



Central Power Services Ltd
Garstang Road
Cloughton-on-Brock
Lancashire
PR3 0PH



0845 437 9750



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CENTRAL POWER SERVICES LIMITED

TERMS AND CONDITIONS OF PURCHASE

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms, the following definitions apply:

Applicable Laws: all applicable laws, statutes and regulations and codes from time to time in force.

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

Commencement Date: has the meaning set out in clause 2.2.

Compliance Legislation: means the Bribery Act 2010, the Criminal Finances Act 2017, the Modern Slavery Act 2015, the Money Laundering Regulations 2017 and such other pieces of Applicable Laws relating to corporate criminal offences.

Contract: the contract between CPS and the Supplier for the Supply in accordance with these Terms, the Order and any Specification.

CPS: Central Power Services Limited, a company registered in England and Wales with company registration number 01980449 and whose registered office is at Garstang Road Brock Preston, Lancashire, PR3 0PH.

CPS's Equipment & Materials: equipment, including tools, systems, cabling, facilities, documents, information, items and materials in any form which are supplied by CPS to the Supplier for use in connection with the provision of the Supply.

CPS's Premises: the location for delivery as set out in the Order or as otherwise notified to the Supplier by CPS before delivery and in the absence of which shall be CPS's registered office.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Supply in any form or media, including without limitation drawings, reports, documents, papers, drawings, designs, testing results, transparencies, photos, graphics, logos, typographical arrangements and software (including drafts).

Force Majeure Event: means events, circumstances or causes beyond a party's reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic, any law or any action taken by a Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Loss: means actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and **Losses** shall be construed accordingly.

Order: CPS's order for the Supply, as set out in CPS's purchase order form or as otherwise specified in writing.



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Quotation: means any quotation for the Supply issued by the Supplier to CPS.

Required Standard: means the accreditations, certifications and standards, rules, policies and procedures whether of CPS, or any applicable third party (which in each case may be updated from time to time), communicated to the Supplier (and where applicable available on request) from time to time, which subject to clause 4.1, CPS requires the Supplier to comply with, meet and uphold at all times in connection with the Supply.

Specification: any specification for the Supply including any related plans, designs and drawings that are issued to the Supplier by CPS or otherwise agreed between the parties.

Supplier: the person or corporate entity from whom or which CPS purchases Supply, as detailed in the Order.

Supply: means the provision by the Supplier:

- (a) Goods, in accordance with Schedule 1;
- (b) Services, in accordance with Schedule 2; and/or
- (c) Works, in accordance with Schedule 3.

Terms: these terms and conditions as amended from time to time in accordance with clause 15.3.

Transfer: assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with.

VAT: value added tax.

1.2 In these Terms, the following rules of interpretation apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory 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;
- (d) 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;
- (e) a reference to **writing** or **written** includes faxes and emails; and
- (f) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2 BASIS OF CONTRACT

2.1 The Order constitutes an offer by CPS to purchase the Supply from the Supplier in accordance with these Terms.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).



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2.3 These Terms apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate at any time including in accordance with clause 2.2(a) above including any Quotation, or which are implied by trade, custom, practice or course of dealing.

2.4 CPS may at any time withdraw the Order prior to the Commencement Date.

2.5 Where there is any conflict between these Terms and the Order, the Order shall prevail.

3 THE SUPPLIER'S GENERAL OBLIGATIONS

3.1 The Supplier shall perform and/or deliver the Supply in accordance with the terms of the applicable Schedule(s).

3.2 Notwithstanding that CPS may have prepared the Specification, the Supplier is deemed to have reviewed and accepted the same as being accurate and complete in every respect and takes any and all responsibility for its contents and any inherent inaccuracies or incompleteness.

3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits (including those issued by Governing Bodies) that it needs to carry out its obligations under the Contract in respect of the Supply and to make use of CPS's Equipment & Materials and not to or omit to do anything which may cause it or CPS to lose any licences, permissions, authorisations, consents and permits (including those issued by Governing Bodies) required for the purposes of the Supply or conducting its business.

3.4 The Supplier shall cooperate with CPS in all matters relating to the Contract and comply with all reasonable instructions of CPS (including complying with any written or verbal instructions in relation to safety and security while at CPS's Premises).

3.5 The Supplier shall:

- (a) hold all CPS's Equipment & Materials in safe custody at its own risk and maintain CPS's Equipment & Materials in good condition until returned to CPS, and not dispose of or use CPS's Equipment & Materials other than in accordance with CPS's written instructions or authorisations; and
- (b) take good care of any of CPS's Equipment & Materials provided by CPS pursuant to this Contract and agrees and acknowledges that title to CPS's Equipment & Materials shall remain with CPS at all times.

4 COMPLIANCE

4.1 In performing its obligations under the Contract, the Supplier agrees to and warrants that it shall comply fully, at its own expense, with the Applicable Laws, and that unless otherwise agreed between the parties, it has and shall maintain the Required Standards.

4.2 The Supplier represents, warrants and undertakes to CPS that:

- (a) in relation to these Terms and the Contract and/or its subject matter, neither the Supplier nor any of its employees, sub-contractors or agents or others performing services on behalf of the Supplier has, as far as it is aware, done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Supplier or CPS of the Compliance Legislation;
- (b) the Supplier has in place, and will at all times during the term of the Contract continue to have in place, adequate procedures designed to prevent any person associated with the Supplier from committing an offence under any Compliance Legislation and as a minimum such procedures comply, and will at all times during the term of the Contract comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the applicable Compliance Legislation;



- (c) the Supplier shall comply with all Compliance Legislation in connection with the Contract and CPS's business and shall immediately notify CPS if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation;
- (d) the Supplier will promptly co-operate (and will procure that each of its employees, agents, sub-contractors and any others performing services on its behalf in relation to the Contract and/or its subject matter will co-operate) with CPS and/or any regulator and/or prosecutor in any investigation relating to any breach, or alleged breach, of any Compliance Legislation by the Supplier or any of its employees, agents, sub-contractors or others performing services on its behalf; and
- (e) neither the Supplier nor any of its shareholders, subsidiaries or affiliates nor any of its or their directors, officers, agents or employees has been subject to any investigation by any government agency with regard to any breach of the Compliance Legislation.

4.3 The Supplier will throughout the term of the Contract comply with, monitor and enforce the obligations referred to in clause 4.2 above.

