

# IN-TEND

## Software Licence Purchase Agreement

Software:	In-tend
Version:	<b>v3.5.3.6</b> (updated with each new standard release)
Licensor:	In-tend Limited ("In-tend")
Address:	3A Phoenix Riverside, Rotherham, South Yorkshire, S60 1FL
Licensee:	<b>xxx</b> (herein after referred to as "You")
Head Office Address:	

### Prepared for In-tend by:

Signature	
Name	
Position	
Date	

### Accepted on behalf of **xxxxxxx** by:

Signature	
Name	
Position	

<b>Date</b>	
-------------	--

## Schedule 1

INSTALLATION	
Hosting	Provided by In-tend Ltd
Number of concurrent users (In-tend reserve the right to audit to establish the usage of the system)	No restriction on number of authorised users issued with a log in by Your System Administrators. You are required to manage this database.
INITIAL TERM (for Maintenance, Support and Hosting)	
From:	Date
To:	Date
IN-TEND PROPOSAL DATES	
Tender/Quotation reference number (where applicable)	xxxx
Date of proposal	Date
SUPPORT CONTACTS	
<p>"Support Contacts" are your appointed system administrators authorized to contact the Support Helpdesk. Internal queries are ordinarily to be filtered via your appointed and trained System Administrators prior to being received by Support.</p> <p>There is no restriction on your supplier base (including any third parties with whom You may be collaborating on a procurement or tender exercise) from contacting support directly</p>	<p>Notwithstanding the number of designated "Support Contacts", the number of Your users who may contact the In-tend Support Helpdesk is limited to three fully trained users. You agree You will endeavour to triage the majority of internal queries through Your own system administrators/users initially before contacting the In-tend Support Helpdesk.</p>
MODULES	

	Modules incorporating: <ul style="list-style-type: none"> <li>- e-Tendering</li> <li>- e-Contract Management (including Contracts Register)</li> <li>- e-Vendor Management</li> <li>- e-Evaluation</li> <li>- e-Auction</li> </ul>
<b>Charges</b>	
<b>Year 1 Charges</b>	<b>£xxx (Inc. VAT)</b>
<b>Year 2 Charges</b>	<b>£xxx (Inc. VAT) *</b>
<b>Year 3 Charges</b>	<b>£xxx (Inc. VAT) *</b>
<b>Year 4 and 5 Charges (if contract is extended)</b>	<b>£xxx (Inc. VAT) *</b>

\* Where pricing is not fixed or paid in whole upfront, a 5% annual inflationary maintenance and hosting charge has been applied

## 1 LICENCE

- 1.1 In-tend grants to You with effect from the commencement date of the Term shown in Schedule 1 ("Term") a non-exclusive, non-transferable licence to use and access the Software. You may use the Software for Your own internal data processing requirements only and shall not permit any third party, other than your appointed contractors and third parties with whom You may be collaborating on a procurement or tender exercise, to use the Software; or not use the same on behalf of any third party (other than contractors and third parties with whom You may be collaborating on a procurement or tender exercise), unless agreed by In-tend in writing, in any way.
- 1.2 You may use the Software on computer(s) under Your control including all sites and remote locations under Your ownership. This clause shall not prevent the remote use of the software by you or your appointed contractor(s) (including third parties You may be collaborating with on a procurement or tender exercise) where required. As the software is completely hosted, it may be used from any point of access. Access will be monitored by You.

## 1 A ORDER OF PRECEDENCE

If and to the extent of any inconsistency or conflict between any of the clauses, the Schedules, and any document incorporated into this Agreement, the order of priority for the purposes of construction, is in descending order of precedence in the list below (such that the document in clause 1A (a) is highest in the order of precedence and so on):

- (a) Schedule 1;

- (b) clauses 1 – 12 of this Agreement;
- (c) Schedule 5 (the Tender Response); where applicable
- (d) Schedule 4;
- (e) Schedules 2 and 3; and
- (f) any other document incorporated by reference into this Agreement.

## **1 B Tender Response**

In-tend shall ensure that the Software meets the stated requirements described in Schedule 5 and, subject to Your payment of the Charges, and any bespoke development work commissioned, shall be obliged to meet all commitments made in its tender responses, set out in Schedule 5, under this Agreement, either from outset, or at agreed delivery milestones, notwithstanding any changes to specifications made by You.

## **2. HOSTING**

### **2.1 Hosting of the Software ("Hosting") is to be provided by In-tend.**

In-tend shall procure Hosting by a Hosting Specialist (the "Specialist") and the following provisions of this clause 2 shall apply. The service level agreement ("Service Level Agreement") applicable to the provision of the Hosting is set out in Schedule 2 or, if In-tend changes the Specialist, such replacement Service Level Agreement as In-tend may notify to You. If In-tend changes the Specialist, In-tend shall use all reasonable endeavours to negotiate a Service Level Agreement with the new Specialist that is not materially less favourable to You than that set out in Schedule 2.

