

# Contractor Guidance for Electronics Watch contract conditions, v 1.1.



## ACKNOWLEDGEMENTS

This Guidance has been developed through consultations with a wide range of stakeholders and is based on the practical experience of Electronics Watch affiliates—public sector buyers. Between 2015-2016 Electronics Watch developed a set of model contract clauses that affiliates to Electronics Watch may incorporate in their ICT hardware contracts. These Electronics Watch Contract Conditions are based on extensive legal analysis to ensure compliance with the EU procurement regime as well as stakeholder comments and analysis from affiliates, human rights experts, labour rights organisations, and companies. Several affiliates field tested the Contract Conditions in 2016. This Guidance reflects their initial experience.

Electronics Watch is grateful to 25 affiliates, resellers and brand companies, human rights and health and safety experts, and labour rights organisations who provided detailed, extensive and insightful comments on draft versions of this Guidance. We have endeavoured to do justice to their perspectives and recommendations.

Electronics Watch is an independent monitoring organisation that assists public sector buyers to meet their responsibility to protect the labour rights of workers in their global electronics supply chains more effectively and less expensively than any single public sector buyer could accomplish on its own.

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## 1

## EXECUTIVE SUMMARY

Electronics Watch is an independent monitoring organisation that helps public sector buyers work together to protect the rights and safety of workers in their global electronics supply chains. Public sector buyers affiliated to Electronics Watch may be located in any country. In order to hold their contractors accountable for breaches of labour rights or safety standards in factories that make the goods they buy, they require contractors to comply with contract conditions developed by Electronics Watch or equivalent contract clauses.

This Guidance is intended to support contractors to comply with the Electronics Watch Contract Conditions, v. 1.1. Electronics Watch recommends that affiliates present the Contract Conditions together with this Guidance to bidders and contractors.

When a Contracting Authority has incorporated the Electronics Watch Contract Conditions in an ICT hardware contract, the Contractor is responsible for carrying out “effective and accountable due diligence” to achieve up to 11 specific outcomes in three related areas:

- Compliance with the Electronics Watch Code of Labour Standards;
- Supply chain transparency; and
- Factory cooperation with Electronics Watch monitors.

This Guidance explains the 11 outcomes and how to achieve them. It defines the following general rule for Contractors to comply with their contractual obligations:

***A Contractor must achieve outcomes within its control, that is, outcomes it can achieve without intervention by another actor. If a Contractor does not achieve the specified outcomes, and they are not within the Contractor’s control, the Contractor must comply with its contractual obligations by exercising and demonstrating effective due diligence.***

The Guidance defines “effective due diligence” in the sections titled, “How a Contractor Complies if it cannot achieve the required [outcome].” The Guidance also notes that Contracting Authorities may phase in certain contractual requirements over time. They may also designate specific outcomes where the Contractor has the option to explain why it cannot presently comply—those outcomes (numbers 3, 6, 7, and 11) are marked, “comply or explain,” in the sections that follow.

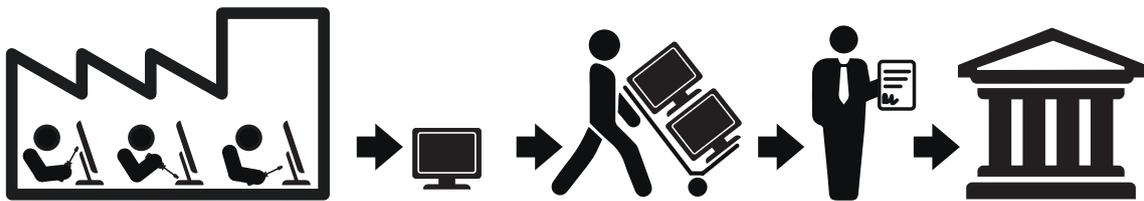
By following this Guidance any Contractor, whether a brand company or reseller, large or small, will be able to comply with the Contract Conditions and work constructively with the Contracting Authority and Electronics Watch to identify, prevent, and mitigate risk of breach of labour rights and safety standards in the Factories that make the Goods the Contracting Authority buys. By meeting their contractual

obligations Contractors will strengthen respect for labour rights and safety standards in their supply chains and help to improve working conditions in the Factories.

If a Contractor has failed to achieve an outcome and to provide evidence of effective due diligence, the Contracting Authority may require it to correct the failure using escalation clauses in the Contract Conditions. The Contracting Authority may also choose to use sanctions to enforce the contract terms.

This Guidance will be reviewed and updated annually based on comments and analysis submitted by stakeholders. Representatives of affiliates, contractors, suppliers, factories, workers and workers' organisations, experts on human rights and procurement, and others are invited to comment on an ongoing basis.

## DEFINITIONS



**A Factory makes the Goods that a Supplier provides a Contractor, which sells them under Contract to a Contracting Authority**

The following definitions are identical to those in the Electronics Watch Contract Conditions, except that the definition of “Factory” in this Guidance clarifies that the term may refer to factories at any tier in which the electronic components in the Goods are produced. Definitions of “Days,” “Remediation,” and “Supplier” are added.

**“Contract”** means the legally binding agreement between the Contracting Authority and the Contractor that requires the Contractor to supply the Goods under the terms of the Electronics Watch Contract Conditions or equivalent conditions;



**“Contracting Authority”** means the affiliate to Electronics Watch that holds the Contract with the Contactor.



**“Contractor”** means the business enterprise that enters into the Contract with the Contracting Authority. A Contractor can be a brand company or a reseller.

**“Days”** mean working days rather than calendar days. Public holidays are defined by the Contractor’s jurisdiction.

**“Electronics Watch Contract Conditions”** are a set of model contract performance clauses developed by Electronics Watch. Affiliates to Electronics Watch must incorporate these clauses or equivalent clauses into ICT hardware contracts.<sup>1</sup>



**“Factory”** means an assembly Factory in which any of the Goods are assembled or a component Factory at any tier in which the electronic components in the Goods are produced;



**“Goods”** means the ICT Goods that form the subject matter of any Contract with an Electronics Watch affiliate, including Goods that are supplied only temporarily as part of a service Contract.

**“Remediation”** has substantially the same meaning as in the OECD Due Diligence Guidelines for Responsible Business Conduct and the UN Guiding Principles on Business and Human Rights. It refers to the process of providing remedy for an adverse impact on labour rights or safety standards and to the substantive outcome that counteracts the adverse impact. Remedy includes immediate corrective actions to end a breach of labour rights and safety standards and long-term actions to prevent further harm to workers. It may also include financial or non-financial compensation to workers, apologies, restitution, rehabilitation, and punitive sanctions.

<sup>1</sup> Equivalent contract clauses must include provisions for enforceable labour rights standards, Factory disclosure, and cooperation with independent monitors.



**“Supplier”** means any trading partner of the Goods between the Factory and the Contractor, such as a brand company, wholesaler, or trader.

## INTRODUCTION

### 3

Electronics Watch affiliates are public sector organisations in any country committed to socially responsible procurement of electronics products. Towards this end they incorporate contract conditions in their ICT hardware contracts, requiring Contractors to exercise effective and accountable due diligence to ensure Factories comply with applicable labour rights and safety standards. The contract conditions also must allow Electronics Watch to monitor for compliance. The contract conditions developed by Electronics Watch for this purpose are based on internationally accepted standards of due diligence, as stated in the UN Guiding Principles on Business and Human Rights, and comply with the EU procurement rules as defined in the 2014 EU procurement directive (Directive 2014/24/EU). While suited to the European legal context, the Electronics Watch Contract Conditions may be adapted to jurisdictions outside Europe.

This Guidance explains Contractors' due diligence responsibilities to achieve the outcomes established in the Electronics Watch Contract Conditions. By following the Guidance any Contractor, whether an IT brand company or reseller, large or small, will be able to comply with the Contract Conditions and work constructively with the Contracting Authority and Electronics Watch to identify, prevent, and mitigate risk of breach of labour rights and safety standards in the Factories that make the Goods the Contracting Authority buys. By meeting their contractual obligations Contractors will strengthen respect for labour rights and safety standards in their supply chains and help to improve working conditions in the Factories.

