NORTH EAST PROCUREMENT ORGANISATION

TERMS AND CONDITIONS FOR THE PURCHASE OF SERVICES

DATED this day of 2015

BETWEEN:

**Homes and Communities Agency** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (**“the Customer”**);

and

**de Poel Managed Services Limited** (Company registration number 4766716) of The Old Shippon, Moseley Hall Farm, Chelford Road, Knutsford, WA16 8RB (**“the Contractor”**).

**Background:**

The North East Procurement Organisation (NEPO) has appointed the Contractor under a framework arrangement for the provision of a ‘vendor neutral’ managed service for temporary agency workers.

The Contractor does not supply temporary agency workers and remains neutral when selecting agency suppliers and proposing temporary agency workers for the Customer. The Contractor provides the participating NEPO Member Organisations with a single point of contact for the acquisition of temporary workers.

Any individual NEPO Member Organisation (or any other Organisation entitled to access the framework) that wishes to call off the Contractor’s services shall enter into a direct agreement with the Contractor, which shall be in the same form as this Contract. This Contract governs the relationship between the Contractor and the Customer named at the head of this agreement.

The Customer may at its absolute discretion order Services from the Contractor in accordance with the terms of this Contract. The Contractor acknowledges that there is no obligation on the Customer to purchase any Services from the Contractor, or to guarantee total quantities or values of Services during the Contract Period.

The Customer contracts with the Company for the provision of the Services in accordance with its powers under s1 of the Localism Act 2011, and all other relevant statutory powers from time to time in force.

