



1. Definitions

Within these conditions (“Conditions”): “Authority” means NEST Corporation; “Contract” means these Conditions, the Order (including its Schedules) and any tender documentation submitted by the Supplier; “Commencement Date” has the meaning set out in Clause 2(a); “EIRs” means the Environmental Information Regulations 2004; “FOIA” means the Freedom of Information Act 2000, and any subordinate legislation made under the Act periodically; “Information” has the meaning given under section 84 of FOIA; “IPRs” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off; “Modern Slavery Act” means the Modern Slavery Act 2015 and any subordinate legislation made under that Act (in each case, as amended, superseded or replaced) ; “Order” means a purchase order for Supplies and/or Services; “Party” means a party to the Contract and “Parties” shall be construed accordingly; “Personal Data” has the meaning set out in the Data Protection Act 1998 (as amended, superseded or replaced) and relates only to personal data of which the Authority is the Data Controller (as defined in the Data Protection Act 1998, as amended, superseded or replaced) and in relation to which the Supplier is providing Services; “Premises” means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its sub-contractors; “Property” means any equipment, tools or tangible property (other than real property) issued or made available to the Supplier by the Authority; “Request for Information” means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs; “Services” means all services to be supplied under an Order; “Supplier” means the contracting party on whom an Order is placed; “Supplies” means all goods to be supplied under an Order; “Staff” means all employees, agents, consultants and contractors of the Supplier and/or any sub-contractor.

2. Order

- a) The Authority shall invite the Supplier to submit a tender for Supplies and/or Services. If the Authority accepts such Tender, the Parties shall execute an Order. The Supplier warrants that such Order shall be executed by its duly authorised representative. The Order shall be accepted on the Authority: (i) issuing an executed version of the Order; or (ii) doing any act consistent with the Order, at which point the Contract shall come into existence (“Commencement Date”).
- b) The Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- c) The Supplier shall reference the Authority’s order number on all correspondence.

3. Supplies

The Supplier shall ensure that Supplies: (i) conform with the quantities, quality standards and specification stated in the Order; (ii) are fit for any purpose held out by the Supplier or made known to the Supplier by or on behalf of the Authority either expressly or by implication and in this respect the Authority relies on the Supplier's skill and judgement; and (iii) are free from defects (whether actual or latent) in design, workmanship and materials and are fit and sufficient for all the purposes for which such Supplies are ordinarily used.

4. Packaging

All Supplies shall be securely and adequately packed and marked with the applicable order number and any additional requirements of the Authority and/or the carriers. The Supplier shall be solely responsible for the cost of removing any packaging from the Premises following delivery.

5. Delivery

- a) The Supplier shall deliver the Supplies to the relevant Premises on the date specified in the Order, which shall be on Monday to Fridays during the hours of 10.00 a.m. to 12.00 noon or 2.00 p.m. to 4.30 p.m.
- b) Delivery of the Supplies shall be completed on completion of unloading, stacking and/or installation of the Supplies at relevant Premises.
- c) If the Authority agrees to accept delivery of the Supplies by instalments, the Supplies may be invoiced and paid for separately. The Supplier's failure to deliver any one instalment on time or at all or a defect in an instalment shall entitle the Authority to exercise the remedies set out in Clause 8(a).
- d) Risk in the Supplies shall pass to the Authority at the time of delivery. Title in the Supplies shall pass to the Authority upon payment, however such passing of title shall not constitute acceptance of the Supplies.
- e) In the event that it is unable to accept deliveries, the Authority may wholly or partly suspend any deliveries under the Order without incurring any additional costs and shall advise the Supplier of an alternative date for delivery of the Supplies as soon as reasonably practicable.
- f) The Authority may inspect and/or test the Supplies at any time before delivery.

6. Services

The Supplier shall: (i) provide the Services to the Authority in accordance with the terms of the Contract; (ii) perform its obligations in respect of the Services with appropriately experienced qualified and trained Staff and with all due skill, care and diligence in accordance with best practice in the Supplier's industry, profession or trade; (iii) meet any performance dates for the Services specified in the Order or otherwise notified to the Supplier by the Authority; (iv) co-operate with, and comply with the instructions of, the Authority in all matters relating to the Services; (v) ensure that the Services and any deliverables will conform with all descriptions and specifications set out in the Order, and that any deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Authority; (vi) use the best quality goods, materials, standards and techniques, and ensure that the deliverables, and all goods and materials supplied and used in the Services or

transferred to the Authority, will be free from defects in workmanship, installation and design, and (vii) provide all equipment, tools and vehicles and such other items as are required to perform the Services.

