



Matthew Brown
Inseto (UK) Limited
Unit 25 Focus Way
Andover
SP10 5NY

25/09/2017

Dear Matthew,

Contract Title: RE17236 Mask Aligner

Contract Reference: RE17236

The Contract shall be subject to the UK Shared Business Services Ltd G1 Terms and Conditions for the Purchase of Goods and the following Schedules and Appendices:

- Schedule 1 - Terms and Conditions
- Schedule 2 - Purchase Order Form
- Schedule 3 - The Services

Please note that this Contract is subject to signed Contract Acceptance

Yours Sincerely,

Sharon Keiller
Procurement Category Manager
Research
Procurement – Scientific Research
UK Shared Business Services Ltd
Sharon.Keiller@uksbs.co.uk

CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

SECTION A

This Contract is dated 25th September 2017.

Parties

- (1) **Science and Technology Facilities Council** Polaris House, North Star Avenue, Swindon SN2 1FF (**the Contracting Authority**).
- (2) **Inesto (UK) Limited**, a company incorporated and registered in England with company number 2096377 and registered VAT number GB 450 3509 74 whose registered office is at Unit 25 Focus Way, Andover, SP10 5NY (**the Supplier**).

Background

The Contracting Authority wishes the Supplier to supply, and the Supplier wishes to supply, the Goods and the Services (as defined below) in accordance with the terms of the Contract (as defined below).

Agreed terms

A1 Interpretation

A1-1 **Definitions.** In the Contract (as defined below), the following definitions apply:

Associated Bodies and Authorised Entities: Associated Bodies and Authorised Entities include but are not limited to The Science and Technology Facilities Council, The Medical Research Council, The Engineering and Physical Sciences Research Council, The Economic and Social Research Council, The Natural Environment Research Council, The Arts and Humanities Research Council, The Biotechnology and Biological Sciences Research Council, UK SBS Ltd, Central Government Departments and their Agencies, Non Departmental Public Bodies, NHS bodies, Local Authorities, Voluntary Sector Charities, and/or other private organisations acting as managing agents or procuring on behalf of these UK bodies. Further details of these organisations can be found at:

<http://www.uksbs.co.uk/services/procure/contracts/Pages/default.aspx>

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Contracting Authority for the supply of the Services in accordance with clause B9.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause C7-11.

Confidential Information: any confidential information, knowhow and data (in any form or medium) which relates to UK SBS, the Contracting Authority or the Supplier, including information relating to the businesses of UK SBS, the Contracting Authority or the Supplier and information relating to their staff, finances, policies and procedures. This includes information identified as confidential in the Order or the Special Conditions (if any).

Contract: the contract between the Contracting Authority and the Supplier for the supply of the Goods and the Services, in accordance with these Conditions, any Special Conditions and the Order only.

Contracting Authority: The Science and Technology Facilities Council, as specified at Section A (1) and any replacement or successor organisation.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Delivery Date: the date for delivery of the Goods specified in the Order or, if no such date is specified, within 28 days of the date of the Order.

Delivery Location: has the meaning set out in clause B2-2-3.

Delivery Note: has the meaning set out in clause B2-1-2.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

EIR: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under the 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.

Goods: the goods (or any part of them) set out in the Order.

Information: has the meaning given under section 84 of FOIA.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights (including moral rights), trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Contracting Authority's order for the Goods and the Services, as set out in the Contracting Authority's completed purchase order form (including any Specification) which is in the format of the pro forma order form attached at Schedule 2. For the avoidance of doubt, if the Contracting Authority's purchase order form is not in the format of the pro forma order form at Schedule 2, it will not constitute an Order.

Public Body: any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

Request for Information: a request for Information or an apparent request under FOIA or EIR.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order.

Special Conditions: the special conditions (if any) set out in Schedule 1.

Specification: any specification for the Goods and / or Services, including any related plans and drawings that is supplied to the Supplier by the Contracting Authority, or produced by the Supplier and agreed in writing by the Contracting Authority.

Supplier or Suppliers: the parties to the contract as named in Section A (2)

Supplier's Associate: any individual or entity associated with the Supplier including, without limitation, the Supplier's subsidiary, affiliated or holding companies and any employees, agents or contractors of the Supplier and / or its subsidiary, affiliated or holding companies or any entity that provides Goods and or Services for or on behalf of the Supplier.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

UK SBS: UK Shared Business Services Limited (a limited company registered in England and Wales with company number 06330639). Where UK SBS is not named as the Contracting Authority within section A (1), UK SBS will be acting as an agent on behalf of the Contracting Authority.

Working Day: any Business Day excluding 27, 28, 29, 30 and 31 December in any year.

A1-2 Construction. In the Contract, unless the context requires otherwise, the following rules apply:

A1-2-1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

A1-2-2 A reference to a party includes its personal representatives, successors or permitted assigns.

A1-2-3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

A1-2-4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A1-2-5 The headings in these Conditions are for ease of reference only and do not affect the interpretation or construction of the Contract.

A1-2-6 A reference to **writing** or **written** includes faxes and e-mails.

A2 Basis of contract

A2-1 Where UK SBS is not the Contracting Authority, UK SBS is the agent of the Contracting Authority for the purpose of procurement and is authorised to negotiate and enter into contracts for the supply of goods and services on behalf of the Contracting Authority. UK SBS will not itself be a party to, nor have any liability under, the Contract unless it is expressly specified as Contracting Authority in the Order.

A2-2 The terms of this Contract, any Special Conditions and the Order apply to the Contract to the exclusion of all other terms and conditions, including any other

terms that the Supplier seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom, practice or course of dealing.