**CONTENTS**

**PART A - OPERATIVE PROVISIONS** **4**

A1 DEFINITIONS 4

A2 HEADINGS 9

A3 NOTICES 9

A4 ENTIRE AGREEMENT 10

**PART B - PROVISION OF SERVICES 10**

B1 CONTRACT PERIOD 10

B2 PERFORMANCE 10

B3 ACCOUNT MANAGER 111

B4 ORDERING PROCESS 11

B5 RISK IN AND TITLE TO GOODS 11

B6 WARRANTY 11

B7 CONTRACTOR’S EMPLOYEES 13

**PART C - PRICE AND PAYMENT 13**

C1 PRICE AND PAYMENT 13

C2 CONTRACT REBATE……………………………………………………………14

**PART D - TERMINATION AND CONSEQUENCES OF TERMINATION 144**

D1 TERMINATION 14

D2 CONSEQUENCES OF TERMINATION 15

D3 DISPUTE RESOLUTION PROCEDURE 166

D4 SURVIVAL 16

**PART E - INSURANCE AND LIABILITIES 177**

E1 INSURANCE 17

E2 INDEMNITY AND LIABILITY 177

**PART F - PROTECTION OF INFORMATION 188**

F1 INTELLECTUAL PROPERTY 18

F2 CONFIDENTIALITY AND PUBLICITY 18

F3 DATA PROTECTION 199

F4 FREEDOM OF INFORMATION 19

F5 RECORD KEEPING AND MONITORING 19

**PART G - STATUTORY OBLIGATIONS 2020**

G1 HEALTH AND SAFETY 20

G2 CORPORATE REQUIREMENTS 20

G3 LAW AND CHANGE IN LAW 20

G4 TUPE AND RE-TENDERING…………………………………………………….21

**PART H - GENERAL PROVISIONS 233**

H1 CONTRACT VARIATION 233

H2 THIRD PARTY RIGHTS 23

H3 NO WAIVER 23

H4 SEVERANCE 23

H5 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY 24

H6 FORCE MAJEURE 24

H7 INDUCEMENTS 25

H8 COSTS AND EXPENSES 25

H9 NO AGENCY OR PARTNERSHIP 25

H10 NON SOLICITATION AND OFFERS OF EMPLOYMENT 25

H11 INSPECTION OF CONTRACTOR’S PREMISES 26

H12 LAW AND JURISDICTION 26

part a - operative provisions

1. DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

|  |  |
| --- | --- |
| “Account Manager” | the person named in the Contract Particulars as the Account Manager and any replacement from time to time in accordance with clause B3.2. |
|  |  |
| “Assigned Employees” | In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services |
|  |  |
| “Business Day” | any day other than a Saturday or Sunday or a public or bank holiday in England. |
| “Change in Law” | the coming into effect or repeal (without re‑enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract. |
| “Commencement Date” | the commencement date stated in the Contract Particulars. |
| “Confidential Information” | 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) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the Data Protection Act 1998). |
| “Contract”  “Contract Manager” | the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:   1. the Contract Particulars; 2. the Special Terms and Conditions; 3. the Standard Terms and Conditions; 4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.   the person duly appointed by the Customer and notified in writing to the Contractor to act as the representative of the Customer for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Customer’s head of procurement or similar responsible officer. |
| “Contractor” | the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members. |
|  |  |
| “Contract Particulars” | the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Contract Manager, Account Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document. |
| “Contract Period” | the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1). |
| “Control” | control as defined by section 416 of the Income and Corporation Taxes Act 1988. |
| “Customer” | the Customer named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Customer (whether in part or totally) or which is controlled by or is under common control with the Customer (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists). |
| “Delivery Instructions” | the instructions provided in the Contract Particulars and any other information that the Customer considers appropriate to the provision of the Services. |
| “Employee” | any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services.. |
| “EIR” | The Environmental Information Regulations 2004. |
| “FOIA” | The Freedom of Information Act 2000. |
| “Force Majeure” | any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies. |
| “Good Industry Practice” | the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract. |
| “HRA” | The Human Rights Act 1998. |
| “Intellectual Property Rights” | patents, inventions, trade marks, service  marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| “Invitation to Tender” | the Customer’s invitation to tender for the Contract. |
| “Key Personnel” | those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5. |
| “Law” | any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply. |
| “Liabilities” | all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought. |
| “NEPO” | North Eastern Procurement Organisation |
| “NEPO Member Organisations” | means organisations who are members of the North Eastern Procurement Organisation. |
| “Order” | an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off. |
| “Organisations” | means a public sector organisation who is able to access this Contract. |
| “Price” | the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for. |
| “Pricing Schedule” | the schedule from the Tender detailing the pricing as detailed in the Contract Particulars. |
| “Prohibited Act” | include any of the following (i) termination of employment; (ii) or the alteration or change of terms and conditions of any Employees; (iii) or the recruitment of any employees; or (v) relocation or assignment to new duties of any employees |
| “Replacement Contractor” | any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract |
| “Services” | the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services. |
| “Special Terms and Conditions” | the additional terms and conditions attached which were set out in the Invitation to Tender. |
| “Specification” | the specification included in the Contract Particulars setting out the Customer's detailed requirements in relation to the Services. |
| “Standard Terms and Conditions” | the terms and conditions set out in this document. |
| “Tender” | the Contractor’s tender for the Services in response to the Customer’s Invitation to Tender. |
| “Transferring Employees” | means those employees employed wholly or mainly by the contractor in providing the Services and who will transfer to a Replacement Contractor or the Customer (as the case may be) under the provisions of TUPE. |
| “TUPE” | The Transfer of Undertakings (Protection of Employment) Regulations 2006. |

* 1. Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
  2. A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

1. HEADINGS
   1. The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.
2. NOTICES
   1. Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.
   2. Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hoursafter it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.
3. ENTIRE AGREEMENT
   1. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