4.4 Where for the purposes of this clause:

- (a) **Counterfeit:** means Fraudulent Goods and/or Deliverables that have been confirmed as:
 - (i) being a copy, imitation or substitute that has been represented, identified or marked as genuine;
 - (ii) being altered by a source without a legal right with the intention to mislead, deceive or defraud; and/or
 - (iii) infringing the Intellectual Property Rights of a third party;
- (b) **Fraudulent:** means Goods and/or Deliverables which have been misrepresented as meeting CPS's requirements, including but not limited to those represented as being new; and
- (c) **Suspect:** means there being any evidence or a reasonable suspicion that Goods and/or Deliverables may be Counterfeit or Fraudulent,

CPS reserves the right to quarantine any Goods and/or Equipment and/or Deliverables which are Counterfeit, Fraudulent or where CPS Suspects that they may be and have the same tested by a third party, the costs of which are to be met by the Supplier in the event that a positive determination is made. Notwithstanding that an invoice may have been validly raised in accordance with applicable payment terms, payment of the Charges in this case will be held by CPS until conclusive results are obtained which confirm that the Goods and/or Equipment and/or Deliverables in question are not Counterfeit or Fraudulent and in cases where payment has already been made the Supplier shall issue a refund to CPS on demand. Furthermore, Goods and/or Deliverables which are Suspect may be subject to disposition and details reported to the appropriate authorities. The disclosure of the source and location of supply is to be provided where requested.

4.5 If the Supplier fails to comply with this clause 4, CPS shall be entitled, in its sole discretion and without limiting its other rights and remedies, to terminate the Contract and any other contracts between the Supplier and CPS without penalty to CPS but with obligations for the Supplier to remedy any damages suffered by CPS as a result of such termination.

4.6 For the avoidance of doubt, this clause 4 shall survive termination or expiry of the Contract, howsoever arising.



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5 CHARGES AND PAYMENT

5.1 The Charges:

- (a) shall be the price set out in the Order or, if no price is specified in the Order, as agreed between the parties in writing;
- (b) be inclusive of the time spent by CPS in respect of any testing required from CPS;
- (c) shall be inclusive of the costs of packaging, insurance, taxes, levies, commissioning, carriage, delivery and performance of the delivery of the Goods, Services and/or Works, as the case may be;
- (d) shall not include the costs of hotel, travelling, and any other ancillary expenses incurred by the Supplier or any individuals who the Supplier engages in connection with the Supply, and such costs shall be incurred at the Supplier's sole expense; and
- (e) are exclusive of amounts in respect of VAT chargeable from time to time and which shall only be payable by CPS on receipt of a valid VAT invoice.

5.2 If before performance of the Supply CPS notifies the Supplier of any changes in Specification, the Supplier shall notify CPS in writing in the event that any such changes would reduce the Supplier's overall costs and reduce the Charges specified in clause 5.1 accordingly. Any reductions in Charges made in accordance with this clause 5.2 shall constitute the new Charges payable from CPS to the Supplier under this Contract. Any increase in the Charges as a result of any change to the Specification by CPS shall be subject to CPS's prior written consent.

5.3 In the event that CPS has already paid the Supplier the Charges set out in clause 5.1, and the Charges are reduced in accordance with clause 5.2, the Supplier shall promptly refund CPS the difference in any monies owed to it arising out of the reduction in the Charges.

5.4 No extra or varied charges, (including but not limited to labour, materials, transportation, delivery, fluctuations in currency or exchange) shall be effective unless agreed in writing and signed by CPS.

5.5 The Supplier shall raise invoices in accordance with the applicable Schedule, and by submitting the same to CPS's nominated representative, dependent on the nature of the Supply. Each invoice shall include such supporting information required by CPS to verify the accuracy of the invoice, including but not limited to the relevant Order Number.

5.6 If CPS disputes any invoice or other statement of monies due, CPS shall notify the Supplier in writing in advance of making payment (provided that any invoice or statement that is accepted in principle by CPS shall remain subject to later challenge in the event of any breach of the Contract by the Supplier). The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of CPS giving notice to the Supplier, the dispute shall be resolved in accordance with clause 15.8. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 5.7. The Supplier's obligations to continue with the Supply shall not be affected by any payment dispute.

5.7 CPS shall pay the invoiced amounts within sixty days of the end of the month in which the applicable invoice was raised, unless otherwise agreed between the parties.

5.8 If CPS fails to make a payment due to the Supplier under the Contract by the due date, then CPS shall pay interest on the overdue sum at 1% a year above the Bank of England's base rate from time to time (but at 1% a year when that base rate is below 0%) from the due date until payment of the overdue sum, whether before or after judgment.



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5.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Supply, and the Supplier shall allow CPS to inspect such records at all reasonable times on request.

5.10 CPS may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to CPS against any liability of CPS to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 In respect of the Supply transferred to CPS under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants:

- (a) that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to CPS, it will have full and unrestricted rights to sell and transfer all such items to CPS; and
- (b) the receipt, use and onward supply of the Supply and the Deliverables by CPS shall not infringe the rights, including any Intellectual Property Rights, of any third party.

6.2 The Supplier grants CPS a non-exclusive, perpetual, irrevocable, royalty free and worldwide licence to use any Intellectual Property Rights subsisting in the Supply or any Deliverables.

6.3 At its own expense, the Supplier shall, promptly at CPS's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as CPS may from time to time require for the purpose of securing for CPS the full benefit of the Contract, including any licence granted to CPS in accordance with clause 6.2.

6.4 All CPS Equipment & Materials are (and shall remain) the exclusive property of CPS and nothing in the Contract shall vest in the Supplier any rights to the Intellectual Property Rights subsisting therein. The Supplier agrees and acknowledges that it is granted a non-exclusive, non-sublicensable, royalty free, revocable licence to make use of CPS's Equipment & Materials strictly for the purposes of performing its obligations in accordance with the Contract.

6.5 CPS reserves the right to enter the Supplier's premises at reasonable notice in order to inspect compliance with this clause 6. CPS may at its discretion and at any time request the Supplier to return or enter the Supplier's premises to remove any of CPS's Equipment & Materials and any associated Deliverables.

6.6 The Supplier shall indemnify CPS, keep CPS indemnified and hold CPS harmless in full against any and all Losses (including but not limited to any direct, indirect or consequential Losses, loss of profit, loss of contract or loss of reputation) suffered or incurred by CPS arising out of, or in connection with, the receipt, use or supply of the Supply and the Deliverables (excluding the CPS's Equipment & Materials).

7 INSURANCE

7.1 During this Contract and for a period of seven years afterwards the Supplier shall (unless CPS otherwise notifies the Supplier in writing), maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance for not less than £5,000,000 per claim;
- (b) product liability insurance for not less than £5,000,000 per claim; and
- (c) where the Supplier is providing Works, professional indemnity insurance for not less than £2,000,000 per claim.

7.2 On CPS's written request, the Supplier shall provide CPS with copies of the insurance policy certificates



and details of the cover provided.

- 7.3 If the Supplier fails or is unable to maintain insurance in accordance with clause 7.1, or fails to provide evidence that it has paid the current year's premiums, CPS 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.