- A2-3 If there is any conflict or inconsistency between the terms of this Contract, the Special Conditions (if any) and the Order (including any Specification), the terms of the Contract will prevail over the Special Conditions and the Special Conditions will prevail over the Order (including any Specification), in each case to the extent necessary to resolve that conflict or inconsistency.
- A2-4 The Order constitutes an offer by the Contracting Authority to purchase the Goods and Services in accordance with the terms of this Contract (and any Special Conditions). This offer shall remain valid for acceptance by the Supplier, in accordance with clause A2-5, for 28 days from the date of the Order. Notwithstanding that after 28 days the offer will have expired, the Contracting Authority may, at its discretion, nevertheless treat the offer as still valid and may elect to accept acceptance by the Supplier, in accordance with clause A2-5, as valid acceptance of the offer.
- A2-5 Subject to clause A2-4, the Order shall be deemed to be accepted on the date on which authorised representatives of both parties have signed a copy of this Contract, at which point the Contract shall come into existence. The Contract shall remain in force until all the parties' obligations have been performed in accordance with the Contract, at which point it shall expire, or until the Contract has been terminated in accordance with clause A3.

A3 Termination

- A3-1 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate the Contract in whole or in part at any time before the Goods or Services are provided with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Contracting Authority shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.
- A3-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- A3-2-1 the circumstances set out in clauses, B3-1, B6-1, C3-1 or C4-1 apply;
 - A3-2-2 the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or
 - A3-2-3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
 - A3-2-4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

- A3-2-5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or
- A3-2-6 (being an individual) the Supplier is the subject of a bankruptcy petition or order; or
- A3-2-7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- A3-2-8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier; or
- A3-2-9 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver; or
- A3-2-10 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets; or
- A3-2-11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause A3-2-3 to clause A3-2-10 inclusive; or
- A3-2-12 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- A3-2-13 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- A3-2-14 the Supplier's financial position deteriorates to such an extent that in the Contracting Authority's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- A3-3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.
- A3-4 Without prejudice to clause A3-3, clauses B1, B2, B3, B4, B5, B6, B10, B11, B12, B13, B14, C1, C2, C6 and C7 shall survive the termination or expiry of the Contract and shall continue in full force and effect.
- A3-5 Upon termination or expiry of the Contract, the Supplier shall immediately:
- A3-5-1 cease all work on the Contract;
- A3-5-2 deliver to the Contracting Authority all Deliverables and all work-in-progress whether or not then complete. If the Supplier fails to do so, then the Contracting Authority may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- A3-5-3 cease use of and return (or, at the Contracting Authority's or UK SBS's acting as an agent on behalf of the Contracting Authority's election, destroy) all of the Contracting Authority's Materials in the Supplier's possession or control; and

- A3-5-4 cease all use of, and delete all copies of, Contracting Authority's or UK SBS's confidential information.
- A3-6 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate the Contract by written notice to the Supplier in any of the following circumstances:
- A3-6-1 Where it considers that the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 ("PCR 2015");
- A3-6-2 Where it considers that the Supplier has at the time of the award of the Contract been in one of the situations referred to in Regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure;
- A3-6-3 Where the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the EU Treaties and Directive 2014/24/EU of the European Parliament and of the Council that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;
- A3-6-4 Where the European Commission sends a reasoned opinion to the United Kingdom or brings the matter before the Court of Justice of the European Union under Article 258 of the TFEU alleging that the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council; or
- A3-6-5 Where a third party starts court proceedings against the Contracting Authority seeking a declaration that the Contract is ineffective or should be shortened under Regulations 98 to 101 of the PCR 2015, which the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority considers to have a reasonable prospect of success.
- A3-6-6 Such termination shall be effective immediately or at such later date as is specified in the notice. The Contracting Authority shall not incur any liability to the Supplier by reason of such termination and shall not be required to pay any costs, losses or damage to the Supplier. Termination under this clause shall be without prejudice to any other rights of the Contracting Authority.
- A3-7 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall at any time have the right for convenience to terminate the Contract or reduce the quantity of Goods & Services to be provided by the Supplier in each case by giving to the Supplier reasonable written notice. During the period of notice the Contracting Authority may direct the Supplier to perform all or any of the work under the Contract. Where the Contracting Authority has invoked either of these rights, the Supplier may claim reasonable costs necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profit, provided that the claim shall not exceed the total cost of the Contract. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed

SECTION B

B1 The goods

- B1-1 The Supplier shall supply all Goods in accordance with the Contract. In particular, the Supplier warrants that the Goods shall:

- B1-1-1 correspond with their description in the Order (including any Special Conditions and any applicable Specification);
- B1-1-2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, expressly or by implication, and in this respect the Contracting Authority relies on the Supplier's skill and judgement;
- B1-1-3 where applicable, be free from defects in design, material and workmanship and remain so for 12 months after delivery;
- B1-1-4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- B1-1-5 be supplied in accordance with all applicable legislation in force from time to time; and
- B1-1-6 be destined for supply into, and fully compliant for use in, the United Kingdom (unless specifically stated otherwise in the Order).
- B1-2 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.
- B1-3 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall have the right to inspect and test the Goods at any time before delivery.
- B1-4 If following such inspection or testing the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause B1-1, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- B1-5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- B1-6 The Contracting Authority's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Contracting Authority under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable legislation as amended.

