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SEC Procurement Limited

and

[Associate Member]

Access Agreement in relation to SEC Framework Agreements and Dynamic Purchasing Systems

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Parties

- (1) **SEC Procurement Limited** of Building 1092 Galley Drive, Kent Science Park, Sittingbourne, United Kingdom, ME9 8GA (**SEC**); and
- (2) **[Associate Member]** **[Associate Member details]** (**Associate Member**)

Introduction

- (A) SEC establishes a range of framework agreements and dynamic purchasing systems in accordance with the Public Contracts Regulations 2015, as listed on SEC's website from time to time (collectively, the **Agreements**).
- (B) The Agreements are established to provide a range of works, services and supplies by appointed service providers (**Service Providers**) and are set up so as to allow access by third party associate members.
- (C) The Associate Member wishes to access the Agreements in order to enter into call-off contracts with Service Providers in relation to the delivery of works, services and/or supplies.
- (D) This Access Agreement sets out the terms on which SEC consents to the Associate Member accessing the Agreements in order to commission such works, services and/or supplies.

Agreed terms

1 Definitions

In this Access Agreement words and expressions shall have the meaning given in the Agreements, unless expressly stated otherwise.

2 Access to the Agreements

The Associate Member covenants to SEC as set out in this Access Agreement.

3 Term

Subject to Clause 6 of this Access Agreement, this Access Agreement shall continue in force until such time as either Party notifies the other Party in writing that it wishes to terminate this Access Agreement.

4 Compliance with Obligations

- 4.1 The Associate Member covenants with SEC that they will duly discharge, perform and observe all the liabilities, obligations and stipulations of the Associate Member under any Call Off Contracts it enters into pursuant to the Agreements and will keep SEC duly and effectually indemnified against all actions, proceedings, claims, demands, costs, damages, penalties and expenses whatsoever under or in respect of any such Call Off Contracts.
- 4.2 The Associate Member covenants with SEC that the Associate Member shall comply with all obligations that are expressed to be obligations of an "Authorised Entity" as defined in the Agreements under which it has awarded call-off contracts.

- 4.3 The Associate Member acknowledges and agrees that, to the fullest extent permitted by law:
- 4.3.1 SEC shall have no liability to the Associate Member (whether in contract, tort or otherwise) for any matter arising out of or in connection with the carrying out of a Mini-Competition by SEC on the Associate Member's behalf; and
 - 4.3.2 SEC shall not be liable for or be required to indemnify the Associate Member against any expenses, liability, losses or costs incurred by the Associate Member which arise out of or in connection with the carrying out of a Mini-Competition by SEC on the Associate Member's behalf, whether under contract, tort or on any other legal basis.
- 4.4 The Associate Member covenants with SEC that the Associate Member shall:
- 4.4.1 be just and true to the Members of SEC and act in good faith;
 - 4.4.2 promote and maintain the good name and reputation of SEC;
 - 4.4.3 comply with its statutory obligations including the requirements of procurement law, in relation to the procurement of Service Providers;
 - 4.4.4 provide to SEC promptly on request such information as SEC determines at its discretion to be necessary to:
 - (a) enable SEC to monitor achievement of SEC's programme and its business;
 - (b) supply to the provider of any grant pursuant to any monitoring or other terms applicable ; or
 - (c) enable SEC to monitor any key performance indicators in any Agreements accessed by the Associate Member or Call-Off Contract;
 - 4.4.5 comply with the terms of each Call-off Contract entered into by the Associate Member in accordance with the Agreement under which it is entered into (as are made available to Associate Members on the SEC website from time to time);
 - 4.4.6 use all reasonable endeavours to avoid conflicts of interest in respect of SEC's programme and declare to SEC any personal or financial interest relevant to the programme; and
 - 4.4.7 co-operate with SEC, its Members and any other Associate Members in relation to the timing of provision of works, services and/or supplies.
- 4.5 Each party undertakes that, except as otherwise permitted by this Agreement, it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of any other party which may have come to its knowledge and each party shall use its reasonable endeavours to prevent the publication or disclosure of any such confidential information.
- 4.6 Each party may disclose other parties' confidential information:

- 4.6.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 4.6; or
 - 4.6.2 with the prior written consent of the other party; or
 - 4.6.3 as may be required by law, court order or any governmental or regulatory authority.
- 4.7 SEC may disclose confidential information in respect of the Associate Member where such disclosure is reasonably required in connection with the provision by SEC of services to the Associate Member or any of SEC's Members, provided that SEC shall notify the Associate Member within 5 Business Days after having disclosed any of the Associate Member's confidential information pursuant to this clause 4.7.
- 4.8 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.
- 4.9 Notwithstanding any other provision of this Agreement, each party will comply at all times with its obligations under Data Protection Legislation and the Freedom of Information Act 2000 and related legislation.
- 4.10 The Associate Member shall indemnify and keep indemnified SEC against any loss, damage, claim, expense, cost or liability which SEC suffers or is liable to suffer arising out of a breach by the Associate Member of this Access Agreement or by the Associate Member of any Call-Off Contract entered into pursuant to this Agreement.
- 4.11 For the avoidance of doubt, SEC shall have no liability to the Associate Member in relation to the provision of any works, services and/or supplies awarded under the Agreements, and/or the Associate Member's use of the Agreements, and SEC does not warrant or guarantee the availability of the Service Providers to carry out any such works, services and/or supplies.

5 **Provision of Information**

- 5.1 Within three (3) Working Days of awarding any Call Off Contract to a Service Providers under the Agreements the Associate Member shall provide SEC with confirmation of the projected total value of such Call Off Contract and the projected monthly value of such Call Off Contract (in both cases excluding VAT), together with such other information as SEC may reasonably require in connection with such Call Off Contract. For the avoidance of doubt, the projected monthly value for this purpose shall be an amount equal to the total projected value divided by the number of months that the Call Off Contract is due to last for, disregarding the effect of any proposed retention;
- 5.2 The Associate Member shall, within three (3) days of any request from SEC provide SEC with copies of all invoices the Associate Member has received from Service Providers pursuant to the terms of Call Off Contracts, together with such other information as SEC may reasonably require in connection with such Call Off Contracts.

5.3 For the avoidance of doubt (and without limitation to any other provision of this Agreement), a breach of any provision of this Clause 5 by the Associate Member shall constitute a material breach of the provisions of this Agreement for the purposes of Clause 6.1.1.

6 **Revocation**

6.1 Without prejudice to SEC's other rights against the Associate Member under this Agreement or under common law, the Associate Member may revoke the Associate Member's right to enter into Call Off Contracts pursuant to the Agreements if:

6.1.1 the Associate Member commits a material breach of the provisions of this Agreement; and/or

6.1.2 the Associate Member commits a material breach of the provisions of the Agreements;

6.2 If SEC wishes to exercise its right under Clause 6.1, it must serve a written notice on the Associate Member stating that the Associate Member's right to enter into Call Off Contracts pursuant to the Agreements has been revoked, and the date from which such revocation shall have effect (the **Revocation Date**).

6.3 Following the Revocation Date, the Associate Member shall not be entitled to enter into any new Call Off Contracts pursuant to the Agreements.

6.4 Following termination of this Access Agreement in accordance with Clause 3, the Associate Member shall not be entitled to enter into any new Call Off Contracts pursuant to the Agreements.

6.5 In no event shall revocation referred to in Clause 6.1 be deemed to affect or amend in any way any Call Off Contracts entered into prior to the Revocation Date.

7 **Assignment and Novation**

7.1 SEC may, at any time, assign, novate, charge or transfer its interest in this Agreement and/or any rights arising under it to any party without the consent of the Associate Member being required. The Associate Member shall enter into all necessary documentation to give effect to such assignment, novation, charge or transfer.

7.2 The Associate Member shall not assign, novate, charge or transfer its interest in this Agreement and/or any rights arising under it to any party without the prior written consent of SEC.

8 **No Agency, Partnership or Joint Venture**

Nothing contained in this Agreement shall be construed as creating an agency, partnership or joint venture relationship between the parties.

9 **General**

9.1 Nothing in this Access Agreement confers or purports to confer on any person any rights pursuant to the Contracts (Rights of Third Parties) Act 1999.

This Access Agreement is governed by English law and subject to the jurisdiction of the Courts of England and Wales. This Access Agreement has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by affixing the Common)
Seal of)
Member)

in the presence of:

Common Seal

.....

Authorised Signatory

OR if no Common Seal

Executed as a deed by
Member

.....

Authorised Signatory

.....

Authorised Signatory/Secretary