

## 1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement unless the context otherwise requires the following words and expressions have the following meanings:

**Agreement** means any Agreement between the CMA and the Supplier for the purchase of Goods and/or Services pursuant to a Purchase Order incorporating these terms;

**Applicable Laws** means all applicable laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time;

**CMA** means the Competition and Markets Authority;

**Commencement Date** means as it is defined in Clause 2.1 (Basis of Agreement);

**Confidential Information** means all information, including any information obtained by the Supplier from any department, agency or office of His Majesty's Government relating to and connected with this Agreement, which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this Agreement;

**Delivery Note** means the document provided by the Supplier to the CMA certifying that the Goods have been delivered. The Delivery Note shall contain, as a minimum: the quantity of goods delivered and the actual date of delivery;

**Employment Liabilities** means any costs, claims, demands, fines, or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities including those incurred by or attributed to any New Supplier or sub-contractor of the CMA (which shall, for the avoidance of doubt, include any incurred as a result of an indemnity or warranty given, or to be given, by the CMA to a New Supplier or sub-contractor);

**Environmental Policy** means the CMA's environmental policy as updated by the CMA and notified to the Supplier from time to time;

**Force Majeure Event** means any event outside the reasonable control of the Supplier affecting its ability to perform any of its obligations under this Agreement including fires, strikes (excluding strikes by its own employees), floods, war, acts of God, catastrophic or partial failure of any part of the telecommunications or power supply network, insurrection or riots, embargoes, or regulations of any civil or military authority;

**Goods** means the goods (including any part or parts of them) which the Supplier is to provide to the CMA pursuant to the Purchase Order in accordance with these terms;

**Government Buying Standards** means the Government Buying Standards product specifications which are mandatory for central government departments and related organisations accessible via <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>;

**ICT Environment** means the CMA's IT system and the Supplier's IT system;

**Intellectual Property Rights** means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right,

right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world in each case whether registered or not and including any application for registration of the foregoing;

**Malicious Software** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**New Supplier** means any person that provides goods or services in replacement of any of the Goods and/or Services whether those goods or services are the same as or similar to any or all of the Goods and/or Services;

**Price** means the price for the Goods and/or Services set out in the Purchase Order, or, if no price is quoted, the price set out in the Supplier's price list, published on the date of delivery or deemed date of delivery of the Goods, or completion of the performance of the Services;

**Purchase Order** means any order from the CMA to the Supplier for the supply of Goods and/or Services in such form as the CMA may determine from time to time;

**Purchase Order Number** means the purchase order number which must be quoted on all correspondence and any invoice which the Supplier provides the CMA;

**Removable Media** means all physical items and devices that can carry and transfer electronic information. Examples include but are not limited to DVDs, CDs, floppy disks, portable hard disk drives, USB memory sticks, flash drives, portable music and video players including mobile phones, hand held devices such as Blackberries and Personal Digital Assistants and laptop computers;

**Services** means the services which the Supplier is to provide to the CMA pursuant to the Purchase Order in accordance with these terms;

**Specification** means CMA's specifications or stipulations for the Goods and/or Services notified in writing to the Supplier in the applicable Purchase Order or others;

**Supplier** means the supplier of any Goods and/or Services under this Agreement;

**Term** means the term of this Agreement as described in Clause 3.1 (Agreement Term);

**Transfer Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and

**Working Day** means any day which is not a Saturday, a Sunday or a bank or public holiday in England.

### Drafting Conventions

- (a) The headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- (b) references to numbered clauses are references to the relevant clause in this Agreement;
- (c) Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include an individual, company, body

corporate, corporation, unincorporated association, 4.6  
firm, partnership or other legal entity.

(d) The words "other", "including" and "in 4.7  
particular" shall not limit the generality of any  
preceding words or be construed as being limited to  
the same class as any preceding words where a  
wider construction is possible.

(e) References to any legislation or legislative provision 4.8  
shall include (i) any subordinate legislation made  
under it, (ii) any provision which it has modified or  
re-enacted (whether with or without modification),  
and (iii) any provision which subsequently 4.9  
supersedes it or re-enacts it (whether with or without  
modification).

## 2 BASIS OF AGREEMENT

2.1 The Purchase Order is an offer made by the CMA to the 4.10  
Supplier and this Agreement shall come into effect upon  
acceptance of the Purchase Order by the Supplier (the  
"Commencement Date"). Unless previously withdrawn by  
the CMA, Purchase Orders shall be deemed accepted if not  
rejected by the Supplier by notice in writing within 7 days of  
their date.