7. Supplier's obligations

- a) The Supplier shall: (i) ensure that at all times it has and maintains all required licences, permissions, authorisations, consents and permits; (ii) comply with all applicable laws and regulations including, without limitation, the Bribery Act 2010, the Modern Slavery Act and the Equality Act 2010; and (iii) inform the Authority immediately upon becoming aware of any event (including actual or threatened court proceedings) which may impact upon the reputation of the Authority, whether or not connected with the Supplies and/or Services.
- b) For the duration of the Contract and for a period of [six years] thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Authority's request, provide reasonable evidence of the existence of each insurance policy.

8. Authority remedies

- a) If the Supplies are not delivered in accordance with the Order (including late or non-delivery or the delivery of incorrect quantities) or do not comply with the Supplier's undertakings in Clause 3 or any other terms implied by law, or if the Services are not performed by the applicable dates then the Authority may do any one or more of the following (whether or not it has accepted any Supplies):
 - i. accept the Supplies;
 - ii. reject the Supplies (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - iii. request the Supplier to deliver substitute Supplies and/or re perform the relevant Services free of charge within the timescales specified by the Authority;
 - iv. require the Supplier to provide a full refund of the price of the rejected or undelivered Supplies and/or unperformed Services (if paid);
 - v. refuse to accept any subsequent delivery of the Supplies and/or performance of the Services which the Supplier attempts to make; and/or
 - vi. recover from the Supplier any costs incurred by the Authority in obtaining substitute supplies and/or services from a third party.
- b) These Conditions shall extend to any substituted or remedial services and/or replacement goods supplied by the Supplier.

9. Liabilities and indemnities

- a) Neither Party excludes or limits liability to the other Party for: (i) death or personal injury caused by its negligence or that of its employees, agents or sub-contractors (as applicable); (ii) fraud or fraudulent misrepresentation by it or its employees; or (iii) any breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and

Services Act 1982. However in no event shall either Party be liable to the other for any loss of profits, business, revenue or goodwill and/or indirect, special or consequential loss or damage.

- b) The Authority may recover as a direct loss: (i) any additional operational, marketing, public relations and/or administrative costs and expenses arising from the Supplier's default; (ii) any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's default; and (iii) any anticipated savings.
- c) The Supplier shall indemnify and hold harmless the Authority and its officers, servants and agents against all claims, demands, liabilities, damages, costs, losses and proceedings (including any interest, fines, legal and other professional fees) awarded against, incurred or suffered whatsoever by the Authority and however arising (directly or indirectly) out of or in connection with: (i) any claim made against the Authority for actual or alleged infringement of a third party's IPRs arising out of, or in connection with, the supply or use of the Supplies and/or Services; (ii) any claims, demands or proceedings brought against the Authority by any third party arising out of, or in connection with, the provision of the Supplies and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier or the Staff; (iii) any claims, demands or proceedings brought against the Authority by any third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Supplies and/or Services, to the extent that the defect in the Supplies and/or Services is attributable to the acts or omission of the Supplier or the Staff; and (iv) any fraudulent act or omission of the Supplier (including without limitation, any misappropriation of monies due to the Authority).
- d) Save as provided in Clause 9(e), the Authority shall not be liable to the Supplier in any circumstances (whether in contract, tort or otherwise) for any loss damage or injury however caused or arising out of or in the course of or in connection with the provision by the Supplier of the Supplies and/or Services or the access to or the use of the Premises by the Supplier or its Staff.
- e) Clause 9(d) shall not apply to: (i) any failure by the Authority to make proper payment to the Supplier in accordance with the terms of the Contract; or (ii) any deliberate or negligent act or omission of the Authority or any of its employees.
- f) The Supplier's liability to the Authority in respect of: (i) Clauses 9(c)(i), 11(e) and 17(a)(vii) shall be unlimited; (ii) each of the indemnities in Clause 9(c) (other than Clause 9(c)(i)) shall in no event exceed [£2 million (£2,000,000)] per incident or series of incidents related to a common cause; and (iii) in respect of all other losses, shall in no event exceed [£2 million (£2,000,000)] per incident or series of incidents related to a common cause.
- g) Without prejudice to this Clause 9, the Authority's liability to the Supplier shall in no event exceed [£2 million (£2,000,000)] per incident or series of incidents related to a common cause.
- h) This Clause 9 shall survive termination of the Contract.

10. Price

The price for the Supplies and/or Services shall state in the Order, exclusive of VAT, customs duties and taxes, but including the costs of packaging, insurance and carriage of the Supplies and all costs and expenses directly or indirectly incurred by the Supplier in connection with the provision of the Services.

