

Date: 08 January 2021

## A Contract for Goods

Between

The Secretary of State for Justice

And

Senator International Limited

## **PARTIES:**

- (1) THE LORD CHANCELLOR of 102 Petty France, London, SW1H 9AJ acting as part of the Crown (the “**Authority**”);

## **AND**

- (2) SENATOR INTERNATIONAL LIMITED with registered company number [REDACTED] whose registered office is Syke Side Drive, Altham Business Park, Accrington, BB5 5YE (the “**Supplier**”)

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

## **WHEREAS**

- A. The Authority wishes to appoint the Supplier to provide Plexiglas and Polycarbonate Screens and the Supplier agrees to provide those goods in accordance with these terms and conditions.

## **NOW IT IS HEREBY AGREED:**

### **A GENERAL**

#### **A1 Definitions and Interpretation**

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

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

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

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

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

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

“**Authority Data**” means:

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

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

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

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

**“Breach of Security”** means an occurrence of:

- (a) any unauthorised access to or use of the ICT Environment and/or any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract;
- (b) the loss (physical or otherwise) and/or unauthorised disclosure of any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract, including copies; and/or
- (c) any part of the Supplier System ceasing to be compliant with the Certification Requirements

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

**“CCN”** means a change control notice in the form set out in Schedule 3.

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

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

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

**“Commercially Sensitive Information”** means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

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

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

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

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on

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

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

**“Contract”** means these terms and conditions, the attached Schedules and any other provisions the Parties expressly agree are included.

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

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

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

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

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

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

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

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

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

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

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

**“Exit Day”** means as it is defined in the European Union (Withdrawal) Act 2018.

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

**“Financial Year”** means the period from 1<sup>st</sup> April each year to the 31<sup>st</sup> March the following year.

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

**“Force Majeure Event”** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding:

- (a) any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier’s supply chain;
- (b) any event related to the covid-19 pandemic which the Supplier was aware of or ought reasonably to have been aware of on the Commencement Date.

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679).

**“General Anti-Abuse Rule”** means:

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

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

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

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

**“Government”** means Her Majesty’s government of the United Kingdom.

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

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

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

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

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

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

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

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

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

**“Intellectual Property Rights”** means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“ISO 14001”** means the family of standards related to environmental management published by the International Organisation for Standardisation.

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

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

**“Law”** means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply.

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

**“Material Breach”** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses D1, D2, D3, G3, I4 or paragraph 9 of Schedule 5.

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

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

**“Month”** means calendar month.

**“MSA”** means the Modern Slavery Act 2015.

**“NICs”** means National Insurance Contributions.

**“Occasion of Tax Non-Compliance”** means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

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

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

**“Price”** means the price (excluding any applicable VAT) payable to the Supplier by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Supplier of its obligations under the Contract.

**“Prohibited Act”** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
  - ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
  - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

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

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

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

**“Receipt”** means the physical or electronic arrival of the invoice at the address specified in clause C1.13 or at any other address given by the Authority to the Supplier for the submission of invoices from time to time.

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

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

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



**“Relevant Requirements”** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the End Date; or

(b) following an Extension, the end date of the Extension

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

“**TFEU**” means the Treaty on the Functioning of the European Union.

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

“**Treaties**” means the TFEU and the Treaty on European Union.

“**Valid Invoice**” means an invoice containing the information set out in clause C1.2.

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

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

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

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

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

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa unless the context requires otherwise;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) the Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- (i) references to the Contract are references to the Contract as amended from time to time;
- (j) any reference in the Contract which immediately before Exit Day is a reference to (as it has effect from time to time):
  - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of s.3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of s.3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

## **A2 Authority Obligations**

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

## **A3 Supplier's Status**

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

## **A4 Mistakes in Information**

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

## **A5 Term**

- A5.1 The Contract starts on 8<sup>th</sup> January 2021 (the "**Commencement Date**") and ends on 7<sup>th</sup> January 2022 (the "**End Date**") unless it is terminated early or extended in accordance with the Contract.
- A5.2 The Authority may extend the term of the Contract until 7<sup>th</sup> January 2023 ("**Extension**"). The terms of the Contract will apply throughout the period of any Extension.

## **B. THE GOODS**

### **B1 Basis of the Contract**

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

### **B2 Samples**

- B2.1 If requested by the Authority the Supplier shall provide the Authority with samples of Goods for evaluation and Approval.
- B2.2 The Supplier shall ensure that the Goods are fully compatible with any equipment to the extent specified in the Specification.
- B2.3 The Supplier acknowledges that the Authority relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of the Supplier's obligations under the Contract.

