

DATED

2019

KETTERING BOROUGH COUNCIL

and

[THE SUPPLIER]

---

AGREEMENT RELATING TO

THE MANUFACTURE AND SUPPLY OF  
[XXX]

---

THIS AGREEMENT is made the                      day of                      2019

**BETWEEN:**

- (1) **KETETRING BOROUGH COUNCIL** of [XXX] (the "**Council**"); and
- (2) **[SUPPLIER]** a company registered in England and Wales with Company Number [XXXX] whose registered office is at [XXXX] (the "**Supplier**")

**NOW IT IS AGREED** as follows:

**1. RECITALS**

- 1.1 The Council wishes to buy, and the Supplier wishes to supply the Goods on the terms and conditions of this Agreement.

**2. DEFINITIONS AND INTERPRETATION**

**2.1 Definitions**

In this Agreement save where the context requires otherwise, words and phrases shall have the same meanings hereby assigned;

"Agreement" shall mean this agreement made between the Council and the Supplier;

"Administrator" means the person for the time being appointed by the Council as being authorised to administer the Agreement on behalf of the Council or such person as may be nominated by the Administrator to act on its behalf;

"Commencement Date" shall mean [XXX].

"Confidential Information" shall mean any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored);

"DPA" means the Data Protection Act 2018;

"Expiry Date" shall mean [XXX] unless extended by the Council in accordance with the provisions of Clause 3.2;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

"Goods" shall mean the list of goods, materials, articles, or things, or any of them contained in the Specification;

"Intellectual Property Rights" shall mean all patents, rights inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Invitation to Tender" means the invitation for Suppliers to bid for the Goods required by the Council;

"Party" shall mean the Council and the Supplier and "Parties" shall be construed accordingly;

“Price” means the sum of [XXX] as detailed in the Tender;

“Schedule” means the schedules attached hereto;

“Site” shall mean [XXX];

“Specification” means the description of Goods to be provided by the Supplier as detailed in Schedule 1;

“Staff” means all persons employed by the Supplier to perform the Agreement together with the Supplier’s servants, agents and sub-contractors used in the performance of the Agreement;

“Supplier’s Representative” means the individual authorised to act on behalf of the Supplier for the purpose of the Agreement;

“Tax” means value added tax;

“Tender” means the Suppliers response to the Invitation to Tender as detailed in Schedule 2;

“Term” means the period of duration of the Agreement in accordance with Clause 3.1;

“Working Day” shall mean a day other than a Saturday or Sunday or a public holiday when banks in London are open for business.

## **2.2 Interpretation**

In this Agreement, except where the context otherwise requires:

- 2.2.1 References to clauses and schedules are to the clauses of and schedules to this Agreement;
- 2.2.2 Clause and schedule headings are for convenience only and do not affect the interpretation of this Agreement;
- 2.2.3 Words in the singular shall include the plural and vice versa;
- 2.2.4 Words importing the masculine include the feminine and the neuter;
- 2.2.5 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality);
- 2.2.6 References to any statute or statutory provision is a reference to it as it is in force for the time being, taking into account any amendment, extension or re-enactment of the same and includes any subordinate legislation made under it;
- 2.2.7 Reference to a Party’s consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs;
- 2.2.8 In the case of conflict or ambiguity between any of the documents referred to in this Agreement, the documents shall have the following order of precedence:
  - (A) these terms and conditions;
  - (B) the Specification and Invitation to Tender;
  - (C) the Tender; and
  - (D) any other documents referred to in this Agreement.

## **3. TERM**

The Agreement shall take effect on the Commencement Date and shall continue until the Expiry Date and or the date of delivery.