### **2.2 You must use the Hosting service for lawful purposes only and strictly in accordance with the acceptable use policies of the Specialist and its connected networks, as notified to You from time to time. In particular and without limitation, You must not (and must not authorise anyone to) use the Hosting service to send or receive any material which is defamatory, offensive, abusive, indecent, obscene, or menacing; in breach of confidence, privacy, trade secrets; in breach of any third party intellectual property rights (including copyright); in breach of any other rights; to cause annoyance, inconvenience, or needless anxiety; or in breach of any instructions provided by the Specialist (and relayed by In-tend to you, if applicable). You acknowledge and agree that, without prejudice to In-tend's other rights and remedies, breach of this clause 2.2 may result in immediate suspension of the Hosting service by the Specialist.**

### **2.3 Without limiting the generality of clause 8 below, In-tend will not accept liability for any of the following arising from the provision of Hosting, namely:**

- 2.3.1 the corruption or destruction of data caused by You or a Third Party given access by You; and
- 2.3.2 the transmission or reception of infringing data of any kind.

## **3. FEES AND PAYMENT**

### **3.1 The initial licence fee, first year's Maintenance and Hosting, Project Management (where applicable), Training, associated agreed expenses and other agreed first year costs (the "Year 1 Charges") are payable within 14 days from date of invoice.**

### **3.2 The total Charges for years 1, 2, 3 and, if extended in accordance with clause 6.1A, year 4 ("Year 1 Charges", "Year 2 Charges", "Year 3 Charges", "Year 4 and 5 Charges" respectively) are set out in Schedule 1. Where Charges are not fixed or paid in full upfront for the contract term, a 5% inflationary increase will be added. This has been highlighted within "Schedule 1 Charges" where appropriate.**

- 3.3 In-tend shall issue one invoice to You annually for the relevant year's Charges, and you are required to issue a Purchase Order 60 days prior to the new maintenance and hosting terms to allow for payment in full prior to the new maintenance and hosting term. Any Charges payable by You pursuant to this Agreement shall, unless otherwise agreed, be payable within **14** days of the date of In-tend's invoice for those charges. Where payment is not received in full prior to the commencement date to allow for seamless provision of service, In-tend reserve the right to cease supply and charge a 20% re-connection fee, in addition to the outstanding monies for the service period invoiced.
- 3.4 Unless otherwise indicated, all charges are exclusive of any applicable value added tax or any other taxes, levies or duties, which will be payable by You in addition.
- 3.5 If You fail to make any payment at the time or within the period required under this Agreement, and In-tend serves You with written notice of such failure and a further 30 days elapses where payment is not made, then without prejudice to any other right or remedy available, In-tend may in its sole discretion: -
- 3.5.1 suspend the performance of any or all of its obligations under this Agreement and charge a re-connection fee of 20% of the fees outstanding; or
  - 3.5.2 charge interest (both before and after any judgement) on a day to day basis at the rate of 3% plus the Bank of England rate for business to business transactions; or
  - 3.5.3 terminate this Agreement pursuant to clause 6.2.1 below.

#### **4 TITLE AND OWNERSHIP**

- 4.1 You acknowledge that all rights, title, and interest in the Software and other property, either tangible or intangible that In-tend may supply to You pursuant to this Agreement, including but not limited to such patent, copyright, trade secret, and other proprietary rights as may be applicable, is vested in In-tend and You shall have no right or title therein except the right to use the same under and in accordance with the terms of this Agreement. Where any bespoke development is required by You, ownership of any resulting intellectual property will remain with In-tend Ltd.
- 4.2 You retain all right, title and interest in all intellectual property rights in any materials and/or data provided by You or any third party authorised by You to use the Software in accordance with clause 1.

#### **5 DECOMPIlation**

- 5.1 Except to the extent and in the circumstances expressly permitted by law, You shall not alter, modify, adapt or translate the whole or any part of the Software in any way nor permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs nor decompile, disassemble or reverse engineer the same nor attempt to do such things.

#### **6 TERM AND TERMINATION**

- 6.1 This Agreement shall come into force on the "From" date set out in Schedule 1 and, subject to earlier termination in accordance with this clause, shall continue for a period of **three (3) years (Initial Term)** and for any period of extension required pursuant to clause 6.1A (**Extension Period**).
- 6.1 A Unless six months' notice in writing is given prior to the end of Initial Term of this Agreement, In-tend will have the right to assume that access to the portal is required for a further year as a minimum beyond this term and rolling access and contract terms applied. A Purchase Order required for on-going maintenance and hosting and is the responsibility of You to issue for the value advised by In-tend's Accounts Department. In-tend will quote for any further contractual periods at discounted rates for contract extensions of 12 months or more as requested by You (with any extension thereof pursuant to clause 2.2), and any such extension shall be on the terms of this Agreement (including the Charges) in effect as at the effective date of the Extension Period.
- 6.1.2 You may terminate this Agreement (in whole or in part) with immediate effect upon notice in writing to In-tend if: -