**PART B – PROVISION OF SERVICES**

1. Contract Period
   1. The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
   2. If the Contract Period includes an option to extend and the Customer intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.
2. PERFORMANCE
   1. The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 7.30 a.m. and 5.30 p.m. on a Business Day.
   2. The time of the delivery of the Services is of essence to the Contract.
   3. The Customer will have the right to observe the Contractor’s performance of the Services if the Services are not being performed on the Customer’s premises.
   4. If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Customer which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Customer and the Customer may, at its absolute discretion, extend the period of the Contract accordingly.
   5. If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Customer immediately.
   6. If the Contractor has a change in Control, the Contractor shall inform the Customer as soon as reasonably practicable.
   7. The Customer retains the Contractor for the performance of the Services on a non-exclusive basis.
3. ACCOUNT MANAGER
   1. The Contractor shall employ a competent and authorised Account Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
   2. The Contractor shall forthwith give notice in writing to the Customer of any change in the identity, address and telephone numbers of the person appointed as Account Manager. The Contractor shall give maximum possible notice to the Customer before changing its Account Manager.
4. ORDERING PROCESS
   1. Where this Contract is identified as requiring Orders in the Contract Particulars, the Contractor shall accept Orders from the Customer in accordance with the ordering procedure and requirements as detailed in the Specification.
   2. The Customer gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
   3. The Orders shall state the type of or part of the Services required including the Customer’s requirements with regard to timescale for delivery of those Services.
5. RISK IN AND TITLE TO GOODS 
   1. Risk in any goods provided as part of the Services shall pass to the Customer upon delivery without prejudice to any rights of rejection which may accrue to the Customer under the Contract or otherwise.
   2. Title in any goods provided as part of the Services shall pass to the Customer upon delivery or earlier payment.
6. WARRANTY
   1. The Contractor warrants to the Customer that the Services will be provided:
      1. in a proper, skilful and workmanlike manner;
      2. by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
      3. in accordance with the Contract and any descriptions provided by the Contractor;
      4. to the reasonable satisfaction of the Contract Manager;
      5. by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Customer, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Customer, or the element of the Services in respect of which the individual was engaged has been completed to the Customer’s satisfaction or other extenuating circumstances explained to the Customer. Any replacements for the Key Personnel shall be subject to the agreement of the Customer and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and
      6. in a way that the Contractor takes every reasonable precaution to safeguard the Customer’s property entrusted to the care of the Contractor.
   2. The Contractor warrants to the Customer that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
      1. be free from defects in design, material and workmanship; and
      2. be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
   3. Without prejudice to the Customer’s rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Customer shall be entitled to:
      1. require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within five (5) Business Days of a request to do so; or
      2. subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services, together with payment of any additional expenditure over and above the Price reasonably incurred by the Customer in obtaining replacement Services.
7. CONTRACTOR’S EMPLOYEES
   1. The Customer reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Customer:
      1. any member of the Contractor’s Employees; and/or
      2. any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Customer, undesirable.

* 1. When directed by the Customer, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Customer, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably desire.
  2. The Contractor’s Employees, engaged within the boundaries of any of the Customer’s premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
  3. The decision of the Customer as to whether any person is to be refused access to any premises occupied by or on behalf of the Customer shall be final and conclusive.
  4. The Contractor shall replace any of the Contractor’s Employees who the Customer reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor’s Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
  5. The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Customer under this clause.

part c - PRICE AND PAYMENT

1. PRICE AND PAYMENT
   1. The Customer shall pay the Price for the Services to the Contractor.
   2. The Contractor shall submit a single VAT invoice to the Customer no later than seven (7) days after the end of each week detailing the Services provided during that week and the amount payable.
   3. Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Customer.
   4. The Customer reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Customer’s satisfaction.
   5. Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
   6. The Customer will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Customer to the Contractor against any liability of the Contractor to the Customer (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Customer are payable under this Contract. The Customer’s rights under this clause will be without prejudice to any other rights or remedies available to the Customer under this Contract or otherwise.
   7. Further details of payment, if any, are set out in the Pricing Schedule.

C2 **CONTRACT REBATE**

C2.1 Where the Contract Particulars so state, the Contractor shall pay NEPO a contract rebate for all orders placed under this Contract. The level of this rebate and the method of payment are set out in the Contract Particulars.

part d - termination AND CONSEQUENCES OF TERMINATION

1. TERMINATION
   1. Subject to the provisions of clause H6 (Force Majeure) the Customer may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
      1. the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
      2. the Contractor is convicted of a criminal offence; or
      3. the Contractor ceases or threatens to cease to carry on its business; or
      4. the Contractor has a change in Control which the Customer believes will have a substantial impact on the performance of the Contract; or
      5. there is a risk or a genuine belief that reputational damage to the Customer will occur as a result of the Contract continuing; or
      6. the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Customer within 14 days, or such other reasonable period as may be specified by the Customer after issue of a written notice specifying the breach and requesting it to be remedied; or
      7. there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
      8. the Contractor commits persistent minor breaches of this Contract whether remedied or not.
   2. The Customer reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.
   3. Where this Contract is subject to Orders as specified in the Contract Particulars the Customer has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
   4. The Customer reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.
2. CONSEQUENCES OF TERMINATION
   1. If this Contract is terminated in whole or in part the Customer shall:
      1. be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
      2. except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Customer to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Customer resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Customer of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
      3. where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination, subject to the liability provisions in clause E2.2; and/or
      4. in the event that any sum of money owed by the Contractor to the Customer (the Contractor’s debt) exceeds any sum of money owed by the Customer to the Contractor (the Customer’s debt) under this Contract then the Customer shall, at its sole discretion, be entitled to deduct the Contractor’s debt from any future Council’s debt or to recover the Contractor’s debt as a civil debt.
   2. Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.
3. DISPUTE RESOLUTION PROCEDURE
   1. If a dispute arises between the Customer and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
   2. If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or other appropriate nominated senior officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
   3. Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
   4. Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.
4. SURVIVAL
   1. The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause E2 (Indemnity and Liability) Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