The Guidance first explains Electronics Watch's principles of engagement in the monitoring process, providing the conceptual underpinning for the Contract Conditions. Then follows the operational guidance, which explains the required outcomes of the Contract Conditions in detail, and how Contractors comply with the Contract Conditions even when the outcomes are beyond the Contractor's control. The operational guidance contains concrete, step-by-step, time-bound due diligence steps. A section on transparency answers the question who has access to what information and when. In addition, there are four annexes, including:

- A timeline that lists all required activities in chronological order for easy reference.
- A compliance checklist that Contractors can use to check off outcomes that are achieved, record any followup due diligence steps, and note their own observations
- An explanation of the Electronics Watch monitoring methodology.
- The legal justification for the Contract Conditions.

***By following the Guidance any Contractor, whether an IT brand company or reseller, large or small, will be able to comply with the Contract Conditions.***

## 4

## PRINCIPLES OF ENGAGEMENT

Electronics Watch conducts monitoring and engages with companies according to the following principles of engagement, which are reflected in the Electronics Watch Contract Conditions.

### Workers come first

Electronics Watch conducts worker-driven monitoring propelled by workers' needs, concerns, and priorities. Social auditing conducted by or on behalf of industry groups may result in corrections of non-compliances, but, for factories, workers' needs are often secondary to the need to deliver an order and secure business, and for brand companies, workers' needs may come second to their need to protect reputations and meet consumer demand. Industry social auditing is not usually designed for workers to play a significant role in the process of monitoring and remediation. It may therefore fail to detect key issues that workers report.<sup>2</sup> In placing workers first, Electronics Watch helps to shift attention to workers' priorities and create a more equal relationship between workers and management.

Thus, Electronics Watch focuses monitoring and engagement on Factories where, based on Electronics Watch's own risk assessments or other credible reports:

- Workers are demanding improved working conditions and where there is a strategic opportunity to strengthen workers' collective capacity to monitor and report on problems and to engage with management in problem solving; or,
- There is a known history of violations indicating that social auditing has not been effective; or,
- The risk of harm to workers is severe.

To the extent that Electronics Watch has access to information about effective work to address risks to workers, Electronics Watch can focus its own monitoring and engagement elsewhere. It is therefore important for Contractors to provide information on compliance findings and corrective actions (Outcomes 4 and 5 in the Operational Guidance), allowing Electronics Watch to focus investigative resources where they are most needed.

### Strengthen workers' collective voices

Detecting the problems is only one aspect of worker-driven monitoring. Helping to strengthen workers' collective voices to identify, remedy and prevent further violations is also part of the monitoring process. The more secure workers are in reporting problems and engaging management in problem solving the more thorough and sustainable workplace improvements will be. Thus Electronics Watch may seek to engage management and workers in a Factory even when others have conducted thorough compliance investigations if there is a need and an opportunity to help strengthen workers' collective voices. This

*In placing workers first, Electronics Watch helps to shift attention to workers' priorities and create a more equal relationship between workers and management.*

<sup>2</sup> Failure to protect workers' freedom of association and strengthen workers' collective voice is a weakness of most electronics companies' compliance programs. In a recent assessment of the capacity of 20 leading electronics companies' capacity to address forced labour in their supply chains, which analysed seven major themes, the Business and Human Rights Resource Center and Sustainalytics found that they scored most poorly in the area of worker voice. See, Know the Chain, "Forced Labor Action Compared: Findings from Three Sectors," April 2017. The Mexican NGO, CEREAL, reviewed 10 years of audit findings of one leading electronics brand and found that among 14 different compliance areas the company detected the least number of violations in the area of freedom association. Most of the company's audits were conducted in Mexico and China where the lack of genuine freedom of association is widely known. See, CEREAL, "Beyond voluntary codes and audits: A challenge for the electronic Industry", July 2016.

approach supports companies that seek to move “beyond auditing” to improve conditions in supplier factories.

### **The public procurement priority**

Public sector organisations have a responsibility and opportunity to protect human rights in the supply chains of the products they buy. Electronics Watch assists public sector buyers to meet this responsibility, and creates the opportunity to meet it more effectively through coordination and collaboration across several countries. Electronics Watch monitors those Factories that make the products that affiliates buy—assembly Factories as well as components suppliers. Accordingly, Electronics Watch must have access to the names and precise addresses of the Factories that make the products that affiliates buy (Outcome 1 and 2 in the Operational Guidance).

### **Independent monitoring**

Public sector buyers often take note of media reports on poor working conditions in the electronics industry which are potentially relevant to their supply chain. They may also receive reports on compliance directly from companies. In order to obtain independent intelligence on Factories public sector buyers have formed Electronics Watch. Electronics Watch accepts no financial support from the electronics industry, including, but not limited to, brand companies, resellers, and factories. Instead, investigations are funded by Electronics Watch affiliates' fees. Electronics Watch monitoring partner organisations can have no industry representatives involved in decision-making or in any capacity that could create a conflict of interest. Electronics Watch also does not work directly with unions or workers' organisations to conduct Factory investigations as these organisations have a material stake in the outcome of the investigations. However, Electronics Watch seeks information from all interested parties and strives to involve them in the process of Remediation (see also Annex III, Electronics Watch Monitoring Methodology).

*Electronics Watch investigations are funded by affiliates' fees.*



### **Respect rule of law but don't stop there**

The law is often the best tool to protect workers and in most cases Electronics Watch will monitor compliance against the law in the country of production. If appropriate, Electronics Watch may also seek cooperation with local labour inspectorates to strengthen enforcement. However, legal compliance may not be sufficient to protect workers. Therefore, Electronics Watch also identifies conditions and practices that harm workers, but are not illegal, based on the Electronics Watch Code of Labour Standards. For example, discrimination against women may be poorly defined by law and afford women workers little protection. Similarly, electronics workers' wages are typically insufficient to cover the basic needs of workers' families, pushing them into poverty even if they are paid legally.

*Last-minute ordering, transfer of risks to subcontractors, and cost-cutting mechanisms profoundly impact working conditions in electronics factories.*



Contractors must work to ensure compliance with legal requirements (Outcome 10 in Operational Guidance) but should also take concrete and measurable steps to improve working conditions in other ways, for example through a living wage strategy (Outcome 11 in Operational Guidance).

### Focus on core issues



Some violations themselves cause or contribute to wider breach of labour rights or safety standards and/or unsafe and poor working conditions. These core issues include violations of the International Labour Organization core labour standards, which consist of a set of enabling rights that create the conditions for workers to promote and realise decent conditions at work. Core issues also include reprisals against workers who complain or seek to make their voice heard. It is a priority for Electronics Watch to remedy core violations to lay the foundation for safe and decent working conditions.

### Ensure quick action on urgent issues



Electronics Watch identifies issues that pose serious present or imminent harm to workers' health, livelihood, or wellbeing and must be addressed urgently to mitigate or prevent such harm. Examples include health and safety hazards that can cause serious injury or illness; illegal firings or punitive actions that deprive workers of their livelihood; child labour and forced labour. Companies must respond with utmost urgency to achieve remedy as delay will aggravate the issue and possibly place workers' health and lives at risk (Outcome 10 in Operational Guidance).

### Help reform the business to address root causes

Last-minute ordering, transfer of risks to subcontractors, and cost-cutting mechanisms are components of the electronics industry business model that profoundly impact working conditions in electronics factories. This model has resulted in flexible and precarious work arrangements, such as temporary, part-time, and contractual employment, along with irregular working hours, lack of job and social security, and increased health and safety risks. Excessive overtime is another type of flexibility often required of workers in both standard and non-standard work arrangements. Short-term fixes to labour rights and safety breaches driven by social audits may be ineffective when the business model itself contributes to the problems. Therefore, Electronics Watch seeks to engage the industry in dialogue to identify, mitigate, and prevent business practices that may contribute to or cause breach of labour rights and safety standards in Factories (Outcomes 6 and 7 in the Operational Guidance).

