

## **SCHEDULE 2**

### **Supply and Distribution of: Vending Machine Services and Vending Machine Innovation.**

**Framework Agreement - CAT11050-TU**

## *Confidential*

### CONTRACT FOR THE SUPPLY OF GOODS

#### 1. DEFINITIONS

The terms and expressions used in these Terms and Conditions shall have the meanings set out below:

**'Member' or 'Our Member'** means any full member of TUCO Ltd or full or associate member of TUCO Ltd and other third parties who may use the Framework Agreement only with the express permission of TUCO Ltd. For the purposes of the Contract, the member will be the Secretary of State for Justice

**'TUCO Ltd'** means The University Caterers Organisation Ltd a company limited by guarantee registered in England No: 06124779, whose registered address is National House, 36 St Ann Street, Manchester M2 7LE.

**'Acceptance Date'** means the date on which the Authorised Officer has accepted the Goods in accordance with Condition 16 below.

**'Acceptance'** means the Member has accepted the Goods as meeting the requirements (Appendix b. Pricing Schedule) of the Contract.

**'Authorised'** means signed by the member.

**'Business Day'** means any day other than a Saturday or Sunday or a public or bank holiday in England, except where a member decrees otherwise and where notice is given.

**'Commencement Date'** has the meaning given in Condition 3 below.

**'Contract'** has the meaning given in Condition 3 below.

**'Delivered'** shall mean the delivery of goods to the place notified in the purchase order.

**'Delivery Date'** means the date specified in the Contract and/or confirmed by the Purchase Order.

**'Delivery Instructions'** means the instructions set out in the Contract for the provision of the goods, including any milestone events, and any other information the Member considers appropriate to the provision of the services.

**'End Date'** has the meaning given in Condition 3 below.

**'Framework Agreement'** means an agreement formed on behalf of TUCO Ltd which is accessible by Members and by third parties who in the case of such third parties use the Framework Agreement only with the express permission of TUCO Ltd.

**'Good Industry Practice'** means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of Goods similar to the Goods under the same or similar circumstances as those applicable to the Contract.

**'Goods'** means the materials, articles, works and services described in the Contract (Appendix b. Pricing Schedule).

**'Installation'** means the installation of the Goods in the designated location and into the operating environment specified by Our Member at the site and 'Install' shall be interpreted accordingly.

**'Intellectual Property Rights'** means patents, copyright, registered and unregistered design rights, utility models, trademarks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

**'Liabilities'** means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

**'Premises'** means the location(s) where the Goods are to be delivered.

**'Replacement Contractor'** means any company, organisation or person who replaces the contractor following termination or expiry of all or part of this Contract.

**'Order Amendment'** means Our Members Order Amendment or series of Order Amendments, each Order Amendment having precedence over any earlier Order Amendment.

**'Package'** means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers and outer wrapping.

**'Price'** has the meaning given in Condition 5 below.

**'Purchase Order'** means a Member's Purchase Order, written. These Terms & Conditions of Purchase have been issued by Our Member and shall be deemed to be incorporated into any Contract formed on the placement of an Order between a Member and the Lender for the Supply of Goods and Services to the Member within the scope of this Agreement, except to the extent that they are expressly varied by the Member upon the written agreement of the Lender. Where the conditions are silent on a particular point, the Member's conditions will apply.

**'Services'** means the services described in the specification and set out in the Contract together with all equipment required and any allocated goods provided by the Contractor in relation to the Services.

**'Supply of Goods and Services Act 1982'** shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

**'Framework Agreement'** means a tender issued by the TUCO Ltd for the supply of Goods to members.

**'Warranty Period'** means the period set out in Condition 30 below.

**'Warranty Services'** means such maintenance, repair and other services that are required to be provided in order to reinstate the Goods and/or the Installation or any part thereof to the standards of performance, and/or to provide the Services to standards that are in accordance with and as detailed in the Contract.

**'The Lender, 'You' and 'Your'** means the person, firm or company to whom the Purchase Order is addressed and any employees, sub-contractor or agents of said person, firm or company. The ~~Lender~~ shall also mean the Distributor/Supplier nominated by TUCO Ltd to affect the delivery of goods. For the purposes of this Contract, the Lender will be Selecta UK LTD (Company reg 2605313)

- 1.1. Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
- 1.2. A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

## 2. HEADINGS

- 2.1. The index and headings to the Conditions and where applicable the appendices and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

## 3. THE CONTRACT

- 3.1. You agree to loan to Our Member the Goods in accordance with the Contract. The Contract shall expressly exclude Your conditions of sale however these are purported by You to apply. Delivery of Goods shall be taken by Our Member that You have accepted the terms and conditions of this Contract.

