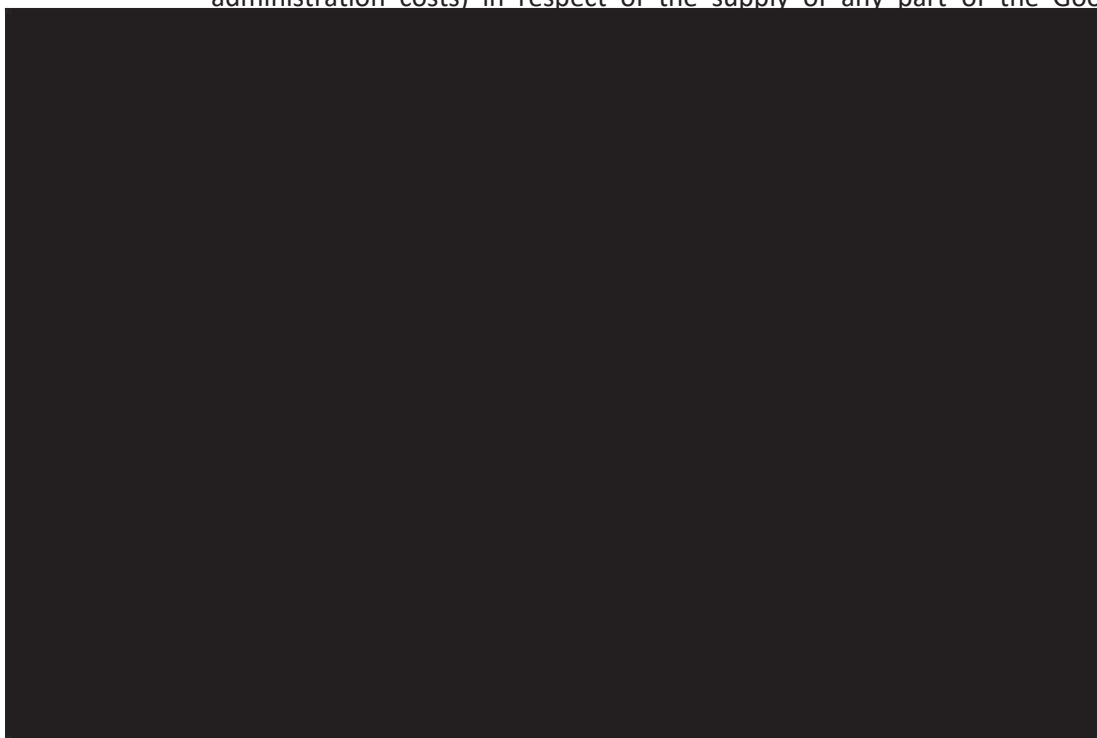
- 45.2 In the event that the Customer/Participating Authority is of the reasonable opinion that there has been a material breach of the Individual Contract by the Supplier, then the Customer/Participating Authority may, without prejudice to its rights under 31.7 – 31.11 Termination - (Termination on Default), do any of the following:-

45.2.1 without terminating the Individual Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer/Participating Authority that the Supplier will once more be able to supply all or such part of the Goods and/or Services in accordance with the Individual Contract;

45.2.2 without terminating the whole of the Individual Contract, terminate the Individual Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Individual Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services;



45.2.3 terminate, in accordance with Clause 31.7–31.11 – Termination - (Termination on Default), the whole of the Individual Contract; and/or

- 45.2.4 charge the Supplier for, and the Supplier shall pay, any costs reasonably incurred by the Customer/Participating Authority (including any reasonable administration costs) in respect of the supply of any part of the Goods



- 45.4.2 persistently fails to comply with Clause 45.3 above;
The Customer/Participating Authority may terminate the Individual Contract with immediate effect by giving the Supplier notice in writing.

- 45.5 Without prejudice to any other right or remedy which the Customer/Participating Authority may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Individual Contract, the Customer/Participating Authority shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods and/or Services have been accepted by the Customer/Participating Authority: -

- 45.5.1 to rescind the Order;
- 45.5.2 to reject the Goods and/or Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Customer/Participating Authority;
- 45.5.3 at the Customer/Participating Authority's option to give the Supplier the opportunity at the Suppliers expense to either remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Individual Contract are fulfilled;
 
- 45.5.4 to refuse to accept any further deliveries of the Goods and/or Services but without any liability to the Customer/Participating Authority;
- 45.5.5 to carry out, at the Suppliers expense, any work necessary to make the Goods and/or Services comply with the Individual Contract; and

45.5.6 to claim such damages as may have been sustained in consequence of the Suppliers breach or breaches of the Individual Contract.



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Appendix 1 Change Control Notice (CCN)

This notice is to be completed whenever there is a modification, addition or deletion from the Individual Contract referred to in (1) above.

[Redacted Content]

Changes to the Individual Contract referred to in (1) above.

Signed for and on behalf of the Supplier

By

Name

Title

Date

Signed for and on behalf of the Customer

By

Name

Title

Date.....