# OPERATIONAL GUIDANCE

## 5

### 5.1 Introduction

Affiliates to Electronics Watch incorporate the Electronics Watch Contract Conditions, or equivalent contract clauses, into ICT hardware contracts. These clauses require Contractors to carry out human rights due diligence in relation to the particular Goods supplied to the affiliate. Unlike award criteria, which Contractors seek to meet prior to the award, contract conditions apply over an extended period of time and allow for accountability through a process of engagement in which both the Contracting Authority and the Contractor may learn and improve performance over time, resulting in better conditions for workers who make the Goods.

However, Contracting Authorities may also use award criteria based on the Contractors' capacity to fulfil the contract conditions. Thus, compliance with the Electronics Watch Contract Conditions may result in future competitive advantage in the market.

#### 5.1.1 The Contractor's Obligations

##### Achieve the outcome or prove due diligence

The Electronics Watch Contract Conditions define 11 specific outcomes in three related areas: Factory compliance with the Electronics Watch Code of Labour Standards, supply chain transparency, and Factory cooperation with Electronics Watch monitors. Supply chain transparency and factory cooperation are prerequisites for Electronics Watch to independently monitor Factories, verify compliance, and work to improve conditions.

The following general rule holds:

***A Contractor must achieve outcomes within its control, that is, outcomes it can achieve without intervention by another actor. If a Contractor does not achieve the specified outcomes, and they are not within the Contractor's control, the Contractor must comply with its contractual obligations by exercising and demonstrating effective due diligence.***

Effective due diligence is defined in the sections below titled, "How a Contractor Complies if it cannot achieve the required [outcome]." Electronics Watch encourages Contractors to exercise due diligence beyond the minimum requirements. In general, a Contractor should follow the path it determines to be most effective in achieving the required outcomes. For example, if a Contractor determines that requests for information from an indirect Supplier, with more influence over the Factory, are more effective than requests from its direct Supplier, it should, if possible, address the indirect Supplier even though only requests of the direct Supplier are required.

*Leverage is not static. It must be exercised, and, through this exercise, strengthened.*

Electronics Watch believes that due diligence will over time create positive results even if the steps a Contractor takes in a particular situation appear ineffective. Contractors' simple exercise of due diligence in many places and over time will increase their combined leverage to achieve the outcomes in this Guidance and change business as usual.



### Exercise leverage

"Leverage" refers to the capacity of Contractors to obtain the outcomes defined in this Guidance. Contractors may have more or less leverage, but leverage is not static for anyone. It is a capacity that must be exercised, and, through this exercise, strengthened.

A Contractor should itself define the type of leverage necessary to obtain the outcomes defined in this Guidance according to its own situation.

Using leverage could be as simple as reasoning with an individual to persuade a company to change its approach. It can involve incentives to encourage compliance, or pressure, up to and including the threat of discontinuing business with a supplier. A Contractor should consider using the following tools to exercise leverage:

- Any bargaining power it has over its Suppliers to try to achieve the outcome;
- Any relevant contractual rights it has against its own Suppliers to try to achieve the outcome;
- When entering into new contracts with its Suppliers, bidding criteria and terms that require the outcome; and,
- Commercial incentives for Suppliers—for example, price, volume, and long-term business—to achieve the outcome.

These tools should be used consistently to ensure systemic improvements rather than occasionally in response to high profile incidents only.

A Contractor should also take steps to ensure it presents a unified voice to Suppliers. Purchasing staff or agents should work closely with staff responsible for compliance and ensure a consistent message on labour rights and safety. Finally, a Contractor should, so far as is legally possible, collaborate with other companies or otherwise attempt to increase its leverage so that it is able to achieve the outcomes.

## 5.1.2 Options for the Contracting Authority



### Comply or explain

Electronics Watch recommends that Contracting Authorities designate certain conditions and related outcomes as “comply or explain.” If a clause is so designated a Contractor must either comply with the clause or explain why it is presently unable to comply and whether or not it is planning to comply at a later stage. Contracting Authorities may, as the market responds and matures, remove the “comply or explain” designation from these clauses and outcomes, making them mandatory in new contracts.

Explanations must be relevant to the clause, specific to the Contractor’s particular situation, and sufficiently informative. Following the European Commission Recommendations on the quality of corporate governance reporting, explanations should describe: (1) the reasons for the non-compliance; (2) how the decision for non-compliance was taken; (3) if and when the company plans to comply; and, where applicable, (4) any measures the company is taking instead of compliance and how that measure achieves the underlying objective of the contract clause.<sup>3</sup>

### Phase in

Contracting Authorities may elect to phase in the Electronics Watch Contract Conditions. While some IT procurements cover only a small number of products, such as laptops, desktops, and servers, others are more complex, covering a range of products and services or even a whole office solution, with several brands delivering under the agreement, some in large quantities, some in small quantities. For complex procurements with challenging information requests for the Contractor, phasing in the requirements leads to more complete compliance over time. Thus, a Contracting Authority may elect to:

- Extend the timeline for certain supply chain transparency requirements;
- Designate certain Goods for coverage in year one of the contract, adding others in subsequent years;
- Cover only Goods that represent a certain minimum procurement value; or,
- Implement other phase-in provisions.

### Enforcement

If a Contractor has failed to achieve an outcome and to exercise effective due diligence it may be required to work with the Contracting Authority to correct the failure. The approach is one of accountability through engagement, relying on the relatively long-term relationships and good faith between Contracting Authorities and Contractors, rather than an arms-length reliance on sanctions. However, engagement is backed up by real sanctions to be effective. The Electronics Watch Contract Conditions contain formal escalation procedures and sanctions provisions that affiliates may implement. The supply contract terms

<sup>3</sup> “Commission Recommendation of 9 April 2014 on the quality of corporate governance reporting (‘comply or explain’),” Office of Journal of the European Union, L 109/46, 12.4.2014.

contain a liquidated damages provision and a termination provision. The framework agreement terms contain a right to suspend the Contractor from the framework. Imposing sanctions is always at the discretion of the Contracting Authority.

## 5.2 Supply Chain Transparency

Supply chain transparency consists of four parts: identification of Factories and Goods associated with the Factories; disclosure of chemical inventory records for each Factory; disclosure of Factory compliance findings and corrective action plans; and assessment of trading conditions, such as pricing and delivery terms, that may impact working conditions in Factories.

### 5.2.1 Factories and products transparency

#### *Purpose*

Electronics Watch monitors those Factories that make the Goods—assembly Factories as well as components suppliers. Accordingly, Electronics Watch must have access to the names and precise addresses of the Factories that make the Goods. The goal of the clauses on factory and product transparency is to maximize visibility of and accessibility to those Factories to allow for independent monitoring through Electronics Watch.

#### *Tool*

The Disclosure Form for Electronics Watch Contract Terms, v. 1.1, should be used to provide the information on Factories and products.

## Outcome 1

(Contract clause, Section 9)

Contractors must:

- **Within 25 Days of the date of contract:**<sup>4</sup> Identify and disclose the Factories where the Goods are assembled, and the specific Goods assembled in each Factory. Contractors must disclose:
  - Brand-owned production sites, contract manufacturers, electronic manufacturing service providers, and original design manufacturers. In case Factories include brand-owned production sites, any additional next tier assembly Factories must also be disclosed.
  - Legal names and the complete physical addresses of the Factory production sites.
  - Product names as near as possible to the product names in a Contracting Authority's purchase order. At a minimum the Contractor must identify all Factories that make the type of product in the purchase order (e.g., the Optimum laptop computer<sup>5</sup>). If possible, the Contractor should identify all Factories that make the model number in a purchase order (e.g., Optimum 3000) and the Factory that made the model number that shipped to a certain location at a certain time (e.g. the Optimum 3000 that was shipped to the UK in July 2016).

<sup>4</sup> "Date of contract" is the date the contract is agreed and signed by both parties. As noted above, a Contracting Authority may choose to extend the timeline for certain requirements depending on the complexity of the procurement.

<sup>5</sup> Optimum 3000 is a fictional product name.