## 4, TERM

- 4.1 The Contract starts on [1<sup>st</sup> June 2022] (the “**Commencement Date**”) and ends on [1<sup>st</sup> June 2026] (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.
- 4.2 The Authority may unilaterally extend the term of the Contract once until [1<sup>st</sup> June 2027] (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

## 5. PRICE

5.1 You will loan to Our Member the Goods free on loan for the Contract term unless otherwise agreed in writing for the firm and unchangeable price stated in the Contract (in Appendix “b.Pricing Schedule”). TUCO Ltd shall have the right to conduct price benchmarking and in the event that TUCO Ltd find a lower price for the same quality Goods You will match such lower price. The price shall include storage, packing, insurance, delivery, installation, maintenance and commissioning (as applicable)

## 6. SUBSTITUTIONS - VARIATION OF REQUIREMENT

- 6.1. The Lender is expected to lend any Goods for which the Lender has tendered as listed in the completed Pricing Schedule or as amended by agreement. If the Lender is unable to lend the exact product requested by Order, the Member must be informed at the time and point of order so that agreement may be reached on appropriate substitution. The product substituted shall be at least equivalent to or otherwise of a higher quality specification than the goods ordinarily supplied under the provisions of the Agreement. Any substitute or alternative goods shall be at no extra cost or charge to the Member.
- 6.2. The Lender will retain revenue subject to 6.3 from the sale of product from the Goods. The Lender will from time to time review the prices of products on sale from the Goods and will be entitled to alter the selling price should increases in products and services be incurred by the Lender.
- 6.3. The Member will be paid a quarterly royalty from the Lender and the royalty percentage is detailed in appendix “b Pricing Schedule” and the royalty percentage will be based on the sales revenue after the deduction of VAT generated by the products sold from the Goods.

## 7. NOT USED

## 8. INTELLECTUAL PROPERTY

8.1 It is a Condition of this Contract that the Goods will not infringe any Intellectual Property Rights of any third party and You shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation Us against all Liabilities which We may suffer or incur as a result of or in connection with any breach of this Condition 8, except where any such claim relates to the act or omission of Us.

## 9. CORPORATE REQUIREMENTS

- 9.1 You shall comply with all obligations under the Human Rights Act 1998 or any subsequent re-enactment.
- 9.2 You shall comply with all Our Members policies and rules, such as, but not limited to:
- 9.2.1 Equality and diversity policies
  - 9.2.2 Sustainability and Social Responsibility

9.2.3 Information security rules

9.2.4 Whistle-blowing and/or confidential reporting policies: and

9.2.5 All site rules relevant to the fulfilment of Your obligations

9.3 You shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

9.4 You shall comply with all relevant legislation relating to Your employees however employed including (but not limited to) the compliance in law of the ability of the employees to work in the United Kingdom.

9.5 If You have a finding against You relating to Your obligations under this Condition 9 You will provide TUCO Ltd with:

9.5.1 details of the finding: and

9.5.2 the steps You have taken to remedy the situation.

## 10. PROPERTY AND RISK

10.1 You shall bear all risks of loss or damage to the Goods for the duration of the Contract term and shall insure accordingly.

10.2 NOT USED

10.2.1 NOT USED

10.2.2 NOT USED

## 11. INDEMNITY AND INSURANCE

11.1. You will indemnify and keep Us indemnified to an amount not more than five million pounds (£5,000,000) in respect of any one claim and in the annual aggregate during the Contract period in respect of and in connection with:

11.1.1. all loss and/or expense which results during proper use directly from defective materials, goods, workmanship or design supplied by You; and

11.1.2. all loss and/or expense, and all actions, claims, demands, costs and expenses incurred by or made against Us which arises from any Installation and/or any Services and/or advice given or anything done or omitted to be done under, or in connection with the Contract by You; and

11.1.3. all and any actions, claims, demands or costs in respect of the death or injury to any person arising from defective materials, Goods, workmanship or design, or by reason of Your negligence, or any act or omission on the part of Your employees, sub-contractors, or agents in connection with the Contract; and

11.1.4. any damage to Our property (including any materials, tools or patterns sent to You for any purpose).