11. Invoices and tax

Invoices quoting the order number, part numbers, description and quantities of Supplies delivered and/or a breakdown of Services performed may be submitted to the Authority at: Invoice Payment Section, Finance Department, NEST Corporation, Riverside House, 2a Southwark Bridge Road, London, SE1 9HA following completion of delivery and/or performance.

- a) Payment will normally be made by the Authority in the month after which a valid and undisputed invoice is received by the Authority. Payment shall be made electronically via the Banks Automated Clearing Service to the bank account nominated in writing by the Supplier.
- b) If the Authority reasonably disputes all or part of an invoice, it shall pay to the Supplier the undisputed part(s) of that invoice but may withhold payment in respect of the disputed part pending the Supplier's provision of any further information reasonably requested by the Authority. On receipt of such further information the Authority may either (i) pay the invoice within 30 days; or (ii) escalate the dispute in accordance with Clause 21.
- c) Where any taxable supply is made by the Supplier to the Authority, VAT shall be added to the contract price at the prevailing rate applicable by law and payable by the Authority to the Supplier upon receipt of a valid UK VAT invoice at the address in Clause 11(a).
- d) The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier by the Authority. Any amounts due under this Clause 11(e) shall be paid by the Supplier to the Authority not less than five days before the date upon which the tax or other liability is payable by the Authority.
- e) The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.
- f) The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under the Contract.

12. Property

Where the Authority issues Property to the Supplier such Property shall be and remain the property of the Authority and the Supplier shall maintain the Property in good order and condition, use the Property solely in connection with this Agreement, store the Property separately at its own risk and ensure that it is clearly identifiable as belonging to the Authority. The Authority may at any time request for the return of the Property at the risk and expense of the Supplier.

13. IPR

- a) Subject to Clause 13(e), all IPRs in any software, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material ("IP Materials"): (i) furnished to or made available to the Supplier by or on behalf of the Authority; and (ii) prepared by or for the Supplier on behalf of the Authority for use, or intended use, by the Supplier, in relation to the performance of its obligations under the Contract, shall belong to the Authority.

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- b) The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the IP Materials prepared in accordance with Clause 13(a) or shall procure that the first owner of the relevant IP Materials assigns them to the Authority on the same basis. This assignment shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant IPRs. The Supplier shall execute all documentation necessary to execute this assignment at its own expense, and/or shall procure that the owner of the relevant IP Materials does so on the same basis.
 - c) The Supplier shall waive or procure a waiver of any moral rights subsisting in any copyright works assigned to the Authority under the Contract.
 - d) The Authority shall grant to the Supplier a non-exclusive licence to use the IP Materials assigned pursuant to Clause 13(b) for the duration of the Contract to enable the Supplier to comply with its obligations.
 - e) The Supplier grants to the Authority, and shall procure that any relevant third parties grant to the Authority, a licence to use, reproduce, modify, develop and maintain any IPRs that the Supplier owned or developed prior to the Commencement Date and are or may be used to perform the Contract (other than those contained within the IP Materials to which the provisions of Clause 13(a)(ii) apply), and which the Authority reasonably requires in order to use the Supplies and/or Services and exercise its rights and take the benefit of the Contract. Such licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign any third party supplying goods and/or services to or on behalf of the Authority.

14. Premises

If the Supplier is required to access the Premises, then it shall be subject to and comply the Authority's the current security and health and safety policies (copies of which are available on request). All equipment belonging to the Supplier shall be at the risk of the Supplier whilst at the Premises and the Authority shall accept no liability for any loss or damage to the same except where any such loss or damage was caused or contributed to by any act or omission of any Authority employee acting in the course of his employment.

15. Assignment and sub-contracting

The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract except with the Authority's prior written consent.

16. Confidentiality

- a) All information associated with the Contract shall be treated as strictly confidential between the Authority and the Supplier.
- b) 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, or otherwise obtained by, 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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it to meet the Receiving Party's

obligations under the Contract and that all employees, agents or subcontractors are informed of the confidential nature of such information.

- c) The Contractor shall not make any press announcement in relation to the Contract or the provision of the Supplies and/or Services, except with the Authority's prior written consent.
- d) This Clause 16 shall survive termination of the Contract.