### **B3 Delivery**

- B3.1 Unless otherwise stated in the Specification, if the Goods are delivered by the Supplier, delivery is completed when the Goods are signed for by the Authority. If the Goods are collected by the Authority, the point of delivery is when the Goods are loaded on the Authority's vehicle.
- B3.2 Except where otherwise provided in the Contract, delivery includes the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Authority or duly authorised person reasonably directs.
- B3.3 The Authority is deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause B4.7.
- B3.4 The issue by the Authority of a receipt note for delivery of the Goods does not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.
- B3.5 Any access to the Premises and any labour and equipment provided by the Authority in connection with delivery is provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.
- B3.6 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Supplier and its Sub-Contractors shall at all times comply with the security requirements of the Authority.

- B3.7 The Authority is under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B3.8 The Authority is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice to the Supplier to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods remains with the Supplier unless they are accepted by the Authority.
- B3.9 Unless expressly agreed to the contrary, the Authority shall not accept delivery by instalments. If the Authority specifies or agrees to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.
- B3.10 Timely supply of the Goods is of the essence of the Contract, including in relation to commencing the supply of the Goods within the time agreed or on a specified date. If the Supplier fails to deliver the Goods within the time promised or specified in the Specification, the Authority is released from any obligation to accept and pay for the Goods and may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

#### **B4 Quality**

- B4.1 The Supplier shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - (b) in accordance with Good Industry Practice and all applicable Laws; and
  - (c) shall comply with the standards and requirements set out in Schedule 5.
- B4.2 The Supplier shall ensure the Goods:
- (a) correspond with their description;
  - (b) conform with the Specification;
  - (c) conform, if applicable, with any sample which has been Approved;
  - (d) operate in accordance with the relevant technical specifications;
  - (e) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - (f) conform in all respects with all applicable Laws; and

- (g) are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Supplier by the Authority.

- B4.3 The Authority may inspect and test the Goods at any time on reasonable notice. The Supplier shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection and testing.
- B4.4 If, following such inspection or testing, the Authority considers that the Goods do not conform or are unlikely to conform with the Supplier's undertakings in clauses B4.1 and B4.2, the Authority may enforce one or more of its rights set out in clause B4.7.
- B4.5 Notwithstanding any inspection or testing, the Supplier remains fully responsible for the Goods and any inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Authority may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- B4.6 If reasonably requested to do so by the Authority, the Supplier shall co-ordinate its activities in supplying the Goods with those of the Authority and other contractors engaged by the Authority.
- B4.7 Pursuant to clause B4.4, the Authority may by notice to the Supplier:
  - (a) reject any of the Goods;
  - (b) have the Goods promptly, free of charge and in any event within 5 Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; and/or
  - (c) treat the Contract as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.
- B4.8 Any Goods rejected or returned by the Authority as set out in clause B4.7 shall be returned to the Supplier at the Supplier's risk and expense.
- B4.9 The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 18 months from the date of delivery. If the Authority within such period or within 25 Working Days thereafter gives notice to the Supplier of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.
- B4.10 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

## **B5 Risk and Ownership**

- B5.1 Subject to clauses B4.4 and B4.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Contract Performance)), pass to the Authority on completion of delivery.
- B5.2 Title in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority on completion of delivery (or payment, if earlier).

## **B6 Non-Delivery**

- B6.1 On dispatch of any consignment of the Goods the Supplier shall send the Authority a note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- B6.2 If the Goods are not delivered to the Authority on the agreed date for delivery, the Authority shall, within 10 Working Days of that date give notice to the Supplier that the Goods have not been delivered and may:
- (a) request the Supplier to deliver substitute Goods free of charge by a date specified by the Authority;
  - (b) refuse to take any subsequent attempted delivery;
  - (c) subject to clause G1.3 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver; or
  - (d) terminate the Contract with immediate effect.

## **B7 Labelling and Packaging**

- B7.1 The Supplier shall ensure that the Goods are labelled and packaged in accordance with the Contract.
- B7.2 The Supplier shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2015 (SI 2015/1640). The container in which the Goods are held shall be labelled with the Supplier's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- B7.3 The Supplier shall remove and dispose of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.
- B7.4 If no period for collection and disposal is specified by the Authority, the Supplier shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Authority may dispose of any packaging materials which have not been collected by the Supplier within those 10 Working Days or such other period specified by the

Authority for collection. The Supplier is responsible for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.

**B7.5** The Supplier shall:

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

## **B8 Equipment**

- B8.1** The Supplier shall provide all the Equipment and resource necessary for the supply of the Goods.
- B8.2** The Supplier shall not deliver any Equipment to, or begin any work on, the Premises without Approval.
- B8.3** All Equipment brought onto the Premises is at the Supplier's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Supplier demonstrates that such loss or damage was caused or contributed to by the Authority's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B8.4** Equipment brought onto the Premises remains the property of the Supplier.
- B8.5** If the cost of any Equipment is reimbursed to the Supplier such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Supplier will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of delivery of the Goods.
- B8.6** The Supplier shall maintain all Equipment in a safe, serviceable and clean condition.
- B8.7** The Supplier shall, at the Authority's written request, at its own cost and as soon as reasonably practicable:



- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

B8.8 Within 20 Working Days of the end of the Term, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and shall leave the Premises in a clean, safe and tidy condition. The Supplier shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Supplier or Staff.