2.2 No Purchase Order shall be capable of acceptance by the  
Supplier unless it is in writing and issued by an authorised  
representative on behalf of the CMA.

2.3 In the event of a conflict or ambiguity the order of preference  
for this Agreement and the documents attached to or referred  
to in this Agreement are as follows:

(a) the Purchase Order; then

(b) these terms.

## 3 AGREEMENT TERM

3.1 This Agreement shall come into force on the Commencement 4.11  
Date and shall (subject to the provisions for earlier  
termination set out in this Agreement) terminate automatically  
without notice on the later of the completion of the delivery of  
the Goods and/or completion of the Services.

3.2 This Agreement may only be extended if agreed in writing  
and signed by both parties.

## 4 CONDITIONS FOR THE SUPPLY OF GOODS

4.1 The Supplier shall supply the Goods strictly in accordance  
with the CMA's delivery instructions (including as to date and  
location) whether given in the Purchase Order or separately.

4.2 The CMA shall have the right to change its delivery 5  
instructions including the delivery date at any time, on paying  
any additional reasonable costs to be incurred by the Supplier  
as a result of any such change provided such costs are  
agreed in advance in writing by the CMA and provided the  
Supplier promptly submits proper invoices for such costs to  
the CMA. 5.1

4.3 All Goods shall be delivered, carriage paid, at the place 6  
specified in the Purchase Order and only between 9.00 am  
and 4.00 pm on Working Days, unless otherwise agreed by 6.1  
the CMA. A Delivery Note must accompany the Goods.

4.4 Delivery of the Goods shall be completed on the completion  
of the loading of the Goods at the location detailed in the  
Purchase Order.

4.5 Time of delivery is of the essence of this Agreement. The 6.2  
CMA shall be under no obligation to accept delivery of the  
Goods before the specified delivery time, but reserves the  
right to do so.

The CMA shall not be obliged to accept quantities of the  
Goods which vary from those specified in the Specification or  
the Purchase Order. The CMA shall accept no responsibility  
for Goods delivered or Services performed in excess of the  
Purchase Order.

The Goods will be properly packed and secured in such a  
manner as to reach their destination undamaged and in good  
condition. The CMA shall not be obliged to return to the  
Supplier any packaging materials for the Goods.

The cost of packaging will be deemed to be included in the  
cost of the Goods. If the Supplier requires packaging to be  
returned, it will be returned at the Supplier's expense.

The Supplier shall not deliver the Goods in instalments  
without the CMA's prior written consent. Where it is agreed  
that the Goods are delivered by instalments, they may be  
invoiced and paid for separately. However, failure by the  
Supplier to deliver any one instalment on time or at all shall  
entitle the CMA to the remedies set out at Clause 9.4  
(Warranties).

The CMA will be deemed to have accepted the Goods as  
being in accordance with this Agreement unless:

(a) within 14 days of the date of delivery of the Goods,  
the CMA notifies the Supplier in writing of any defect  
or other failure of the Goods to conform with this  
Agreement (which would be apparent upon  
reasonable inspection and testing of the Goods  
within 14 days); or

(b) the CMA notifies the Supplier in writing of any defect  
or other failure of the Goods to conform with this  
Agreement within a reasonable time where the  
defect or failure would not be so apparent within 14  
days of the date of delivery,

failing which the CMA shall not be entitled to reject the Goods  
and the CMA shall be bound to pay the Price as if the Goods  
had been delivered in accordance with this Agreement.

The Supplier shall promptly keep the CMA informed of any  
matter of which it is or reasonably should, as Supplier of the  
Goods, be aware of relating to the storage, transportation,  
handling, assembly or use of the Goods by the CMA  
(including any Applicable Law or advice from responsible or  
professional or legal bodies in respect of raw materials used  
in the manufacture of the Goods) and the actions it has taken  
or proposes to take and those that the CMA should take in  
relation to such matters.

## 5 TITLE AND RISK

The Goods shall be at the risk of the Supplier until they are  
delivered in accordance with this Agreement when, without  
prejudice to any right of rejection which the CMA may have  
under this Agreement or by law, title to and risk in the Goods  
shall pass to the CMA, provided that if the CMA pays for the  
Goods prior to delivery, title to the Goods shall pass to the  
CMA when payment is made.