8 LIQUIDATED DAMAGES

- 8.1 If the Supplier fails to meet any deadline for, or defaults in, performance of any element of the Supply, the Supplier shall pay to CPS as liquidated damages 1% of the Charges payable by CPS to the Supplier for the Supply in question for each day's delay or default (**Liquidated Damages**).
- 8.2 The Supplier shall pay the Liquidated Damages on demand or CPS may deduct them from its payments of the Charges to the Supplier.
- 8.3 The Liquidated Damages payable under this clause 8 shall accrue from the first day on which the Supplier has delayed or defaulted in the performance of its obligations and shall continue until the earlier of:
- (a) the Supplier fulfilling the delayed or defaulted obligation in question; or
 - (b) termination of the Contract by CPS.
- 8.4 This clause 8 is without prejudice to the right of CPS to claim general damages arising out of the associated delay or default of the Supplier.
- 8.5 The parties confirm that the Liquidated Damages are reasonable and proportionate to protect CPS's legitimate interest in performance and represent a genuine pre-estimate of its Losses during the period of such delay or default.

9 LIMITATION OF LIABILITY

- 9.1 Nothing in this Contract shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by:
 - (i) section 12 of the Sale of Goods Act 1979; or
 - (ii) section 2 of the Supply of Goods and Services Act 1982; or
 - (iii) section 8 of the Supply of Goods (Implied Terms) Act 1973; or
 - (d) any matter in respect of which it would be unlawful to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) CPS shall under no circumstances whatsoever be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any:
 - (i) loss of profit;
 - (ii) loss of goodwill;
 - (iii) loss of business;
 - (iv) loss of business opportunity;



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- (v) loss of anticipated saving;
 - (vi) loss or corruption of data or information; or
 - (vii) Losses of an indirect, special or consequential nature, that arises under, in connection with or otherwise arising out of the Contract; and
- (b) CPS's total liability to the Supplier in respect of all other Losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed the total Charges actually paid by CPS to the Supplier under the Contract.

10 INDEMNITY AND GURANTEE

10.1 The Supplier shall indemnify CPS, keep CPS indemnified and hold CPS harmless from and against any and all Losses (including, for the purposes of this clause 10.1, loss of profit, loss of contract, loss of business opportunity and special, indirect and consequential Losses) suffered or incurred by CPS arising under or in connection with:

- (a) any breach by the Supplier, its agents, employees or permitted subcontractors of any term of the Contract;
- (b) any Contract entered into by CPS, the performance of which has been delayed or rendered impossible as a result of the Supplier's breach of its obligations under the Contract;
- (c) any claim made against CPS by any customer or third party to the extent that such claim relates to, or arises from the Supply;
- (d) any claim made against CPS by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Supply;
- (e) any loss or damage to any property, Location, or equipment owned, managed or controlled by or which is the responsibility of CPS, caused in any way by any act or omission of the Supplier or by any third party for whom the Supplier is responsible; and/or
- (f) the Supplier's negligence or misconduct.

10.2 CPS may at its absolute discretion and at any time by serving written notice on the Supplier, require that the Supplier provide a parent company guarantee, corporate guarantee, performance bond or such other form of security for the Supplier's performance of its obligations under this Contract, in such form as CPS may require.

11 TERMINATION

11.1 Without limiting its other rights or remedies, CPS may terminate the Contract by giving the Supplier one weeks' written notice for any reason, provided that in so doing it shall pay the Supplier fair and reasonable compensation for any work in progress to the extent that the same cannot be redeployed or otherwise mitigated in respect of the Supply at the time of termination.

11.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to other if:

- (a) the other party commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of receipt of notice in writing to do so;
- (b) the other party repeatedly or persistently breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;



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- (c) the other party 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 or limited liability partnership) 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;
 - (d) the other party 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;
 - (e) 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 other party (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
 - (f) a creditor or encumbrancer of the other party 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 fourteen days;
 - (g) 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 other party (being a company);
 - (h) the holder of a floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(c) to 11.2(i) (inclusive);
 - (k) the other party suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
 - (l) the other party's financial position deteriorates to such an extent that in the notifying party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued prior to and as at the date of termination.
- 11.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 11.5 On termination or expiry of the Contract (or the applicable part), the Supplier shall promptly:
- (a) return to CPS all CPS Equipment & Materials and all other property belonging to CPS that the Supplier had supplied to it in connection with the Supply under the Contract;
 - (b) return to CPS all documents and materials (and any copies) containing CPS's Confidential Information;
 - (c) erase all of CPS's Confidential Information from its computer systems (to the extent possible);
 - (d) deliver to CPS all of the Supply and Deliverables whether or not then complete; and



(e) on request, certify in writing to CPS that it has complied with the requirements of this clause 11.5.

12 CONFIDENTIALITY

- 12.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.
- 12.2 The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.
- 12.3 The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 12.4 This clause 12 shall survive termination of the Contract.

13 FORCE MAJEURE

- 13.1 CPS shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from a Force Majeure Event.
- 13.2 CPS shall notify the Supplier within a reasonable period of time of any Force Majeure Event and CPS shall use reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 13.3 If a Force Majeure Event prevents, hinders or delays CPS's performance of its obligations for a continuous period of more than thirty days, CPS may terminate the Contract immediately by giving written notice to the Supplier.

14 NOTICES

- 14.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier.
- 14.2 A notice or other communication shall be deemed to have been received:
- (a) if delivered personally, when left at the address referred to in clause 14.1;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 14.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15 GENERAL

15.1 Assignment and Other Dealings

- (a) CPS may at any time assign, Transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.



- (b) The Supplier may not assign, Transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without prior written agreement of CPS.

15.2 Entire agreement

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligence misstatement based on any statement in the Contract.
- (d) Nothing in the Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation.

15.3 Variation

Except as set out in the Contract, no variation of this Contract, including the introduction of any additional terms and conditions, shall not be effective unless it is agreed in writing and signed by the parties (or their authorised representatives and permitted assigns).

15.4 Waiver

- (a) A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise, or the single or partial exercise of, any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the parties shall:

- (a) negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision; and
- (b) if agreement under clause 15.5(a) cannot be reached, delete the relevant provision or part-provision.

15.6 Rights and Remedies

Except as expressly provided in these Terms and the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law and each shall be cumulative of every other right or remedy now or in the future existing and may be enforced concurrently from time to time.

15.7 Third party rights

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.



15.8 Multi-tiered dispute resolution procedure

If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this Contract, the parties may at their discretion follow the procedure set out in this clause:

- (a) Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute;
- (b) If the management level employees are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it;
- (c) If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Supplier is not registered in the United Kingdom, the parties will attempt to settle it by mediation;
- (d) Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, either party may request a recommendation for the nomination of a mediator from the Centre for Effective Dispute Resolution (**CEDR**);
- (e) The parties shall have recourse to mediation in accordance with the International Chamber of Commerce's Mediation Rules, which are deemed to be incorporated by reference into this clause;
- (f) To initial the mediation, a party must give notice in writing (**ADR Notice**) to the other party to the Dispute, referring the Dispute to mediation. A copy of the ADR Notice should be sent to CEDR; and
- (g) If the directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them and the Supplier is registered in the United Kingdom, the parties may comment course proceedings under clause 15.10 in relation to the whole or part of the Dispute.