Contractors must:

- **Within 25 Days of the date of contract:** Identify and disclose high risk component Factories, and the specific components made in each Factory.<sup>6</sup> Contractors must disclose:
  - Factories where the latest industry audits include findings of “priority non-conformances” as defined in industry audits;<sup>7</sup> and,
  - Factories where the Contractor is aware of other audits or reports within the last 24 months that include findings of high risk in terms of:
    - Workers’ use of hazardous substances without adequate protection or training, or serious incidents causing illness, injury or other harm to workers.
    - Forced or child labour.
    - Other urgent issues that pose serious present or imminent harm to workers’ health, livelihood, or wellbeing.
  - Legal names and the complete physical addresses of the Factory production sites.
- **Within 10 Days of request by the Contracting authority, after Electronics Watch finds a risk of breach:** Confirm whether or not specific component Factories identified by Electronics Watch or the Contracting Authority make components of the Goods.

### How a Contractor complies if it cannot achieve the required Factory and product transparency

A Contractor must achieve outcomes within its control, that is, outcomes the Contractor can achieve without intervention by another actor. If a Contractor does not achieve Outcome 1 or 2, and those outcomes are not within the Contractor’s control, the Contractor must comply with its contractual obligations by taking the following steps:

#### Within 10 Days of the target date of Outcome 1 or Outcome 2<sup>8</sup>:

- Formally request the required Factory information from the direct Supplier or an appropriate indirect Supplier. The formal request must include specific mention of the requirement for the Factory information, as stated in the Contract between the Contractor and the Contracting Authority, and be signed by a senior level manager. The Contractor should, if possible, direct its request to Suppliers further up the supply chain if it determines such requests will be more effective. The Contractor should also take such follow-up actions it determines to be necessary and feasible to achieve the outcome; and,
- Provide evidence of each request and communicate the Supplier’s response or lack of response to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

If a Contractor believes it can achieve the required outcomes but requires more time, it can request an extension from the Contracting Authority, explaining and justifying the request as needed and proposing a new timeline. The Contracting Authority may, at its discretion, approve or reject such a request.

## Outcome 2

(Contract clause, Section 9)

<sup>6</sup> Under the Electronics Watch Contract Conditions the Contractor is required to disclose all the Factories where the Goods are produced, including all component suppliers. However, Electronics Watch recommends the Contracting Authority holds the Contractor to a less burdensome disclosure requirement based on risk as described in this Guidance.

<sup>7</sup> Priority non-conformances include but are not limited to child labour, forced labour, and health and safety issues that can cause immediate danger to life or serious injury. For the purposes of this Guidance, priority non-conformances include all those listed in the areas of Labor, Health and Safety, Hazardous Substances, and Management System in the EICC Validated Audit Process Operational Manual.

<sup>8</sup> For example, the target date for Outcome 1 is within 25 days of the date of contract. If a Contractor does not achieve that outcome within those 25 days, it must take the steps described in this section within the next 10 days or within a maximum of 35 days of the date of contract.

## 5.2.2 Materials transparency

### *Purpose*

Hazardous chemicals in electronics production processes create significant health risks for workers. Many of these chemicals are not, or not yet, officially listed as hazardous. Knowing the chemicals used in particular facilities is the first step to protecting workers from exposures and ensuring adequate control measures.

### *Tool*

There is no specific tool for this outcome, but Contractors can submit the information in any available format.

## Outcome 3

(Contract clause, Section 9)



Contractors must:

- **Within 25 Days of the date of contract:** Report the chemical inventory record for each disclosed Factory. Contractors may submit either the chemical inventory records auditees are required to maintain under the EICC Validated Audit Process<sup>9</sup> or a list of chemicals Factories are required to maintain under hazardous substances regulations and programs in the European Union, the United States, and other countries<sup>10</sup>.

### How a Contractor complies if it cannot achieve the required materials transparency:

A Contractor must achieve outcomes within its control, that is, outcomes the Contractor can achieve without intervention by another actor. If a Contractor does not achieve Outcome 3, and that outcome is not within the Contractor's control, the Contractor must comply with its contractual obligations by taking the following steps:

#### **Within 10 Days of the target date of the outcome:**

- Formally request access to the chemical inventory records for the Factories from the direct and/or indirect Supplier. The formal request must include specific mention of the requirement for the information, as stated in the Contract between the Contractor and the Contracting Authority, and be signed by a senior level manager; and,
- Provide evidence of the request and report on the results to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

If a Contractor believes it can achieve the required outcomes but requires more time, it can request an extension from the Contracting Authority, explaining and justifying the request as needed and proposing a new timeline. The Contracting Authority may, at its discretion, approve or reject such a request.

<sup>9</sup> Section C3 of Version 5.1. of the EICC Validated Audit Process Operations Manual requires auditees to identify and properly manage hazardous substances. As part of that process they are required to maintain "accurate chemical inventory records."

<sup>10</sup> These regulations and programs include, but are not limited to, the EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) program, which has registered a list of 120,000 chemicals; Hazard Communication regulations in the EU, US, China, Mexico and elsewhere which require the employer to generate a list of hazardous substances in use at the site and ensure protection for workers; and the Toxic Release Inventory program of the US Environmental Protection Agency and similar regulations in the EU, China, and Mexico, which maintain a list of covered hazardous substances.

### 5.2.3 Compliance data transparency

#### *Purpose*

The goal of the clauses on compliance data transparency is to maximize visibility of known non-compliances in Factories in order to help Electronics Watch monitors build on previous auditing and compliance work by addressing knowledge gaps and avoiding repetitive investigations. The more Electronics Watch knows about previous non-compliance findings the more effectively Electronics Watch can focus resources to improve conditions in Factories.

#### *Tool*

Unless the Contractor provides the full audit reports it should use the Contractor Compliance Plan Template for the Electronics Watch Contract Conditions, v. 1.1, to provide compliance data.

Contractors must:

- **Within 25 Days of the date of contract:** Report the most recent compliance findings for each disclosed Factory.<sup>11</sup> The compliance findings may be provided in their entirety or in summary form, and should consider all available information, including brand, EICC, or third-party social audits of applicable labour rights and safety standards and/or other credible reports and sources of information. The report must include:
  - All industry findings of priority and major non-conformances as well as corrective actions.<sup>12</sup>

The report should also include:

- All non-compliances with the ILO core labour standards, that is, freedom of association and the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in respect of employment and occupation.
- All non-compliances with domestic labour and safety standards and ILO labour standards.
- Corrective action plans for the reported non-compliances.
- Findings of risk as well as confirmed breaches. In case of conflicting findings, the report should include the more severe findings.
- As soon as the Contractor becomes aware of new findings of priority or major non-conformances, or Remediation of such prior findings, report these changes to the Contracting Authority. The Contractor must make enquiries every six months into whether there are new compliance findings relating to the Factories.

## Outcome 4

*(Contract clause, Sections 9 and 10)*

<sup>11</sup> The Electronics Watch Contract Conditions require Contractors to disclose pre-existing audit reports, to which they have access, in full. Electronics Watch recommends that Contracting Authorities require a minimum of summary findings of compliance, as described in this Guidance, instead.

<sup>12</sup> These include all priority findings and major non-compliances in the areas of Labor, Health and Safety, Hazardous Substances, and Management System under the EICC Validated Audit Process Operational Manual.

## Outcome 5

(Contract clause, Sections 9 and 10)

Contractors must:

- **Within 25 Days of request by the Contracting Authority, after Electronics Watch finds risk of breach:** Disclose the most recent detailed full compliance findings and corrective action plans to achieve Remediation.

### How a Contractor complies if it cannot achieve the required compliance data transparency:

A Contractor must achieve outcomes within its control, that is, outcomes the Contractor can achieve without intervention by another actor. If a Contractor does not achieve Outcome 3 or 4, and those outcomes are not within the Contractor's control, the Contractor must comply with its contractual obligations by taking the following steps:

#### Within 10 Days of the target date of the outcome:

- Formally request access to full or summary audit reports, as required under Outcome 4 or 5, from the direct Supplier or the appropriate indirect Supplier. The formal request must include specific mention of the requirement for the information, as stated in the Contract between the Contractor and the Contracting Authority, and be signed by a senior level manager; and,
- Provide evidence of the request and report on the results to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

If a Contractor believes it can achieve the required outcomes but requires more time, it can request an extension from the Contracting Authority, explaining and justifying the request as needed and proposing a new timeline. The Contracting Authority may, at its discretion, approve or reject such a request.

