

**PART THREE – CONDITIONS OF CONTRACT**

**DATED**

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**AGREEMENT FOR THE PROVISION OF ORGANS AT**

**WARREN HILL CREMATORIUM**

**Kettering Borough Council**

and

**Supplier**

This agreement is dated [DATE]

## Parties

- (1) Kettering Borough Council of Municipal Offices, Bowling Green Road, Kettering, NN15 7QX (**Customer**)
- (2) [FULL COMPANY NAME], a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

## BACKGROUND

- (A) The Supplier carries on the business of manufacturing and selling the Products.
- (B) The Customer wishes to buy, and the Supplier wishes to supply, the Products on the terms and conditions set out in this agreement.

## Agreed terms

### 1. Interpretation

- 1.1 The following definitions and rules of interpretation in this clause apply in this agreement.

**ADR notice:** has the meaning given in clause 17.1(c).

**Affected Party:** has the meaning given in clause 15.2.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Claim:** has the meaning given in clause **Error! Reference source not found.**

**Commencement Date:** the date of this agreement.

**Confidential Information:** has the meaning given in clause 13.1.

**Delivery:** completion of delivery of Products in accordance with clause 4.2.

**Delivery Date:** XXXX

**Delivery Location:** Warren Hill Crematorium, Rothwell Road, Kettering NN16 8XE

**Dispute:** has the meaning given in clause 17.1.

**Dispute Notice:** has the meaning given in clause 17.1(a).

**Force Majeure Event:** has the meaning given in clause 15.1.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**month:** a calendar month.

**Price:** XXXX

**Products:** the products set out in **Error! Reference source not found..**

**Representatives:** has the meaning given in clause 13.2.

**Specification:** the specification of the Products set out in Schedule 1.

**VAT:** value added tax or any equivalent tax chargeable in the UK.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or

another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 A reference to **writing** or **written** includes fax but not email.
- 1.13 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement; references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Supply of the products**

- 2.1 The Supplier shall supply, and the Customer shall purchase the Products in accordance with the terms and conditions of this agreement.

## **3. Manufacture, quality and packing**

- 3.1 The Supplier shall manufacture, pack and supply the Products in accordance with generally accepted industry standards and practices that are applicable.

- 3.2 The Products supplied to the Customer by the Supplier under this agreement shall:

- (a) conform to the Specification;
- (b) 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 Customer;
- (c) be free from defects in design, material and workmanship and remain so for 10 years after Delivery; and
- (d) comply with all applicable statutory and regulatory requirements.

- 3.3 The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.

- 3.4 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with the terms of this agreement.

- 3.5 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Products.

- 3.6 The Customer shall have the right to enter the Supplier's premises to inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Products.

- 3.7 Inspections carried out pursuant to clause 3.6 shall be carried out during business hours on reasonable notice to the Supplier.

- 3.8 If following an inspection the Customer reasonably considers that the Products are not or are not likely to be as warranted under clause 3.2, the

Customer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Products are or will be as warranted under clause 3.2.

#### **4. Delivery**

- 4.1 The Supplier shall deliver the Products to the Delivery Location on the Delivery Date.
- 4.2 Delivery shall be complete on delivery, installation and satisfactory commissioning of the Products to the reasonable satisfaction of the Customer at the Delivery Location.

#### **5. Acceptance and defective products**

- 5.1 The Customer shall not be deemed to have accepted any Products until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Products, until a reasonable time after the latent defect has become apparent.
- 5.2 If any Products delivered to the Customer do not comply with clause 3.2, or are otherwise not in conformity with the terms of this agreement, then, without limiting any other right or remedy that the Customer may have, the Customer may reject those Products and:
  - (a) require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within two Business Days of being requested to do so; or
  - (b) require the Supplier to repay the price of the rejected Products in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Products); and
  - (c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that do not conform with the terms of this agreement.
- 5.3 The Customer's rights and remedies under this clause 5 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.
- 5.4 The terms of this agreement shall apply to any repaired or replacement Products supplied by the Supplier.

- 5.5 If the Supplier fails to promptly repair or replace rejected Products in accordance with clause 5.2(a), the Customer may, without affecting its rights under clause 5.2(c), obtain substitute products from a third party supplier, or have the rejected Products repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.

## **6. Title and risk**

- 6.1 The risk in Products delivered to the Customer shall pass to the Customer on Delivery.
- 6.2 Title to Products delivered to the Customer shall pass to the Customer on Delivery.

## **7. Terms of payment**

- 7.1 The Supplier shall invoice the Customer for the Products on or at any time after Delivery.
- 7.2 The Customer shall pay invoices in full within 30 days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.3 If the Customer disputes an invoice, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with clause 17. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 7.2.
- 7.4 Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under this agreement against any amounts payable by it to the other party under this agreement.

## **8. Insurance**

- 8.1 During this agreement and for a period of one year afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- (a) public liability insurance for not less than £10,000,000 per claim; and

- (b) product liability insurance for not less than £10,000,000 for claims arising from any single event.
- 8.2 On taking out and on renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to the Customer. On the Customer's written request, the Supplier shall provide the Customer with copies of the insurance policy certificates and details of the cover provided.
- 8.3 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this agreement which they are contracted to fulfil.
- 8.4 The Supplier shall:
  - (a) do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
  - (b) notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 8.5 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 8.1.
- 8.6 If the Supplier fails or is unable to maintain insurance in accordance with clause 8.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 8.2, the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

## **9. Compliance with laws and policies**

- 9.1 In performing its obligations under the agreement, the Supplier shall comply with applicable laws, statutes, regulations and codes from time to time in force.
- 9.2 The Customer may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 9.1.

## **10. Indemnity**

10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) any claim made against the Customer 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 Products;
- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Products, 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, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Products, to the extent that the defect in the Products is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

10.2 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

## **11. Limitation of liability**

11.1 Nothing in this agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) breach of section 2 of the Consumer Protection Act 1987; or
- (e) the indemnities contained in clause 10; or
- (f) the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

## **12. Assignment and other dealings**

- 12.1 Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party.

## **13. Confidentiality**

- 13.1 Each party undertakes that it shall not at any time during this agreement disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers of the other party, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 13.2.

- 13.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 13 as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 13.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## **14. Termination**

- 14.1 Without affecting any other right or remedy available to it, either party may terminate this agreement on giving not less than six months' written notice to the other party.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
  - (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
  - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the other party;
  - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
  - (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(d) to clause 14.2(i) (inclusive);
- (l) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business;
- (m) any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.

14.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

## **15. Force majeure**

**15.1 Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) interruption or failure of utility service.

- 15.2 Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 15.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 1 week, the party not affected by the Force Majeure Event may terminate this agreement by giving 1 week's written notice to the Affected Party.

## **16. Severance**

- 16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 16.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **17. Dispute resolution procedure**

17.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Health Services Manager of the Customer and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the Health Services Manager of the Customer and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Public Services of the Customer and Director of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the Head of Public Services of the Customer and the Director of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 14 Days days after the date of the ADR notice.

## **18. Variation**

18.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **19. Waiver**

19.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

- 19.2 A failure or delay by a party to exercise 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 prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **20. Notices**

- 20.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

- 20.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (c) if sent by fax at 9.00 am on the next Business Day after transmission.

- 20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **21. Entire agreement**

- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 21.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **22. Third party rights**

22.1 Unless it expressly states otherwise, this agreement, does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **23. Governing law**

23.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## **24. Jurisdiction**

24.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

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

## **Schedule 1    Specification**

Signed for and on behalf of Kettering Borough Council		.....  Chief Legal Officer Democratic and Legal
Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF CUSTOMER]		.....  Director   .....  Director