11.2. You must take out and maintain insurance adequate to cover the risks set out in this Condition 11 and Your liabilities under the Contract and in any event shall take out and maintain (where applicable):

11.2.1. Product Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and

11.2.2. Not used.

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- 11.2.3. Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise.
  - 11.2.4. Employer Liability Insurance coverage of not less than five million pounds sterling (£10,000,000) for any one, or a series of claims that may arise.
  - 11.3. You will take out and maintain such insurances as set out in this Condition 11 with a reputable insurance company and shall at Our request provide evidence of the insurance policy or policies and of payment of the premiums. Your failure to maintain such insurances shall be treated as a material breach of the Contract and shall give Us the right to terminate the Contract in accordance with Condition 7.
  - 11.4. This Clause 11.4 sets out Our entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Lender in respect of any failure of Us to abide by applicable regulation or legislation or other legal requirement in respect of the process leading to the Tender and any Direct Award or Mini Tender and the formation of this Agreement; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
    - 11.4.1. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.
    - 11.4.2. Nothing in this agreement limits or excludes Our liability:
      - 11.4.2.1. for death or personal injury resulting from Our negligence; or
      - 11.4.2.2. for any damage or liability incurred by the Supplier as a result of fraud or fraudulent misrepresentation by Us.
  - 11.5. Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement or in respect of any correspondence between the parties leading to the submission of the Tender, a Direct Award or any Mini Tender shall be limited to and shall not exceed £300,000 (three hundred thousand pounds) in respect of any one claim and in the annual aggregate during the Contract period .
  - 11.6. Neither party shall be liable to the other for:
    - 11.6.1. loss of profits; or
    - 11.6.2. loss of business; or
    - 11.6.3. depletion of goodwill and/or similar losses; or
    - 11.6.4. loss of anticipated savings; or
    - 11.6.5. loss of contract; or
    - 11.6.6. loss due to corruption of data; or
    - 11.6.7. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

## 12. PROGRESS AND INSPECTION

- 12.1. You shall at Your expense provide any programmes of manufacture and delivery that Our Member may reasonably require.
- 12.2. You shall notify Our member, in writing, without delay if Your progress falls behind or may fall behind any of these programmes.

12.3. Our member shall have the right to check progress at Your works or the works of Your sub-contractors at all reasonable times to inspect and to reject Goods that do not comply with the Contract. Your sub-contracts shall reserve such rights for Our Member.

12.4. Any inspection or approval shall not relieve You from Your obligations under this Contract.

### **13. QUALITY AND DESCRIPTION**

The Goods shall:

- a) conform in every respect with the provisions of the Framework Agreement
- b) be capable of all standards of performance specified in the Framework Agreement
- c) be fit for any purpose made known to You expressly or by implication
- d) be of merchantable quality
- e) comply with any current legislation, especially the Food Safety Act 1990 or subsequent re-enactments thereof.

### **14. PACKAGING, LABELLING, STORAGE AND DISTRIBUTION**

- a) Unless otherwise stated in the Agreement, all packaging shall be non-returnable. If the Agreement states the Packaging is returnable You must give Our member full disposal instructions before the time of delivery. The Packaging must be clearly marked to show to whom it belongs. You must pay the cost of all carriage and handling for the return of packaging. We shall not be liable for any Packaging lost or damaged in transit.
- b) You shall be obliged by statute to comply with any specific labelling requirements.
- c) All Goods that are on loan must be adequately protected against damage, deterioration and contamination in transit and during storage. Any information related to the handling and storage of Goods upon receipt must be clearly marked on the packaging.
- d) All distribution shall be carried out in vehicles which are appropriate for the Goods to be supplied. All vehicles should comply with the prevailing food safety legislation and the standards set out in the Food Safety (Temperature Control) Regulations 2006. Vehicles must be clean internally and externally. All chilled Goods must be delivered in vehicles designed and equipped and operational for the transportation of chilled products to the hygiene and temperature specification required. Where the Distributor delivers both Frozen and Chilled foods simultaneously then multi-temperature vehicles must be used.
- e) All Goods supplied within this Agreement requires You to ensure that the Members shall be able to comply with the UK Producer Responsibility Obligations (Packaging Waste) Regulations 2007.