B2 Delivery

- B2-1 The Supplier shall ensure that:
 - B2-1-1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - B2-1-2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered (the **Delivery Note**); and

- B2-1-3 if the Supplier requires the Contracting Authority to return any packaging material to the Supplier, that fact is clearly stated on the Delivery Note. Any such packaging material shall be returned to the Supplier at the Supplier's cost.
- B2-2 The Supplier shall deliver the Goods:
- B2-2-1 on the Delivery Date;
- B2-2-2 carriage paid;
- B2-2-3 to the location or locations as is or are set out in the Order, or as instructed by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority in writing prior to delivery (the **Delivery Location**);
- B2-2-4 During the Contracting Authority's normal business hours on a Working Day, or as instructed by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.
- B2-3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location and in accordance with the provisions of this clause B2. The Supplier will unload the Goods at its own risk as directed by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority. The Goods will remain at the risk of the Supplier until delivery to the Contracting Authority (including unloading) is complete, including that the Supplier has obtained sign-off of the Delivery Note by or on behalf of the Contracting Authority, at which point ownership of the Goods shall transfer to the Contracting Authority.
- B2-4 If the Supplier delivers to the Contracting Authority more than the quantity of Goods ordered, the Contracting Authority will not be bound to pay for the excess and any excess will remain at the Supplier's risk and will be returnable to the Supplier at the Supplier's expense.
- B2-5 If the Supplier delivers more or less than the quantity of Goods ordered, and the Contracting Authority accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- B2-6 The Supplier shall not deliver the Goods in instalments without prior written consent from the Contracting Authority's or UK SBS acting as an agent on behalf of the Contracting Authority's. Where it is agreed that the Goods are to be delivered in instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time, or at all, or any defect in an instalment, shall entitle the Contracting Authority to the remedies set out in clause B3.
- B2-7 The Supplier shall:
- B2-7-1 obtain, at its risk and expense, any export and import licences or other authorisations necessary for the export and import of the Goods and their transit through any country or territory; and
- B2-7-2 deal with all customs formalities necessary for the export, import and transit of the Goods, and will bear the costs of complying with those formalities and all duties, taxes and other charges payable for export, import and transit.
- B2-8 Without prejudice to the Contracting Authority's statutory rights, the Contracting Authority will not be deemed to have accepted any Goods until the Contracting Authority has had at least 14 Working Days after delivery to inspect them and the Contracting Authority also has the right to reject any Goods as though they had not

been accepted for 14 Working Days after any latent defect in the Goods has become apparent.

- B2-9 If, in connection with the supply of the Goods, the Contracting Authority permits any employees or representatives of the Supplier to have access to any of the Contracting Authority's premises, the Supplier will ensure that, whilst on the Contracting Authority's premises, the Supplier's employees and representatives comply with:

B2-9-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and

B2-9-2 any Contracting Authority policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Contracting Authority laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Contracting Authority's premises by any employee or representative of the Contracting Authority.

B3 Goods – Remedies

- B3-1 If the Goods, or any part of them, including any instalment(s), are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause B1-1 or any requirements set out in the Special Conditions (if any), or the Supplier has otherwise not supplied the Goods in accordance with, or the Supplier has failed to comply with, any of the terms of the Contract, then, without limiting any of its other rights or remedies, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall have the right, at their discretion, to any one or more of the following remedies, whether or not it has accepted the Goods or any part of them:

B3-1-1 to terminate the Contract in whole or in part without liability to the Supplier;

B3-1-2 at its discretion reject any of the Goods which have been delivered by the Delivery Date and refuse to accept any subsequent delivery of Goods that the Supplier attempts to make (and any such rejected Goods shall be stored and are returnable at the Supplier's sole risk and expense);

B3-1-3 purchase substitute Goods from elsewhere;

B3-1-4 accept late delivery of the Goods;

B3-1-5 to require the Supplier to remedy any defect in, repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

B3-1-6 to recover from the Supplier any costs incurred by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority in obtaining substitute goods from a third party; and

B3-1-7 to claim damages for any other costs, loss or expenses incurred by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

- B3-2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

- B3-3 The Supplier shall indemnify, and shall keep indemnified, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, in full and hold the Contracting Authority and UK SBS harmless against all claims, costs,

expenses, damages and losses, whether direct or indirect (including loss of profits, loss of business, depletion of goodwill and similar losses), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority as a result of or in connection with:

B3-3-1 any claim made against the Contracting Authority or UK SBS for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

B3-3-2 any claim made against the Contracting Authority or UK SBS by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

B3-3-3 any claim made against the Contracting Authority or UK SBS by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause B3-3 shall survive termination or expiry of the Contract.

B3-4 The Contracting Authority's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

B4 Title, risk and use

B4-1 Title and risk in the Goods shall pass to the Contracting Authority on completion of delivery.

B4-2 The Supplier warrants that it has full clear and unencumbered title to the Goods and that upon completion of delivery the Supplier has full and unrestricted rights to sell and transfer absolutely all Goods to the Contracting Authority.

B5 Supply of Services

B5-1 The Supplier shall from the date set out in the Contract and until the end date specified in the Contract provide the Services to the Contracting Authority in accordance with the terms of the Contract.

B5-2 The Supplier shall meet any performance dates for the Services (including the delivery of Deliverables) specified in the Order (including any Special Conditions and any applicable Specification) or notified to the Supplier by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.

B5-3 In providing the Services, the Supplier shall:

B5-3-1 co-operate with the Contracting Authority in all matters relating to the Services, and comply with all instructions of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority;

B5-3-2 perform the Services with reasonable skill and care and in accordance with all generally recognised commercial standards and practices for services of the nature of the Services;

B5-3-3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;

- B5-3-4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Contract (including any Special Conditions and any applicable Specification), and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority;
- B5-3-5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- B5-3-6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Contracting Authority, will be free from defects in workmanship, installation and design;
- B5-3-7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- B5-3-8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Contracting Authority's premises; and
- B5-3-9 not do or omit to do anything which may cause the Contracting Authority to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Contracting Authority may rely or act on the Services.
- B5-4 The Contracting Authority's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Contracting Authority under the Supply of Goods and Services Act 1982 and any other applicable legislation as amended.
- B5-5 Without prejudice to the Contracting Authority's statutory rights, the Contracting Authority will not be deemed to have accepted any Deliverables until the Contracting Authority has had at least 14 Working Days after delivery to inspect them and the Contracting Authority also has the right to reject any Deliverables as though they had not been accepted for 14 Working Days after any latent defect in the Deliverables has become apparent.
- B5-6 If, in connection with the supply of the Services, the Contracting Authority permits any employees or representatives of the Supplier to have access to any of the Contracting Authority's premises, the Supplier will ensure that, whilst on the Contracting Authority's premises, the Supplier's employees and representatives comply with:
- B5-6-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
- B5-6-2 any Contracting Authority policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Contracting Authority laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Contracting Authority's premises by any employee or representative of the Contracting Authority`.
- B5-7 The Supplier warrants that the provision of Services shall not give rise to a transfer of any employees of the Supplier or any third party to the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority pursuant to TUPE.