## 6 CONDITIONS FOR THE SUPPLY OF SERVICES

Where the Supplier is to perform Services at premises other  
than the Supplier's premises, the CMA shall procure safe and  
unencumbered access to the premises and the provision of  
adequate power, lighting, heating and other such facilities,  
supplies, materials or equipment for the Supplier's  
employees, sub-contractors or agents in accordance with the  
demands of any Applicable Law and as the Supplier shall  
reasonable require.

If this Agreement is for or includes Services to be performed  
by the Supplier then, the Supplier undertakes, represents and  
warrants to the CMA that the Supplier shall:

- (a) provide the Services with reasonable skill and care;
- (b) co-operate with the CMA in all matters relating to the Services, and comply with all reasonable instructions of the CMA; 7.9
- (c) use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
- (d) ensure that the Services will conform with the Specification, including all descriptions and performance dates, and that any deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the CMA; 7.10
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to the CMA, will be free from defects in workmanship, installation and design; 7.11
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Laws; and
- (h) comply with any reasonable instructions and guidelines issued by the CMA from time to time. 7.12

6.3 Time of performance of the Services is of the essence of this Agreement. The Services shall be provided so as to meet the dates set out in the Purchase Order.

## 7 PRICES AND PAYMENT

- 7.1 The Price shall be inclusive of all packaging, packing, labelling, export or import or other customs duties taxes or licences, insurance, delivery costs, labour and all other costs incurred by the Supplier in relation to the Goods and/or Services and their delivery/performance unless otherwise specified in the Purchase Order. 7.13
- 7.2 All sums payable under this Agreement are exclusive of VAT which shall be added if appropriate at the rate prevailing at the relevant tax point but inclusive of any other applicable tax or duty payable upon such sums. 8
- 7.3 No variation in the Price of the Goods and/or Services nor any extra charges will be accepted by the CMA unless expressly agreed by the CMA in writing. 8.1
- 7.4 The Supplier shall submit an electronic invoice within 28 Working Days of supplying the Goods and/or Services to the satisfaction of the CMA. Invoices must be sent to CMA Accounts Payable at the following email address: invoices@cma.gov.uk. In the event of a query regarding an outstanding payment please contact CMA's Finance Team either by email to Finance.Team@cma.gov.uk or by telephone on 020 3738 6908 / 6284. 8.2
- 7.5 Invoices submitted early shall be deemed received on the date of delivery of the Goods or date of completion of the performance of the Services.
- 7.6 Invoices shall show the amount of VAT payable and shall detail the Purchase Order Number. 8.3
- 7.7 Save where an invoice is disputed, the CMA shall pay the Supplier within 30 Days of receipt of an invoice. 8.4
- 7.8 All payments shall be in pounds sterling by electronic transfer to the Supplier's bank account as set out in this Agreement, or such other bank account as the Supplier may from time to

time notify to the CMA with any applicable charges on such payments being at the Supplier's expense.

Whenever under this Agreement any sum or sums of money shall be recoverable from or payable by the Supplier to the CMA, that amount may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Agreement or under any other contract with the CMA or with any agency or office of His Majesty's Government.

Any money paid by the CMA to the Supplier in respect of any Goods rejected under these terms together with any additional expenditure over and above the Price specified in the Purchase Order reasonably incurred by the CMA in obtaining other goods in replacement of any rejected Goods shall be paid by the Supplier to the CMA within 14 days of the date of the CMA's notice demanding the same or, at the CMA's sole option, shall be deducted from the money still to be paid by the CMA to the Supplier in relation to such Goods.

If the Price is stated in the Purchase Order to be on a "time and materials" or "cost plus" basis or similar the Supplier shall give the CMA access to all documents and information in the Supplier's possession or under its control to enable the CMA to satisfy itself that the amount charged by the Supplier is properly and correctly charged in accordance with this Agreement and in default the CMA shall be entitled to withhold payment in whole or in part until such default is rectified to the satisfaction of the CMA.

If any sum due from the CMA to the Supplier under this Agreement is not paid on or before the due date for payment (and which has not been disputed by the CMA in good faith), then all sums then owing by the CMA to the Supplier shall become due and payable immediately and the Supplier shall be entitled to charge the CMA interest on the overdue amount from the due date until payment is made in full both before and after any judgement at 2% per annum over the Bank of England's base lending rate from time to time (accruing on a daily basis and compounded quarterly).

On termination of this Agreement, the Price payable by the CMA to the Supplier will become due within 30 Days of termination.

## 8 INTELLECTUAL PROPERTY

The CMA owns, and shall continue to own all right, title and interest in and to any Intellectual Property Rights or proprietary interest that it owned prior to the Commencement Date of this Agreement ("**Retained Rights**") and grants the Supplier a non-exclusive, non-transferable right to use the Retained Rights for the sole purpose of performing the Supplier's obligations under this Agreement.