### **15. DELIVERY**

15.1. The Goods shall be delivered in accordance with any delivery instructions at Your expense to arrive in such quantities at such times and to such places as the Member may order from time to time as subsequently agreed between the parties.

15.2. The time of the delivery of the Goods is of the essence to the Contract.

15.3. Where the Goods are delivered by You, the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the delivery instructions. Where the Goods are collected by Our Member from You, the point of delivery shall be when they are loaded onto Our Members vehicle.



- 15.4. Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by You at such places Our Member may direct in the Contract.
- 15.5. The issue by Our Member of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.
- 15.6. All Goods must be properly packaged to survive transit without damage, clearly and legibly labelled and addressed. Our Member will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that You require returning will be done so at Your cost and risk.
- 15.7. Where specified in the contract You shall be responsible for the removal and disposal of all packaging complying with the law at your own expense.
- 15.8. Unless expressly agreed to the contrary, Our Member shall not be obliged to accept delivery by instalments. If We do not specify or agree to delivery by instalments, delivery of any one instalment not in accordance with the delivery instructions shall without prejudice to any other rights or remedies of Our member, entitle Our Member to terminate the whole of any unfulfilled part of the Contract without further liability to You.
- 15.9. If You at any time become aware of any act or omission, or proposed act or omission by Our Member which prevents or hinders, or may prevent or hinder You from lending the Goods in accordance with the Contract, You shall inform Our Member and TUCO Ltd in writing.
- 15.10. Our Members retain You for the loan of Goods on a non-exclusive basis unless stated otherwise in the Contract.
- 15.11. Deliveries shall be to designated sites including non-ground floor locations (provided they are agreed at the time of order Acceptance). It should be noted that these sites might vary over the duration of this Framework Agreement to include, for example, new Members or additional Members being added. A Delivery Voucher shall be issued by the Lender in respect of each and every delivery made under this agreement. The said voucher shall clearly and legibly state the full and proper description of goods delivered and where relevant quote the Member's Purchase Order Number.
- 15.12. One copy of the Delivery Voucher shall be retained by the receiving establishment. The other copy shall be signed and returned to the Lender or his representative by the person accepting the delivery.
- 15.13. The Lender shall permit any Member to inspect any delivery note and check the quantity and/or quality of the Goods at the point of delivery before acceptance. The Lender or its employees shall give all reasonable assistance to enable such checks to be carried out. It is the responsibility of the Lender to obtain a receipted, signed voucher for all goods delivered.
- 15.14. Any discrepancy in the delivery of goods must be noted on the Delivery Voucher and copy and duly signed for by both parties.
- 15.15. If a Member or designated employee is unable at the prescribed time of delivery to fulfil its obligations to fully check the delivery note or to check the quantity/quality of the Goods even with the aid of the Lender's assistance then the Member or designated employee shall sign on the delivery note that the delivery has been made but that the Goods were "Not Checked".



15.16. The Member shall then within 24 hours (or the next working day) notify the Lender of any failure/wrongly delivered goods.

## **16. ACCEPTANCE**

16.1. Our Members shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform to the requirements of the Contract. It is agreed that Our Members may exercise the right of rejection. Our Member shall give You a reasonable opportunity to replace the Goods with new Goods that conform to the Contract, after which time, Our Member shall be entitled to cancel the Contract. In the event of cancellation under this Condition You shall promptly repay any monies paid under the Contract without any retention or offset whatsoever. Cancellation of the Contract under this Condition shall not affect any other rights Our Member may have. You must collect all rejected Goods within a reasonable time of rejection or Our Member shall return them to You at Your risk and expense.

## **17. E PROCUREMENT**

17.1. NOT USED

17.2. NOT USED

17.3. NOT USED

## **18. PAYMENT**

18.1. Our Member shall pay the Price agreed in the Framework Agreement for the Goods supplied on loan and their maintenance by You

18.2. You shall unless otherwise instructed submit a VAT invoice to Our Member no later than seven (7) calendar days after the end of each calendar month detailing the Goods provided during the calendar month the amount payable and the purchase order number.

18.3. Our Member will use 'reasonable endeavours' to make Payment of any undisputed invoice no later than thirty (30) days following the date of receipt of the invoice by Our Member.