17. Data protection and FOIA

- a) The Supplier shall: (i) only carry out processing of Personal Data on the Authority's instructions; (ii) implement appropriate technical and organisational measures to protect any Personal Data against unauthorised or unlawful processing and accidental loss or damage; (iii) only transfer Personal Data to countries outside the European Economic Area with the Authority's prior written consent, which may be granted subject to such conditions as the Authority deems necessary; (iv) ensure that access to the Personal Data is limited to those Staff who need access to the Personal Data to meet the Supplier's obligations under the Contract and that all Staff are informed of the confidential nature of the Personal Data; (v) promptly notify the Authority of any notices in connection with the processing of any Personal Data, including subject access requests, and provide reasonable information and assistance to the Authority; (vi) promptly notify the Authority if any Personal Data has been disclosed in breach of this Clause 17(a); and (vii) indemnify the Authority against any loss or damage suffered by the Authority in relation to any breach by the Supplier of its obligations under this Clause 17(a).
- b) The Supplier acknowledges that the Authority is subject to the requirements of FOIA and the EIRs. The Supplier shall: (i) transfer any Request for Information to the Authority as soon as practicable after receipt (and in any event within three days); (ii) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within seven days of the Authority's request; and (iii) provide all reasonable assistance to the Authority in respect of such Request for Information. The Supplier shall not respond directly to a Request for Information unless expressly authorised to do so by the Authority. The Supplier acknowledges that the Authority shall comply with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA regarding the disclosure of Information.

18. Notices

Any notice or other communication entered into shall be in writing (including facsimile or email), and addressed to the Authority at the address set out in the Order. Notices for the attention of the Supplier shall be addressed to the Supplier's registered office (if it is a company) or its principal place of business (in any other case).

19. Term and termination

- a) The Contract shall take effect on the Commencement Date and shall expire automatically upon completion of the Services and/or acceptance of the final consignment of the Supplies by the Authority, unless terminated at an earlier date by operation of law or in accordance with these Conditions.
- b) The Authority may terminate the Contract (in whole or in part) with immediate effect by providing notice to the Supplier. The Authority shall compensate the Supplier in respect of any

unavoidable direct loss incurred by the Supplier by reason of such termination, up to the value of the price which would have been payable for the relevant Supplies and/or Services. The Supplier shall take all reasonable steps to mitigate such loss and the Authority shall only compensate the Supplier for those costs which are not covered by the Supplier's insurance. The Supplier shall submit a fully itemised and costed list of the losses which it seeks to recover from the Authority, with supporting evidence.

- c) The Authority may terminate the Contract (in whole or in part and without incurring any liability to the Supplier) with immediate effect where the Supplier commits a default which is irremediable or, where capable of remedy, is not remedied by the Supplier within 14 days of receiving notice of such default by the Authority.
- d) In the event that the Supplier becomes insolvent or is otherwise deemed to have insufficient assets with which to discharge its debts and liabilities, the Authority may terminate the Contract with immediate effect without incurring any liability to the Supplier.
- e) Termination or expiry of the Contract, howsoever arising, shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiry and nothing in these Conditions shall prejudice the right of either Party to recover any amount outstanding at termination or expiry and the Authority may recover any part completed work including any relevant tools, fixtures and documentation. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.

20. General

- a) No variation to the Contract will be binding upon the Parties unless agreed in writing and duly authorised by an Authority representative as a Schedule to the applicable Order.
- b) Neither Party shall be liable to the other for any delay or failure to perform its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, provided that the Supplier shall use reasonable endeavours to cure any such events or circumstances and resume performance under the Contract.
- c) The rights and remedies provided under the Contract may be waived only in writing by authorised representatives of the Parties in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- d) The rights and remedies provided under the Contract are cumulative and, unless otherwise provided in the Contract, are not exclusive of any right or remedies provided at law or in equity or otherwise under the Contract.
- e) At all times during the Contract the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- f) Any person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- g) If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of

the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

- h) The Contract forms the entire agreement between the Parties and shall supersede any prior communications or representations between the Parties. Each of the Parties acknowledges and agrees that in entering into the Contract and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract. Nothing in these Conditions shall operate to exclude any liability for fraud or negligent misstatement.

21. Dispute resolution

All disputes or questions between the Parties with respect to any matter or thing arising out of or relating to the Contract (other than a matter or thing as to which the decision of the Authority is stated to be final and conclusive, and except and insofar as may be otherwise provided in the Contract) shall be referred to senior representatives of the Parties for resolution in the first instance. If the dispute cannot be resolved within a reasonable period of time following such referral it will thereafter be referred to mediation. Nothing in this Clause 21 shall prevent either Party from applying for emergency injunctive relief.

22. Applicable law

Subject to the provisions of Clause 21, the Authority and the Supplier accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.