- 6.1.3 In-tend's Specialist (as defined in Schedule 2) does not meet the service levels contained in Schedule 2 for 3 consecutive months or on 3 separate occasions in a 6-month period; or
- 6.1.4 In-tend becomes insolvent or bankrupt or if an order is made or a resolution is passed for the winding up of In-tend or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part any part of the In-tend's assets or business or if In-tend makes any composition with its' creditors or takes or takes or suffers any similar or analogous action in consequence of debt; or
- 6.1.5 In-tend commits any material breach of this Agreement provided that, if the breach is capable of remedy (being actual remedy as opposed to remedy by payment of damages or compensation), the notice shall only be given if In-tend has not remedied the same within 15 working days of having been given notice in writing specifying the breach and requiring it to be remedied;
- 6.2 In-tend may terminate this Agreement immediately upon notice in writing to You if:
- 6.2.1 You fail to pay any sum due under this Agreement by thirty (30) working days following written notification by In-tend that there has been a failure to pay; or
- 6.2.2 You commit any other material breach of this Agreement provided that if the breach is capable of remedy (being actual remedy as opposed to remedy by payment of damages or compensation) the notice shall only be given if You shall not have remedied the same within 15 working days of having been given notice in writing specifying the material breach and requiring it to be remedied;
- 6.2.3 You become bankrupt or commit any act of bankruptcy or enter into an arrangement with Your creditors or are put into liquidation otherwise than voluntary liquidation for the purpose only of amalgamation or reconstruction or if a receiver or administrator is appointed over any of Your assets or undertaking or any part thereof or anything analogous to the foregoing under the law of any country occurs in relation to You.
- 6.3 Termination of this Agreement for any reason shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into or continuance in force of any provision of this Agreement, which is expressly or by implication intended to come into or continue in force on or after such termination.
- 6.4 Upon termination of this Agreement for any reason (but not upon termination of that part of the Agreement relating to the provision of Support/and or Hosting where off-boarding provision has been made), You shall immediately cease using the Software.
- 6.5 You may terminate this Agreement (in whole or in part) at any time by giving not less than 3 months' notice to In-tend.
- 6.6 If You terminate the Agreement for cause (in whole or in part) under clause 6.1, In-tend shall refund a pro rata proportion of any sums paid by You for hosting services not performed.
- 6.6 If requested by You, In-tend agrees that following termination or expiry of this Agreement it shall, for a period of not less than 3 months prior to the termination date, provide all reasonable off-boarding additional support and assistance to You to enable You to migrate Your data. In particular, In-tend shall offer You three options on termination or expiry:
- a) In-tend shall make all Your data available for extraction via excel as well as all documents saved either individually or to a zip file. In-tend shall ensure that all audit trails can be exported along with evaluation tables and all evaluator comments, KPI results and clarification trails. In-tend shall ensure that You can create tailored bespoke reports allowing for mass download/export of very specific data. This option can be done in Your own time at no additional charge; or
- b) In-tend shall keep the system live on an access only manner meaning You can log into the Software and view all information and export however you will be unable to conduct any further tender projects or contracts. This will allow You to retain all data in an archive access database which you can access or export at any time. The cost for this is 25% of Your previous annual 'Hosting & Maintenance' fee (inclusive of any inflationary increases as appropriate); or

c) In-tend shall migrate all Your data from the system into a manageable format as required. This would incur a development cost which would depend on the data required and the format. Our development is calculated in day rates and would be £1,500 +VAT p/day and would require further discussion to determine the amount of days required.

## **7 LIMITED WARRANTY AND DISCLAIMER OF WARRANTY**

- 7.1 In-tend warrants that: (i) the Software shall substantially perform the functions described in the user manual for the version or modules listed in Schedule 1 when operated in conjunction with the supported operating system/s; (ii) that all services under this Agreement shall be performed with all reasonable care and skill and in accordance with all applicable laws from time to time in force; (iii) it will co-operate with You in all matters relating to the services; (iv) its staff are suitably skilled and experienced to perform the tasks allocated to them; (v) that it has all the necessary rights and licences in respect of all intellectual property rights in the Software to enable it to grant the licence and provided associated services under this Agreement; and (vi) the Software will meet the requirements (both technical and otherwise) set out in Schedule 5. In-tend does not warrant that the Software will meet Your other requirements, that the Software will operate in combinations that You may select that are not expressly stated in Schedule 5, that the Software operates satisfactorily in conjunction with third party software not specified in the documentation referred to above (or otherwise approved by In-tend in writing) or that operation of the Software will be uninterrupted or error-free.
- 7.2 With hosting provided, In-tend shall use all reasonable endeavours to procure compliance by the Specialist with the Service Level Agreement ("Specialist" and "Service Level Agreement" being defined at clause 2.1 above). You must notify In-tend of any claim you intend to make for service credits within the period referred to at clause 2 of the Service Level Agreement and Your entitlement to service credits in respect of hosting services shall, in no event, exceed the credits that In-tend receives from the Specialist in respect of the Hosting service provided to You pursuant to this Agreement, except where the Specialist has refused to pay service credits due to any act or omission of In-tend (in which case In-tend shall remain liable to You for those service credits that would otherwise have been payable).
- 7.3 You use reasonable endeavours to give notice to In-tend as soon as You are reasonably able upon becoming aware of a breach of the warranty contained in clause 7.1 above.
- 7.4 Subject to You providing (where reasonably possible) a documented example of the relevant defect or failure to the Support helpdesk, In-tend shall remedy any breach of those warranties by the provision of remedial services in accordance with clause 9 below.
- 7.5 The foregoing warranties are in lieu of all other warranties, express or implied, which are excluded to the fullest extent permissible by law.