Subject to any pre-existing rights of third parties and of the Supplier, the Intellectual Property Rights in all reports, documents and other materials which are generated or acquired by the Supplier (or any of its sub-contractors or agents) (the "**Deliverables**") in the performance of the Services and/or delivery of the Goods shall belong to and be vested automatically in the CMA and the CMA hereby grants to the Supplier a non-exclusive, non-transferable licence to such Intellectual Property Rights in the Deliverables for sole purpose of performing its obligations under this Agreement.

The Supplier waives all moral rights relating to the Deliverables.

If the Supplier in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its agents, sub-contractors or third parties, it shall itself provide, or procure from such agent, sub-contractor or third party a non-exclusive, licence for, or, if the Supplier is itself a licensee of those Intellectual Property

Rights, it shall grant a sub-licence to, the CMA to use, reproduce, modify, adapt and enhance the material as the CMA sees fit. Such licence or sub-licence shall be perpetual and irrevocable and granted at no cost to the CMA.

8.5 The CMA shall have the sole right to use any information collected or collated pursuant to this Agreement (excluding any information which in the opinion of the CMA is confidential to the Supplier or which has been communicated to the Supplier under a condition that it shall be confidential to the Supplier), and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the CMA.

8.6 Nothing in this Agreement or done under this Agreement shall be taken to diminish any copyright, patent rights or any other Intellectual Property Rights which would, apart from this Agreement, vest in the CMA.

8.7 The Supplier shall ensure that all royalties, licence fees or similar expenses in respect of Intellectual Property Rights in materials used in connection with this Agreement have been paid and are included in this Agreement Price.

## 9 WARRANTIES

9.1 The Supplier warrants and represents that:

- (a) it has fully informed itself by all such tests and examinations as are reasonably necessary of any conditions and limitations that might affect its ability to perform the Services and/or deliver the Goods in accordance with the terms of this Agreement;
- (b) it has the experience, qualifications, staff and capability to and will execute the Services and/or delivery of the Goods efficiently and expeditiously to the CMA in accordance with the Specification, best professional standards and the terms of this Agreement;
- (c) it has the power to enter into and perform its obligations under this Agreement, and its obligations under this Agreement constitute its legal, valid and binding obligations enforceable in accordance with its terms;
- (d) all personnel used to provide the Services and/or the Goods will be vetted in accordance with best industry practice, be subject to a valid Baseline Personnel Security Standard ("BPSS") check and be provided with regular training as is appropriate and necessary to perform the Services and/or deliver the Goods;
- (e) it will inform the CMA promptly, giving details of the circumstances, reasons and likely duration, in the event it becomes aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Supplier or any of its personnel which may prevent the Supplier fulfilling its obligations in accordance with this Agreement;
- (f) it will comply with any other reasonable confidentiality or conflict of interest obligations imposed on it;
- (g) it has, will retain and will keep in force all titles, permits, licences, and certificates necessary for it to perform its obligations and duties under this Agreement and shall comply with all Applicable Laws, rules and regulations relating to the Services and/or the delivery of the Goods; and

- (h) the CMA's use and, if applicable, possession of the Services and/or the Goods or any part thereof in accordance with the terms of this Agreement shall not infringe any Intellectual Property Rights of any third party.

9.2 The Supplier undertakes, represents and warrants to the CMA that the Goods and their packaging and labelling shall:

- (a) be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly, use and/or storage of the Goods;
- (b) conform to the Specification and with any instructions of the CMA, and shall otherwise meet the requirements of this Agreement;
- (c) be without fault, are of satisfactory quality and fit for their intended purpose (whether such purpose is implied or expressly stated in the Specification or Agreement);
- (d) be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with designs of the CMA);
- (e) comply with all Applicable Laws.

9.3 The Supplier shall use its best endeavours to transfer or assign to the CMA or otherwise obtain for the benefit of the CMA any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods in respect of the Goods (or part thereof) to the extent that the same is capable of such transfer or assignment to the CMA or otherwise providing such benefit for the CMA.