part e - insurance and liabilities

1. INSURANCE
   1. The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
   2. The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
   3. If the Contractor does not maintain the necessary insurances under the Contract the Customer may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.
2. INDEMNITY AND LIABILITY
   1. Neither party seeks to exclude or limit its liability for:
      1. death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party’s negligence);
      2. fraudulent misrepresentation; or
      3. any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
   2. Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
   3. The Contractor shall indemnify the Customer in full without limit of liability for any direct loss of or damage to the real or personal property of the Customer or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Customer (including legal expenses on an indemnity basis) arising from the Contractor’s negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

**PART F - PROTECTION OF INFORMATION**

1. INTELLECTUAL PROPERTY
   1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
      1. provided to the Contractor by the Customer shall remain the property of the Customer;
      2. prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Customer subject to any exceptions set out in the Contract Particulars.
   2. The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Customer a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Customer an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Customer, and shall be granted at no cost to the Customer.
   3. It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Customer against all Liabilities which the Customer may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Customer.
   4. At the termination of the Contract the Contractor shall at the request of the Customer immediately return to the Customer all materials, work or records held in relation to the Services, including any back-up media.
2. CONFIDENTIALITY AND PUBLICITY
   1. Any documents provided by the Customer and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Customer and shall not be disclosed disposed of or used for any purpose without prior written consent from the Customer.
   2. All Confidential Information provided by the Customer to the Contractor shall be returned to the Customer at the end of the Contract.
   3. Without prejudice to the Customer’s obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
   4. Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.
3. DATA PROTECTION
   1. The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the the Data Protection Act 1998.
4. FREEDOM OF INFORMATION
   1. The Customer is subject to the FOIA and the EIR (“the Acts”). As part of the Customer's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Customer has absolute discretion to apply or not to apply any exemptions under the Acts.
   2. The Contractor shall assist and cooperate with the Customer (at the Contractor’s expense) to enable the Customer to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Customer.
5. RECORD KEEPING AND MONITORING
   1. In order to assist the Customer in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Contractor shall on request allow the Customer or the Customer’s representatives such access to (and copies of) those records as may be required by the Customer in connection with the Contract.
   2. The Contractor will at its own cost, provide any information that may be required by the Customer to comply with the Customer’s procedures for monitoring of the Contract.

part g - statutory obligations

1. HEALTH AND SAFETY
   1. The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Customer.
2. CORPORATE REQUIREMENTS
   1. The Contractor shall comply with all obligations under the HRA.
   2. The Contractor shall comply with all Council policies and rules, such as, but not limited to:
      1. equality and diversity policies;
      2. sustainability;
      3. information security rules;
      4. whistleblowing and/or confidential reporting policies; and
      5. all site rules relevant to the fulfilment of the Contractor’s obligations in the performance of the Services.
   3. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
   4. The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
   5. If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Customer with:
      1. details of the finding; and
      2. the steps the Contractor has taken to remedy the situation.
3. LAW AND CHANGE IN LAW
   1. The Contractor shall comply at all times with the Law in its performance of the Contract.
   2. On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Customer of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.
   3. Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

G4. TUPE AND RE-TENDERING

G4.1 If requested to do so by the Customer, the Contractor shall fully and accurately disclose at no cost to the Customer for the purpose of TUPE and re-tendering within 20 working days of a written request all information relating to its Employees engaged in providing the Service under the Contract (“the Assigned Staff”) in particular but not necessarily restricted to the following

G4.1.1 The total number of Assigned Staff whose employment with the Contractor in respect of the Services is likely to be terminated at the expiry of this Contract but for any operation of law;

G4.1.2 For each member of Assigned Staff, their age and gender, details of their salary and payment settlements which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual employees do not have to be given); and

G4.1.3 Full information about the other terms and conditions which the Assigned Staff are employed (including but not limited to their working arrangements) or about where that information can be found; and

G4.1.4 Details of pension entitlements, if any; and

G4.1.5 Job titles of the Assigned Staff affected and the qualifications required for each position; and

G4.1.6 Disciplinary procedures taken against any Assigned Staff and any grievance procedures taken out by any Assigned Staff within the previous two years; and

G4.1.7 Details of any court or tribunal case, claim or action brought by any Assigned Staff against the Provider within the previous two years; and

G4.1.8 Details of any court or tribunal case claim or action, which the Provider has reasonable grounds to believe that any of the Assigned Staff may bring against the Contractor or a Replacement Contractor arising out of the Assignment Staff’s employment.