## **8 LIMITATION OF REMEDIES**

- 8.1 In-tend does not seek to limit or exclude its liability to You for the injury to or death of person caused by any negligent act or omission or willful misconduct of In-tend, its employees, agents or any sub-contractors.
- 8.2 Except for the type of liability referred to at clause 8.1, any other matters for which a party's liability may not by law be restricted or excluded by law, and subject always to clause 11A, the total liability of either party in respect of any contractual breach or representation, statement or tortuous act or omission (including negligence) arising under or in connection with this Agreement (a "Default") shall not exceed 75% of the total sums payable by You under this agreement (assuming the Agreement continues for the full contract term). For the avoidance of doubt, any service credits paid or payable by In-tend shall not count towards or reduce In-tend's liability cap.
- 8.3 Notwithstanding anything else contained in this agreement (and without limiting In-tend's liability in respect of injury to or death of any person caused by any negligent act or omission or willful misconduct of In-tend, its employees or subcontractors), In-tend shall not be liable to You for any loss of profits,



goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by You as a result of an action brought by a third party), whether arising from negligence, breach of contract or otherwise howsoever.

## **9 SOFTWARE AND SUPPORT SERVICES**

- 9.1 In-tend shall provide support services ("Support Services") in respect of the Software in accordance with clauses 9 and 10 of this Agreement and In-tend's "Software Support Policy", set out in Schedule 3. In addition, In-tend shall use all reasonable endeavours to resolve (via allocated buyers and suppliers dedicated telephone helplines, details of which have been or will be provided to You) any difficulties and queries that You may have in relation to Your use of the Software provided that Your system administrators have been trained on current and available functionality ("Latest Release"). All internal support related queries are to go via the internal System Administrators for resolve in the first instance, and all unlocking supplier enquiries are the responsibility of You to unlock.
- 9.2 Unless otherwise agreed by In-tend in writing, Support Services shall be provided only between the hours of 08:30 and 17:00 Mondays to Fridays excluding English statutory holidays.
- 9.4 In-tend shall not be obliged to accept requests for Support Services other than from support contacts nominated by You and whose details have previously been provided in writing to In-tend (the maximum number of such support contacts not to exceed the number indicated in Schedule 1). You must ensure that the nominated support contacts (System Administrators) have been fully trained in the use of the Software.

## **10 YOUR OBLIGATIONS**

- 10.1 During the period of this Agreement during which In-tend is to provide Support Services (as defined in clause 9.1 above), You shall;
- 10.1.1 not request, permit or authorise anyone other than In-tend (its agents or sub-contractors (if any)) and/or Your internal IT team to provide any maintenance or support services in respect of the Software and/or its Current Release;
- 10.1.2 co-operate fully with In-tend's personnel in the diagnosis of any error or defect in the Software;
- 10.1.3 where personal information is disclosed by You to In-tend and processed by In-tend, or the Specialist (as defined at clause 2.1) in connection with the provision of Hosting (as defined at clause 2.1), obtain all necessary consents and approvals to ensure that such processing is carried out in accordance with Schedule 4.
- 10.2 To the extent that In-tend agrees with You to visit any address of Yours for the purpose of providing Support Services encompassing Training (as defined at clause 9.1 above) or other services under or pursuant to this Agreement, You shall:
- 10.2.1 ensure for health and safety reasons that In-tend's personnel, upon or prior to entering Your premises for the purposes of this Agreement, are made familiar with Your premises and safety procedures and have access, at all times while on those premises, to a member of Your staff familiar with Your premises and safety procedures.
- 10.3 Failure to comply with section 10.2 may result in In-tend charging for site visits (including reimbursement of expenses reasonably incurred) in accordance with In-tend's standard charging rates as from time to time amended.

## **11 FORCE MAJEURE**



In-tend shall not be liable to You or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform any of its obligations under this Agreement if the delay or failure was due to any cause beyond In-tend's reasonable control including but not limited to industrial action (not involving In-tend's staff or those of its suppliers and/or contractors), war, fire, unforeseeable prohibition or legal enactment of any kind, or any act or omission by You.

#### **11 A INDEMNITY**

11A.1 In-tend shall fully indemnify and hold You harmless against any losses, damages, cost, charges, expenses and other liabilities (including without limitation, reasonable legal fees), whether foreseeable or not, incurred or sustained by or awarded against You as a result of or in connection with:

- 11A.1.1 any claim or action that the Software infringes the intellectual property rights or any other proprietary or equitable right of a third party;
- 11A.1.2 any claim or action for death or injury resulting from its own or that of its employees', agents' or subcontractors' negligence;
- 11A.1.3 any damage to Your tangible property resulting from the negligence of In-tend or of its employees, agents; and
- 11A.1.4 any loss or corruption of Your data including the costs and expenses associated with its recovery and/or reconstruction if and to the extent that such loss is caused by or contributed to by any act, omission or breach of contract of In-tend.

#### **11 B CONFIDENTIALITY, TRANSPARENCY AND DATA**

Each party shall comply with its obligations under Schedule 4.