18.4. Our Members reserve the right to withhold payment of the relevant part of the Price without payment of interest, where You have either failed to deliver the Goods at all or delivered Goods which in their reasonable opinion are unsatisfactory and any invoice relating to such Goods will not be paid unless or until the Goods have been delivered to Our satisfaction

18.5. Our member will be entitled but not obliged at any time or times without notice to You to set off any liability of Our Member to You against any liability of You to Our Member and may for such purpose convert or exchange any sums owing to You into any currency or currencies in which the obligations of Our Member are payable under this Contract. Our rights under this Condition 18.5 will be without prejudice to any other rights or remedies available to Our Member under this Contract or otherwise

## **19. LATE DELIVERIES**

19.1. If the Goods or any part of them are not delivered by the time or times specified in the Contract then Our Member may by written notice cancel any undelivered

balance of the Goods. Our Member may also return for full credit and at Your expense any Goods which in Our Members opinion cannot be used owing to this cancellation.

## **20. EQUIPMENT CONSUMABLE SUPPLIES**

- 20.1. Our Members reserve the right to procure equipment consumable supplies to be used on or with the Goods, and suitable for the Goods from You or such other source as Our Members deem appropriate. Such procurement of equipment consumables from a source other than You shall not invalidate Our Members rights under these General Conditions of Contract, and shall in no way affect the provisions in respect of warranty claims made in accordance with Condition 30 nor Our members rights under this Condition 20 provided that the equipment consumables utilised meet the minimum standards as published by You or the manufacturer, or where no published standards are available, the standards generally accepted as being appropriate to the equipment consumable supplies for use on or with the Goods concerned.
- 20.2. In the event that You shall claim that the use of specific equipment consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to You of meeting Your obligations to provide Warranty Services it shall be for You to prove that the equipment consumables do not meet the requisite minimum standards and are affecting the Goods and/or increasing Your costs as set out above. If You shall prove that the equipment consumables do not meet the requisite minimum standards Our Member shall cease using the equipment consumables concerned and procure alternative equipment consumables which meet the standards required.

## **21. MAINTENANCE**

- 21.1. If required by Our Member before the end of the Warranty Period You shall enter into a separate contract for the maintenance of the Goods.
- 21.2. If a maintenance contract commences before the end of the Warranty Period the maintenance charges during the Warranty Period shall reflect Your obligations under Condition 30.
- 21.3. You will be responsible for the maintenance of the Goods throughout the duration of the contract. The cost of the maintenance of the Goods will be covered according to Appendix "b. Pricing Schedule".

## **22. SPARES**

- 22.1. You shall be responsible for maintenance and provision of spares for the duration of the Contract term.
- 22.2. You shall maintain a supply of such spares or replacement parts for a period of seven (7) years from the date of delivery or the Acceptance Date, whichever is the latest.
- 22.3. Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items.
- 22.4. If during the period set out in Condition 22.2 You or Your sub-contractor intend to discontinue the manufacture of spares or replacement parts for the Goods You shall forthwith give notice to Our Member of such intention and advise Our Member of any third party source from which the spares or replacement parts will be available, or to which third party source You intend to provide drawings, patterns, specifications and other information.
- 22.5. If during the stipulated period set out in Condition 22.2 You or Your sub-contractor either:

22.5.1. fails to make available to Our Member, or any nominated third party maintenance service provider, with reasonable despatch, at reasonable prices all such spares or replacement parts as Our Member or nominated third party maintenance source shall require for the Goods; or

22.5.2. becomes insolvent or has a receiving order made against them or commences to be wound up (not being a member's winding up for the purposes of reconstruction) then You shall so far as it is legally entitled to do so and if so required by Our Member as soon as practicable deliver to Our Member or nominated third party maintenance source, free of charge such drawings, patterns, specifications and other information as referred to in Condition 22.4 and which Our Member or nominated third party source shall be entitled to retain for such time only as necessary for the exercise by Our Member of Our Members rights under this Condition 22.5.2 and which if You so require shall be returned by Our Member to You at Our Members cost and expense.