## **B9 Staff**

B9.1 The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

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

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

B9.2 The Authority shall maintain the security of the Authority's Premises in accordance with its standard security requirements. The Supplier shall comply with all security requirements of the Authority while on the Authority's Premises, and ensure that all Staff comply with such requirements.

B9.3 The Authority may search any persons or vehicles engaged or used by the Supplier at the Authority's Premises.

B9.4 At the Authority's written request, the Supplier shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all people who may require admission to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B9.5 At the Authority's request, the Supplier shall ensure that all Staff who have access to the Authority's Premises have been cleared in accordance with the BPSS.

B9.6 The Supplier shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:

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

## **B10 Due Diligence**

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

## **B11 Property**

- B11.1 The Property is deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within 5 Working Days of receipt.
- B11.2 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B11.3 The Supplier shall ensure the security of all the Property whilst in its possession in accordance with the Authority's reasonable security requirements as required from time to time.
- B11.4 The Supplier is liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **C. PAYMENT**

### **C1 Payment and VAT**

- C1.1 The Supplier shall submit invoices to the Authority in accordance with this clause C1 and Schedule 2.
- C1.2 The Authority issues Purchase Orders using Basware and, unless Approved otherwise, the Supplier shall, when invited, register on Basware.
- C1.3 If the Supplier registers on Basware, a Valid Invoice is an invoice issued through Basware, unless the invoice contains:
  - (a) additional lines not included in the relevant Purchase Order;
  - (b) line descriptions which have been materially altered so that they no longer match the equivalent description in the relevant Purchase Order; or
  - (c) Prices and/or volumes which have been increased without Approval.
- C1.4 If, with Approval, the Supplier does not register on Basware, a Valid Invoice is an invoice which includes the information set out in Part 2 of Schedule 2 and, if requested by the Authority:
  - (a) timesheets for Staff engaged in providing the Goods signed and dated by the Authority's representative on the Premises on the day;

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

**C1.5 *The Authority shall not pay an invoice which is not a Valid Invoice.***

- C1.6 The Authority shall not pay the Supplier's overhead costs unless Approved and overhead costs include, without limitation: facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Goods.
- C1.7 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then if plant was waiting to be transferred between Premises or if the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.
- C1.8 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Supplier is awaiting licensing of the Premises on the Authority's instructions).
- C1.9 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Supplier shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C1.10 The Supplier may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C1.11 If the Authority pays the Supplier prior to the submission of a Valid Invoice this payment is on account of and deductible from the next payment to be made.
- C1.12 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Supplier. All payments made by the Authority to the Supplier are on an interim basis

pending final resolution of an account with the Supplier in accordance with the terms of this clause C1.

**C1.13 The Supplier shall:**

(a) add VAT to the Price at the prevailing rate as applicable and show the amount of VAT payable separately on all invoices as an extra charge. If the Supplier fails to show VAT on an invoice, the Authority is not, at any later date, liable to pay the Supplier any additional VAT;

(b) ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice; and

(c) not suspend delivery of the Goods unless the Supplier is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

**C1.14 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause C1.14 shall be paid by the Supplier to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.**

**C1.15 The Authority shall:**

(a) in addition to the Price and following receipt of a Valid Invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with the Contract;

(b) pay all sums due to the Supplier within 30 days of receipt of a Valid Invoice unless an alternative arrangement has been Approved.

**C1.16 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank.**

**C2 Recovery of Sums Due**

**C2.1 If under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Authority under the Contract or under any other agreement with the Authority or the Crown.**

**C2.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.**

**C2.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid**

court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

- C2.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **C3 Price During Extension**

Subject to Schedule 2 and clause F4 (Change), the Price applies for the Initial Term or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

## **D. PROTECTION OF INFORMATION**

### **D1 Authority Data**

D1.1 The Supplier shall:

- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise Approved;
- (b) preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
- (c) not delete or remove any proprietary notices contained within or relating to the Authority Data;
- (d) to the extent that Authority Data is held and/or processed by the Supplier, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
- (e) identify, and disclose to the Authority on request those members of Staff with access to or who are involved in handling Authority Data;
- (f) on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of data, and its procedures for reducing risk; and
- (g) notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason.

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

- (a) require the Supplier (at the Supplier's cost) to restore or procure the restoration of Authority Data and the Supplier shall do so promptly; and/or

- (b) itself restore or procure the restoration of Authority Data, and be repaid by the Supplier any reasonable costs incurred in doing so.