15.9 Governing Law

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 the law of England and Wales.

15.10 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or these Terms or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – GOODS

1 DEFINITIONS

In this Schedule, the following definitions apply in conjunction with the defined terms contained in clause 1:

Delivery: means (unless otherwise agreed in writing) delivery of the Goods to CPS by or on behalf of the Supplier, DDP (Duty Delivery Paid) at the Location (Incoterms, 2020) in accordance with this Schedule and **Deliver** and **Delivered** shall be construed accordingly.



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Location: means the location for Delivery, being by default CPS's Premises, unless otherwise specified in the Order or subsequently notified to the Supplier by CPS in advance of Delivery.

Warranty Period: the period of 12 months from the date on which the Goods are first put into operational use, whether by CPS or its customer (unless otherwise agreed between the parties in writing).

2 SUPPLY OF THE GOODS

- 2.1 The Supplier warrants, undertakes and represents that the Goods shall in every respect:
- (a) correspond with their description and any applicable Specification;
 - (b) be of the best quality, made of the highest quality materials and fit for any purpose held out by the Supplier or expressly made known to the Supplier by CPS and in this respect CPS relies on the Supplier's skill and judgment;
 - (c) be properly packaged and secured in such manner as to enable them to reach the Location in the required condition;
 - (d) be free from defects in design, materials and workmanship as at the date of Delivery notwithstanding that CPS may have initially carried out such design;
 - (e) comply with all Applicable Laws relating to the manufacture, labelling, packaging, storage, handling, sale, delivery and intended usage of the Goods.
- 2.2 CPS (and its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) shall have the right to inspect and test the Goods (or any samples of) at any time on reasonable notice and at a time to be agreed between the parties before or after Delivery, provided always that no inspection or testing by CPS (or its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) shall be deemed to constitute CPS's acceptance of the Goods or diminish or otherwise affect the Supplier's obligations under the Contract.
- 2.3 If following such inspection or testing under paragraph 2.2, CPS (or its clients, the ultimate beneficiaries of the Supply and any of its or their representatives) considers that the Goods do not conform with the Supplier's warranties, undertakings and representations at paragraph 2.1 or are otherwise defective, incorrect or not in compliance with the Specification or the Contract, CPS shall inform the Supplier and the Supplier shall at its own cost, immediately take such remedial action as is necessary and determined by CPS as appropriate to ensure compliance.
- 2.4 Notwithstanding paragraphs 2.2 – 2.3 above, the Supplier shall inspect and test the Goods for compliance with the Contract prior to their Delivery.
- 2.5 The Supplier shall, if requested, supply CPS with such certificates of origin and/or testing as CPS may require. Such certificates must state the relevant Order numbers together with any item numbers.

3 DELIVERY OF THE GOODS

- 3.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in accordance with the best industry standards and applicable safety standards, in such manner as to reasonably expect them to reach the Location (and any onward destination as notified by CPS to the Supplier) in good condition;
 - (b) each Delivery of the Goods is accompanied by a delivery note which shows:
 - (i) the date of the Order;



- (ii) the Order number;
 - (iii) the type and quantity of the Goods (including the code number of the Goods (where applicable));
 - (iv) special storage, delivery and usage instructions (if any); and
 - (v) if the Goods are being Delivered by instalments, the outstanding balance of Goods remaining to be Delivered; and
- (c) if the Supplier requires CPS to return any packaging materials for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

3.2 The Supplier shall Deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then as soon as reasonably practicable (with prior written notice of the Delivery date and time to CPS) and where and for the avoidance of doubt, the Supplier's compliance with such dates and times shall be of the essence; and
- (b) during CPS's normal hours of business on a Business Day, or as otherwise agreed between the parties,

provided that where CPS is unable to accept Delivery for whatever reason, the Supplier shall be required to store the Goods at its own cost and risk until such time as an alternative date for Delivery has been agreed.

3.3 Early Delivery is not permitted except as provided in the Order or otherwise agreed between the parties. Packaging, transport and other cost of Delivery shall be included in the Charges unless otherwise expressly stated in the Order.

3.4 The Supplier acknowledges that it has satisfied itself as to the site conditions and the suitability of the Location for Delivery and installation of the Goods and shall not be entitled to rely on any information provided by CPS, except to the extent that such information is expressly warranted as accurate. CPS shall have no liability for any failure by the Supplier to deliver the Goods, or for any resulting costs, delays or Losses, to the extent that such failure arises from unforeseen site conditions, including inadequate foundations, insufficient electrical capacity, restricted access, or structural issues, except where such conditions were within CPS' knowledge and were not disclosed to the Supplier.

3.5 If the Supplier Delivers:

- (a) less than one hundred (100%) of the quantity of Goods ordered, CPS may save where the remaining balance is due to follow in a separate instalment, reject the Goods; or
- (b) more than one hundred per cent (100%) of the quantity of Goods ordered, CPS may at its sole discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier Delivers more than 10% of the quantity of Goods ordered and CPS expressly accepts the Delivery of the additional quantity of the Goods in writing, a pro rata adjustment shall be made to the invoice for the Goods.

3.6 CPS may delay or alter dates and places by giving the Supplier reasonable written notice.

3.7 The Supplier shall not Deliver the Goods in instalments without CPS's prior written consent. Where it is agreed that the Goods are to be 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 or any defect in an instalment shall entitle CPS to the remedies set out in paragraphs 6.1, 6.2, and/or 6.3 below.

4 TITLE AND RISK

- 4.1 Risk in the Goods shall pass to CPS on Delivery.
- 4.2 Title to the Goods shall pass to CPS on the earlier of Delivery or CPS making payment for any element of the Charges attributable to those Goods.

5 INVOICING

Unless otherwise agreed between the parties, the Supplier may raise its invoice(s) for the Goods at any time following the completion of Delivery.

6 DEFECTS AND REMEDIES

- 6.1 If the Supplier fails (in each case to the extent applicable) to Deliver the Goods on the date for Delivery, CPS shall, without limiting its other rights or remedies under the Contract or otherwise, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent Delivery of the Goods which the Supplier attempts to make;
 - (c) where CPS has paid in advance for Goods which have not been Delivered by the Supplier, to have such proportion of the sums attributable to the undelivered portion refunded by the Supplier; and
 - (d) to claim Liquidated Damages in accordance with clause 8.
- 6.2 If the Supplier has Delivered Goods that do not comply with the warranties, undertakings and representations set out in paragraph 2.1 or otherwise fail to conform with the Contract, without limiting its other rights or remedies under the Contract or otherwise, CPS shall (in each case to the extent applicable) have one or more of the following rights:
- (a) to reject the Goods (in whole or in part) and to return them to the Supplier at the Supplier's own risk and expense;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the Charges attributable to the rejected Goods (if paid) as determined by CPS using its professional discretion;
 - (d) take, at the cost and liability of the Supplier, steps required to make good any defects by replacing or repairing any rejected Goods (whether itself and/or by means of alternative suppliers, including by purchasing substitute Goods);
 - (e) to refuse to accept any subsequent Delivery of the Goods which the Supplier attempts to make; and
 - (f) to claim damages for any Losses (including but not limited to any direct, indirect or consequential Losses, loss of profit, loss of contract or loss of reputation) incurred by CPS arising from the Supplier's failure to supply Goods in accordance with paragraph 2.1.
- 6.3 CPS's rights under paragraph 6.2 shall, unless otherwise specified in the Order, cease at the end of the Warranty Period. In the case of latent defects, CPS shall continue to be entitled to exercise its rights



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after the Warranty Period expires, but only if it exercises it within 28 days of the date the latent defect becomes apparent to CPS. In the case of defects for which an Applicable Law provides a longer Warranty Period than this paragraph 6.3, such longer period shall apply.