B6 Services - Remedies

- B6-1 If the Supplier fails to perform the Services by the applicable dates, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall,

without limiting its other rights or remedies, have one or more of the following rights:

B6-1-1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

B6-1-2 to refuse to accept any subsequent performance of the Services (including delivery of Deliverables) which the Supplier attempts to make;

B6-1-3 to recover from the Supplier any costs incurred by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority in obtaining substitute services from a third party;

B6-1-4 where the Contracting Authority has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or

B6-1-5 to claim damages for any additional costs, loss or expenses incurred by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority which are in any way attributable to the Supplier's failure to meet such dates.

B6-2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

B6-3 The Contracting Authority's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

B7 Contracting Authority obligations

B7-1 The Contracting Authority shall:

B7-1-1 provide the Supplier with reasonable access at reasonable times to the Contracting Authority's premises for the purpose of providing the Services; and

B7-1-2 provide such information to the Supplier as the Supplier may reasonably request and the Contracting Authority considers reasonably necessary for the purpose of providing the Services.

B8 Goods Price and Payment

B8-1 The price of the Goods shall be the price set out in the Order.

B8-2 The price of the Goods excludes amounts in respect of value added tax (VAT) or other applicable sales tax, but includes the costs of all materials, costs charges, expenses, packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by or on behalf of the Contracting Authority.

B8-3 The Contracting Authority shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the statutory rate in force at the relevant time.

B8-4 The Supplier may invoice the Contracting Authority for the Goods on or at any time after the completion of delivery.

B8-5 The Contracting Authority shall pay correctly rendered invoices within [30] days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Contracting Authority agrees in writing to another payment method.

- B8-6 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Contracting Authority in order to justify withholding payment of any such amount in whole or in part. The Contracting Authority may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- B8-7 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within [30] days of receipt of the invoice.
- B8-8 The Supplier shall ensure, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015, that any subcontract awarded by the Supplier contains suitable provisions to impose, as between the parties to the subcontract, requirements that :
- B8-8-1 any payment due from the Supplier to the subcontract or under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- B8-8-2 any invoices for payment submitted by the subcontract or are considered and verified by the Supplier in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;
; and
- B8-8-3 any subcontract or will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs B8-8-1, B8-8-2 and B8-8-3 of this Clause B8-8, subject to suitable amendment to reflect the identities of the relevant parties.

B9 Services Charges and Payment

- B9-1 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- B9-2 Where the Order states that the Services are to be provided on a time and materials basis, the Charges for those Services will be calculated as follows:
- B9-2-1 the charges payable for the Services will be calculated in accordance with the Supplier's standard daily fee rates (as at the date of the Order), subject to any discount specified in the Order;
- B9-2-2 the Supplier's standard daily fee rates for each individual person will be calculated on the basis of an eight-hour day worked between such hours and on such days as are agreed by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority and the Supplier;
- B9-2-3 the Supplier will not be entitled to charge pro-rata for part days without the prior written consent of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority;
- B9-2-4 the Supplier will ensure that every individual whom it engages to perform the Services completes time sheets recording time spent on the Services and the Supplier will use such time sheets to calculate the charges covered by each invoice and will provide copies of such time sheets to the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority upon request; and

- B9-2-5 the Supplier will invoice the Contracting Authority monthly in arrears for its charges for time, as well as any previously agreed expenses and materials for the month concerned calculated as provided in this clause B9-2 and clause B9-3.
- B9-3 The Contracting Authority will reimburse the Supplier at cost for all reasonable travel, subsistence and other expenses incurred by individuals engaged by the Supplier in providing the Services to the Contracting Authority r provided that the Contracting Authority's prior written approval is obtained before incurring any such expenses, that all invoices for such expenses are accompanied by valid receipts and provided that the Supplier complies at all times with Contracting Authority's expenses policy from time to time in force.
- B9-4 The Supplier shall invoice the Contracting Authority on completion of the Services. Each invoice shall include such supporting information required by the Contracting Authority to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- B9-5 In consideration of the supply of the Services by the Supplier, the Contracting Authority shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Contracting Authority agrees in writing to another payment method.
- B9-6 All amounts payable by the Contracting Authority under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Contracting Authority, the Contracting Authority shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- B9-7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority to inspect such records at all reasonable times on request.
- B9-8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Contracting Authority in order to justify withholding payment of any such amount in whole or in part. The Contracting Authority may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- B9-9 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within [30] days of receipt of the invoice.
- B9-10 Payment to other parties**
The Supplier shall ensure, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015, that any subcontract awarded by the Supplier contains suitable provisions to impose, as between the parties to the subcontract , requirements that :
- B9-10-1 any payment due from the Supplier to the subcontract or under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- B9-10-2 any invoices for payment submitted by the subcontract or are considered and verified by the Supplier in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;
; and

B9-10-3 any subcontract or will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs B9-10-1, B9-10-2 and B9-10-3 of this Clause B9-10, subject to suitable amendment to reflect the identities of the relevant parties.