*The more Electronics Watch knows about previous non-compliance findings the more effectively Electronics Watch can focus resources to improve conditions in Factories.*

## 5.2.4 Transparency of trading conditions

### Purpose

The goal of the clauses on transparency of trading conditions is to build the capacity of Contracting Authorities, Contractors, and Electronics Watch to address business practices known to negatively impact labour rights and safety compliance in the Factories.<sup>13</sup> For example, rush orders, cancellations, and low profit margins create demand for highly flexible and low cost workforces and result in increased use of temporary and contract workers who are vulnerable to health and safety risks, forced labour, employment and social insecurity, and poor working conditions.

### Tool

The Contractor Compliance Plan Template for the Electronics Watch Contract Conditions, v. 1.1, should be used to provide information on trading conditions.

<sup>13</sup> For an overview of these trading conditions, see the ILO working paper, "The impact of procurement practices in the electronics sector on labour rights and temporary and other forms of employment," commissioned by The Global Dialogue Forum on the Adaptability of Companies to Deal with Fluctuating Demands and the Incidence of Temporary and Other Forms of Employment in Electronics, held in Geneva, 9-11 December 2014. The working paper is available at [http://www.ilo.org/sector/Resources/publications/WCMS\\_541524/lang--en/index.htm](http://www.ilo.org/sector/Resources/publications/WCMS_541524/lang--en/index.htm)

Contractors must:

• **Within 25 Days of the date of contract:** Provide a general report on trading conditions that impact Factory compliance with applicable labour rights and safety standards.<sup>14</sup> The report must include:

- An assessment of the extent to which the Contractor's and Suppliers' trading conditions, including pricing and delivery policies and practices, contribute to or cause breach of labour rights and safety standards in the Factories. The assessment should take into account factors such as, profit margins for Suppliers; who carries the cost and risk of inventory; accuracy of market forecasting; frequency of late orders; and changes to orders midstream; and,
- Any plan of the Contractor or the Suppliers to prevent trading conditions under which it is not feasible for the Goods to be produced in compliance with applicable labour rights and safety standards. Such a plan should take into account best or emerging industry practices, including long range demand forecasts shared with Factories, financial incentives for Factory compliance with labour rights and safety standards, and financial compensation to Factories for necessary costly remedies; and,
- An assessment of the leverage the Contractor has over its immediate Supplier, and of the leverage the Supplier has over the Factories. The assessment should be based on factors such as the overall volume of business and approximate length of business between the companies, the Contractor's or Supplier's volume of business as a percent of the Factory's business, and other relevant considerations known to the Contractor; and,
- An assessment of the extent to which the Contracting Authority's and/or other purchasing authorities' purchasing practices impact working conditions in the Factories.

## Outcome 6

(Contract clauses 8b and 8c)



<sup>14</sup>The Electronics Watch Contract Conditions require disclosure of the volume of business and length of business relations between the Contractor and its direct suppliers involved in the production of the Goods in order to be able to estimate leverage. This Guidance instead asks the Contractor to estimate the leverage based on factors such as volume of business and length of business relations but does not require the Contractor to disclose commercially sensitive information about its business relations.

Contractors must:

• **Within 25 Days of request by the Contracting Authority, after Electronics Watch finds risk of breach:** Assess and report on any of the Contractor's and/or Suppliers' trading conditions that may contribute to or cause a specific breach in specific Factories. The assessment should include a time-bound plan for correcting trading conditions that may have contributed or caused breaches in the Factories.

## Outcome 7

(Contract clauses 8b and 8c)



*A general report on trading conditions that impact Factory compliance includes an assessment of the extent to which the Contractor's and Suppliers' pricing and delivery policies and practices contribute to or cause breach of labour rights and safety standards in the Factories.*

### **How a Contractor complies if it cannot achieve the required transparency of trading conditions:**

A Contractor must achieve outcomes within its control, that is, outcomes the Contractor can achieve without intervention by another actor. If a Contractor does not achieve Outcome 6 or 7, and those outcomes are not within the Contractor's control, the Contractor must comply with its contractual obligations by taking the following steps:

#### **Within 20 Days of the target date of the outcome:**

- Formally request the direct Supplier or an appropriate indirect Supplier to provide the requested report on trading conditions that impact Factory compliance with applicable labour rights and safety standards and make it available to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority. The formal request must include specific mention of the requirement for the information on trading conditions, as stated in the Contract between the Contractor and the Contracting Authority, and be signed by a senior level manager; and,
- Provide evidence of the request to the Supplier and communicate the Supplier's response or lack of response to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

If a Contractor believes it can achieve the required outcomes but requires more time, it can request an extension from the Contracting Authority, explaining and justifying the request as needed and proposing a new timeline. The Contracting Authority may, at its discretion, approve or reject such a request.

## **5.3 Factory Cooperation**

### *Purpose*

Factory cooperation is essential for Electronics Watch monitors to conduct independent investigations and gather comprehensive intelligence about Factory compliance with labour rights and safety standards. Factory cooperation can also be a prerequisite for remedial activities, such as worker and management trainings and dialogue.

## **Outcome 8**

*(Contract clause, Section 11)*

Contractors must:

- Exercise leverage to ensure Factories do not intimidate or retaliate in any way against any worker who speaks with Electronics Watch monitors either on site or off site.

Contractors must:

## Outcome 9

*(Contract clauses, Sections 9 and 10)*

- Exercise leverage to ensure Factories allow access for Electronics Watch monitors when Electronics Watch presents evidence of risk of breach of applicable labour rights and safety standards. Electronics Watch will seek to conduct Factory investigations in collaboration with other investigators or auditors, if appropriate, to minimize the burden on a Factory. A visit will either take place on a specific date arranged with a Factory or during a four-week window communicated to a Factory:

Factory access means the Factory allows:

- Visits to all relevant work floors, hostels, dormitories, and dining services;
- Worker interviews and surveys without the presence of supervisors or management;
- Examination of relevant Factory records, including:
  - collective bargaining agreements;
  - personnel records;
  - records of working hours and wages paid;
  - records of social security payments, pension contributions, and holiday pay;
  - enterprise grievance procedures;
  - disciplinary log books;
  - health and safety policies;
  - health and safety records, including workplace inspection records, injury and illness incident investigation records, records of verification of hazard corrections, and employee training records;
  - other relevant Factory records.

### **How a Contractor complies if it cannot achieve the required factory cooperation:**

A Contractor must achieve outcomes within its control, that is, outcomes the Contractor can achieve without intervention by another actor. If a Contractor does not achieve Outcome 8 or 9, and those outcomes are not within the Contractor's control, the Contractor must comply with its contractual obligations by taking the following steps:

#### **Within 10 Days of request by the Contracting Authority:**

- In case a Factory denies access to Electronics Watch monitors, formally request the direct Supplier or appropriate indirect Supplier to use its leverage to ensure Factory cooperation with Electronics Watch monitors or negotiate directly with the Factory to ensure Factory cooperation. Suppliers may, for example, equip Electronics Watch monitors with a letter requesting Factories to participate in monitoring activities. The formal request must include specific mention of the contractual requirement for cooperation, as stated in the Contract between the Contractor and the Contracting Authority, and be signed by a senior level manager.

*Contractors must exercise leverage to ensure Factories do not intimidate or retaliate in any way against any worker who speaks with Electronics Watch monitors either on site or off site.*

- Provide evidence of each request and report on the results to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

**Within 5 Days of request by the Contracting Authority:**

- In case a Factory intimidates or retaliates against workers who speak with Electronics Watch monitors, formally request the direct Supplier or an appropriate indirect Supplier to use its leverage to arrange for a meeting between Factory management and Electronics Watch monitors to discuss appropriate remediation, such as an apology to the targeted workers and guarantees to all workers that they will be able to speak freely to Electronics Watch monitors.
- Provide evidence of each request and report on the results to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

<sup>15</sup> Equivalent codes require compliance with country of production labour laws, including health and safety regulations, and international labour standards, including the ILO core conventions.

They should also require respect for Articles 23 of the United Nations Universal Declaration of Human Rights and Article 32 of the United Nations Convention on Rights of the Child.