#### **12 GENERAL**

- 12.1 You may not assign or purport to assign (or otherwise transfer or purport to transfer) this Agreement or any of Your rights and obligations under it. In addition, You may not grant sub-licenses' under the licence granted to You at clause 1 above, except in relation to contractors and third parties with whom You may be collaborating on a procurement or tender exercise.
- 12.2 This Agreement is assignable by In-tend, and In-tend may also sub-contract any of its obligations under this Agreement as it sees fit (provided that it remains responsible to You for any acts and omissions of its sub-contractors).
- 12.3 Notices or other documents to be given under this Agreement shall be in writing and delivered by hand or sent by registered post to the party concerned at its address set out at the head of this Agreement or such other address as one party may from time to time designate by written notice to the other. Any such notice or other document shall be deemed to have been received by the Receiving Party.
- 12.4 No waiver by In-tend of any breach of this Agreement by You shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver must be in writing to be effective.
- 12.5 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.
- 12.6 No variation or addition to this Agreement shall be binding upon In-tend unless agreed in writing between a director of In-tend and Your duly authorised representative.
- 12.7 This Agreement embodies the entire understanding of the parties and overrides any prior promises, undertakings or representations. Nothing contained in this clause shall, however, operate to limit or exclude liability for fraud.

- 12.8 A person who is not a party to this Agreement has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party, which exists or is available apart from that Act.
- 12.9 This Agreement shall be construed under the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

## SERVICE LEVEL AGREEMENT

### Schedule 2

#### SOLUTION HOSTED WITH NODE 4 (referred to as 'Specialist' within the agreement).

This is the Service Level Agreement between In-tend (hereafter the "Customer") and the current Specialist. In-tend's warranty at clause 7.13 of the Agreement to which this is a Schedule applies to paragraphs 1-7 below.

1. Service Level Warranty. NODE 4 will use its commercially reasonable endeavours to provide availability of Services 100% of the time. If Customer is unable to transmit and receive information from the network of routers, switches and communication channels owned by NODE 4 (the 'Network') to other portions of the internet because NODE 4 failed to provide Services for more than one continuous hour, then NODE 4 will credit Your account a pro-rata Hosting fee for the continuous duration of such failure to provide Services, provided that such credits will not exceed in aggregate the 50% of Subscription Fees otherwise due from the Customer for one (1) calendar month for failures in any one (1) calendar month. Failure to provide Services shall mean TCP/IP traffic was unavailable to be sent or received from NODE 4's data centre, other than caused by regularly scheduled or emergency maintenance events, or Customer caused outages or disruption, or performance of Internet networks controlled by other companies, or traffic exchange points which are controlled by other companies, or blocking of data communications in contravention of any Acceptable Use Guidelines or for protection of the Network.

2. Notification. Customer must notify NODE 4 in writing within twenty one (21) business days from the time Customer becomes eligible to receive a credit in order to

qualify to receive such credit. Failure to comply with this requirement will forfeit Customer's right to receive a credit.

3. Limitation on Remedies. Service credits are not applicable for more than one breach of any targets outlined in this document arising from the same occurrence. Service credits will not be payable by NODE 4 to the Customer in relation to the Service Availability for faults or disruptions to the Service caused by any of the following:

- The fault, action or negligence of the Customer, its employees, agents or contractors;
- The Customer failing to comply with NODE 4's Standard Terms and Conditions;
- A fault in, or any other problem associated with, equipment connected on the Customer's side of the NODE 4 Network Termination Point, except where such fault or problem is directly caused by the fault action or negligence of NODE 4, its employees, agents or contractors;
- Any event described in Clause 12 (Force Majeure) of NODE 4's Standard Terms and Conditions;
- A failure by the Customer to give NODE 4 access to any equipment after being requested to do so by NODE 4; or
- Maintenance during any Planned Outage
- Where the customer is unable to provide 24 hour site access
- Faults relating to PSTN or Analogue Phones lines

The provision of Service credits shall be the sole and exclusive remedy for the failure to meet targets for the Co-

location service. NODE 4 shall have no additional liability to the Customer.

4. Disclaimer of Third Party Actions and Control. NODE 4 does not and cannot control the flow of data from the Network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which Customer's connections to the Internet (or portions thereof) may be impaired or disrupted. Although NODE 4 will use commercially reasonable endeavours to take actions it deems appropriate to remedy and avoid such events, NODE 4 cannot guarantee that they will not occur. The Customer shall have no claim for any service credits, breach of contract or otherwise in respect of any such period of non-availability.

5. NODE 4 reserves the right to suspend or cancel all or any of the Services for legal or regulatory reasons. Wherever possible, NODE 4 shall provide notice of such matters. The Customer shall have no claim for service credits, breach of contract or otherwise in respect of any such period of non-availability.

6. The Customer accepts that computer and telecommunication systems are not fault free and may experience or require occasional periods of downtime (during which some or all of the Services will not be available) whether for repair, maintenance, upgrading or otherwise, and NODE 4 cannot guarantee uninterrupted availability. NODE 4 will use all reasonable endeavours to minimise such periods of non-availability. The Customer shall have no claim for any service credits, breach of contract or otherwise in respect of any such period of non-availability. The Customer shall have no claim for any service credits, breach of contract or otherwise in respect of any such period of non-availability. NODE 4 would notify In-tend with a minimum of thirty six hours notice of planned outages to enable In-tend to notify You.

7. Other Networks: Approval and Usage. The Services provide the Customer with the ability to transmit data beyond the Network, through other networks, public and private. Use of or presence on other networks may require approval of the respective network authorities and will be subject to any acceptable usage policies such networks may establish. Customer will not hold NODE 4 responsible for, and NODE 4 will not be liable for, such approval or for violation of such policies, however caused, other than to the extent that such exclusion is prohibited by applicable law. Customer understands that NODE 4 does not own or control other networks outside of the Network, and NODE 4 is not responsible or liable and does not accept liability for performance (or non-performance) within such networks or within interconnection points between the Services and other networks that are operated by third parties.