B10 Contracting Authority property

B10-1 The Supplier acknowledges that all information (including confidential information), equipment and tools, drawings, specifications, data, software and any other materials supplied by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority to the Supplier (**Contracting Authority's Materials**) and all rights in the Contracting Authority's Materials are and shall remain at all times the exclusive property of the Contracting Authority and UK SBS (as appropriate). The Supplier shall keep the Contracting Authority's Materials in safe custody at its own risk, maintain them in good condition until returned to the Contracting Authority or UK SBS, and not dispose or use the same other than for the sole purpose of performing the Supplier's obligations under the Contract and in accordance with written instructions or authorisation from the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.

B11 Intellectual property rights

B11-1 In respect of any goods that are transferred to the Contracting Authority under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Contracting Authority, it will have full and unrestricted rights to transfer all such items to the Contracting Authority.

B11-2 Save as otherwise provided in the Special Conditions, the Supplier assigns to the Contracting Authority, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. Where those products or Deliverables incorporate any Intellectual Property Rights owned by or licensed to the Supplier which are not assigned under this clause, the Supplier grants to the Contracting Authority a worldwide, irrevocable, royalty-free, transferable licence, with the right to grant sub-licences, under those Intellectual Property Rights to maintain, repair, adapt, copy and use those products and Deliverables for any purpose.

B11-3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

B11-4 The Supplier shall, promptly at the request of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may from time to time require for the purpose of securing for the Contracting Authority the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Contracting Authority in accordance with clause B11-2.

B12 Indemnity

B12-1 The Supplier shall indemnify, and shall keep indemnified the Contracting Authority and UK SBS acting as an agent on behalf of the Contracting Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any

interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority as a result of or in connection with:

B12-1-1 any claim made against the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

B12-1-2 any claim brought against the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and

B12-1-3 any claim whether in tort, contract, statutory or otherwise, demands, actions, proceedings and any awards arising from a breach by the Supplier of clause B5-7 of these Conditions.

B12-2 This clause B12 shall survive termination or expiry of the Contract.

B13 Insurance

B13-1 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

B13-1-1 professional insurance for not less than £2 million per claim;

B13-1-2 public liability insurance for not less than £5 million per claim (unlimited claims); and

B13-1-3 employer liability insurance for not less than £5 million per claim (unlimited claims); and

B13-1-4 product liability insurance for not less than £5 million for claims arising from any single event and not less than £10 million in aggregate for all claims arising in an year.

The Supplier shall ensure that the Contracting Authority's interest is noted on each insurance policy, or that a generic interest clause has been included.

B13-2 On request from the Contracting Authority's or UK SBS acting as an agent on behalf of the Contracting Authority, the Supplier shall provide the Contracting Authority or UK SBS with copies of the insurance policy certificates and details of the cover provided.

B13-3 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the Contract which they are contracted to fulfil.

B13-4 The Supplier shall:

B13-4-1 do nothing to invalidate any insurance policy or to prejudice the Contracting Authority's entitlement under it; and

B13-4-2 notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

B13-5 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause B13-1.

- B13-6 If the Supplier fails or is unable to maintain insurance in accordance with clause B13-1, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

B14 Liability

- B14-1 In this clause B14, a reference to the Contracting Authority or UK SBS's liability for something is a reference to any liability whatsoever which the Contracting Authority or UK SBS might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Contracting Authority's or UK SBS's negligence or from negligence for which the Contracting Authority's or UK SBS would otherwise be liable.

- B14-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority is not in breach of the Contract, and neither the Contracting Authority nor UK SBS has any liability for anything, to the extent that the apparent breach or liability is attributable to the Supplier's breach of the Contract.

- B14-3 Subject to clause B14-6, neither the Contracting Authority nor UK SBS acting as agent on behalf of the Contracting Authority shall have any liability for:

B14-3-1 any indirect or consequential loss or damage;

B14-3-2 any loss of business, rent, profit or anticipated savings;

B14-3-3 any damage to goodwill or reputation;

B14-3-4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Contracting Authority's premises by or on behalf of the Supplier; or

B14-3-5 any loss, damage, costs or expenses suffered or incurred by any third party.

- B14-4 Subject to clause B14-6, the Contracting Authority and UK SBS's total liability shall be limited to the Charges.

- B14-5 Subject to clause B14-6, the Supplier's total liability in connection with the Contract shall be limited to £1,000,000.

- B14-6 Nothing in the Contract restricts either the Contracting Authority, UK SBS or the Supplier's liability for:

B14-6-1 death or personal injury resulting from its negligence; or

B14-6-2 its fraud (including fraudulent misrepresentation); or

B14-6-3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

SECTION C

C1 Confidential information

- C1-1 A party who receives Confidential Information shall keep in strict confidence (both during the term of the Contract and after its expiry or termination) all Confidential Information which is disclosed to it. That party shall only disclose such Confidential Information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging that party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep all such information confidential in accordance with this clause C1. Neither party shall, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless the information:

C1-1-1 was public knowledge or already known to that party at the time of disclosure; or

C1-1-2 subsequently becomes public knowledge other than by breach of the Contract; or

C1-1-3 subsequently comes lawfully into the possession of that party from a third party; or

C1-1-4 is agreed by the parties not to be confidential or to be disclosable.

- C1-2 To the extent necessary to implement the provisions of the Contract (but not further or otherwise), either party may disclose the Confidential Information to any relevant governmental or other authority or regulatory body, provided that before any such disclosure that party shall make those persons aware of its obligations of confidentiality under the Contract and shall use reasonable endeavours to obtain a binding undertaking as to confidentiality from all such persons.

- C1-3 All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by a party from the other party shall be returned promptly to the other party (or, at the election of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, destroyed) on expiry or termination of the Contract, and no copies shall be kept.

C2 Transparency

- C2-1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Supplier agrees that the Contract and the sourcing documents issued by UK SBS which led to its creation will be published by UK SBS on a designated web site.