9.4 Where: (i) there is any breach of the Supplier's warranty, obligation or requirement imposed by, given or stated in this Agreement in respect of the Goods or Services; or (ii) the Goods or any instalment of the Goods are not delivered or the Services are not performed at the specified time, the CMA shall be entitled at its sole discretion without liability to the Supplier (arising out of such action) and without prejudice to any other right or remedy the CMA may have to take one or more of the following actions to:

- (a) cancel this Agreement in whole or in part;
- (b) reject the relevant Goods (in whole or in part) and any Goods already delivered which cannot be effectively and commercially used by reason of the non-delivery of any undelivered Goods and raise a debit note against the Supplier's invoice for them;
- (c) refuse to accept any subsequent delivery of the Goods or performance of the Services;
- (d) recover from the Supplier any costs reasonably incurred by the CMA in obtaining substitute goods or services from another supplier;
- (e) require the Supplier at its sole cost to replace, repair the Goods or carry out such work as is necessary within 14 days so that the Goods conform to the Specification and this Agreement;
- (f) carry out at the Supplier's expense any work necessary to make the Goods comply with the Specification and this Agreement;
- (g) require the Supplier at its sole cost to re-execute the Services in accordance with this Agreement, Purchase Order and Specification within 7 days;
- (h) treat this Agreement as terminated by the Supplier's breach and:
  - (i) delay payment of the Price for the Goods and/or Services until the requirements of

- this Agreement, Purchase Order and any Specification are entirely fulfilled;
- (ii) refuse to make payment of the Price of the Goods and/or Services; or
- (iii) require the repayment of any part of the Price of the Goods and/or Services which the CMA has paid whether or not the CMA has previously required the Supplier to repair the Goods, supply any replacement Goods or re-execute the Services; and/or
- (i) claim such damages as may have been incurred by the CMA as a result of the Supplier's breach of this Agreement.
- 9.5 If the CMA claims that a Purchase Order has not been fulfilled or has been incorrectly fulfilled the Supplier shall be deemed to accept the validity of the claim unless it serves written notice on the CMA disputing the said claim and stating the reasons for its dispute within 7 days of the date of the said claim.
- 9.6 If the CMA exercises any right to reject the Goods under these terms the CMA may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's risk and cost on the basis that a full refund for Goods so returned shall be paid forthwith by the Supplier.
- 9.7 The CMA's rights under these terms are in addition to any statutory remedies available to the CMA.
- 10 INDEMNITY**
- 10.1 In addition to any other remedy available to the CMA, the Supplier shall indemnify and defend the CMA and their respective directors, officers and employees in full and on demand, from and against any and all direct or indirect liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of this Agreement:
- (a) any claim made against the CMA 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 sub-contractors;
- (b) any claim made against the CMA by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or sub-contractors; and
- (c) any claim made against the CMA 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, or receipt, use or supply of the Services.
- 10.2 The Supplier shall provide all facilities, assistance and advice required by the CMA or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance, or purported performance of, or failure to perform, this Agreement.

## LIABILITY

Nothing in this Agreement excludes or limits the Supplier's liability for:

- (a) death or personal injury caused by the Supplier's negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- (e) defective products under the Consumer Protection Act 1987; or
- (f) any liability which cannot be legally excluded or limited.

The CMA's liability for all breaches of this Agreement shall be capped at an aggregate amount of one hundred and twenty-five percent (125%) of the Price under this Agreement.

## INSURANCE

The Supplier shall at its own cost effect and keep in place with reputable insurers such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under this Agreement. The Supplier shall on the written request of the CMA from time to time provide the CMA with reasonable details of the insurance maintained in force in accordance with this Clause. The Supplier shall do nothing to invalidate any of the policies maintained in force in accordance with this Clause.

## COMPLIANCE

### Environmental Requirements

- (a) In performing this Agreement the Supplier shall comply with the CMA's Environmental Policy as updated from time to time, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- (b) The Supplier shall ensure that the Goods and their packaging are manufactured using biodegradable substances wherever they are available and appropriate. Where the Goods, their packaging or their manufacturing process include timber or timber products, the Supplier shall procure timber and wood-containing products from either sustainable and legal sources or Forest Law Enforcement, Governance and Trade (FLEGT) licensed or equivalent sources.
- (c) The paper for all written outputs, including reports, produced in connection with this Agreement shall (unless otherwise specified) be produced on recycled paper containing 100% post-consumer waste and used on both sides where appropriate.
- (d) All Goods purchased by the Supplier on behalf of the CMA (or which will become the property of the CMA) must comply with the relevant minimum environmental standards specified in the Government Buying Standards (formerly "Quick Wins") unless otherwise specified or agreed in writing.

- (e) Click on <http://sd.defra.gov.uk/advice/public/buying/> and select "find a product".