**End**

## In-tend Ltd – Software Support Policy - Schedule 3

In-tend Limited sells a suite of software to Clients including:

**In-tend™** A procurement tender management system

It is often the case that In-tend's software is mission-critical either to a client's whole operation, or to a division or department. Thus In-tend places the highest priority on documenting its support policy and monitoring performance against that policy. All support calls need to be logged via In-tend's internal ticketing system 'DSMS', and not reported via Sales or Training personnel.

### Organisation of the support function

In-tend has a dedicated customer support department with dedicated telephone and e-mail contact addresses.

**For Your Supplier base, the local rate contact telephone contact details are: 0845 557 8079 and email [support@in-tend.co.uk](mailto:support@in-tend.co.uk)**

**For Your System Administrator's (internal system users), the Buyers dedicated contact telephone details are: 0843 8498404 and email [support@in-tend.co.uk](mailto:support@in-tend.co.uk)**

Standard support is available between the hours of 8:30 and 17:00 GMT Monday and Friday excluding English public holidays. Additional extended support hours can be negotiated on request.

Support calls from receipt through to resolution are recorded on a bespoke database. This enables In-tend to run exception report on actions overdue, and to analyse the support activity from us to you as the Client.

*In-tend require the client to nominate two support contacts. It is the experience of In-tend that the bulk of support calls from a widespread user base relate to data and "how to" calls rather than system problems. These can be filtered out by the client nominating an in-house team of "super-users ' System Administrators'" who offer the first line of internal support to users in the field. The super-users contact In-tend if they are unable to resolve problems. The importance of this arrangement is that In-tend's support is concentrated on appropriate problems rather than being dispersed.*

It is extremely helpful in being able to respond urgently to support problems if In-tend personnel and their nominated representatives where appropriate are granted remote access to the client's system.

### Methods of contacting In-tend for support

E-mail	In-tend will respond to all support e-mails however telephone support is the preferred option. Email <a href="mailto:support@in-tend.co.uk">support@in-tend.co.uk</a>
Telephone	In-tend will complete a telephone call template to record the required data. Local call rate 0845 557 8079 for suppliers, and 0843 8498404 for System Administrators/buyer system users. Please note the Support Contacts permitted to access this dedicated buyer support number within Schedule 1. Whereby the call is of a Training nature, these will be advised to You.

### Prioritisation of calls

Problems will be prioritised as follows:

Category 1	The In-tend software used by the client is not functioning at all.
Category 2	A module or feature of the In-tend software is not functioning, and there is no short-term work around available.
Category 3	As category 2, but there is short-term work around

Category 4 "How to" calls. Minor problems with little impact on either the software's functionality or the client's operations. Suggested changes to the software.

On initial contact In-tend will assign an internal database support reference number to the item. The internal standard priorities are shown above.

#### **In-tend response times**

General All support calls will be logged immediately in In-tend's internal ticketing system, DSMS.

All references in this section to periods of time are to periods of time within In-tend's standard support hours or such extended support hours as In-tend may have agreed in writing. Additional support hours are available at additional cost.

Category 1 The client will be contacted hourly at a minimum with a solution/report of progress

Category 2 The client will be contacted four-hourly at a minimum with a solution/report of progress

Category 3 The client will be contacted daily at a minimum with a solution/report of progress

Category 4 "How to" problems will be resolved immediately. In respect of other items, the client will be advised of the proposed response case by case. Training may be promoted whereby it is apparent that the user is unaware of the available system functionality, and the system user may be passed to the internal System Administrator where internal processes have not been followed in respect of buyers/users nominated to contact the support helpdesk. All Your suppliers will be assisted, however please note that forgotten account/unlocking requirements are the responsibility of You to resolve. It is Your responsibility to ensure that you have the expressed written permission of Your supplier base to include in any opportunities and to comply with Your requirements under GDPR legislative requirements.

#### **Client response times**

The same response times apply to the client where In-tend personnel, in the course of investigating a problem has asked the client to undertake an action or provide information. If the client has not responded (either with an answer or progress report) within two working days of In-tend's request, then In-tend may without further reference to the client treat the item as closed.

#### **Escalation**

The name of the person(s) on the Supplier's staff to which unresolved problems should be escalated are listed below and in the following order:

1st Business Development Manager

xxx (0114 407 0056 Ext xxx)

[xxx@in-tend.co.uk](mailto:xxx@in-tend.co.uk)

2nd Director of Operations

Caroline Featherstone (0114 407 0056 Ext 1005)

[c.featherstone@in-tend.co.uk](mailto:c.featherstone@in-tend.co.uk)

3rd CEO

Steve South (0114 407 0056 Ext 1025)

[s.south@in-tend.co.uk](mailto:s.south@in-tend.co.uk)

The name of the person(s) on the Customer's staff to which unresolved problems should be escalated are listed below and in the following order:

1st

2nd

3rd

**Product updates ("Releases")**

Updates to modules already purchased are included without charge to organisations who have a current support contract. System upgrades and maintenance will be conducted (in the main when non-essential) overnight or at weekends wherever possible. Scheduled maintenance times will be notified in advance and a message placed on Your portal. You must allow In-tend to upgrade your software at the times specified in order to receive additional functionality provided with each release and for support services.