- C2-2 The entire Contract and all the sourcing documents issued by UK SBS will be published on the designated web site save where to do so would disclose information the disclosure of which would:

C2-2-1 contravene a binding confidentiality undertaking that protects information which the UK SBS, at the time when it considers disclosure, reasonably considers to be confidential to Supplier;

C2-2-2 be contrary to regulation 21 of the Public Contracts Regulations 2015; or

C2-2-3 if the reasonable opinion of UK SBS is prevented by virtue of one or more of the exemptions in the Freedom of Information Act (FOIA) or one or more of the exceptions in the Environmental Information Regulation (EIR).

If any of the situations in C2-2-1, C2-2-2, C2-2-3 apply the Supplier consents to the Contract or sourcing documents being redacted by UK SBS to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions

In this entire clause the expression "sourcing documents" means the advertisement issued by UK SBS seeking expressions of interest, any pre-qualification questionnaire stage and the invitation to tender.

C3 Force majeure

- C3-1 If any event or circumstance that is beyond the reasonable control of the Supplier, and which by its nature could not have been foreseen by the Supplier or, if it could have been foreseen, was unavoidable, (provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract) prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 10 Business Days, the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may terminate this Contract immediately by giving written notice to the Supplier.

C4 Corruption

- C4-1 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:

C4-1-1 offers or agrees to give any person working for or engaged by the Contracting Authority, UK SBS or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Contracting Authority, or UK SBS or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;

C4-1-2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Contracting Authority, or UK SBS or any Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Contracting Authority, or UK SBS before the Contract is entered into;

C4-1-3 breaches the provisions of the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010; or

C4-1-4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

- C4-2 For the purposes of clause C4-1, "loss" shall include, but shall not be limited to:

C4-2-1 The Contracting Authority's or UK SBS's costs in finding a replacement supplier;

C4-2-2 direct, indirect and consequential losses; and

C4-2-3 any loss suffered by the Contracting Authority or UK SBS as a result of a delay in its receipt of the Goods.

C5 Data protection

- C5-1 The Supplier shall comply at all times with all data protection legislation applicable in the UK from time to time.

C6 Freedom of information

- C6-1 The Supplier acknowledges that the Contracting Authority and or UK SBS may be subject to the requirements of FOIA and EIR and shall assist and co-operate with the Contracting Authority and or UK SBS to enable them to comply with its obligations under FOIA and EIR.
- C6-2 The Supplier shall and shall procure that its employees, agents, sub-contractors and any other representatives shall provide all necessary assistance as reasonably requested by the Contracting Authority or UK SBS to enable the Contracting Authority or UK SBS to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.
- C6-3 The Contracting Authority and or UK SBS acting as an agent on behalf of the Contracting Authority shall be responsible for determining (in its absolute discretion) whether any Information:
- C6-3-1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;
- C6-3-2 is to be disclosed in response to a Request for Information,
- C6-3-3 and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.
- C6-4 The Supplier acknowledges that the Contracting Authority and or UK SBS may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive:
- C6-4-1 without consulting with the Supplier, or
- C6-4-2 following consultation with the Supplier and having taken its views into account.
- C6-5 Where clause C6-4-2 applies the Contracting Authority and or UK SBS shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.
- C6-6 Where the Supplier organisation is subject to the requirements of the FOIA and EIR, C6-7 will supersede C6-2 – C6-5. Where the Supplier organisation is not subject to the requirements of the FOIA and EIR, C6-7 will not apply.
- C6-7 The Contracting Authority and UK SBS acknowledge that the Supplier may be subject to the requirements of the FOIA and EIR and shall assist and co-operate with the Supplier to enable them to comply with its obligations under the FOIA and EIR.

C7 General**C7-1 Entire agreement.**

C7-1-1 The Contract constitutes the entire agreement between the Contracting Authority and the Supplier in relation to the supply of the Services and the Contract supersedes any earlier agreements, arrangements and understandings relating to that subject matter.

C7-2 Liability

C7-2-1 Where the Contracting Authority is more than one person, the liability of each such person for their respective obligations and liabilities under the Contract shall be several and shall extend only to any loss or damage arising out of each such person's own breaches.

C7-2-2 Where the Contracting Authority is more than one person and more than one of such persons is liable for the same obligation or liability, liability for the total sum recoverable will be attributed to the relevant persons in proportion to the price payable by each of them under the Contract.

C7-3 Assignment and subcontracting.

C7-3-1 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

C7-3-2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without prior written consent from the Contracting Authority's or UK SBS acting as an agent on behalf of the Contracting Authority.

C7-3-3 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may (without cost to or liability of the Contracting Authority or UK SBS) require the Supplier to replace any subcontractor where in the reasonable opinion of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015 apply to the subcontractors.

C7-4 Further assurance.

C7-4-1 The Supplier will promptly at the request of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority do (or procure to be done) all such further acts and things, including the execution of all such other documents, as the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority may from time to time require for the purpose of securing for the Contracting Authority the full benefit of the Contract, including ensuring that all title in the Goods is transferred absolutely to the Contracting Authority.

C7-5 Publicity

C7-5-1 The Supplier shall not make any press announcements or publicise this Contract in any way without prior written consent from the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority.

C7-5-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall be entitled to publicise this Contract in accordance with any legal obligation upon Contracting Authority or UK SBS, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

C7-5-3 The Supplier shall not do anything or cause anything to be done, which may damage the reputation of the Contracting Authority or UK SBS or bring the Contracting Authority's or UK SBS's into disrepute.

C7-6 Notices.

C7-6-1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to:

C7-6-1-a in the case of the Contracting Authority: **Science and Technology Facilities Council**; Address: **Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1FF**; Email: **TBC** (and a copy of such notice or communication shall be sent to: **Scientific Research, Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1FF**; Email: **scientificresearch@uksbs.co.uk** and the **Chief Procurement Officer**, Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1ET);

C7-6-1-b in the case of the Supplier: the address, fax number and email address set out in the Order, or any other address, fax number or email address which that party may have specified to the other party in writing in accordance with this clause C7-6, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

C7-6-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C7-6-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail between the hours of 9.00am and 5.00pm on a Working Day, upon successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number), or if sent by fax or e-mail outside the hours of 9.00am and 5.00pm on a Working Day, at 9.00am on the next Working Day following successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number).