### 13.2 Health, safety and security

- (a) The Supplier shall ensure that all of the Supplier's staff who have access to or are employed on the CMA's premises comply with all health and safety rules and regulations and the CMA's health, safety and security procedures and instructions. Supplier staff shall complete any additional security clearance procedures required by the CMA when working at their premises.
- (b) The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

### 13.3 Data Protection

- (a) The following definitions apply in this Clause 13.3:
- (i) **Information Commissioner, Controller, Processor, Personal Data, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- (ii) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the EU GDPR as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 ("**UK GDPR**"), the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (b) The parties acknowledge they may each be the recipient of some Personal Data from the other over the course of the Services and will in such cases become a Controller of this data. When either party is acting as a Controller it will do so in compliance with the Data Protection Legislation. The Controller is responsible for ensuring all Personal Data is shared lawfully and the requisite lawful base(s) to process this data is in place.
- (c) Where a party is the recipient of Personal Data from the other party in the capacity of Processor, it will do so for the purposes and duration of the Services only, and only as directly instructed to do so in writing by the other party, being the Controller. It will process any such data only where appropriate technical, organisational and security measures are in place and subject to terms of confidentiality as set out in Clause 18 (Confidentiality). The Processor will support the Controller with any valid access requests, audits or breaches regarding the Personal Data concerned and, will destroy all Personal Data it has received in the capacity of Processor following the completion of the Services. The Processor will keep appropriate records to demonstrate

compliance with its obligations under this Clause 13.3 and under the Data Protection Legislation.

- (d) Any sub-contractor(s) and sub-consultant(s) appointed by the Supplier processing Personal Data reasonably required in connection with this Agreement shall be engaged in writing and any such Agreement shall incorporate appropriate written data processing clauses.

### 13.4 Data Handling

- (a) The Supplier will only use encrypted Removable Media approved or issued by the CMA when connected to the CMA's IT network and all use must be in strict accordance with the rules about sensitivity and risks of information. In particular, encrypted memory sticks may only be used for data marked up to and including the protective marking of 'Official'.
- (b) All losses of data must be reported to the appointed CMA representative (the "**Contract Manager**") as soon as possible so that risk mitigation action can be taken. Any theft of Removable Media must be reported to the police within 24 hours of becoming aware of the theft and a crime/incident number obtained.
- (c) Floppy disks must not be used in the delivery of this Agreement.

### 13.5 Anti-Bribery

- (a) The Supplier undertakes that it:
- (i) has not committed an offence under Sections 1, 2, 6 or 7 of the Bribery Act 2010 (a "**Bribery Offence**");
- (ii) has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under the Bribery Act 2010;
- (iii) is not aware of any circumstances that could give rise to an investigation relating to an alleged Bribery Offence or prosecution under the Bribery Act 2010.
- (b) The Supplier agrees that it:
- (i) has in place, and shall maintain until termination of this Agreement, adequate documented procedures designed to prevent persons associated with the Supplier (including an employee, sub-contractor or agent or other third party working on behalf of the Supplier or any group company) (an "**Associated Person**") from committing a Bribery Offence;
- (ii) shall comply with the Bribery Act 2010 and shall not, and shall procure that no Associated Person shall, commit any Bribery Offence or any act which would constitute a Bribery Offence;
- (iii) shall not do or permit anything to be done which would cause the CMA or any of CMA's employees, sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act; and
- (iv) shall notify the CMA immediately in writing if it becomes aware or has reason to

believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Supplier's obligations under this Clause 13.5. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

### 13.6 Official Secrets Act

- (a) The Supplier shall take all reasonable steps to ensure that all persons employed by it or by any sub-contractor in connection with this Agreement are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any work under or in connection with this Agreement.

### 13.7 Discrimination

- (a) The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Employment Equality (Sexual Orientation) (Religion or Belief) (Age) Regulations 2006, the Employment Equality (Age) Regulations 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

### 13.8 Modern Slavery

- (a) The Supplier undertakes, warrants and represents that:
- (i) neither the Supplier nor any of its officers, employees, agents or sub-contractors:
    - (A) has committed an offence under the Modern Slavery Act 2015 (an "**MSA Offence**"); or
    - (B) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
    - (C) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
  - (ii) it shall comply with the Modern Slavery Act 2015;
  - (iii) it shall notify the CMA immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have, breached or potentially breached any of Supplier's obligations under this Clause 13.8. Such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.
- (b) Any breach of this Clause 13.8 by the Supplier shall be deemed a material breach of this Agreement and shall entitle the CMA to terminate this Agreement in accordance with Clause 14 (Termination).