## **23. OPERATING MANUALS**

23.1. You shall supply to Our Members all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation so required. If after the Acceptance Date the operating manuals and documentation need updating or replacing You shall be responsible for notifying Our Member of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of Our Members written instructions. You shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

## **24. ATTACHMENT TO THE GOODS**

24.1. Our Member shall have the right to attach to, or install into or onto the Goods any goods (including but not limited to software) which Our members consider to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by Our member, If Our Member attach or install goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve You from meeting Your obligations to provide Warranty Services in accordance with Condition 30 or replacement goods in accordance with Condition 6 hereof provided that:-

24.1.1. the goods attached or installed are not specified in any of Your and/or the Manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating Our Members rights under Conditions 30 and 6 as aforesaid;

24.1.2. You have not otherwise notified Our Member in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate Our rights under Conditions 30 and 6 as aforesaid; and

24.1.3. The goods have been attached or installed in accordance with the published instructions of You.

24.2. In the event that the attachments and/or installation is made by Our Member and You can prove that such attachment or installation is adversely affecting the standard of performance of the Goods or otherwise increasing the frequency of the provision of the Warranty Services then You shall be entitled to be reimbursed any associated direct costs which You can demonstrate as being reasonably and necessarily incurred in providing Warranty Services or returning the Goods to the normal standards of performance in accordance with this Contract as a direct result of the attachment or installation being made by Our Member (other than where such attachment or installation has been with the approval of You).

## **25. TRAINING**

25.1. Where appropriate, the Contract Price shall include the cost of instruction of Our Members personnel in the use of the Goods, such instructions shall be in accordance with the requirements of the Contract.

## **26. WORK ON OUR PREMISES**

26.1. If the Contract involves any works or services which You perform on Our Members premises then the following Conditions shall apply:

26.1.1. You shall ensure that You and Your employees, Your sub-contractors and their employees and any other persons associated with You will adhere in every respect to the obligations imposed upon You by current safety legislation.

26.1.2. You shall ensure that You and Your employees, Your sub-contractors and their employees and any other person associated with You will comply with any reasonable or otherwise necessary regulations that We may notify to You in writing.

26.1.3. When required You and Your employees, Your sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving Our Member site(s) and shall comply with any alcohol and/or drug testing programme that may be in place from time to time

26.1.4. You shall ensure all employees or sub-contractor staff will be clearly identifiable by wearing a uniform and/or name badge at all times.

26.2. You shall make no delivery of materials, plant or other things nor commence any work on Our Member premises without obtaining Our prior consent.

26.3. Access to Our member premises shall not be exclusive to You but only such as shall enable the performance of the Contract concurrently with the execution of work by others. You shall co-operate with such others as Our Members may reasonably require.

26.4. We shall have the power at any time during the progress of the Contract to order in writing:

26.4.1. the removal from Our Member premises of any materials which in Our Members opinion are either hazardous, noxious or not in accordance with the Contract, and/or:

26.4.2. the substitution of proper and suitable materials, and/or;

26.4.3. the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods which, in respect or material or workmanship, is not in Our opinion in accordance with the Contract.

26.5. On completion of the Contract You shall remove Your plant, equipment and unused materials and shall clear away from Our Members premises all waste materials arising out of the Contract and leave Our premises in a neat and tidy condition.

## **27. HAZARDOUS GOODS AND SAFETY**

27.1. Where the Goods comprise or include substances hazardous to health, You will supply to Our Members on or before delivery with all data necessary to allow Our Members to form a suitable and sufficient assessment of the attendant risks and of the steps which need to be taken in order to meet the requirements of all relevant Statutory Regulations.

27.2. You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment,

and in particular to the marking of hazardous goods, the provision of data sheets for hazardous materials and all provisions relating to food.

27.3. You shall fully comply with Waste Electrical and Electrical Equipment (WEEE), Regulations 2006 and any enactment thereof.

27.4. You shall comply with the standards as detailed in BS7671:2008 (IEE) Wiring Regulations in order to comply with In-Service Inspection of Electrical Equipment (IEE) – Portable Appliance Testing.

## **28. SUPPLIER SOURCING/VETTING**

28.1. It is TUCO Ltd's policy to continually seek the best value for money purchases and suppliers available to Members. To enable TUCO Ltd to assess potential supplier's products and ability to realistically service the supply, TUCO Ltd reserve the right to trade with other suppliers during the period of this Agreement. You will be notified by TUCO Ltd when trials are being undertaken and to what extent.

## **29. ARTICLES ON LOAN AND USE OF INFORMATION**

29.1. All tools, materials, drawings, specifications and other equipment and data (the Articles) loaned by Our Members to You in connection with the Contract shall remain always Our Members property and be surrendered to Our Members upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract. You agree that no copy of any of the Articles will be made without the consent in writing of Our Authorised Officer. Until You return all the Articles to Our Members they shall be at Your risk and insured by You at Your expense against the risk of loss, damage or theft. Any loss of or damage to such Articles shall be made good by You at Your expense. All scrap arising from the supply of such Articles must be disposed of at Our Members discretion and all proceeds of sales of such scrap must promptly be paid to Our Members.