- 6.4 These Terms shall extend to any repaired or replacement Goods supplied by the Supplier and any applicable Warranty Period in respect of the same shall be deemed to recommence on the date on which they are accepted by CPS.

SCHEDULE 2 – SERVICES

1 DEFINITIONS

In this Schedule, the following definitions apply:

AWR 2010: the Agency Workers Regulations 2010 (SI 2010/93).

Deemed Employment: an engagement to which section 61M(d) of the Income Tax (Earnings and Pensions) Act 2003 applies.

Engagement: means the engagement of the Supplier (and its personnel) under this Schedule.

Key Personnel: the Supplier's manager and those individuals identified or otherwise agreed as being key personnel between the parties, or any replacement individuals appointed by the Supplier pursuant to paragraph 4.2.

Screen: carry out pre-vetting checks to the level and criteria as required by CPS from time to time.

Location: the location(s) (if any) at which the Services are to be performed, whether owned or operated by CPS or which it is otherwise granted access to.

Supplied Personnel: means the personnel supplied by the Supplier to CPS for the purposes connected with this Engagement as set out in the Order or otherwise agreed between the parties from time to time.

2 SUPPLY OF THE SERVICES

The Supplier warrants, undertakes and represents that the Services and any Deliverables shall in every respect:

- (a) correspond with their description and any applicable Specification and that where any such Specification has been prepared by or on behalf of CPS that:
 - (i) it has fully examined and ratified the accuracy and completeness of the same and/or has notified CPS of any inconsistencies, inaccuracies or incompleteness of the same; and
 - (ii) the Supplier's Proposal complies with the Specification in all respects;
- (b) be performed in accordance with any works programme and/or deadlines contained within the Specification or the Order (as the case may be);
- (c) be of the best quality and fit for any purpose held out by the Supplier or expressly made known to the Supplier by CPS and in this respect CPS relies on the Supplier's skill and judgment;
- (d) be free from defects in design, materials and workmanship as at the date of delivery notwithstanding that CPS may have initially carried out such design;
- (e) be executed with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade and by appropriately qualified and experienced personnel; and



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(f) comply with all Applicable Laws relating to the delivery and intended usage of the Services.

3 THE LOCATION

- 3.1 The Supplier is deemed to have full knowledge of the Location, its conditions and including any sub-structure, related structures or third party structures or Locations which affect the same and the Supplier warrants that the condition of the Location is suitable for the performance of the Services.
- 3.2 If, in the opinion of the Supplier, the ground of the Location (including any private access road or track) is unsuitable for the Services to be performed on, travelled over, the Supplier shall take all necessary steps at its own cost and risk to ensure such suitability.
- 3.3 The Supplier is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Location in the course of accessing, moving around and egressing from the Location and shall unless otherwise notified to it or agreed between the parties, liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.
- 3.4 Where required under the Order or otherwise stated within the Specification, the Supplier shall be responsible:
- (a) for clearing the Location, public highways and access roads, including of any and all vehicles, plant, machinery, goods, temporary accommodation, storage facilities or other materials or waste not required in connection with the Contract and for setting up any and all required barricades, cones or tapes in advance of the performance of the Services;
 - (b) for its own unobstructed access to, movement around and egress from the Location for any reason reasonably required in connection with the performance of its obligations under the Contract; and
 - (c) unless otherwise agreed in writing, for the unloading and loading of any goods, equipment, plant and machinery inherent in the supply of the Services.

4 THE SUPPLIER'S OBLIGATIONS AND PERSONNEL

- 4.1 The Supplier shall observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Locations from time to time. CPS reserves the right to refuse any of the Supplier's personnel involved in the provision of the Services access to the Location, which shall only be given to the extent necessary for the performance of the Services.
- 4.2 In relation to the Supplier's personnel, the Supplier shall:
- (a) ensure that its personnel devote sufficient time and attention to fulfilling their respective roles;
 - (b) use the Key Personnel in the provision of the Services;
 - (c) ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under the Contract;
 - (d) ensure that the Key Personnel have the ability to bind the Supplier;
 - (e) promptly inform CPS of the absence (or the anticipated absence) of any of the Key Personnel, and if so required by CPS, provide a suitably qualified replacement for such individual; and



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(f) use its best endeavours not to make any changes to the Key Personnel throughout the term of the Contract and obtain the prior written approval of CPS (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.

4.3 CPS may at any time instruct the Supplier to remove any person engaged in performing the Services if, in CPS's reasonable opinion, that person's performance or conduct is unsatisfactory. The Supplier shall remove any such person promptly. Any personnel appointed by the Supplier to replace staff removed under this paragraph 4 shall be subject to the written approval of CPS (such approval not to be unreasonably withheld or delayed).

5 INVOICING

Unless otherwise agreed between the parties, the Supplier may raise its invoice for the Services at any time following the satisfactory performance (in the reasonable opinion of CPS) in accordance with this Schedule 2.

6 DEFECTS AND REMEDIES

6.1 If in performing the Services, the Supplier fails to meet any relevant milestones or deadlines then, without prejudice to CPS's other rights and remedies under the Contract and otherwise, CPS may:

- (a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (b) purchase substitute services from elsewhere and reclaim from the Supplier any Losses suffered or incurred (including but not limited to any direct, indirect or consequential Losses, loss of profit, loss of contract or loss of reputation) on a full indemnity basis as a result of procuring such services from a third party instead of the Supplier; and
- (c) where CPS has paid in advance for the Services which have not been delivered by the Supplier, to have such proportion of the sums attributable to the undelivered portion refunded by the Supplier.

6.2 If the Supplier has performed Services or provided Deliverables that do not comply the warranties, undertakings and representations set out in paragraph 2, without limiting its other rights or remedies, CPS shall, in addition to its other rights and remedies under the Contract and otherwise, have one or more of the following rights:

- (a) to reject the Services and/or Deliverables (in whole or in part);
- (b) to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repeat performance of the rejected Services and provide new Deliverables (without any liability to pay any further Charges), or to provide a full refund of the price of the rejected Services or Deliverables (if paid) as determined by CPS using its professional discretion;
- (d) take, at the cost and liability of the Supplier, steps required to make good any defects (whether itself and/or by means of alternative suppliers);
- (e) to refuse to accept any repeated performance of the Services which the Supplier attempts to make; and



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- (f) to claim damages for any Losses (including but not limited to any direct, indirect or consequential Losses, loss of profit, loss of contract or loss of reputation) suffered or incurred by CPS arising directly and wholly from the Supplier's failure to supply Services in accordance with paragraph 2.