## 5.4 Factory Compliance with the Electronics Watch Code of Labour Standards

### *Purpose*

Factory compliance with the Electronics Watch Code of Labour Standards, or an equivalent code,<sup>15</sup> ensures workers who produce the Goods have safe and decent working conditions and access to all rights granted to them by law and applicable international conventions and agreements. Compliance with the living wage standard (Outcome 11) ensures workers and their families do not live in poverty.

## Outcome 10

*(Contract clause, Section 7)*

<sup>16</sup> Contractors and their Suppliers are not required to monitor for compliance according to the Electronics Watch Code, but will be in compliance with the Contract Conditions and achieve Outcome 10 if they discover breach of an industry code and provide evidence of Remediation. However, Contractors are required to exercise leverage to ensure Remediation of breach of the Electronics Watch Code or equivalent codes when Electronics Watch discovers a breach of the Code. Note that there is a special procedure to remedy breach of the living wage standard described in Outcome 11.

<sup>17</sup> Examples include health and safety hazards that can cause serious injury or illness; illegal firings or punitive actions that deprive workers of their livelihood; child labour harmful to children's health, physical or mental development; and different forms of forced labour.

Contractors must:

- Exercise leverage to ensure, and provide evidence of, expeditious Remediation of any breach of the Code in Factories upon discovery by the Contractor, a Supplier, Electronics Watch, or another credible source.<sup>16</sup>
- Exercise leverage to ensure, and provide evidence of, effective actions taken by the Contractor or the Contractor's Suppliers to mitigate risk and prevent recurrence of breach of the Code in Factories.

"Expeditious" Remediation means that remedial action is taken as soon as practically possible. Electronics Watch designates certain issues as "urgent." These issues pose serious present or imminent harm to workers' health, livelihood, or wellbeing and must be addressed urgently to mitigate or prevent such harm.<sup>17</sup> Contractors must respond with utmost urgency to ensure remedy as delay will aggravate the issue and possibly place workers' health and lives at risk. The minimum standard for response is the industry protocol established for "Priority findings," which requires action to mitigate or prevent harm within 48 hours of discovery of risk.

Even when workers’ health, livelihood, and wellbeing are not at imminent risk, delays may cause additional harm to workers and complicate Remediation.<sup>18</sup> Therefore Contractors must always strive to ensure Remediation as expeditiously as possible. The minimum response standard for non-urgent issues is:

- Two working days after receiving Electronics Watch notice of findings of breach: acknowledge receipt.
- After an additional five working days or as agreed: initiate discussion with Electronics Watch on a course of action including a time-bound corrective action plan.<sup>19</sup>
- Remediation according to corrective action plan.

Because delayed action can have serious consequences for workers, Contractors must ensure compliance with this timeline.

*The minimum standard for response to urgent issues is the industry protocol established for “Priority findings,” which requires action to mitigate or prevent harm within 48 hours of discovery of risk. Non-urgent issues must also be addressed expeditiously as delays may cause additional harm to workers and complicate Remediation.*

<b>Electronics Watch Classification of Monitoring Findings</b>	
<p>This symbol means that the issue poses serious, ongoing, or imminent harm to workers’ health, livelihood, or wellbeing and must be addressed urgently to mitigate or prevent such harm. These issues may also be indicators of core issues (see below).</p>	
<p>This symbol indicates core issues that cause or contribute to wider violations of labour rights or safety standards and/or unsafe and poor working conditions. Core issues include, but are not limited to, reprisals against workers who complain or seek to make their voice heard and violations of the ILO core labour standards, which consist of a set of enabling rights that create the conditions for workers to promote and realise decent conditions at work.</p>	
<p>This symbol refers to conditions and practices that breach legal requirements at the site of production.</p>	
<p>This symbol refers to conditions and practices that harm workers, but are not illegal. They may or may not be violations of voluntary codes or other standards.</p>	
<p>This symbol means that the issue has been identified in previous research or monitoring reports and appears to be uncorrected.</p>	

<sup>18</sup> For example, when workers are exposed to hazardous working conditions delays in corrective action can result in deteriorating health and even death over time. When workers are illegally fired delays in their reinstatement may aggravate conditions of poverty for workers and their families. When workers are demoted or harassed because of their support for an independent union, creating a climate of fear in a factory, Remediation will be more difficult the longer it is delayed.

<sup>19</sup> The time line for corrective action will vary depending on the severity and complexity of the breach. Systemic issues may require a long-term plan for improvement including capacity building but those plans must result in demonstrable improvements for workers.

## Outcome 11

(Contract clause, Section 7)



Contractors must:

- **Within six months of date of contract:** Report to the Contracting Authority and to Electronics Watch on behalf of the Contracting Authority on its own or its Suppliers' strategies to increase wages to a living wage level<sup>20</sup> in the Factories. The report on the living wage strategies must include, but is not limited to, whether or not, and to what extent, the following steps have been accomplished:
  - Increases in the base wage of the lowest paid workers making the Goods beyond the legal minimum wage, and, if so, the percentage increase.
  - Legally binding collective bargaining between workers and management or worker-management dialogue on wage increases in the Factories.
  - A baseline study of wage levels in the Factories, and how the wage levels relate to the legal minimum wage and the cost of basic needs of workers and their families.
  - A calculation of the living wage for workers in the Factories based on the Electronics Watch living wage standard or similar standard.
  - A plan for accommodating the cost of increasing wages in Factories to a living wage, ensuring that the cost is not borne by workers in the form of reduced benefits, classification of workers to lower grades, increased working hours with fewer workers, or other means that harm workers.
  - Consultations with independent workers' unions or other organisations or committees representing workers in all of the steps above.
- **Every six months following the initial report on the living wage strategies:** Report to the Contracting Authority and to Electronics Watch on behalf of the Contracting Authority on its or its Suppliers' progress in implementing the living wage strategy in the Factories.

<sup>20</sup>The Electronics Watch Contract Conditions define a "living wage" as a "take home" or "net" wage (excluding any taxes, bonuses, allowances, or overtime wages) earned during a country's legal maximum work-week (not exceeding 48 hours), which is sufficient to pay for the basic needs (housing, energy, nutrition, clothing, health care, education, potable water, childcare, and transportation) of a family of four people, and includes an additional 10% of the cost of basic needs as discretionary income.

**How a Contractor complies if it cannot achieve compliance with the Electronics Watch Code of Labour Standards:**

A Contractor must achieve outcomes within its control, that is, outcomes the Contractor can achieve without intervention by another actor. If a Contractor does not achieve Outcome 10 or 11, and those outcomes are not within the Contractor's control, the Contractor must comply with its contractual obligations by taking the following steps:

**Within 10 Days of request by the Contracting Authority, in case the Contractor has not ensured Remediation within the required timeline for response to either urgent or non-urgent issues:**

- Formally communicate the Electronics Watch findings of Factory breach of labour rights and/or safety standards to the direct Supplier or to Suppliers further up the supply chain and request the Supplier to provide the following information:
  - Evidence of Remediation of breaches and a list of workers, including their contact information, who have received compensation for harm; or,
  - A time-bound corrective action plan.

This written communication must include specific mention of the Contractual requirement for Remediation of breach, including compensation of workers, as stated in the Contract between the Contractor and the Contracting Authority, and be signed by a senior level manager.

- Provide evidence of the request and report on the results to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

**Within 20 Days of the target date of the outcome, in case the Contractor has not submitted a report on its own or Suppliers' living wage strategies or the report is incomplete:**

- Formally request the direct Supplier or the applicable indirect Supplier to provide all the required information for the report on the living wage strategy. This written communication must include specific mention of the Contractual requirement for a living wage strategy as stated in the Contract between the Contractor and the Contracting Authority, and be signed by a senior level manager.
- Provide evidence of each request and report on the results to the Contracting Authority and Electronics Watch on behalf of the Contracting Authority.

## 6

## TRANSPARENCY TO STAKEHOLDERS

### **Electronics Watch shares its own monitoring findings based on stakeholders' need to know and right to know.**

Electronics Watch shares its own monitoring results with stakeholders that are most immediately impacted by the findings.