## **30. WARRANTY**

30.1. You warrant that the Goods will be:

30.1.1. of satisfactory quality within the meaning of the Sale of Goods Act 1994 and fit for purpose as required by the Specification or held out by You; and

30.1.2. new (unless otherwise specified on the Purchase Order) and free from defects in design, material and workmanship; and

30.1.3. provided in accordance with the Contract, correspond to the specification and any drawings, samples or descriptions provided by You; and

30.1.4. so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

30.1.5. free from asbestos content unless specifically required under the Contract.

30.1.6. comply with all current legislation.

30.1.7. be fit for any purpose made known to You expressly or by implication and in this respect Our members rely on Your skill and judgement.

30.1.8. You warrant that to the extent that associated services are performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.

30.2. Without prejudice to Our Member's right to withdraw from the Framework Agreement or any order placed within it, if any of the Goods supplied are not in accordance with the Contract, Our member shall be entitled to:

30.2.1. require You to repair the Goods or to supply replacement Goods in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) working days of a request to do so: or

30.3. You further warrant that You will make good at Your expense any defect in the Goods that Our Member discover under proper usage during the first twelve months of actual use or 18 months from the date of acceptance by Our Member whichever period shall expire first. Such defects may arise due to Your faulty design, Your erroneous instructions as to the use or inadequate or faulty materials or poor workmanship or any other breach of Your obligations whether in this Contract or at law.

30.4. Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by Our Member.

## **31. KPIs**

**31.1 Lender performance shall be monitored in accordance with the Key Performance Indicators in [Annex c. KPI's and SLA's].**

**31.2 Progress and performance against each KPI will be formally assessed on a monthly basis.**

**31.3 The Lender's performance shall be judged unsatisfactory where one or more KPI does not meet its threshold percentage each month.**

**31.4 If the unsatisfactory performance continues for a period of 6 consecutive months, the Member may exercise, without prejudice to its other rights and remedies in connection with this Contract, terminate this Contract in accordance with Clause 34.**

## **32. YOUR INSOLVENCY AND/OR CHANGE OF OWNERSHIP**

32.1. If You become insolvent or bankrupt or (being a Company) make an arrangement with Your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purpose of amalgamation or reconstruction) We may without replacing or reducing any other of Our rights terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

32.2. If the ownership of Your Company changes during the period of the Contract and the ownership of Your Company is in violation United Kingdom government regulations and laws of the United Kingdom, then We may without replacing or reducing any other rights terminate the Contract with immediate effect by written notice to You or any person in whom the Contract may have become vested.

## **33. TERMINATION ON CHANGE OF CONTROL OR INSOLVENCY**

33.1. We may terminate the Contract by written notice having immediate effect if:

33.1.1. You undergo a change of control within the meaning of Section 416 of the Income and Corporation Tax Act 1988, which directly impacts adversely and materially on the performance of the Contract and the new ownership is a company and/or person that is in violation United Kingdom government regulations and laws of the United Kingdom; or



- 33.1.2. Where You are an individual or a firm You or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- 33.1.3. Where You are a company, You pass a resolution or the Court makes an order that You be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of Your business or any part of it; or You are unable to pay Your debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 33.2. We may only exercise Our right under Condition 33.1.1 within six (6) months after a change of control occurs and shall not be permitted to do so where it has been agreed in advance to a particular change of control that occurs. You shall notify Us immediately when any change of control occurs.

## **34. TERMINATION FOR REASONS OTHER THAN CHANGE OF CONTROL OR INSOLVENCY**

- 34.1. We may terminate the Contract with immediate effect by notice in writing to You on or at any time if in addition to Our rights under Condition 33:
  - 34.1.1. You are convicted of a criminal offence; or
  - 34.1.2. You cease or threaten to cease to carry on Your business; or
  - 34.1.3. There is genuine belief that there is a risk that reputational damage to Us will occur as a result of the Contract continuing; or
  - 34.1.4. You are in breach of any of Your obligations under this Contract that is capable of remedy and which has not been remedied to Our complete satisfaction within fourteen (14) business days or such other reasonable period as may be specified by Us after issue of a written notice specifying the breach and requesting it to be remedied; or
  - 34.1.5. There is a material or substantial breach by You of any of Your obligations under this Contract which is incapable of remedy; or
  - 34.1.6. You commit persistent minor breaches of this Contract, whether remedied or not.
- 34.2. We reserve the right to terminate the Contract in part in the case of termination under Conditions 34.1.4, 34.1.5 and 34.1.6.
- 34.3. NOT USED