## **D2 Official Secrets Acts and Finance Act**

D2.1 The Supplier shall comply with:

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

## **D3 Confidential Information**

- D3.1 Except to the extent set out in this clause D3 or if disclosure or publication is expressly allowed elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- D3.2 The Supplier hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- D3.3 If required by the Authority, the Supplier shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Supplier shall maintain a list of the non-disclosure agreements completed in accordance with this clause D3.3.
- D3.4 If requested by the Authority, the Supplier shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Supplier shall ensure that Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract.
- D3.5 The Supplier may disclose the Authority's Confidential Information only to Staff who are directly involved in supplying the Goods and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- D3.6 The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- D3.7 Clause D3.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

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

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

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

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

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

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

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

D3.13 The Supplier shall:

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

#### **D4 Freedom of Information**

D4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

D4.2 The Supplier shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:

- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

D4.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the FOIA and/or the EIR.

#### **D5 Publicity, Branding and Media**

D5.1 The Supplier shall not:

- (a) make any press announcements or publicise the Contract or its contents in any way;
- (b) use the Authority's name, brand or logo in any publicity, promotion, marketing or announcement of order; or
- (c) use the name, brand or logo of any of the Authority's agencies or arms-length bodies in



any publicity, promotion, marketing or announcement of orders  
without Approval.

- D5.2 Each Party acknowledges that nothing in the Contract either expressly or impliedly constitutes an endorsement of any products or services of the other Party (including the Goods and the ICT Environment) and each Party shall not conduct itself in such a way as to imply or express any such approval or endorsement.
- D5.3 The Supplier shall use reasonable endeavours to ensure that its Staff and professional advisors comply with clause D5.1.

## **E. INTELLECTUAL PROPERTY**

### **E1 Intellectual Property Rights**

E1.1 All Intellectual Property Rights in:

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

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

E1.2 The Supplier hereby assigns:

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

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

E1.3 The Supplier shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to supply the Goods grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Supplier or to any other third party supplying goods and/or services to the Authority ("**Indemnified Persons**");
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Goods; and
- (d) during and after the Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E1.3, except to the extent that any such claim results directly from:
  - i) items or materials based upon designs supplied by the Authority; or
  - ii) the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of the Contract.

E1.4 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier to the Authority.

E1.5 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Supplier or Indemnified Person) arising from the performance of the Supplier's obligations under the Contract ("**Third Party IP Claim**"), provided that the Supplier shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E1.6 The Authority shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs

and disbursements) incurred in doing so. The Supplier is not required to indemnify the Authority under this clause E1.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E1.3 (d) i) and ii).

E1.7 The Authority shall not, without the Supplier's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.

E1.8 If any Third-Party IP Claim is made or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E1.3 (b) and G2.1 (g)) use its best endeavours to:

- (a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Goods which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Supplier is unable to comply with clauses E1.8 (a) or (b) within 20 Working Days of receipt by the Authority of the Supplier's notification the Authority may terminate the Contract immediately by notice to the Supplier.

E1.9 The Supplier grants to the Authority and, if requested by the Authority, to a Replacement Supplier, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Commencement Date and which the Authority (or the Replacement Supplier) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Goods).

## **F. CONTROL OF THE CONTRACT**

### **F1 Contract Performance**

The Supplier shall immediately inform the Authority if any of the Goods are not being or are unable to be supplied, the reasons for non-supply, any corrective action and the date by which that action will be completed.

### **F2 Remedies**

F2.1 If the Authority reasonably believes the Supplier has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, procure the supply of all or part of the Goods until such time as the Supplier has demonstrated to the Authority's reasonable satisfaction that the Supplier can supply the Goods in accordance with the Specification;

- (b) without terminating the whole of the Contract, terminate the Contract in respect of some of the Goods only (whereupon a corresponding reduction in the Price shall be made) and thereafter procure a third party to supply those Goods;
- (c) withhold or reduce payments to the Supplier in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (d) terminate the Contract in accordance with clause H2.

F2.2 Without prejudice to its right under clause C2 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Goods by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for those Goods.

F2.3 If the Authority reasonably believes the Supplier has failed to supply all or some of the Goods in accordance with the Contract, professional or Good Industry Practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Supplier notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F2.4 If the Supplier has been notified of a failure in accordance with clause F2.3 the Authority may:

- (a) direct the Supplier to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
- (b) withhold or reduce payments to the Supplier in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

F2.5 If the Supplier has been notified of a failure in accordance with clause F2.3, it shall:

- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
- (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F2.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F2.6 If, having been notified of any failure, the Supplier does not remedy it in accordance with clause F2.5 in the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Supplier.