New modules or additional licensed functionality will be offered as chargeable upgrades.

<b>Schedule 3 – Service Level Agreements (Availability of Software and Responsiveness)</b>				
	Category	Availability	Response	Outcome
1	Availability of Software	The Software shall be Available $\geq 99\%$ of the time during Core Hours during the relevant Service Period and $\geq 98\%$ outside of Core Hours during the relevant Service Period	N/A	N/A
2	Category 1 and 2 service failure (as defined in Schedule 3)	The Contractor shall restore the Software $\leq 4$ hours following the receipt of a notification that a Category 1 or 2 service failure has occurred during the Core Hours.	Receipt of notification of a Category 1 or 2 service failure by You	Restoration of the Software so that the Software can be used by You
3	Category 3 service failure (as defined above)	The Contractor shall restore the Services $\leq 7$ hours following the receipt of notification that a Category 3 service failure has occurred during the Core Hours.	Receipt of notification of a Category 3 service failure by You	Restoration of the Software so that the Software can be used by You

“Core Hours” are 8.30am to 5.00pm Monday to Friday excluding English public holidays

“Service Period” is one calendar month

Availability is as follows:-



- In-Tend shall measure the Availability of the Software
- The Software shall be Available (and "Available" shall be interpreted accordingly) when:
  - You are able to access and utilise all the functions of the Software
  - The Software is able to process Your Data and to provide any required reports. Depending on the reports required these may be chargeable.
  - Availability shall be measured as a percentage of the total time in a Service Period; in conjunction with Clause 7.3 in relation to the Service Providers' downtime

## Schedule 4

### Part A

#### 1. Confidentiality

In this paragraph 1, "**Confidential Information**" means all information, including all personal data, whether written or oral (however recorded), provided by the disclosing party to the receiving party in connection with the Agreement and which (i) is known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered as confidential by the receiving Party. The term "Confidential Information" does not include information which: (i) is in or enters the public domain (other than as a result of its disclosure by the receiving party in breach of the Agreement); (ii) was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party; or (iii) is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality

1.1 Subject to paragraph 1.2, each party shall:

- 1.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing party; and
- 1.1.2 not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under the Agreement.

1.2 Notwithstanding clause 1.1, a party may disclose Confidential Information which it receives from the other Party:

- 1.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 1.2.2 to its auditors or for the purposes of regulatory requirements;
- 1.2.3 on a confidential basis, to its professional advisers;
- 1.2.4 to the Serious Fraud Office where the party has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 1.2.5 where the receiving party is In-tend, to its staff on a need to know basis to enable performance of the Intend's obligations under the Agreement provided that the In-tend shall procure that any staff to whom it discloses Confidential Information pursuant to this paragraph 1.2.5 shall observe the In-tend's confidentiality obligations under the Agreement; and
- 1.2.6 where the receiving Party is You:
  - (a) on a confidential basis to Your employees, agents, consultants and contractors;
  - (b) on a confidential basis to any body or department which succeeds to those functions of You to which the Agreement relates or any company to which You transfer or propose to transfer all or any part of its business;
  - (c) to the extent that You (acting reasonably) deem disclosure necessary or appropriate in the course of carrying out Your public functions; or
  - (d) in accordance with paragraph 2 of this Schedule,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on You under this paragraph 1.

- 1.3 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and In-tend hereby gives its consent for You to publish the Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. You may consult with In-tend to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 1.4 In-tend shall not and shall take reasonable steps to ensure that its staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with for the purposes of maintaining and showing current customer lists during an initial presentation to potential new customers. Your prior written consent would be obtained for any other purpose.

## 2 Freedom of Information

In this paragraph 2:

- **"Request for Information"** has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply); and
- **"Information"** has the meaning given under section 84 of the FOIA.

- 2.1 In-tend acknowledges that You are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 2.1.1 provide all necessary assistance and cooperation as reasonably requested by You to enable You to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
  - 2.1.2 transfer to You all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
  - 2.1.3 provide You with a copy of all Information belonging to You requested in the Request for Information which is in its possession or control in the form that You require within 5 working days (or such other period as You may reasonably specify) of Your request for such Information; and
  - 2.1.4 not respond directly to a Request for Information unless authorised in writing to do so by You.
- 2.2 In-tend acknowledges that You may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning In-tend or the services provided under this Agreement (including commercially sensitive information) without consulting or obtaining consent from In-tend. In these circumstances You shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give In-tend advance notice, or failing that, to draw the disclosure to the In-tend's attention after any such disclosure.