## 14

### 14.1

## TERMINATION

The CMA may immediately terminate this Agreement without payment of compensation by giving notice in writing to the Supplier if:

- (a) the Supplier commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
- (b) the Supplier commits a breach of its obligations under this Agreement which is capable of remedy and fails to remedy it or persists in such breach after 30 days of having been required in writing to remedy or desist;
- (c) the Supplier:
  - (i) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
  - (ii) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up or dissolution of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
  - (iii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
  - (iv) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
  - (v) calls a meeting, gives a notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained for that party;
  - (vi) takes any steps in connection with proposing a reorganisation of the party (whether by way of voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
  - (vii) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
  - (viii) has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged within 14 days of it being levied;
  - (ix) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Clause 14.1(c); and/or

- (d) the Supplier ceases, or appears in the reasonable opinion of the CMA likely or is threatening to cease, to carry on all or a substantial part of its business. 18.1

## 15 BREAK

- 15.1 The CMA shall at any time have the right to terminate this Agreement or reduce the quantity of Goods or Services to be provided by the Supplier in each case by giving to the Supplier one month's written notice. During the period of notice the CMA may direct the Supplier to perform all or any of the work under this Agreement. 18.2

## 16 CONSEQUENCES OF TERMINATION

- 16.1 The termination of this Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 16.2 Upon termination of this Agreement for any reason whatsoever:
- (a) the CMA shall have the right to recover from the Supplier all prices paid in respect of work which has not yet been delivered;
  - (b) subject to Clause 16.1 the relationship of the parties shall cease save as (and to the extent) expressly provided for in this Clause 16;
  - (c) any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect;
  - (d) the parties shall immediately return all of the other party's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information;
  - (e) the Supplier shall co-operate with the CMA and/or any new provider of the Services and/or Goods appointed by the CMA in ensuring the smooth handover and continued running of the Services and/or delivery of the Goods during such handover; and
  - (f) if the Supplier is required by any law, regulation or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy by Clause 16.2(d), it shall notify the CMA in writing of such retention, giving details of the documents or materials that it must retain.

## 17 TRANSFER REGULATIONS

- 17.1 It is the parties' intention that neither the commencement nor the termination of this Agreement or of any of the Services will give rise to a relevant transfer pursuant to the Transfer Regulations.
- 17.1 In addition to any other remedy available to the CMA, the Supplier shall indemnify and defend the CMA and any New Supplier and their respective directors, officers and employees in full and on demand, from and against any and all Employment Liabilities howsoever arising whether wholly or in part arising directly or indirectly foreseeable or not, which are or which may be incurred, suffered or paid by the CMA or any New Supplier in relation to any individual who claims that their employment or liabilities in connection with their employment transfer to the CMA, any of CMA's companies or a New Supplier under the Transfer Regulations including any Employment Liabilities relating to the termination of employment of any such individual.

## CONFIDENTIALITY

The Supplier shall keep and procure to be kept secret and confidential all Confidential Information belonging to the CMA disclosed or obtained as a result of the relationship of the parties under this Agreement and shall not use nor disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the CMA.

The Supplier may disclose Confidential Information to an employee, consultant, sub-contractor or agent to the extent necessary for the performance of this Agreement provided such disclosure is subject to obligations equivalent to those set out in this Agreement. The Supplier shall use its best endeavours to procure that any such employee, consultant, sub-contractor or agent complies with such obligations. The Supplier will be responsible to the CMA in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.

18.3 The obligations of confidentiality in this Clause 18 do not extend to any Confidential Information which the Supplier can show:

- (a) is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under this Agreement;
- (b) was in its written records prior to the date of this Agreement and not subject to any confidentiality obligations;
- (c) was or is disclosed to it by a third party entitled to do so;
- (d) the parties agree in writing is not Confidential Information or may be disclosed; or
- (e) is required to be disclosed under any Applicable Law, or by order of a court or governmental body or authority of competent jurisdiction.

## TRANSPARENCY

19.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement (including, but not limited to, any documents subsequently developed to monitor delivery and performance of this Agreement) is not Confidential Information. The CMA shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

19.2 Notwithstanding any other term of this Agreement, the Supplier hereby gives their consent for the CMA to publish this Agreement (and any documents subsequently produced by either party as part of management of this Agreement – including, but not limited to, performance against key performance indicators and plans to rectify the same etc.) in their entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to this Agreement, to the general public.