G4.2 The Contractor shall permit the Customer to use the information for the purposes of TUPE and for re-tendering. The Customer shall be able to disclose this information to any prospective tenderer or Replacement Contractor without requiring the Customer to enter in to a confidentiality agreement or otherwise imposing any conditions upon the disclosure of the information.

G4.3 The Contractor will co-operate with the re-tendering of the Service by allowing the Replacement Contractor to communicate with and meet with the Transferring Employees and/or their representative(s).

G4.4 In the event that the information provided by the Contractor in accordance with Clause G4.1 becomes inaccurate, whether due to changes to the employment and personnel details of the Assigned Staff made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate the Contractor shall notify the Customer of the inaccuracies and provide the amended information.

G4.5 The Contractor will keep the Customer and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with:

G4.5.1 The employment or termination of employment of any of the Employees by the Contractor (whether or not terminated by notice and, if so terminated, whenever that notice expires);

G4.5.2 Any act, omission or default of the Contractor in respect of the employment of the Transferring Employees;

G4.5.3 The Contractor’s failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Customer or the Replacement Contractor to give the Contractor the information required from the Customer or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE; and

G4.5.4 The Contractor’s failure to provide the employee liability information under Regulation 11 of TUPE;

G4.5.5 Any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Customer or the Replacement Contractor is not participating, or pursuant to the Transferring Employee’s terms and conditions of employment;

G4.5.6 The Contractor’s failure to comply with its obligations under Clause G4.6 below;

G4.6 The Contractor will not in the event of notice of termination of this Contract or from a date of 12 months before expiry of the Contract Period carry out a Prohibited Act.

part H - general provisions

1. CONTRACT VARIATION
   1. Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Customer and the Contractor.
   2. The Customer shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Customer confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.
2. THIRD PARTY RIGHTS
   1. This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.
3. NO WAIVER
   1. Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
   2. No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).
4. SEVERANCE
   1. If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.
5. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY
   1. Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Customer, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.
   2. The Customer shall be entitled to:
      1. assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or
      2. transfer, assign or novate its rights and obligations where required by Law.
   3. The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.
6. FORCE MAJEURE
   1. Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
   2. If the Customer or the delivery location is affected by circumstance of Force Majeure, the Customer shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Customer nor entitle the Contractor to terminate the Contract.
   3. Industrial action by, or illness or shortage of the Contractor’s Employees, agents or subcontractors, failure or delay by any of the Contractor’s suppliers to supply goods, components, services or materials and breach of the Contractor’s warranties under clause B6 shall not be regarded as an event of Force Majeure.
   4. If the event of Force Majeure continues for more than three (3) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
   5. If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
7. INDUCEMENTS
   1. The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Customer any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Customer, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
   2. The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Customer by the Contractor or on the Contractor’s behalf.
   3. Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Customer, the Customer has the right to:
      1. terminate the Contract and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the provision of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; or
      2. recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause whether or not the Contract has been terminated.
8. COSTS AND EXPENSES
   1. Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.
9. NO AGENCY OR PARTNERSHIP
   1. Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party’s behalf.
10. NON SOLICITATION AND OFFERS OF EMPLOYMENT
    1. The Contractor agrees that it will not, without the prior written consent of the Customer, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:
       1. solicit or entice, or endeavour to solicit or entice, away from the Customer, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Customer at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or
       2. attempt, or knowingly assist or procure any other person to do the above.
11. INSPECTION OF CONTRACTOR’S PREMISES
    1. The Contractor shall permit the Customer to make any inspections or tests which may reasonably be required in respect of the Contractor’s premises in relation to the Contract.
12. LAW AND JURISDICTION
    1. This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

Signed for and on behalf of the Customer

Signed  …………………………….............

Name    ………………………….................

Position         …………………………….............

Signed for and on behalf of the Contractor

Signed  …………………………….............

Name    ………………………….................

Position         …………………………….............