## **4. SUPPLIER’S OBLIGATIONS**

### **4.1 The Supplier shall:**

- 4.1.1 Provide the Goods on Working Days between the hours of 8.30am and 5.00pm and

shall make itself available at weekends and public holidays for the purpose of supporting any required emergency repairs in accordance with the Councils requirements as set out in the Specification, the Tender and the terms of this Agreement;

- 4.1.2 Deliver the Goods with reasonable skill, care, and diligence, and in accordance with good commercial practices, and all general industry standards and practices that are applicable;
  - 4.1.3 Act at all times in good faith and in the best interests of the Council;
  - 4.1.4 Ensure that the Goods are properly packaged and secured so as to enable them to reach the Site in good condition;
  - 4.1.5 Ensure that time is of the essence in the delivery of the Goods to the Site and that Goods are delivered by suitably skilled, experienced, qualified and competent members of the Supplier's Staff under proper management and supervision;
  - 4.1.6 Allow the Council to inspect and examine any Goods or work being undertaken in the performance of the Agreement at all reasonable times.
- 4.2 The Goods supplied to the Council by the Supplier under the terms of this Agreement shall:
- 4.2.1 Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council;
  - 4.2.2 Be free from defects in design, material and manufacturing and remain so for 12 months from the Date of delivery; and
  - 4.2.3 Comply with all applicable statutory and regulatory requirements.
- 4.3 The Supplier acknowledges and agrees that the Council is entering into this Agreement on the basis of the information provided in the Tender and confirms that this is accurate and complete in all material respects and is not in any way misleading.
- 4.4 Without prejudice to any other rights and remedies the Council may have pursuant to this Agreement, the Supplier shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Supplier's delay in the performance of its obligations under the Agreement and which the Supplier has failed to remedy following reasonable notice from the Council. For the avoidance of doubt, the Supplier shall have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Council's failure to comply with its obligations under this Agreement.
- 4.5 This Agreement shall not negate or diminish any duty or obligation which the Supplier owes to the Council in equity, at common law or pursuant to statute or European Law.

## **5. HEALTH AND SAFETY**

- 5.1 The Supplier shall:
- 5.1.1 Be responsible for the health and safety of all Staff and any other person involved in the performance of this Agreement and shall comply and ensure that its staff comply, with the requirements of the Health and Safety at Work Act 1974 and any other health and safety rules and regulations;
  - 5.1.2 Adopt safe methods of working in order to protect the health and safety of its Staff and where applicable, the employees of the Council and all other persons, including members of the public;
  - 5.1.3 Notify the Council as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Goods;
- 5.2 Review its safety policy and safe working procedures as often as may be necessary and shall present any proposed amendments to the Administrator for approval.

## **6. DELIVERY**

6.1 The Supplier shall deliver the Goods to the Site and provide the Council with a delivery note containing the order number and space for a six digit works order number and address.

6.2 Delivery shall be complete when the Council have signed the delivery note.

## **7. COMPLAINTS**

The Supplier shall maintain a complaints procedure to log complaints and take appropriate remedial action.

## **8. COUNCIL'S OBLIGATIONS**

The Council shall co-operate with the Supplier in all matters relating to the Goods and appoint the Administrator to oversee the Agreement.

## **9. MANAGEMENT**

The Administrator shall have full authority to act on behalf of the Council for all purposes connected with the Agreement.

## **10. ACCEPTANCE AND DEFECTIVE PRODUCTS**

10.1 The Council shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

10.2 If the Goods do not comply with clause 4.2 or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that the Council may have, the Council may:

10.2.1 Require the Supplier to repair or replace that part of the Goods at the Supplier's risk and expense within a reasonable time; and

10.2.2 Claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of the Goods or part of it that is not in conformity with the terms of this Agreement.

10.3 The Council's rights and remedies under clause 4 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, fitness for purpose, and correspondence with sample implied into this Agreement by the Sale of Goods Act 1979.

## **11. TITLE AND RISK**

The title and risk in the Goods shall pass to the Council on delivery.

## **12. PRICE**

The Price for the Goods shall be the prices set out in the Tender.

## **13. CHARGES AND PAYMENTS**

13.1 Once the Supplier has delivered the Goods to the Site, the Supplier shall submit a valid Tax invoice to the Council for payment and any other documentation reasonably required by the Administrator to substantiate the invoice.