19.3 The CMA may consult with the Supplier to inform its decision regarding any redactions that may be required to keep information which is exempt from disclosure under the FOIA from being disclosed but the CMA shall have the final decision in its absolute discretion. The Supplier shall assist and cooperate with the CMA to enable the CMA to publish this Agreement.

19.4 The Supplier agrees not to disclose the identity of the CMA as a client of the Supplier, nor to use the CMA's name nor refer to the CMA directly or indirectly in any advertisement or other publication without receiving the CMA's prior written



approval for such use or reference and to the form and context in which the reference to the CMA is to appear. The Supplier shall abide by any conditions or limitations imposed by the CMA in such approval, if given.

- 19.5 The Supplier further agrees not to disclose the existence of this Agreement, or the nature of the relationship established by this Agreement.

## 20 FORCE MAJEURE

- 20.1 Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control.

- 20.2 A party suffering a Force Majeure Event ("**Affected Party**") shall notify the other party ("**Non-Affected Party**") in writing as soon as reasonably practicable specifying the cause of the event, the scope of commitments under this Agreement affected by the event, and a good faith estimate of the time required to restore full performance. Except for those commitments identified in the notice of a Force Majeure Event, the Affected Party shall not be relieved of its responsibility to fully perform as to all other commitments in this Agreement.

- 20.3 If the Force Majeure Event continues for a period of more than 30 days from the date of the notice of Force Majeure Event, the Non-Affected Party shall be entitled, at its sole discretion, to terminate this Agreement.

## 21 SUB-CONTRACTING AND ASSIGNMENT

- 21.1 This Agreement is personal to the Supplier. The Supplier shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement without the prior written consent of the CMA. Where the Supplier enters into a contract with a sub-contractor for the purpose of performing this Agreement or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Supplier to the sub-contractor within a period not exceeding 30 days from receipt of a valid invoice as defined by the contract requirements. The CMA reserves the right to ask for information about payment performance and will provide a facility for sub-contractors to report poor performance to the CMA and the Cabinet Office.

- 21.2 Sub-contracting any portion of this Agreement shall not relieve the Supplier of any obligation or duty attributable to it under this Agreement.

- 21.3 The CMA may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement at any time without the prior written consent of the Supplier.

## 22 GENERAL

- 22.1 A person who is not a party to this Agreement has no rights (whether under the Contracts (Right of Third Parties) Act 1999 or otherwise) to enforce any provision of this Agreement.

- 22.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

- 22.3 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

- 22.4 The Supplier shall not exercise any right of lien, general or otherwise and howsoever arising, over any Goods, any materials relating to the Services or any other property of the CMA's in the Supplier's possession, in respect of any sums owed by the CMA to the Supplier under this Agreement or otherwise.

- 22.5 Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and each party irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind this Agreement which it might otherwise have had in relation to them. Nothing in this Clause 22.5 will exclude any liability in respect of misrepresentations made fraudulently.

## 22.6 Severability of provisions

- If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from the Agreement and the validity and/or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired as a result of that omission.

## 22.7 Waiver

- The rights and remedies of either party in respect of the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. Any waiver of any breach of the Agreement shall be in writing. The waiver by either party of any breach of the Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

## 22.8 Variation

- No purported alteration or variation of the Agreement shall be effective unless it is in writing, refers specifically to the Agreement and is signed by a duly authorised representative of each of the parties to the Agreement.

## 22.9 Notices

- (a) Any notices sent under the Agreement must be in writing. Notice by email is deemed to be in writing.
- (b) Notices may be served in the ways set out in the table below at the relevant party's registered office (if it is a company) or its principal place of business (in any other case) or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under the Agreement and, the following table sets out the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Personal delivery	On delivery provided delivery is between 9.00am and 5.00pm on a Working Day	properly addressed and delivered

<b>Manner of Delivery</b>	<b>Deemed time of delivery</b>	<b>Proof of Service</b>
Prepaid first class recorded delivery domestic postal service	9.00am on the second Working Day after posting or at the time and date recorded by the delivery service	properly addressed prepaid and posted
Email	9.00am on the first Working Day after sending	despatched in a legible and complete form to the correct e-mail address without any error message provided that a confirmation copy of the e-mail is sent to the recipient by prepaid first class domestic postal service in the manner set out above. Failure to send a confirmation copy will invalidate the service of any email transmission

## 23 LAW AND JURISDICTION

- 23.1 The Agreement, these terms and any issues, disputes or claims arising out of, or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 23.2 All disputes or claims arising out of or relating to the Agreement shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.