C7-6-3 This clause C7-6-3 shall only apply where UK SBS is not the Contracting Authority. In such cases, UK SBS may give or receive any notice under the Contract on behalf of the Contracting Authority and any notice given or received by UK SBS will be deemed to have been given or received by the Contracting Authority.

C7-6-4 Except for clause C7-6-5, the provisions of this clause C7-6 shall not apply to the service of any proceedings or other documents in any legal action.

C7-7 Severance

C7-7-1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

C7-7-2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

C7-8 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- C7-9 No partnership, employment or agency.** Nothing in the Contract creates any partnership or joint venture, nor any relationship of employment, between the Supplier and either the Contracting Authority or UK SBS. Nothing in the Contract creates any agency between the Supplier and either the Contracting Authority or UK SBS.
- C7-10 Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it, except that UK SBS and any member of the UK SBS, Associated Bodies or Authorised Entities that derives benefit under this Contract may directly enforce or rely on any terms of this Contract.
- C7-11 Variation.** Any variation to the Contract, including any changes to the Services, these Conditions, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority and the Supplier.
- C7-12 Governing law and jurisdiction.**

C7-12-1 Subject to clause C7-12-2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

C7-12-2 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority shall be free to enforce its intellectual property rights in any jurisdiction.

C7-13 Modern Slavery Act 2015

C7-13-1 During the Term or any extension of the Contract, the Contracting Authority is committed to ensuring that its supply chain complies with the above Act. The Supplier shall provide such assurances, on the anniversary of the commencement date or completion of the Contract, if less than 12 months.

C7-13-2 The Supplier shall provide a report covering the following but not limited to areas as relevant and proportionate to the Contract evidencing the actions taken, relevant to the Supplier and their supply chain associated with the Contract.

C7-13-2-a Impact assessments undertaken

C7-13-2-b Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised

C7-13-2-c Evidence of stakeholder engagement

C7-13-2-d Evidence of ongoing awareness training

C7-13-2-e Business-level grievance mechanisms in place to address modern slavery

C7-13-2-f Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation

C7-13-3 The Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority reserves the sole right to audit any and all reports submitted by the Supplier to an extent as deemed necessary and the Supplier shall unreservedly assist the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority in doing so. Any financial burden incurred by the Supplier in doing so shall not be reimbursable.

C7-14 Changes in costs resulting from changes to Government Legislation, Levies or Statutory Payments

The Contracting Authority will reimburse during any term or extension (or, where such costs, awards or damages arise following termination/expiry) of this Agreement, any increases in the Supplier's cost of providing the Goods & Services by reason of any modification or alteration to the Government legislation duties or levies or other statutory payments (including but not limited to National Insurance and/or VAT and/or introduction of or amendment to working time minimum wages). Subject always to open book access to the Supplier's records and always after a period of due diligence carried out by the Contracting Authority, relevant and proportionate to the value concerned.

C7-15 Taxation obligations of the Supplier

C7-15-1 The relationship between the Contracting Authority, UK SBS and the Supplier will be that of "independent contractor" which means that the Supplier is not an employee, worker, agent or partner of the Contracting Authority or UK SBS and the Supplier will not give the impression that they are.

C7-15-2 As this is not an employment Contract the Supplier will be fully responsible for all their own tax including any national insurance contributions arising from carrying out the Services. If the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority has to pay any such tax then the Supplier will pay back to the Contracting Authority or UK SBS in full, any money that the Contracting Authority or UK SBS has to pay, and they will also pay back the Contracting Authority or UK SBS for any fine or other punishment imposed on the Contracting Authority or UK SBS because the tax or national insurance was not paid by the Supplier.

C7-16 Cyber Essentials Questionnaire

The supplier agrees that during any term or extension at the sole discretion of the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority, to complete the attached questionnaire as many times as is required within 14 days from notice, and shall send this information as directed by the Contracting Authority or UK SBS acting as an agent on behalf of the Contracting Authority. The Contracting Authority and UK SBS acting as an agent on behalf of the Contracting Authority is required to provide such assurances to comply with government legislation. Any financial burden associated with the completion and submission of this questionnaire shall be at the suppliers cost and will not be reimbursable.



Copy of Statement
of Assurance Questionnaire

Schedule 1 Purchase Order Form To Follow

Schedule 3 The Services

3.1 Duration of Contract

This contract shall commence on the 25th September 2017 through to and including 24th September 2020.

3.2 Scope of Requirement

Brief Introduction for this Requirement

This opportunity is for the supply of a mask aligner to support current and short-medium term work plans. Additional options for field upgrade to meet potential future developments will be regarded favorably.

We have established processes on an existing mask aligner (a Karl Suss MA6) but require to open avenues for using those and new processes on larger wafers (8"/200mm diameter). The new mask aligner & exposure system will be used for small volume production runs using established processes and also for new process development.

Processes may be developed and used on a range of wafer sizes, from individual die (e.g. 10x10mm, 20x20mm, 20x70mm) through various wafer sizes (2", 3", 4", 6", 8"). Wafer materials handled include silicon, cadmium telluride, cadmium zinc telluride.

Existing processes must be fully portable between the existing MA6 and the new mask aligner. This requires the cross calibration of exposure systems and supply of suitable tooling and/or tooling adapters.

The new system must be suitable for occasional operators as well as every-day users. Whilst users will be trained, all aspects of usage must be sufficiently intuitive as to avoid errors.

The complete system must be delivered and commissioned in the user's facility at the Rutherford Appleton Laboratory before the end of February 2018, with user acceptance complete before the end of March 2018.