### **F3 Transfer and Sub-Contracting**

- F3.1 Except where both clauses F3.9 and F3.10 apply, the Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Supplier of any of its obligations or duties under the Contract.
- F3.2 The Supplier is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Supplier shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Goods fully in accordance with the Contract.
- F3.3 The Supplier shall ensure that Sub-Contractors retain all records relating to the Goods for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with clause F5 (Audit). If any Sub-Contractor does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Supplier on the basis of such documents or work carried out by the Sub-Contractor.
- F3.4 If the Authority has consented to the award of a Sub-Contract, the Supplier shall ensure that:
- (a) the Sub-Contract contains a right for the Supplier to terminate the Sub-Contract if the relevant Sub-Contractor does not comply with its legal obligations in environmental, social or labour law;
  - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F3.4 (a) in any Sub-Contract which it awards; and
  - (c) copies of each Sub-Contract are sent to the Authority immediately after their execution.
- F3.5 If the Authority believes there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or
  - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.
- F3.6 Unless Approved otherwise, if the total value of the Contract over the Term is, or is likely to be, in excess of £5,000,000, the Supplier shall, in respect of Sub-Contract opportunities arising during the Term from or in connection with the provision of the Goods:
- (a) advertise on Contracts Finder those that have a value in excess of £25,000;
  - (b) within 90 days of awarding a Sub-Contract, update the notice on Contracts Finder with details of the Sub-Contractor;

- (c) monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder and awarded during the Term;
- (d) provide reports on the information in clause F3.6 (c) to the Authority in the format and frequency reasonably specified by the Authority;
- (e) promote Contracts Finder to its suppliers and encourage them to register on Contracts Finder; and
- (f) ensure that each advertisement placed pursuant to F3.6 (a) includes a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder.

F3.7 The Supplier shall, at its own cost, supply to the Authority by the end of April 2021 for the previous Financial Year:

- (a) the total revenue received from the Authority pursuant to the Contract;
- (b) the total value of all its Sub-Contracts;
- (c) the total value of its Sub-Contracts with SMEs; and
- (d) the total value of its Sub-Contracts with VCSEs.

F3.8 The Authority may from time to time change the format and the content of the information required pursuant to clause F3.7

F3.9 Notwithstanding clause F3.1, the Supplier may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Supplier (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F3.6 is subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both clauses F3.7 and F3.8.

F3.10 If the Supplier assigns the right to receive the Price under clause F3.9, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F3.11 The Supplier shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority can make payment.

F3.12 Clause C2 continues to apply in all other respects after the assignment and shall not be amended without Approval.

F3.13 Subject to clause F3.14, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

#### **F4 Change**

F4.1 After the Commencement Date, either Party may request a Change subject to the terms of this clause F4.

F4.2 Either Party may request a Change by notifying the other Party in writing of the Change by completing the Change Request Form set out in Schedule 3. The Party requesting the Change shall give the other Party sufficient information and time to assess the extent and effect of the requested Change. If the receiving Party accepts the Change it shall confirm it in writing to the other Party.

F4.3 If the Supplier is unable to accept a Change requested by the Authority or if the Parties are unable to agree a change to the Price, the Authority may:

- (a) allow the Supplier to fulfil its obligations under the Contract without the Change; or
- (b) terminate the Contract immediately except where the Supplier has already delivered all or part of the Goods or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F4.4 A Change takes effect only when it is recorded in a CCN validly executed by both Parties.

F4.5 The Supplier is deemed to warrant and represent that the CNN has been executed by a duly authorised representative of the Supplier in addition to the warranties and representations set out in clause G2.

F4.6 Clauses F4.4 and F4.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Change.

## **F5      Audit**

### **F5.1      The Supplier shall:**

- (a) keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority;
- (b) on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract;
- (c) make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Goods;
- (d) allow authorised representatives of the Authority and/or the National Audit Office to examine the Supplier's records and documents relating to the Contract and provide such copies and oral or written explanations as may reasonably be required; and
- (e) allow the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Supplier shall provide such explanations as are reasonably required for these purposes.

## **G.      LIABILITIES**

### **G1      Liability, Indemnity and Insurance**

#### **G1.1      Neither Party limits its liability for:**

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

#### **G1.2      Subject to clauses G1.3 and G1.5, the Supplier indemnifies the Authority fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported**



supply, of the Goods or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.