## **35. CONSEQUENCES OF TERMINATION**

- 35.1. If this Contract is terminated in whole or in part We shall:
  - 35.1.1. be liable to pay to You only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
  - 35.1.2. be entitled to deduct from any sum or sums which would have been due from Us to You under this Contract or any other Contract and to recover the same from You as a debt any sum in respect of any loss or damage to



Us resulting from or arising out of termination of this Contract. Such loss or damage shall include the reasonable cost to Us of the time spent by Our officers in terminating the Contract and in making alternative arrangements for the supply of Goods or any part of them; and/or

35.1.3. where termination arises under any reason other than set out in Conditions 31, 32, 33 or 34, pay to You an amount equal to Our maximum liability provision in Condition 11, and/or

35.1.4. in the event that any sum of money owed by You to Us (Your debt) exceeds any sum of money owed by Us to You (Our debt) under this Contract then We shall, at Our sole discretion, be entitled to deduct Your debt from any of Our future debt or to recover Your debt as a civil debt.

35.2. Upon termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have been accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

## **36. DISPUTE RESOLUTION**

36.1 If any dispute or difference shall arise between the You and Our Member in connection with or arising out of the Contract then either You or Our Member may give the other seven (7) calendar days notice to resolve the dispute or difference through an Alternative Dispute Resolution (ADR) procedure as recommended by the Centre for Dispute Resolution. If the matter has not been resolved by an ADR procedure within fifty-six (56) calendar days of such notice having been received, or if the other party will not participate in the ADR procedure, then the dispute or difference shall be referred to Arbitration in accordance with Condition 36.2 below.

36.2 If any dispute or difference which may arise between You and Our Member in connection with or arising out of the Contract is under Condition 36.1 is to be referred to ADR but is not so resolved as specified in Condition 36.1 then either You or Our Member shall give to the other ten (10) business days written notice to that effect and such dispute or difference shall be referred to a single Arbitrator agreed between the parties within ten (10) business days after the date of the said written notice or in default of agreement as may be nominated by the president for the time being of the Chartered Institute of Arbitrators

## **37. CORRUPT GIFTS**

37.1 In connection with this or any other Contract between You or Our Member or TUCO Ltd You shall not give, provide, or offer to Our Members or TUCO Ltd's staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this Condition 37 Our Members shall without prejudice to any other rights Our Member may possess, be at liberty forthwith to terminate this and any other Contract and to recover from You any loss or damage resulting from such termination.

## **38. LAW AND CHANGE IN LAW**

38.1 This contract is governed by and interpreted in accordance with English Law and is 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

38.2 On the occurrence of a change in law which has a direct effect upon the Price the parties shall meet within ten (10) business days of You notifying Us of the change in law to consult and seek to agree the effect of the change in law and change in the Price as a result following the principle that this Condition 38.2 is not intended to create an artificial cushion from market forces for You. If the parties, within ten (10) business days of this meeting have not agreed the

occurrence or the impact of the change in law, either party may refer the matter to dispute resolution in accordance with Condition 36.

38.3 Any agreed additional sums payable as a result of the operation of this Condition 38.3 shall be included in the Price. For the avoidance of doubt nothing in this Contract will permit You double recovery of any increase in Your costs.

### **39. WAIVER**

39.1 A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

EXECUTED (but not delivered until the  
date hereof) by  
TUCO

(TUCO) Chief Executive Officer)

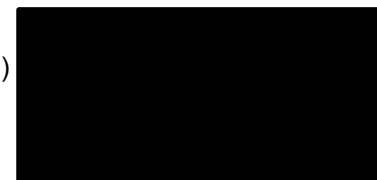
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**Authorised signatory**

EXECUTED (but not delivered until the  
date hereof) by  
**Selecta UK Limited**

)



**Director**

EXECUTED (but not delivered until the  
date hereof) by

)



**Ministry of Justice on behalf of  
Secretary of State for Justice**

**Authorised signatory**