- Workers have a right to know about findings and recommendations that directly impact their own work environment, and they may have an urgent need to know about findings related to issues that pose serious present or imminent harm to their health, livelihood, or wellbeing.
- Factories and buyers, likewise, have a right and need to know about the findings that impact their own business to be able to respond in a timely manner, achieve remedy, and mitigate and prevent violations.
- Electronics Watch affiliates have a right to know about risks in their own supply chains and may need to take action to ensure breaches are remedied. However, affiliates may not need to know about monitoring findings as quickly as the affected workers and companies.
- Finally, the public has a right to know that their tax money is not causing harm to others and ultimately must be able to hold public and private institutions to account. However, access to monitoring findings is not time sensitive for the public, and may not require the degree of specificity that other stakeholders need. Electronics Watch may release its own monitoring reports publicly, but only after the Contractor and Suppliers have had a reasonable opportunity to review and address the findings of the monitoring reports and when it is in the best interest of workers. The timeline for Contractors and Suppliers to take action varies according to the urgency and complexity of the violations (Outcome 10). Confidential information will be protected.

*Workers have a right to know about findings and recommendations that directly impact their own work environment, and they may have an urgent need to know about findings related to issues that pose serious present or imminent harm to their health, livelihood, or wellbeing.*

### **Electronics Watch shares information obtained from Contractors based on the contractual terms between the Contractor and Contracting Authority.**

EU procurement rules protect the confidentiality of information provided by economic operators during a procurement procedure in order to protect the integrity and effectiveness of the procurement process. However, it does not reach beyond this phase to regulate the contractual agreement between the parties as to information sharing during contract performance. In the absence of any such general constraint on what parties may agree about the sharing of information which is provided during contract performance, a contracting authority is entitled under general principles of freedom of contract to require whatever information sharing provisions it deems necessary in its contracts.

When a Contracting Authority has incorporated the Electronics Watch Contract Conditions the following confidentiality rules apply, unless the information in question is already public or the Contractor has consented to make it public.

**Only the following information may be made public:**

- Supply chain relationships: the fact that a Contracting Authority obtains products from a Contractor and that the Contractor obtains the products from certain brand companies and Factories, but not the names of products or other product details or the names of individuals associated with brand companies and Factories.

**The following information may be shared with all Electronics Watch affiliates, but not the general public:**

- The names of the Goods made in the specific Factories listed and supplied to affiliates.

**The following information may be shared with all Electronics Watch affiliates that obtain Goods from the same Factories:**

- The fact that the Contractor has been required to engage in an escalation process to address apparent breaches of its obligations.

All other information required to be disclosed under the Electronics Watch Contract Conditions, as explained in this Guidance, is confidential and will not be disclosed by Electronics Watch or by the Contracting Authority unless it is required by law to make the disclosure. For greater clarity, this confidential information includes, but is not necessarily limited to:

- Product details associated with certain Factories, IT brand companies, and Contractors.
- Compliance findings and audit reports disclosed by the Contractor.
- Records containing privacy data or commercially sensitive information.
- Contractor assessments of their own and suppliers' trading conditions.

**Internal Information Flow**

Electronics Watch works with qualified civil society organisations located as near as possible to workers' communities in electronics production regions to conduct monitoring. Electronics Watch shares necessary supply chain information with Electronics Watch monitoring organisations under contract terms that require the monitoring organisation to respect the same confidentiality as Electronics Watch. The monitoring organisation in turn reports its findings and recommendations exclusively to Electronics Watch and is bound by contract not to make any other use of the information it obtains in the course of conducting monitoring for Electronics Watch.

## I ANNEX I: TIMELINE OF REQUIRED ACTIVITIES

This Guidance includes target dates for when an outcome must be achieved, and—in case an outcome not within the control of the Contractor is not achieved by the target date—target dates for when additional due diligence must be exercised. Some outcomes must be achieved within a certain time period of the date of contract, while other outcomes must only be achieved upon request of the Contracting Authority.

*The outcomes and due diligence requirements are stated in summary form in this table. For the exact and complete requirements please refer to Section 5, Operational Guidance.*

Outcome	Outcome Target Dates <sup>21</sup>	Due Diligence (if outcome is not achieved)	Due Diligence Target Date <sup>22</sup>
<b>Supply Chain Transparency</b>			
Assembly Factory and high risk component Factory disclosure (Outcomes 1 and 2)	<i>Within 25 Days of date of contract</i>	Formal request of direct or indirect Supplier	<i>Within 10 Days of outcome target date</i>
Chemical inventory for each disclosed Factory and Good or component (Outcome 3)	<i>Within 25 Days of date of contract</i>	Formal request of direct or indirect Supplier	<i>Within 10 Days of outcome target date</i>
Compliance findings in summary or in whole (Outcome 4)	<i>Within 25 Days of date of contract</i>	Formal request of direct or indirect Supplier	<i>Within 10 Days of outcome target date</i>
General report on trading conditions that potentially impact Factory compliance (Outcome 6)	<i>Within 25 Days of date of contract</i>	Formal request of direct or indirect Supplier	<i>Within 20 Days of outcome target date</i>
Whether or not specific component Factories identified by the Contracting Authority make components of the Goods (Outcome 2)	<i>Within 10 Days of request by Contracting Authority</i>	Formal request of direct or indirect Supplier	<i>Within 10 Days of outcome target date</i>
Compliance findings in full (Outcome 5)	<i>Within 25 Days of request by Contracting Authority</i>	Formal request of direct or indirect Supplier	<i>Within 10 Days of outcome target date</i>
Report on trading conditions that may contribute to or cause specific breach in a Factory (Outcome 7)	<i>Within 25 Days of request by Contracting Authority</i>	Formal request of direct or indirect Supplier	<i>Within 20 Days of outcome target date</i>

Outcome	Outcome Target Dates <sup>21</sup>	Due Diligence (if outcome is not achieved)	Due Diligence Target Date <sup>22</sup>
<b>Factory Cooperation</b>			
Factory access for Electronics Watch monitors upon presentation of risk of breach (Outcome 9)		Formal request of direct or indirect Supplier for Factory access	<i>Within 10 Days of request by Contracting Authority</i>
No retaliation against workers who speak with Electronics Watch monitors (Outcome 8)		Formal request of direct or indirect Supplier to arrange for meeting between Electronics Watch monitors and factory management	<i>Within 5 Days of request by Contracting Authority</i>
<b>Compliance with Code of Labour Standards</b>			
Report on living wage strategy (Outcome 11)	<i>Initial report within 6 months of date of contract; progress updates every 6 months</i>	Formal request of direct or indirect Supplier to provide the information necessary for the living wage strategy report	<i>Within 20 Days of outcome target date</i>
Evidence of Remediation of breach and effective action to mitigate risk and prevent recurrence of breach (Outcome 10)	<i>As expeditiously as possible after discovery of breach (see timeline in Outcome 10)</i>	Formal communication of findings of breach to direct or indirect Supplier with request for evidence of remediation or corrective action plan	<i>Within 10 Days of request by Contracting Authority</i>

<sup>21</sup> The Contracting Authority may specify other target dates at its discretion.

<sup>22</sup> The Contracting Authority may specify other target dates at its discretion.

## II

## ANNEX II: COMPLIANCE CHECKLIST

This checklist is a tool for Contractors to aid compliance with the Electronics Watch Contract Conditions. Contractors can check off outcomes that are achieved, record any followup due diligence steps, and note their own observations.

*The outcomes are stated in summary form in this table. For the exact and complete requirements please refer to Section 5, Operational Guidance.*

Outcomes	Achieved	Follow-up Due Diligence	Observations
1. Assembly Factory disclosure	<input checked="" type="checkbox"/>  <input type="checkbox"/>		
2. High risk component Factory disclosure	<input checked="" type="checkbox"/>  <input type="checkbox"/>		
3. Disclosure of Factory chemical inventory records*	<input checked="" type="checkbox"/>  <input type="checkbox"/>		
4. Disclosure of compliance findings in entirety or in summary	<input checked="" type="checkbox"/>  <input type="checkbox"/>		
5. Disclosure of compliance findings in full	<input checked="" type="checkbox"/>  <input type="checkbox"/>		

Outcomes	Achieved	Follow-up Due Diligence	Observations
6. General report on trading conditions*	  		
7. Report on trading conditions that impact compliance in specific Factories*	  		
8. Non-retaliation against workers who speak with Electronics Watch monitors	  		
9. Factory access for Electronics Watch monitors	  		
10. Remediation of breach of labour rights and safety standards	  		
11. Living wage strategy report*	  		

\*The Contracting Authority may designate these clauses, "comply or explain" (see Section 5.1.2).