13.2 The Council shall pay undisputed invoices within 30 days of receipt, to a bank account nominated in writing by the Supplier.

- 13.3 Each Party may without limiting any other rights or remedies it may have, set off any amounts owed to it by the other Party against any amounts payable by it to the other Party.
- 13.4 During the Term of this Agreement the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- 13.4.1 Public Liability Insurance - cover in the minimum sum of £10,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the manufacture and supply of the Goods;
  - 13.4.2 Employers Liability Insurance - minimum sum of £10,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
  - 13.4.3 Product liability insurance with a limit of indemnity of not less than £5,000,000.00 in relation to any one claim or series of claims;
  - 13.4.4 (if applicable) professional Indemnity Insurance - against the risk of professional negligence on the part of the Bidder and or its staff in the minimum sum of £2,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited.
- 13.5 On the Council's written request, the Supplier shall provide the Council with copies of the insurance policy certificates and details of the cover provided.

#### **14. INDEMNITY**

- 14.1 The Supplier shall indemnify, and keep indemnified the Council against all claims and all direct, indirect or consequential liabilities, costs proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Council arising out of, or in connection with:
- 14.1.1 Any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods;
  - 14.1.2 Any claim made against the Council by a third party arising out of, or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier; and
  - 14.1.3 Any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, the defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions or the Supplier, its employees, agents or subcontractors.

#### **15. WARRANTIES AND REPRESENTATIONS**

The Supplier warrants and represents that it has the full capacity and authority and all necessary consents to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Supplier.

#### **16. ANTI-BRIBERY**

- 16.1 The Supplier:
- 16.1.1 Shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Prevention of Corruption Act 1880 to 1916 and Section (2) of Section 117 of the Local Government Act 1972 and the Bribery Act 2010;

- 16.1.2 Warrants that it is not aware of any financial or other advantage being given to any person working for, or engaged by the Supplier, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

## **17. DISCRIMINATION**

The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic, or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

## **18. ENVIRONMENTAL REQUIREMENTS**

The Supplier shall perform the Agreement in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gasses, volatile organic compounds and other substances damaging to health and the environment.

## **19. TERMINATION**

- 19.1 The Council may terminate the Agreement by notice in writing with immediate effect where the Supplier:

- 19.1.1 undergoes a change of control, within the meaning of Section 1124 of the Corporation Tax Act 2010, which impacts adversely and materially on the performance of the Agreement; or
- 19.1.2 is an individual or a firm and a petition is presented for the Supplier's bankruptcy, or a criminal bankruptcy order is made against the Supplier or any partner in the firm, or the Supplier or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Supplier's or firm's affairs; or
- 19.1.3 is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- 19.1.4 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or
- 19.1.5 has abandoned the Agreement; or
- 19.1.6 has failed to perform a substantial part of the Service for a period of seven (7) Working Days; or
- 19.1.7 has failed to supply or proceed or deliver the Goods with due diligence; or
- 19.1.8 commits a material breach of any of the terms of this Agreement; or

- 19.1.9 has made a material or fundamental misrepresentation to the Council during the tender process; or
- 19.1.10 is persistently committing minor breaches of the Agreement; or
- 19.1.11 is otherwise fundamentally or persistently in breach of his obligations under the Agreement.

## **20. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

If the Council terminates the Agreement in accordance with Clause 19 or terminates the provision of any part of the Agreement under that clause, and then makes other arrangements for the provision of the Goods, the Council shall be entitled to recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under Clause 19, no further payments shall be payable by the Council to the Supplier until the Council has established the final cost of making those other arrangements.

## **21. REMEDIES CUMULATIVE**

Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **22. RECOVERY UPON TERMINATION**

- 22.1 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Supplier and the Council accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 22.2 The provisions of this Clause shall survive the continuance of the Agreement and indefinitely after its termination.

## **23. FORCE MAJEURE**

Neither Party shall be responsible to the other for any delay in performance or non-performance of the Agreement due to any causes beyond the reasonable control of the Parties, but the affected Party shall promptly upon the occurrence of any such cause, inform the other Party in writing stating that such cause has delayed or prevented its performance under the Agreement, and thereafter the Parties will take all action within their powers to comply with the terms of this Agreement as fully and promptly as possible.