STATUS

- 7.1 The relationship of the Supplier to CPS will be that of independent contractor and nothing in the Contract shall render it or any of its personnel (including any Supplied Personnel) an employee, worker, agent or partner of CPS and the Supplier shall not hold itself out as such.
- 7.2 The Supplier shall promptly give to CPS all such information and documentation as it may reasonably require from time to time in order for CPS to determine whether the Engagement is or will be within the rules in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 and is or will be Deemed Employment and, if CPS determines the Engagement is Deemed Employment, in order to comply with any obligation on CPS to deduct and account for tax or national insurance contributions from the fees due. The Supplier shall promptly inform CPS of any material change to any information or documentation previously provided in compliance with this paragraph and shall also promptly provide any other information or documentation that it considers (or ought to reasonably consider) to be materially relevant to determining whether the Engagement is Deemed Employment. Subject to clause 15.3, CPS reserves the right to amend the terms of the Engagement, and the Contract, if the Engagement is determined to be Deemed Employment.
- 7.3 The Supplier shall be fully responsible for and shall indemnify CPS, keep CPS indemnified and hold CPS harmless for and in respect of the following:
- (a) subject to paragraph 7.4, any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from a determination that the Engagement is Deemed Employment or made in connection with either the performance of the Supply or any payment or benefit received by the Supplier (or any of its personnel) in respect of the same, where such recovery is not prohibited by law. The Supplier shall further indemnify CPS, keep CPS indemnified and hold CPS harmless in full against any and all Losses suffered, incurred or otherwise payable by CPS in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of CPS's negligence or wilful default; and
 - (b) any liability arising from any employment-related claim or any claim based on worker status (including associated Losses) brought by the Supplier (and any of its personnel) against CPS arising out of or in connection with the provision of the Supply, except where such claim is as a result of any act or omission of CPS.
- 7.4 The indemnity in paragraph 7.3(a) does not apply to any income tax or National Insurance contributions deducted by CPS if the Engagement is Deemed Employment and CPS makes any deductions from fees due under the Contract prior to payment to the Supplier.
- 7.5 CPS may at its option satisfy the indemnity in paragraph 7.3 (in whole or in part) by way of deduction from payments due to the Supplier.
- 7.6 The Supplier warrants that it is not, nor will it prior to the cessation of the Contract, become a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.



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SCHEDULE 3 – WORKS

1. DEFINITIONS

In this Schedule, the following definitions apply:

CDM Regulations: means the Construction (Design and Management) Regulations 2015.

CIS: means the Construction Industry Scheme.

Completion Date: means the completion date for the Works, as notified to the Supplier in writing.

Core Training Requirements: means any training requirements and/or qualifications relevant to, and reasonably required for the proper and safe performance of the Works, as further set out in the Order.

Deemed Employment: an engagement to which section 61M(d) of the Income Tax (Earnings and Pensions) Act 2003 applies.

Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person;
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works;
- (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works;
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement; or
- (e) having been supplied or placed on the market in breach of Regulation (EU) No 305/2011 and the Construction Products Regulations 2013 (SI 2013/1387).

Good Industry Practice: means using the standards, guidance, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

NIC: National Insurance contributions.

Practical Completion: shall take the meaning given to it in paragraph 7.3.

Programme: means the timetable by which the Works shall be performed, as contained in the Order or otherwise notified by CPS to the Supplier from time to time.

Location: the place or location upon which the Works are to be carried out, as specified in the Order.

Supplied Personnel: means the personnel supplied by the Supplier to CPS for the purposes connected with the Works, as set out in the Order or otherwise agreed between the parties from time to time.

Supplier Equipment: means any equipment (including tools, systems, or facilities) provided by the Supplier, its agents, subcontractors or consultants to CPS and used directly or indirectly in connection with the Supply.

Supplier's Representative: means an individual acting for and on behalf of the Supplier, as agreed between the parties in writing.



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Works: means the works to be provided and performed by the Supplier as detailed in the Order.

Works Commencement Date: means the date in which the Works shall commence, as set out in the Order or otherwise notified to the Supplier.

2. PROVISION OF THE WORKS

2.1 The Supplier warrants and undertakes that it shall:

- (a) commence with the Works on the Works Commencement Date; and
- (b) carry out the Works as directed by CPS (and its authorised representative(s)) and in accordance with any applicable Specification.

2.2 The Supplier shall (to the extent required by the Order) design, carry out, construct, complete, test, commission and maintain the Works and provide all labour, materials, constructional plant, temporary works, transport to and from (and around) the Location, and (except to the extent otherwise provided for in the Order), everything required in and for such carrying out, construction, completion and maintenance of the Works.

2.3 The Supplier warrants, undertakes and represents to CPS that it shall:

- (a) perform the Works in accordance with:
 - (i) Good Industry Practice; and
 - (ii) all Applicable Laws;
- (b) co-operate with, and act in accordance with the instructions of CPS (or CPS's authorised representative);
- (c) and any Works shall conform with any particulars or Specification specified in the Order including any variations;
- (d) perform the Works in a timely way in a proper and workmanlike manner and in accordance with the Programme;
- (e) ensure that the Works shall be fit and sufficient for any purpose for which they are supplied, free from defects in workmanship and subject to any applicable installation and usage guidelines supplied;
- (f) perform the Works with the minimum disturbance to CPS or any other third-party, contractor or supplier occupying or requiring access to the Location; and
- (g) maintain a clean and tidy Location at all times during the performance and progression of the Works.

2.4 Where the Works compromise the completion of design works, the Supplier shall:

- (a) comply with the CDM Regulations; and
- (b) carry out and complete the design, including the selection of any specification for the kinds and standards of the goods, materials and workmanship to be used in the Works in accordance with Good Industry Practice.

2.5 Prior to entering into the Contract, the Supplier shall be deemed to have inspected and examined the Location. If, in the opinion of the Supplier (acting in accordance with Good Industry Practice), the Location is unsuitable for the Works to be performed (or, where Goods are being supplied in conjunction



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with Works, the Location is unsuitable for either the supply, installation and/or use of the Goods), the Supplier shall take all necessary steps at its own cost and risk to ensure such suitability.