## ANNEX III: ELECTRONICS WATCH MONITORING METHODOLOGY

The Electronics Watch Contract Conditions are designed to create the information flow and access to Factories necessary to make possible independent compliance monitoring and verification through Electronics Watch.

Electronics Watch conducts worker-driven monitoring, that is, monitoring guided by workers' needs, concerns, and priorities where workers themselves are actively involved both individually and collectively. Workers should be able to call attention to problems in their workplace and initiate investigations, be informed of investigatory findings, and take an active role in the development of solutions.

Electronics Watch implements worker-driven monitoring through qualified civil society organisations located as near as possible to workers' communities. These Electronics Watch monitors use a range of complementary techniques to obtain reliable findings on potential or actual breaches of applicable labour rights and safety standards. Those techniques include:

- Offsite semi-structured worker interviews to obtain information from workers in safe settings where they do not fear retaliation for speaking to investigators or reporting problems in their workplace.
- Onsite or offsite interviews with supervisors and managers.
- Onsite worker surveys to reach a larger number of workers and thus obtain information on the extent of a problem in a workplace or information about issues that may impact relatively few workers, such as harassment or occupational health and safety incidents.
- Onsite worker focus group discussions that allow workers to talk to other workers, identify workers' priorities, and explore challenging problems and solutions.
- Gathering of documentary evidence from workers, managers, or a factory union, including work contracts, pay slips, digital communication, the use of grievance mechanisms, and factory records.

*Electronics Watch conducts worker-driven monitoring, that is, monitoring guided by workers' needs, concerns, and priorities where workers themselves are actively involved both individually and collectively.*



Offsite monitoring is normally the core method as workers are more likely to disclose problems in the workplace in conditions that better safeguard their anonymity. However, if workers seldom go off-site, or if workers work long hours and do not consistently enjoy time off, investigators may find limited opportunities to connect with workers outside the factory. Therefore, Electronics Watch monitors may also seek to carry out onsite monitoring activities. In addition, Electronics Watch may be involved in follow-

up compliance activities to ensure corrective action and prevent recurrence of violations. Those activities may include ongoing monitoring, worker trainings on labour law and occupational health and safety, the development of grievance mechanisms, facilitated worker-management dialogue, and monitoring worker participation in health and safety committees and programs, which may be best carried out onsite. Therefore, one of the key outcomes of the Electronics Watch Contract Conditions is Factory cooperation with Electronics Watch monitors (see Section 5.3 in this Guidance).

## IV

## ANNEX IV: LEGAL CONTEXT

*The Electronics Watch Contract Conditions are based on internationally accepted standards of due diligence.*

The Electronics Watch Contract Conditions reflect the requirements of the UN Guiding Principles on Business and Human Rights, which require human rights due diligence by businesses, and other human rights instruments. In accordance with EU procurement law, the Electronics Watch Contract Conditions are linked to the subject-matter of the contract (the Goods supplied) and comply with the principles of non-discrimination and proportionality.

#### **Contractors' human rights due diligence responsibility**

The Electronics Watch Contract Conditions are based on internationally accepted standards of due diligence and reflect the requirements of the UN Guiding Principles on Business and Human Rights (UNGP). The UNGPs, a global standard for preventing and addressing risk of adverse human rights impact in business activities, have been endorsed unanimously by the UN Human Rights Council and apply to all states and businesses worldwide. The Electronics Watch Contract Conditions reflect the UNGPs requirements for due diligence by business enterprises to:

- Identify and assess any actual and potential human rights impacts with which they may be involved through their business relationships (UNGP 17 and 18);
- Take appropriate action (according to their leverage) to prevent and mitigate adverse human rights impacts (UNGP 19);
- Account for how they address their human rights impacts (UNGP 21); and,
- Provide for or cooperate in remediation of adverse impacts (UNGP 22).

The requirement to respect human rights in supply chains apply to all businesses “regardless of their size, sector, operational context, ownership and structure” (UNGP 14).

#### **Link to subject matter of the contract**

The Electronics Watch Contract Conditions comply with EU procurement rules. Under Article 70 of the 2014 directive (Directive 2014/24/EU) contract conditions must be linked to the subject matter of the contract. Article 67(3) explains that this link exists where the terms relate to goods to be provided under a contract in any respect and at any stage in their life cycle. Thus, the terms may relate to factors involved in the process of production or the trading of goods. The Electronics Watch Contract Conditions impose requirements relating to the production and trading conditions of the goods, consistent with EU law.

It is not permissible to include a contract term that relates to general corporate policy (Recital 104). The Electronics Watch terms are compliant with this constraint as the requirements are imposed only in relation to the Goods supplied to the affiliate. The Contractor is not required to have any general due diligence policy in place; it is only required to carry out due diligence in relation to the particular goods supplied to the affiliate. Thus, the Contractor must only ensure that the production conditions of those Goods comply with the standards in the Electronics Watch Code of Labour Standards; that is, the workers producing the Goods must not be affected by breaches of the standards of the Code.

The effect of the Electronics Watch Contract Conditions may, however, extend to the whole worksite where the Goods are produced. Labour and health and safety standards typically apply to a whole worksite and cannot be isolated to particular workers or production lines. Thus, compliance with the Electronics Watch Contract Conditions may benefit not just the workers producing the Goods but workers at the whole worksite.

### **The principle of non-discrimination**

The principle of non-discrimination requires that comparable situations are not treated differently and that different situations are not treated the same. The Electronics Watch Contract Conditions ensures that neither small nor large companies, neither resellers nor brands, enjoy an inherent advantage in the tender process. The key requirement for contractors is effective and accountable due diligence. As this Guidance explains, any company can satisfy the due diligence requirements, though the means by which businesses meet their responsibilities will vary and may be proportional to their size.

### **The principle of proportionality**

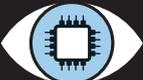
The principle of proportionality requires that the measure at issue is appropriate for attaining the objective pursued and that it does not go beyond what is necessary to attain the objective. The Electronics Watch Contract Conditions are carefully tuned to achieve the key objective: Factory compliance with the Electronics Watch Code of Labour Standards. The clauses related to supply chain transparency and factory cooperation are necessary to ensure independent monitoring through Electronics Watch and verification of compliance with the applicable standards. The clauses related to transparency of compliance findings ensure that Electronics Watch can concentrate monitoring where it will be most effective. The clauses related to transparency of trading conditions are necessary to address root causes of labour rights and safety breaches to ensure Factory improvements are sustainable, yet are formulated to allow companies to protect confidential business information.

## Subcontractors

The Electronics Watch Contract Conditions impose requirements relating not only to the Contractor's own activities, but also to the activities of entities which are further up its supply chain. This is permissible under EU law. It is in fact explicitly encouraged in the 2014 directive. Recital 105 states, "It should be stated explicitly that Member States should be able to... [extend] the transparency obligations, for instance... by enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted [in relation to environmental, social and labour law]."

In fact, it is common practice for contracting authorities to include contract terms which are relatively intrusive in relation to subcontractors. Contracting authorities sometimes seek to control the identity of subcontractors (or economic operators further up the supply chain) by including in the contract terms the right to approve or veto the contractor's choice of subcontractors.<sup>23</sup> The Electronics Watch Contract Conditions, by contrast, impose a relatively light obligation: the Contractor must simply carry out due diligence to ensure that its subcontractors (or entities further up the supply chain) do not produce the Goods in conditions that violate the Electronics Watch Code of Labour Standards.

<sup>23</sup> The Law of Public and Utilities Procurement: Regulation in the EU and UK (Volume 1), 3rd edition (2014), Professor Sue Arrowsmith, para. 6-265.

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