ITAC-MNTC& Interconnect: Mask Aligner

Mandatory Requirements:

Tool description	A mask aligner with manual loading of mask (up to 9 inch square) and wafers (up to 8 inch or 200mm diameter). Alignment of a mask to a wafer with subsequent exposure in contact or proximity by means of UV collimated light.
Stand alone	Stand-alone system (except fluids, power supply, and laminar flow) including rollers, adjustable feet and antivibration system.
Operation	Basic machine operations to be controlled by robust industrial based embedded system such as PLC.
User interface	User interface to be provided via an operating system which allows for ease of data transfer/capture and backup.

Native tooling for 200mm	Include tooling for 200mm wafer handling and 9" mask holding to support all alignment (top side, bottom side, infrared) and exposure modes (proximity, hard contact, soft contact, vacuum, grey scale lithography)
Compatibility with legacy tooling	Include tooling adapter for existing Karl Suss MA6 mask holders and substrate chucks (full list available on request: listed on legacy tooling worksheet), or provide equivalent range of holders and chucks in new machines' native format.
Alignment Subsystem	
Alignment of full range of expected work-pieces	Top and bottom side alignment of pieces 3mm up to 200mm circular. Must support movement of one objective at a time to the centre line (top and bottom side). Must support moving of both objectives to the 200mm boundary. Must provide split field eyepieces with left/right mixing and individual cameras on each field with fast (<10secs) switching between cameras and eyepieces
Alignment modes	Top side, back side, with software recall of alignment parameters for multiple different wafer/mask combinations.
Alignment resolution	It must be possible to align wafer and mask to within 1µm.
Levelling of mask to substrate	Wafer/mask levelling in each alignment mode (non-contact using spacers or contact without spacers).
Exposure Subsystem	
UV Light source	Exposure of pieces 3mm up to 200mm circular. Must provide an even exposure field ($\leq \pm 2.5\%$) over full 200mm diameter. No source deterioration due to ageing.
Exposure modes	Proximity, hard contact, soft contact, vacuum, grey scale lithography, with software recall/re-use of mode and all parameters.
Spectral selection	Controlled/reproducible wavelength selection: switch/software selection of commonly used individual exposure lines (e.g. i-line - 365nm, H-line - 405nm, G-line - 436nm)
Dose control	Accurate shutter and dose control, e.g. 100ms resolution on exposure time, saving of all exposure parameters for easy recall/re-use.
Exposure optics telecentricity	Telecentricity error <0.2° over all commonly used exposure lines
Adaptable optics	Possibility for operator to easily change (<5mins) key optics properties such as collimation angle, illumination angle distribution.
After Sales Support	
Warranty	Warranty period shall be no less than 3 years
Helpdesk	Access to telephone support during business hours (Monday – Friday 08:30 – 17:00)

	A 3 hours response time is required for technical issues that cannot be triaged during initial call.	
Reactive Repairs	An engineer is required to be able to attend site and diagnose in the event of equipment failure within 36 hours of being notified via the helpdesk.	
	Where minor repairs are required we would expect these to be carried out within the 36 hour response time. Where major repairs are required we would require a firm timescale for repair will be required to be agreed ahead of the engineer leaving site.	
Support of Potential Future Developments		
Upgradability	To ensure that the capital investment in this machine stays viable for the foreseeable future we require there to be capacity within your chosen proposal for the machine to be upgraded periodically to be able to fit with new scientific advancements.	
	Some examples that we are aware of are:	
	Bonding alignment upgrade	Ability to upgrade path for bonding alignment up to 200mm wafers
	Plasma treatment upgrade	Selective plasma treatment of surface with various gas derived plasmas on various sized substrates up to 200mm circular wafers for local surface modification.
	IR back-side alignment upgrade	BSA with IR cameras
	Nano-imprint upgrade	Nanoimprint on full wafer surface
Whilst the above example are not mandatory requirements, as part of your bid response you are required to confirm that there is capacity for upgrades and provide examples of any that may be relevant.		
Desirable Requirements		
Description of Installation environment	Should fit within existing services of installation location. * ISO 5 cleanroom * compressed air * house vacuum * nitrogen * 13 A power sockets * extract * 2m x 2m x 2m (volume)	
Running costs	We favour equipment with lower running costs and lower standby costs.	
Alignment Subsystem		
Alignment of full range of expected work-pieces	Provision of pattern recognition assisted alignment and automated alignment (on both top-side and bottom-side alignment)	
Alignment modes	Infrared	

Alignment resolution	0.2µm
Levelling of mask to substrate	Software automation of wafer levelling
Exposure Subsystem	
Exposure models	Storage and auto-selection of wavelength from saved parameter list.
Dose control	In-situ monitoring of dose and control of exposure to servo out variations.
Exposure optics telecentricity	Telecentricity error <0.2 over full spectral range of source.
Adaptable optics	Provision of software model for simulating optics adjustments.
Running costs	We will favour a light source with lower running costs: • source which can be switched on and off at will. • source with long lifetime/long MTBF.
<u>Terms and Conditions</u> Bidders are to note that any requested modifications to the Contracting Authority Terms and Conditions on the grounds of statutory and legal matters only, shall be raised as a formal clarification during the permitted clarification period.	

3.3 Commercials

The total price exclusive of VAT shall not exceed £357,500.00.

| for and on behalf of Inseto (The
Supplier)

| Signed

Name

Position

Date



Matthew P. Brown

Director

27/09/2017

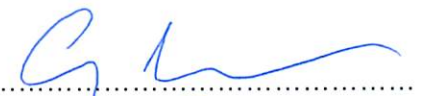
for and on behalf of the Science and
Technology Facilities Council (The
Contracting Authority)

Signed

Name

Position

Date


.....
Gary Robbins
.....
Head of Procurement
.....
29/9/17
.....

THIS IS THE LAST PAGE OF THESE TERMS & CONDITIONS