- 2.6 The Supplier is responsible (at its sole cost) for the protection of, and liable for any damage to the Location, including but not limited to cables, ducts, water pipes and gas lines, and any other facilities on or adjacent to the Location in the course of accessing, moving around and egressing from the Location and shall unless otherwise notified to it or agreed between the parties, liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.
- 2.7 The Supplier:
- (a) warrants that at all times it (and its Supplied Personnel) shall provide the Works in a professional manner and without uncooperative, abrasive, rude, foul mouth and/or aggressive behaviour towards any of CPS's employees or any other third party;
 - (b) agrees and acknowledges that CPS relies on the skill and judgement of the Supplier and its Supplier Personnel in the supply of the Works; and
 - (c) shall ensure throughout the duration of this Contract that it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 2.8 Any Goods, and Supplier's Equipment brought to, and stored on Location for the incorporation in the Works shall not be moved or removed from Location without the express prior written consent of CPS.
- 2.9 In the event that the Supplier becomes aware of any issues or circumstances which may prejudice the performance of the Works, the Supplier shall immediately notify CPS and take no further action until such time as CPS directs. In the case of any emergency and in the absence of any express instructions from CPS, the Supplier shall limit any action to that which is required under Applicable Laws relating to health and safety, exercising Good Industry Practice at all times. Any action taken under this paragraph shall be without charge.
- 2.10 If the Supplier fails to provide the Works (or any part thereof, where the Works are to be completed in sections or phases) in accordance with the Programme, then without limiting or restricting CPS's other rights and remedies, CPS may:
- (a) refuse to accept any subsequent attempts to perform the Works (or any part thereof) and terminate this Contract immediately by written notice to the Supplier;
 - (b) procure work similar to the Works from an alternative supplier; and
 - (c) require that the Supplier pays Liquidated Damages in the manner specified in clause 8 of the Terms.

3. SUPPLIER GOODS, MATERIALS AND LABOUR

- 3.1 Unless otherwise agreed in writing, the Supplier shall be required to provide the Supplier Equipment and labour in connection with its supply of the Works, inclusive of any operation and maintenance manuals or other relevant documentation as may be required by CPS.
- 3.2 In respect of any Supplied Personnel, the Supplier warrants, represents and undertakes that:
- (a) it shall carry out pre-vetting checks to the level and criteria as may be required by CPS or as may otherwise be notified to the Supplier from time to time;



- (b) they that have a right to work in the United Kingdom (and in this regard, the Supplier further warrants, represents and undertakes that such engagement shall comply with all Applicable Laws relating to immigration, employment and agency);
- (c) they will be appropriately qualified to carry out the Works that they are required to perform;
- (d) any Supplied Personnel:
 - (i) are healthy, fit for work (i.e. not under the influence of any drugs and/or alcohol) and are able to provide the Works in accordance with the provisions of the Contract;
 - (ii) have successfully completed and satisfy the Core Training Requirements; and
- (e) they are contractually obliged to perform the Works in accordance with Applicable Laws and the terms contained in this Contract.

3.3 Without prejudice to the foregoing, the Supplier shall not specify in the course of providing the Works or make use of anything, which is Deleterious at the time of such specification or use.

3.4 If the Supplier becomes of the existence of any Deleterious materials and/or Goods at the Location (whether or not such has been supplied by the Supplier), it shall immediately notify CPS in writing.

3.5 Where requested by CPS, the Supplier shall provide samples of any Goods, materials, and/or Supplier Equipment to be incorporated or used in accordance with the Works (and any samples any samples issued by the Supplier pursuant to this paragraph 3.5 shall be supplied at the Supplier's sole cost).

4. CPS'S EQUIPMENT & MATERIALS

4.1 Any CPS Equipment & Materials, and any other goods and/or materials that are supplied by CPS to the Supplier shall at all times be and remain (as between CPS and the Supplier) the exclusive property of CPS, but shall be held by the Supplier in safe custody at its own risk until returned to CPS, and the Supplier shall not use or copy or dispose of the same other than in association with CPS's written instructions, and the Supplier shall insure CPS's Equipment & Materials against any loss, damage or destruction, howsoever arising during the Works.

4.2 In the event that any loss and/or damage occurs to CPS's Equipment & Materials before Practical Completion (howsoever arising), the Supplier shall immediately notify CPS of the nature, extent and location of the loss and/or damage. The Supplier shall, as directed by CPS, repair or replace CPS's Equipment & Materials, including the removal of any debris.

4.3 The Supplier shall be liable for the cost of the:

- (a) repair or replacement of any of CPS's Equipment & Materials that is lost or damaged by the Supplier or any Supplied Personnel;
- (b) removal of any debris or rubbish; and
- (c) restoration of Location to CPS's reasonable satisfaction,

except to the extent that the loss or damage is due to the negligence, breach of statutory duty, omission or default of CPS.

4.4 In respect of any CPS Equipment & Materials that is to be used in connection with the Works, the Supplier warrants, represents and undertakes that:



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- (a) it has and maintains all the licences, permissions, authorisations, insurance, consents and permits that it needs to operate CPS's Equipment & Materials in the performance of the Works;
- (b) where it will use Supplier Equipment during the performance of the Works, the Supplier Equipment will be, in good condition and in good and safe working order; and
- (c) all Supplied Personnel will operate CPS's Equipment & Materials in accordance with Good Industry Practice.

5. QUALITY, INSPECTION & TESTING

- 5.1 Nothing contained in this Contract shall in any way detract from or otherwise limit or exclude the Supplier's obligations under common law or statute or any express warranty or condition contained in this Contract.
- 5.2 The Supplier shall permit CPS or its authorised representatives to make any inspections or tests it or they may reasonably require in relation to the Works and the Supplier shall afford all reasonable facilities and assistance free of charge. The Supplier shall make good any defects or deficiencies in the event of any failure (in the sole opinion of CPS) to comply with the terms of this Contract. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by CPS of any rights or remedies in respect of the Works.
- 5.3 The Supplier shall provide such assistance, equipment, labour and materials as may be required by CPS for the purpose of measuring and testing the Works, including information relating to the Goods (including but not limited to the quality, weight or quantity).
- 5.4 CPS may by written notice to the Supplier reject any of the Works which fail to meet the requirements in the Contract. Such notice shall be given within a reasonable time after performance of the Works. If CPS rejects any of the Works pursuant to this paragraph 5.4, the Supplier shall at CPS's sole option (without prejudice to its other rights and remedies) either:
 - (a) re-perform the defective Works in accordance with any timescale specified by CPS, such that the re-performed Works comply in all respects with the requirements of the Contract; or
 - (b) refund to CPS the Charges paid in respect of the defective Works.

6. HEALTH AND SAFETY

The Supplier shall:

- (a) inform CPS in a timely manner of any matters (including health, safety or security requirements) which may affect the provision of the Works, and no less than 5 Business Days prior to the commencement of the Works, carry out a risk assessment to identify (and where possible eliminate) risks in connection with the provision of the Works at the Location to control residual health and safety risks identified in the following risk assessment in a form which is acceptable to CPS;
- (b) follow Good Industry Practice at the Location and where possible, use Supplier Equipment and/or materials which are least harmful to the environment; and
- (c) comply with all Applicable Laws, including but not limited to the Health and Safety at Work Act 1974 and the Environmental Protection Act 1990 and all regulations and/or delegated legislation in respect of health and safety at the Location.