- G1.3 Subject to clause G1.1 the Supplier's aggregate liability in respect of the Contract does not exceed the Price payable in the previous calendar year of the Contract.
- G1.4 Subject to clause G1.1 the Authority's aggregate liability in respect of the Contract does not exceed the Price payable in the previous calendar year of the Contract.
- G1.5 The Supplier is not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.6 The Authority may recover from the Supplier the following losses incurred by the Authority to the extent they arise as a result of a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional costs of procuring a Replacement Supplier for the remainder of the Term and or replacement deliverables which shall include any incremental costs associated with the Replacement Supplier and/or replacement deliverables above those which would have been payable under the Contract;
  - (d) any compensation or interest paid to a third party by the Authority; and
  - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- G1.7 Subject to clauses G1.1 and G1.6, neither Party is liable to the other for any:
- (a) loss of profits, turnover, business opportunities or damage to goodwill; or
  - (b) indirect, special or consequential loss.
- G1.8 Unless otherwise specified by the Authority, the Supplier shall, with effect from the Commencement Date for such period as necessary to enable the Supplier to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract including:

- (a) if required by the Authority, appropriate, professional indemnity insurance in the sum of not less than £5,000,000 (five million pounds) for any advice given by the Supplier to the Authority;
- (b) cover for death or personal injury, loss of or damage to property or any other loss; and
- (c) employer's liability insurance in respect of Staff.

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

- G1.9 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Supplier does not have and maintain the insurances required by the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- G1.12 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

- G2.1 The Supplier warrants and represents on the Commencement Date and for the Term that:
  - (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Supplier;
  - (b) in entering the Contract, it has not committed any fraud;
  - (c) as at the Commencement Date, all information provided to the Authority by the Supplier or offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;

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

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

### **G3 Tax Compliance**

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

- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Authority:

- i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
- ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

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

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

## **H. DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Supplier shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“**Change of Control**”). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier within 6 Months of:

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

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

## **H2 Default**

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

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

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

H2.3 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Supplier may terminate the Contract with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 or to a Force Majeure Event.

## **H3 Termination on Notice**

The Authority may terminate the Contract at any time by giving 30 days' notice to the Supplier.

## **H4 Other Grounds**

H4.1 The Authority may terminate the Contract if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Supplier was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- (d) the Supplier has not, in supplying the Goods, complied with its legal obligations in respect of environmental, social or labour law.

## **H5 Consequences of Expiry or Termination**

- H5.1 If the Authority terminates the Contract under clause H2 and makes other arrangements for the supply of the Goods the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.
- H5.2 If the Contract is terminated under clause H2 the Authority shall make no further payments to the Supplier (for Goods supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause H5.
- H5.3 If the Authority terminates the Contract under clauses H3 or H4 the Authority shall make no further payments to the Supplier except for Goods supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- H5.4 Save as otherwise expressly provided in the Contract:
  - (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
  - (b) termination of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Official Secrets Acts and Finance Act), E3 (Confidential Information), E4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery), H8 (Retendering and Handover), H9 (Exit Management), H10 (Knowledge Retention), I6 (Remedies Cumulative), and I12 (Governing Law and Jurisdiction).

## **H6 Disruption**

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

## **H7 Recovery**

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

## **H8 Retendering and Handover**

- H8.1 Within 21 days of being requested by the Authority, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future supply of the Goods.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future supply of the Goods.
- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Supplier indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Supplier is required to provide under clause H8.1.
- H8.5 The Supplier shall allow access to the Premises in the presence of an authorised representative, to any person representing any potential provider whom the Authority has selected to tender for the future supply of the Goods.
- H8.6 If access is required to the Supplier's Premises for the purposes of clause H8.5, the Authority shall give the Supplier 7 days' notice of a proposed visit and a list of all persons who will be visiting. Their attendance is subject to compliance with the Supplier's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Supplier shall co-operate fully with the Authority during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Authority, the Supplier shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the supply of the Goods. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

- H9.1 On termination of the Contract the Supplier shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Supplier in accordance with the procedure set out in clauses H9.2 to H9.5.
- H9.2 If the Authority requires a continuation of supply of the Goods on expiry or termination of the Contract, by engaging a third party to supply them, the Supplier shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of supply without disruption to routine operational requirements.



- H9.3 The following commercial approach shall apply to the transfer of the supply of Goods if the Supplier:
- (a) does not have to use resources in addition to those normally used to deliver the Goods prior to termination or expiry, there shall be no change to the Price; or
  - (b) reasonably incurs additional costs, the Parties shall agree a Change to the Price based on the Supplier's rates either set out in Schedule 2 or forming the basis for the Price.
- H9.4 When requested to do so by the Authority, the Supplier shall deliver to the Authority details of all licences for software used in supplying the Goods including the software licence agreements.
- H9.5 Within one Month of receiving the software licence information described in clause H9.4, the Authority shall notify the Supplier of the licences it wishes to be transferred and the Supplier shall provide for the approval of the Authority a plan for licence transfer.

## **H10 Knowledge Retention**

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

## **I. GENERAL**

### **I1 Dispute Resolution**

- I1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Supplier and the commercial director of the Authority.
- I1.2 Nothing in this dispute resolution procedure prevents the Parties seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.
- I1.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.
- I1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement of the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I1.6.

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

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

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

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Supplier (the “**Arbitration Notice**”) stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I1.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I1.7 (a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## **I2 Force Majeure**

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

which those steps should be taken, to enable continued supply of the Goods affected by the Force Majeure Event.