- 2.3 Notwithstanding any other provision in this Agreement, You shall be responsible for determining in Your absolute discretion whether any Information relating to In-tend or the services provided under this Agreement is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## Part B - PERSONAL DATA

### 1 Definitions

- 1.1 For the purposes of this schedule, the terms "**Controller**", "**Personal Data**", "**Processor**", "**Personal Data Breach**", "**Supervisory Authority**", "**process**", "**processing**", "**processed**" and "**Data Subject**" shall have (until 24 May 2018) the meanings ascribed under the Directive and (from 25 May 2018) the meaning given under the Regulation in relation to the Personal Data processed by In-tend as a result of this Agreement.
- 1.2 In addition to the terms in paragraph 1.1 above, the following terms shall have the following meaning:
- "Data Protection Legislation"** means all laws that relate to data protection, privacy, the use of information relating to individuals, and or the information rights of individuals including, without limitation, the Data Protection Act 1998, the Directive, the Privacy and Electronic Communication (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Consumer Protection from Unfair Trading Regulations 2008, the Regulation and any relevant national laws implementing the same all as amended or replaced from time to time;
- "Directive"** means the European Commission Directive 95/46/EC;
- "Regulation"** means the General Data Protection Regulation (EU) 2016/679
- 1.3 For the purposes of this Agreement, the parties acknowledge that You shall be Controller and In-tend shall be Processor, processing Personal Data (forming part of Your data) on Your behalf.
- 1.4 In respect of any processing of Personal Data that In-tend undertakes for and on behalf of You in accordance with this Agreement, In-tend shall:
- (a) process such Personal Data only:
- (i) for the purpose of performing its obligations under this Agreement; and
- (ii) for such other purposes as may be expressly instructed by or agreed with You as otherwise notified in writing from time to time; and
- (iii) in accordance with the Data Protection Legislation.

- (b) taking into account the nature of the processing, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
- (c) not otherwise modify, amend, remove or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party without the prior written authorisation of You;
- (d) maintain up to date records of its processing activities performed on behalf of You which shall include the categories of processing activities performed as set out in [Appendix 1 (Data Processing Register)], information on cross border data transfers and a general description of security measures implemented in respect of processed data;
- (e) keep the Personal Data separate from any data it processes on behalf of any other third party (including but not limited to business continuity measures and processes for regularly testing, assessing and evaluating the effectiveness of such security measures);
- (f) assist the Controller in its compliance with its obligations under Data Protection Laws in respect of notifying Personal Data Breaches to the Supervisory Authority and affected Data Subjects, insofar as it is able taking into account the nature of the processing and the information available to the Processor;
- (g) ensure that only those personnel who need to have access to the Personal Data are granted access to such Personal Data (and only for the purposes of the performance of this Agreement) and that all of the personnel required to access the Personal Data are reliable and have been informed of the confidential nature of the Personal Data and comply with the obligations set out in this schedule;
- (h) not appoint a sub-processor without the prior written consent of You, not to be unreasonably withheld, and ensure an agreement is entered into with the relevant sub-processor which includes the same terms set out in this schedule in relation to In-tend's processing obligations;
- (i) not transfer Personal Data to a country or territory outside the United Kingdom and European Economic Area except with the prior written consent of You;
- (j) notify You within 48 hours if it receives any: (i) request from a Data Subject to access that Data Subject's Personal Data; (ii) complaint or request relating to the Data Protection Legislation; and / or (iii) correspondence from a Supervisory Authority;
- (k) notify You in the event it becomes aware (and no later than 24 hours after becoming aware) of any Personal Data Breach, breach of the Data Protection Legislation, or this schedule;
- (l) unless otherwise required by Data Protection Legislation, In-tend shall return or delete, at Your sole discretion, all Personal Data upon the termination of the processing activities carried out under this Agreement, and promptly provide You with a confirmation in writing that it has done so; and
- (m) permit without charge, on an annual basis, and / or where You becomes aware of a data breach of alleged breach of the Data Protection Legislation by In-tend, reasonable access by You to all records, files, tapes, computer systems, or any other information howsoever held by In-tend in

respect of In-tend's activities pursuant to the contract for the purposes of reviewing compliance with this schedule and / or the Data Protection Legislation.

- 1.5 The parties shall complete the data processing register set out in template form in Annex 1 in relation to any processing undertaken.
- 1.6 Both parties shall indemnify and keep each party indemnified in full from and against all claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of, any Personal Data Breach and / or any breach or purported breach of this schedule and / or the Data Protection Legislation (including in relation to and / or arising out of the performance or non-performance by its sub-processor(s) and personnel).
- 1.7 The provisions of this schedule shall survive termination or expiry of this Agreement.

## Annex 1

### Data Processing Register Template

#### 1 Data Subjects

The Personal Data to be processed by In-tend on Your behalf pursuant to the Agreement concerns the following categories of Data Subjects:

[TBC]

#### 2 Nature and purposes of the processing

The Personal Data to be processed by In-tend on Your behalf shall be processed for the following purposes:

As submitted by suppliers as part of their commercial tenders, RFQs and other competitive exercises.

#### 3 Duration of the processing

Until expiry of this contract.

#### 4 Categories of Regulated Data

The Personal Data to be processed by In-tend on Your behalf concerns the following categories of data:

[TBC]

#### 5 Recipients

The Personal Data to be processed under the Agreement may only be transferred to the following recipients or categories of recipients:

[TBC]

#### 6 Special Categories data (if applicable)

The Personal Data to be processed by In-tend on Your behalf concern the following special categories of data

[TBC]

#### 7 Additional useful information (e.g. storage limits and other relevant information)

[TBC]

#### 8 Contact details

For Personal Data queries arising from or in connection with the Agreement, the Parties shall contact the following:

You	In-tend
[TBC]	Caroline Featherstone



	Director of Operations
--	------------------------

#### **Schedule 5 – The Tender Response**

**Embed document**

#### **Schedule 5 – Commercial Offer**

**Embed document**

#### **Schedule 5 –Your Policies:**

**Embed document**