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7. PROGRESS AND PRACTICAL COMPLETION

- 7.1 The Supplier shall make available the Supplier's Representative at the Location at all times during the performance of the Works to ensure that the Works are being performed in accordance with the Specification and/or Programme.
- 7.2 Where relevant to the performance of the Works and timely completion of the Programme, the Supplier's Representative shall be required to co-operate and communicate the progress of the Works to CPS, required by CPS from time to time.
- 7.3 Practical Completion of the Works shall be deemed to have occurred when CPS notifies the Supplier in writing that the Works:
- (a) are accepted as practically complete;
 - (b) have (where applicable), passed any test(s) required by CPS for the commissions of, and proper use and performance of the Works; and
 - (c) in the reasonable opinion of CPS, are completed in accordance with any applicable Specification,

and, all circumstances, are free of all defects, and are tested and commissioned as required and accompanied by all documents required to be provided to CPS ('Practical Completion').

- 7.4 CPS may, at any time prior to Practical Completion, notify the Supplier of its rejection of the Works (whether in whole or in part). Where CPS notifies the Supplier of its failure to accept the Works, the Supplier shall use its best endeavours to rectify and/or reperform the rejected Works at the Supplier's sole cost.

8. CHARGES AND PAYMENT

- 8.1 The Charges for the Works shall be set out in the Order.
- 8.2 Where the Works are to be supplied on a time and materials basis (as specified in the Order), the Supplier shall:
- (a) maintain full, accurate and complete records of all times and dates when the Works were carried out and the grade of the individual(s) carrying out such Works for inspection and approval by CPS on a weekly basis;
 - (b) immediately inform CPS in writing where any initial estimate provided by the Supplier in respect of the Works is likely to be exceeded, fully particularising the reasons for such; and
 - (c) where paragraph 8.2(b) applies, not carry out any further Works until CPS has approved a further estimate for such Works in writing.
- 8.3 CPS shall be entitled to refuse payment on any records that have not been approved by it under paragraph 8.2 (and CPS shall not unreasonably delay notification of any approval or disapproval, as the case may be).
- 8.4 Unless otherwise agreed in writing by CPS, no additional rates may be charged for work carried out on days other than Business Days.
- 8.5 The Supplier shall raise an invoice following Practical Completion of Works (as notified to the Supplier in writing) and CPS undertakes to pay correctly submitted invoices within 60 days of the end of the month of physical or electronic arrival at the nominated address of CPS of the invoice.



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8.6 A valid invoice is one that:

- (a) is for the correct sum;
- (b) is in respect of the Works supplied to the required quality;
- (c) quotes the relevant Order; and
- (d) has been delivered to the nominated address.

8.7 CPS's payment of the Charges is strictly subject to the Supplier performing its obligations under and in accordance with this Contract, and in accordance with the Specification and by the Completion Date set by CPS, as may be amended from time to time.

8.8 CPS shall not be liable for any orders or amendments to orders other than those issued or confirmed on the official Order and shall not be responsible for the payment of the Charges for any of the Works supplied in excess of those required by the Order.

8.9 No acceptance of payment of or on account of the Charges shall constitute any admission by CPS as to proper performance by the Supplier of its obligations under this Contract.

8.10 In the event that CPS makes an overpayment in respect of the Charges, the Supplier undertakes that it shall immediately on becoming aware of that overpayment (or on being informed of that overpayment by CPS), return such overpaid sums to the bank account nominated by CPS.

9. CONSEQUENCES OF TERMINATION

9.1 Where the Contract is terminated, for any reason whatsoever prior to completion of the Works, the Supplier shall:

- (a) cease the Works immediately, and vacate Location;
- (b) restore the Location to the satisfaction of CPS; and
- (c) where requested by CPS in writing, remove or procure the removal from Location of any Supplier Equipment.

9.2 Where the Supplier fails to comply with its obligations at paragraph 9.1(c), CPS may, within two (2) Business Days from the date of termination, take possession of, remove, re-sell or otherwise dispose of any Supplier's Equipment, goods or material remaining at the Location.

10. STATUS

10.1 CPS is not obliged to offer Works to the Supplier and the Supplier is not obliged to accept such work if offered.

10.2 The relationship of the Supplier to CPS will be that of independent contractor and nothing in this Contract shall render it nor any Supplied Personnel an employee, worker, agent or partner of CPS and the Supplier shall not hold itself out and shall procure that any Supplied Personnel shall not hold themselves out as such.

10.3 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be solely and fully responsible for the payment of tax and/or NICs in respect of the sums payable to the Supplier under this Contract. The Supplier shall account for such tax, VAT and NICs to the appropriate authorities.

10.4 The Supplier shall promptly give to CPS all such information and documentation as it may reasonably



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require from time to time in order for CPS to determine whether Deemed Employment will apply to the Works and, if CPS does so determine, in order to comply with any obligation on CPS to deduct tax and/or NICs from the Charges due under this paragraph 10.4. The Supplier shall, promptly inform CPS of any material change to any information or documentation previously provided in compliance with this paragraph and shall also promptly provide any other information or documentation that it considers (or ought to reasonably consider) to be materially relevant to determining whether Deemed Employment will apply to the Works.

10.5 The Supplier shall indemnify CPS for and in respect of the following:

- (a) subject to paragraph 10.4, any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Works or any payment or benefit received by the Supplier in respect of the Works, where such recovery is not prohibited by law. The Supplier shall further indemnify CPS against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by CPS in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of CPS's negligence or wilful default;
- (b) any liability arising from any employment-related claim or any claim based on worker status including reasonable costs and expenses brought by the Supplier against CPS arising out of or in connection with the provision of the Works, except where such claim is as a result of any act or omission of CPS; and
- (c) any present or future tax, deductions, liability, contribution or claim issued to CPS under the CIS in connection with the Supplier's performance of the Works, or any payment or benefit received by the Supplier in respect of the Works. The Supplier shall further indemnify CPS against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by CPS in connection with or in consequence of any such liability, deduction, contribution, tax or claim other than where the latter arise out of CPS's negligence or wilful default.

10.6 The indemnity at paragraph 10.5(a) does not apply to any income tax or NICs deducted by CPS if:

- (a) when carrying out the Works, the Supplier has Deemed Employment status; and
- (b) CPS makes the deductions from the Charges payable under paragraph 10 prior to payment to the Supplier.

10.7 Where applicable under the CIS, CPS shall be entitled to make tax deductions from any Charges due and payable to the Supplier in accordance with paragraph 8. The Supplier acknowledges that, where CPS has made any deductions in accordance with this paragraph, CPS shall have fulfilled its obligations to pay the Supplier the Charges and that the Supplier shall not make a claim for any such deductions made.

10.8 CPS may at its option satisfy the indemnity in paragraph 10.5 (in whole or in part) by way of deduction of payments due to the Supplier.

10.9 The Supplier warrants that it is not nor will it be prior to cessation of this Contract, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.