- 12.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 12.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
    - i) the other Party is not entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
    - ii) neither Party is liable for any Default arising as a result of such failure;
  - (b) the Supplier fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Goods (or some of the Goods) continue to be supplied in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
- 12.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- 12.8 Relief from liability for the Affected Party under this clause I2 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause I2.7.

### **I3 Notices and Communications**

- 13.1 Subject to clause I3.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- 13.2 If it is not returned as undelivered a notice served in:
- (a) a letter is deemed to have been received 2 Working Days after the day it was sent; and
  - (b) an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

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

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

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

(a) For the Authority:

Contact Name: [REDACTED]

Address: 102 Petty France, Westminster, London, SW1H 9AJ; and

Email: [REDACTED]

(b) For the Supplier:

Contact Name: [REDACTED]

Address: [REDACTED]  
[REDACTED]

## **[REDACTED] of Interest**

14.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the Contract. The Supplier will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.

14.2 The Authority may terminate the Contract immediately by notice and/or take or require the Supplier to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause 14 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **15 Rights of Third Parties**

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

15.2 Subject to clause 15.1, a person who is not a Party has no right under the CRTPA to enforce the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

- 15.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- 15.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

## **16 Remedies Cumulative**

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

## **17 Waiver**

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

## **18 Severability**

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

## **19 Entire Agreement**

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

## **110 Change in Law**

- 110.1 The Supplier is neither relieved of its obligations to supply the Goods in accordance with the terms and conditions of the Contract nor entitled to an increase in the Price as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is reasonably foreseeable at the Commencement Date.

I10.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause I10.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:
  - (i) change is required to the Goods, the Price or the Contract; and
  - (ii) relief from compliance with the Supplier's obligations is required; and
- (b) provide the Authority with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods.

I10.3 Any variation in the Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause I10.1(b)) shall be implemented in accordance with clause F4.

## **I11 Counterparts**

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

## **I12 Governing Law and Jurisdiction**

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

## SCHEDULE 1 – SPECIFICATION

### 1. General

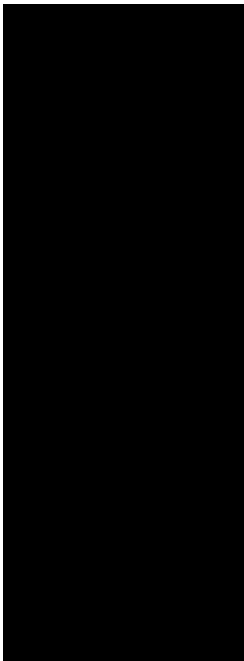
This Schedule 1 sets out a description of the Goods to be provided by the Supplier.

#### Annex A - Specification



Plexiglass and  
Polycarbonate Screen

#### Annex B – Technical Non- Price Response





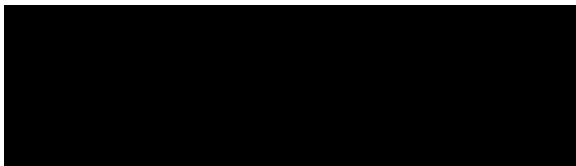
## **SCHEDULE 2 – PRICES and INVOICING**

### **Part 1**

#### **1. Charges**

- 1.1 The Prices contained in this Schedule 2 - Annex C are for the supply and installation of the Goods.
- 1.2 The Supplier acknowledges and agrees that the Prices cover all expected requirements for other sites selected by the Authority and the Authority can order from the list of Goods for other sites.
- 1.3 The Supplier shall discount the Prices contained in this Schedule 2 for Goods ordered by the Authority as per Annex C of this Schedule 2.

#### **Annex C – Pricing**



### **Part 2**

#### **1 Invoice requirements**

- 1.1 Other than invoices submitted through Basware, all invoices submitted to the Authority must:
  - 1.1.1 clearly state the word 'invoice' and contain the following information:
    - i) a unique identification number (invoice number);
    - ii) the Supplier's name, address and contact information;
    - iii) the name and address of the department/agency in the Authority with which the Supplier is working;
    - iv) a clear description of the Goods being invoiced for;
    - v) the date the Goods were provided;
    - vi) the date of the invoice;
    - vii) the amount being charged;
    - viii) VAT amount if applicable;

- ix) the total amount owed;
- x) the Purchase Order number; and
- xi) the amount of the invoice in sterling or any other currency which is Approved.

1.1.2 if submitted by email meet the following criteria:

- i) email size must not exceed 4mb;
- ii) one invoice per file attachment (PDF). Multiple invoices can be attached as separate files; and
- iii) any supporting information, backing data etc. must be contained within the invoice PDF file

and

1.1.3 unless Approved:

- i) not contain any lines for items which are not on the Purchase Order; and
- ii) replicate, as far as possible, the structure of and the information contained in the Purchase Order in respect of the number of lines, line descriptions, price and quantity.