## **24. VARIATION AND WAIVER**

- 24.1 Any variation of this Agreement shall be in writing and signed by or on behalf of each of the Parties.
- 24.2 Failure by either Party to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law, shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

## **25. SEVERANCE**

If any court or competent authority finds that any provision of this Agreement is invalid, illegal or unenforceable, that provision shall be deleted, and this shall not affect the validity and enforceability of the remainder of the Agreement.



## **26. ASSIGNMENT**

- 26.1 The Supplier shall not assign, transfer or in any way dispose of this Agreement or any part thereof without the approval of the Council.
- 26.2 Subcontracting any part of the Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Agreement.
- 26.3 The Supplier shall be responsible for the acts and omissions of its subcontractors as though they are its own.

## **27. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall operate to create a partnership, or contract of employment between the Parties, or to authorise either Party to act as an agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

## **28. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person who is not a party to this Agreement shall have any rights to enforce the terms of this Agreement and the terms of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

## **29. DATA PROTECTION ACT**

- 29.1 The Supplier shall comply (and shall ensure that its Staff comply) with the DPA and shall where appropriate maintain a valid and up to date registration or notification under the DPA.
- 29.2 The Parties shall duly observe all of their obligations under the DPA which arise in connection with this Agreement.
- 29.3 The Supplier acknowledges that the Council is subject to the requirements of the DPA and shall assist and co-operate with the Council to enable the Council to comply with the information disclosure requirements.

## **30. FREEDOM OF INFORMATION**

The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall assist and co-operate the Council to enable the Council to comply with these information disclosure requirements.

## **31. CONFIDENTIALITY**

Each Party agrees that all Confidential Information belonging to the other Party as confidential and safeguard it accordingly and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

## **32. FRAUD**

The Supplier shall safeguard the Council against fraud and shall notify the Council immediately if it has any reason to suspect that fraud has occurred or is occurring or is likely to occur.

## **33. PUBLICITY**

Without prejudice to the Councils obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the approval of the other Party.

#### **34. INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Supplier by the Council shall remain the property of the Council and the Supplier shall not, and shall procure that its Staff shall not without approval use or disclose any Intellectual Property Rights, or any other information which the Supplier may obtain in performing the Agreement except information which is in the public domain.

#### **35. AUDIT**

- 35.1 The Supplier shall keep and maintain until 6 years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods and Goods provided under it, all expenditure reimbursed by the Council, and all payments made by the Council.
- 35.2 The Supplier shall on request afford the Council such access to those records as may be required by the Council in connection with the Agreement.

#### **36. NOTICES**

- 36.1 A notice or other communication given to a Party under this Agreement shall be given in writing, addressed to that Party at its registered office or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier.
- 36.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 36.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the Second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 36.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **37. DISPUTES**

- 37.1 If any dispute arises in connection with this Agreement, the Parties shall meet in good faith to resolve the issue.
- 37.2 If the dispute is not resolved at that meeting, the Parties will refer the matter to a single arbitrator to be agreed between the Parties.
- 37.3 If the matter has not been resolved within 42 days from the initiation of arbitration, the dispute shall be referred to, and finally resolved by the courts.
- 37.4 The Parties shall share the costs of arbitration equally, irrespective of fault.

#### **38. ENTIRE AGREEMENT**

- 38.1 This Agreement and any documents referred to in it or annexed to it constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations and undertakings, whether written or oral relating to the subject matter of this Agreement.
- 38.2 Nothing in this Clause shall limit or exclude any liability on the part of the Supplier for fraudulent misrepresentation.

**39. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.

SIGNED BY )  
KETTERING BOROUGH COUNCIL )

.....

SIGNED BY )  
[SUPPLIER] )

.....

Director  
AND

.....

Director/ Company Secretary

## Schedule 1 - Specification

## Schedule 2 - Tender