1.2 If required by the Authority, the Supplier shall submit a structured electronic invoice in an Electronic Data Interchange or XML format.

## **SCHEDULE 3 - CHANGE CONTROL**

### **Change Request Form**

(For completion by the Party requesting the Change)

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

## Contract Change Notice (“CCN”)

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

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

## SCHEDULE 4 - COMMERCIALY SENSITIVE INFORMATION

- 1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E4 (Freedom of Information).
- 2 In this Schedule 4 the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 4 applies.
- 4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interest's exemption set out in s.43 of the FOIA to the Information listed below.

SUPPLIER'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY

## **SCHEDULE 5 – STATUTORY OBLIGATIONS AND CORPORATE SOCIAL RESPONSIBILITY**

### **1 What the Authority expects from the Supplier**

- 1.1 In September 2017, Her Majesty's Government published a Supplier Code of Conduct (the "**Code**") setting out the standards and behaviours expected of suppliers who work with government. The Code can be found online at:

*[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-3\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-3_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)*

- 1.2 The Authority expects the Supplier and its Sub-Contractors to comply with their legal obligations, in particular those set out in Part 1 of this Schedule 5, and to meet the standards set out in the Code as a minimum. The Authority also expects the Supplier and its Sub-Contractors to use reasonable endeavours to comply with the standards set out in Part 2 of this Schedule 5.

### **PART 1 Statutory Obligations**

#### **2 Equality and Accessibility**

- 2.1 The Supplier shall:

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

#### **3 Modern Slavery**

- 3.1 The Supplier shall, and procure that each of its Sub-Contractors shall, comply with:

- (a) the MSA; and

- (b) the Authority's anti-slavery policy as provided to the Supplier from time to time ("**Anti-slavery Policy**").

3.2 The Supplier shall:

- (a) implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
- (b) respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
- (c) prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
- (d) maintain a complete set of records to trace the supply chain of all goods and/or services provided to the Authority regarding the Contract;
- (e) report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the Authority and to the Modern Slavery Helpline; and
- (f) implement a system of training for its employees to ensure compliance with the MSA.

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

- (a) it conducts its business in a manner consistent with all applicable laws, regulations and codes including the MSA and all analogous legislation in place in any part of the world;
- (b) its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
- (c) neither the Supplier nor any of its Sub-Contractors, nor any other persons associated with it:
  - i) has been convicted of any offence involving slavery and trafficking; or
  - ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

3.4 The Supplier shall notify the Authority as soon as it becomes aware of:

- (a) any breach, or potential breach, of the Anti-Slavery Policy; or
- (b) any actual or suspected slavery or trafficking in a supply chain which relates to the Contract.

3.5 If the Supplier notifies the Authority pursuant to paragraph 3.4 of this Schedule 5, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the

Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

3.6 If the Supplier is in Default under paragraphs 3.2 or 3.3 of this Schedule 5 the Authority may by notice:

- (a) require the Supplier to remove from performance of the Contract any Sub-Contractor, Staff or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

#### **4 Income Security**

4.1 The Supplier shall:

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

#### **5 Working Hours**

5.1 The Supplier shall ensure that:

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



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

## **6 Right to Work**

### **6.1 The Supplier shall:**

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

## **7 Health and Safety**

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

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

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

## **8. Welsh Language Requirements**

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

## **9 Fraud and Bribery**

- 9.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act.
- 9.2 The Supplier shall not during the Term:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 9.3 The Supplier shall, during the Term:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - (b) have in place reasonable prevention measures (as defined in section 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
  - (c) keep appropriate records of its compliance with its obligations under paragraphs 9.3(a) and 9.3(b) and make such records available to the Authority on request; and
  - (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.
- 9.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of paragraphs 9.1 and/or 9.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

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

## **PART 2 Corporate Social Responsibility**

### **10 Zero Hours Contracts**

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

### **11 Sustainability**

- 11.1 The Supplier shall:
- (a) comply with the applicable Government Buying Standards;
  - (b) provide, from time to time, in a format reasonably required by the Authority, reports on the environmental effects of providing the Goods;
  - (c) maintain ISO 14001 or BS 8555 or an equivalent standard intended to manage its environmental responsibilities; and
  - (b) perform its obligations under the Contract in a way that:
    - (i) supports the Authority's achievement of the Greening Government Commitments;

- (ii) conserves energy, water, wood, paper and other resources;
- (iii) reduces waste and avoids the use of ozone depleting substances; and
- (iv) minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

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

**SIGNED** for and on behalf of the Lord  
Chancellor

Signature:

Name (block capitals):

Position:

Date:

**SIGNED** for and on behalf of the Senator  
International Limited

Signature:

Name (block capitals):

Position:

Date: