



DATED **XXXX** 20**XX**

AGREEMENT
BETWEEN
CORNWALL DEVELOPMENT COMPANY LTD
and
XXXXXXXXXX

FOR THE PROVISION OF **XXXXXXX**
TEN XXXX

THIS AGREEMENT is made on XXXXX 2020

BETWEEN:

- (1) CORNWALL DEVELOPMENT COMPANY (CDC) (Company Number 03668828) of Bickford House, South Wheal Crofty, Station Road, Pool, Cornwall TR15 3QG ('the Company'); and
- (2) XXXXXX (Company No. XXXXXX) whose registered address is XXXXXX ('the Supplier')

each a 'Party' and together the 'Parties'

WHEREAS

- (A) The Company wishes to have provided the Services as set out in this Agreement.
- (B) Following a tender exercise the Supplier has successfully tendered for and is willing to provide such Services in accordance with the Conditions of this Agreement.
- (C) Provided the Supplier complies with the provisions of this Agreement to the satisfaction of the Company, the Company shall make to the Supplier the payments provided for in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Agreement'	means this Agreement entered into between the Company and the Supplier embodying these Conditions and the schedules and appendices attached hereto;
'Appendix'	means any of the appendices attached hereto
'Best Industry Practice'	means using standards, practises, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which could reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
'The Company's Representative'	means the person nominated by the Company as set out in Schedule 1 and appointed pursuant to Condition 8;
'Commencement Date'	means XXXXXX;
'Confidential Information'	means 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 the disclosure

of which would or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how or either Party and all Personal Data and Sensitive Personal Data within the meaning of the DPA. Confidential information shall not include information which:

- (i) Was public knowledge at the time of the disclosure (otherwise than by breach of clause 15 (Confidential Information; Disclosure of Information and Freedom of Information))
- (ii) Was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) Is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) Is independently developed without access to the Confidential Information

'Conditions'	means the terms and conditions as set out in this Agreement;
'Contract Documents'	means the documents comprising this Agreement and the Tender Documents;
'Contract Period'	means the period ascertained in accordance with Condition 2;
'Contract Price'	means the price payable to the Supplier by the Company under this Agreement as set out in the Pricing Document at Appendix 2;
'Contract Standard'	means such standard as complies in each and every respect with all relevant provisions of this Agreement and where to the extent that no criteria are stated in this Agreement such standard as is to the entire satisfaction of the Company's Representative;
'Data Processor'	has the meaning set out in the Data Protection Legislation;
'Data Subject'	has the meaning set out in the Data Protection Legislation;
'DPA'	the UK Data Protection Legislation and the General Data Protection Regulation (GDPR) and any other directly applicable European Union legislation relating to privacy;
'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 Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;
'Intellectual Property Rights'	means all vested and contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created to which the Company may be entitled

'Personal Data'	has the meaning as set out in the Data Protection Legislation;
'Price'	means the price which shall become due and payable by CDC to the Supplier in respect of the provision of the Services in accordance with the provisions of this Agreement, as set out in the Pricing Document;
'Pricing Document'	means the document attached at Appendix 2;
'Regulated Activity'	means a regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006;
'Regulations'	means the public contract regulations 2015 (as amended)
'Schedule'	means any of the schedules attached hereto;
'Sensitive Personal Data'	has the meaning as set out in the Data Protection Legislation;
'Services'	means the services to be performed by the Supplier under this Agreement as set out in the Specification;
'Specification'	means the document attached to this Agreement at Appendix 1;
'Supplier's Representative'	means the person who is nominated to represent the Supplier as set out in Schedule 1 and appointed pursuant to Condition 7;
'Tender Documents'	means all the introduction, the Invitation to Tender, Pre-Qualification questionnaire, the Specification, the information provided (including the schedule of prices), the request for tender and the Tender Submission.
'Tender Submission'	means the proposal submitted by the Supplier in respect of the tender process and attached to this Agreement at Appendix 3 which specifies the Services to be undertaken, the time estimate for the provision of the Services and the sums payable for the Services.
'Termination Date'	means XXXXXX.
'TUPE'	means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
'Working Day'	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its interpretation.
- 1.3 Where appropriate words denoting the singular only shall include the plural and vice versa.
- 1.4 The masculine shall include the feminine and the neuter and vice versa.
- 1.5 A reference to a person shall include a reference to any individual, Company or other legal entity.
- 1.6 Reference to any Act of Parliament or any Order, Regulation, Statutory Instrument, Directive or the like shall be deemed to include a reference to any amendment or re-enactment thereof.
- 1.7 The Schedules and Appendices to this Agreement form part of and shall be deemed to be incorporated in this Agreement.

- 1.8 In the event of any conflict between the provision of this Agreement and the provision of the Schedules or Appendices hereto the provisions of this Agreement shall prevail.

2. CONTRACT PERIOD

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue in force until the later of the Termination Date or the date by which the Supplier's obligations under this Agreement are fulfilled unless otherwise terminated in accordance with the terms of this Agreement.

3. FORM OF AGREEMENT

- 3.1 The Supplier shall be deemed to have satisfied itself before submitting its Tender Documents as to the accuracy and sufficiency of the rates and prices stated in its Tender Documents which shall (except in so far as is otherwise provided in this Agreement) cover all of the Supplier's obligations under this Agreement and the Supplier shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Supplier's Tender.
- 3.2 Except as otherwise expressly provided, the Contract Documents are to be taken together as one agreement. Should either Party become aware of any ambiguities or discrepancies in or between the Contract Documents, he shall immediately inform the other Party's representative giving full details of the ambiguity or discrepancy. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of either Party shall be resolved by the Parties.
- 3.3 In the event of any inconsistency between the Conditions and any other provision in any of the other Contract Documents, the Conditions shall prevail.
- 3.4 Copyright in the Contract Documents shall vest so far as it lawfully can in the Company but the Supplier may obtain or make at its own expense any further copies required for use by the Supplier in the preparation of the tender or provision of the Services.

4. SUPPLY OF SERVICE

- 4.1 The Supplier shall supply the Services for the duration of this Agreement in accordance with the Company's requirements as set out in the Specification and the terms of this Agreement in consideration of payment of the Contract Price by the Company.
- 4.2 The Company is entitled to reject the Services where they do not comply with the Specification or the Company's requirements as made known to the Supplier.

5. SUPPLIER'S OBLIGATIONS

- 5.1 The Supplier undertakes to the Company that:
- 5.1.1 it shall provide the Services to the Company subject to the provisions of this Agreement and will conform in all aspects with the Specification and the Tender Documents.
 - 5.1.2 it shall provide all other services reasonably required by the Company which are reasonably incidental to the Services in accordance with the terms of this Agreement.
 - 5.1.3 it shall comply with all reasonable instructions given by the Company in relation to the Services.
 - 5.1.4 it shall keep the Company fully informed and provide it with regular reports on all matters of interest to a prudent client, together with such information as the Company may reasonably require from time to time.
 - 5.1.5 it will be responsible for all costs, fees, expenses and charges incurred in the provision of the Services.

- 5.1.6 the Supplier shall ensure that all of the obligations of the Supplier pursuant to this Agreement shall be performed and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence.
- 5.1.7 the Services shall be provided at all times in accordance with Best Industry Practice and to the Contract Standard.
- 5.1.8 Suppliers are reminded of their obligations as set out in the Regulations relating to their conduct.
- 5.2 The Supplier shall maintain current and accurate records of all work undertaken in the provision of the Services.
- 5.3 The Supplier shall inform the Company's Representative promptly and confirm in writing if the Supplier is unable to or fails to provide any part of the Service in accordance with this Agreement. The provision of information under this Condition 5.3 shall not in any way release or excuse the Supplier from any of its obligations under this Agreement.
- 5.4 The Supplier shall at all times allow the Company's Representative, professional advisors and such other persons as from time to time nominated by the Company's Representative if relevant, access to:
 - 5.4.1 any work places of the Supplier for the purpose of inspecting work being performed pursuant to this Agreement;
 - 5.4.2 any work places of the Supplier for the purpose of inspecting and taking copies of records and documents in the possession, custody or control of the Supplier in connection with this Agreement;
 - 5.4.3 any personnel or agent of the Supplier for the purpose of interviewing such persons in connection with this Agreement;
 - 5.4.4 any report required by any statutory enactment or regulation or a copy thereof shall be supplied by Supplier if requested to do so in writing by the Company.
- 5.5 The Supplier will ensure that as this agreement constitutes procurement for a European funded project all original documents relating to this agreement will be retained until the final completion and sign off for this commission and that the supplier will:
 - 5.5.1. keep secure and not without the written consent of the Company make use of for its own purposes or disclose any all original and copy records, documents, information, statements and papers which may be acquired or produced by the Supplier or by any permitted sub-contractor in the performance of this Agreement all of which shall be deemed to be Confidential Information. In default of compliance, the Company shall be entitled to recover possession of such materials and the Supplier shall grant a licence to the Company or its appointed agents to enter for that purpose any premises of the Supplier or its permitted sub-contractors where any such materials may be held;
 - 5.5.2 neither dispose nor part with possession of any materials provided to the Supplier by the Company pursuant to this Agreement or prepared by the Supplier other than in accordance with the express instructions of the Company;
 - 5.5.3 make all original and copy records, documents, information, statements and papers which may be acquired or produced by the Supplier or by any permitted sub-contractor in the performance of this Agreement available to the Company and its internal auditors, auditors for related funders and stakeholders for the project and when required to do so the Department of Communities and Local Government, the European Court of Auditors, The European Commission auditors the National Audit Office or Government Office and also their respective auditors together with the local Government Ombudsman and must

co-operate fully with any investigations at its own expense and make such explanations to the Company and any of the previously named bodies and auditors and the Local Government Ombudsman as may be necessary for them to be satisfied that the terms and conditions of Agreement and the Company's contract standing orders and financial regulations and all statutory and regulatory provisions relating to this Agreement have been and are being complied with

- 5.6 On expiry or termination of this Agreement the Supplier shall, at the cost of the Supplier, transfer all original records, documents, information, statements and papers which may be acquired or produced by the Supplier or by any permitted sub-contractor in the performance of this Agreement to CDC.
- 5.7 The Supplier shall at all times (where relevant) comply with the Company's Contract Procedure Rules and Financial Regulations and all policies and procedures as may be amended from time to time.
- 5.8 Except and to the extent and upon the terms of this Agreement or as otherwise required or permitted by the Company, the Supplier shall not use any facilities or equipment of the Company.
- 5.9 The Supplier is only permitted to advertise the fact that it is undertaking this Agreement to the extent previously specified in the associated tender documents all other advertising must be subject to written consent of the Company.
- 5.10 If the Supplier is unable or fails to provide the Services or any part thereof in accordance with the requirements of Condition 5.1, the Company may itself provide or may employ and pay other persons to provide the Services or any part thereof and any additional costs incurred thereby may be deducted from any sums due or to become due to the Supplier under this Agreement or shall be recoverable from the Supplier by the Company as a debt. The Company's rights under this Condition shall be without prejudice to any other rights or remedies which it may possess.
- 5.11 The Supplier shall as may be necessary or appropriate co-operate, liaise with, and co-ordinate its activities with those of any other supplier or contractor or sub-contractor employed directly or indirectly by the Company and shall provide the Services in harmony with and at no detriment to any other Services provided by or on behalf of or to the Company. If the Supplier or its personnel default in complying or fail to comply with this Condition, then any costs, expenses, liabilities or damages whatsoever incurred by the Company as a consequence thereof, including the reasonable cost to the Company of the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Supplier under this Agreement or shall be recoverable from the Supplier by the Company as a debt.

6. SUPPLIER'S PERSONNEL

- 6.1 The Supplier shall employ sufficient persons to ensure that the Services are provided at all times and in all respects in accordance with this Agreement.
- 6.2 The Supplier's personnel employed in and about the provision of the Services shall be properly and sufficiently qualified, competent, skilled, honest, and experienced and shall at all times exercise due care in the execution of their duties. The Supplier shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:
 - 6.2.1 the task or tasks such person has to perform,
 - 6.2.2 all relevant provisions hereof,
 - 6.2.3 all relevant policies, rules, procedures and standards of the Company, and

- 6.2.4 all relevant rules, procedures and statutory requirements concerning health and safety, including the Company's health and safety policy which shall be provided to the Supplier and if not so provided shall be requested by it.
- 6.3 The Company's Representative shall, upon giving notice in writing, have the power to require the Supplier to remove from the provision of the Services any personnel of the Supplier specified in such notice including the Supplier's Representative. The Supplier shall forthwith remove such personnel from the provision of the Services and shall unless the Company determines otherwise immediately provide a replacement who shall be satisfactory to the Company.
- 6.4 The Company shall in no circumstances be liable either to the Supplier or to such personnel in respect of any cost, expense, liability loss, or damage occasioned by such removal and the Supplier shall fully indemnify the Company in respect of any claim made by such personnel.
- 6.5 The Supplier shall provide and shall ensure that its personnel at all times when engaged in the provision of the Services at any premises owned, occupied or controlled by the Company wear such identification (including photographic identification) as may be specified by the Company, and shall ensure that when requested to do so any personnel of the Supplier shall disclose his identity and status as personnel of the Supplier and shall not attempt to avoid so doing.
- 6.6 Where Company rules and regulations or the nature or the location of any duties upon which the Supplier's personnel shall be engaged in the provision of the Services make the wearing of any special or protective clothing headwear or footwear necessary or appropriate, the Supplier shall provide and shall require its personnel to wear such clothing headwear or footwear. Such special or protective clothing headwear or footwear shall be maintained and replaced as necessary by the Supplier.
- 6.7 The Supplier shall notify the Company's Representative immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Company and any other client of the Supplier and the Supplier shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Company's Representative.

7. SUPPLIER'S REPRESENTATIVE

- 7.1 The Supplier shall appoint a suitably qualified and experienced Supplier Representative as named in Schedule 1 who shall be empowered to act on behalf of the Supplier for all purposes connected with this Agreement. Such appointment or any further appointment shall be subject to the approval of the Company. The Supplier's Representative shall not be replaced without prior written approval of the Company, such approval not to be unreasonably withheld. Any notice, information, instruction or other communication given to the Supplier's Representative or his duly appointed deputy shall be deemed to have been given to the Supplier.
- 7.2 The Supplier shall forthwith give notice in writing to the Company's Representative of the identity, address and telephone numbers of any person appointed as the Supplier's Representative and of any subsequent appointment.
- 7.3 The Supplier shall forthwith give notice in writing to the Company's Representative of the identity, address and telephone numbers of any person authorised to act for any short temporary period as deputy for the Supplier's Representative and when such deputy ceases to be so authorised.
- 7.4 The Supplier shall ensure that the Supplier's Representative or his deputy is available to meet the Company's Representative at all reasonable times. The Supplier shall submit to the Company a list of any personnel appointed to supervise each area of work and shall inform the Company within five working days if there are any changes to that list.

8. COMPANY'S REPRESENTATIVE

- 8.1 The Company's Representative shall be the person named in the Schedule 1 or such other person nominated in writing by the Company from time to time to act in the name of the Company for the purposes of this Agreement.
- 8.2 The Company's Representative shall have power to issue instructions to the Supplier on any matter relating to the provision of the Services and the Supplier shall comply therewith.
- 8.3 From time to time the Company's Representative may appoint one or more representatives to act for the Company's Representative generally or for specified purposes or periods. Any act or instruction of any such representative shall be treated as an act or instruction of the Company's Representative.

9. SAFEGUARDING

- 9.1 If appropriate, the Supplier shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people.
- 9.2 The Supplier shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to CDC's Representative and Cornwall Council's Safeguarding Adults team 0300 1234 131 in respect of a vulnerable adult or Cornwall Council's Multi Agency Referral Unit (MARU) 0300 123 1116 in respect of a child. The Supplier's safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.
- 9.3 The Supplier shall ensure that children and/or vulnerable adults are safeguarded from any form of exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.
- 9.4 The Supplier shall comply with all statutory obligations and CDC and Government policies (including but not limited to the CDC's Safeguarding Policy, Safeguarding Guidance for Providers and the South West Safeguarding Procedures) in respect of safeguarding as applicable and amended from time to time.
- 9.5 The Supplier shall immediately notify CDC of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 9 have been met.
- 9.6 The Supplier must comply with any instruction given by CDC in respect of this clause 9.

Whistleblowing

- 9.7 The Supplier shall have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Supplier as regards any part of the provision of the Services.
- 9.8 The Supplier shall not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to clause 9.7 and in good faith reported alleged malpractice on the part of the Supplier.

10. PAYMENTS

- 10.1 Provided the Supplier has complied fully with this Agreement the Company shall in consideration of the provision of the Services pay the Contract Price to the Supplier in accordance with the Pricing Document.
- 10.2 The total Contract Price is £XXXX excluding Value Added Tax.
- 10.3 Any VAT payable by the Company shall be payable at the rate and in the same manner for the time being prescribed by law. All VAT charges must be shown separately in any invoice clearly identifying what it relates to.

- 10.4 The Contract Price shall be inclusive of all expenses and disbursements.
- 10.5 Provided that the Supplier shall have complied fully with this Agreement and where there is no dispute, payment of the Contract Price and any VAT shall be made by the Company within 30 days of receipt of a valid invoice. Each invoice shall contain appropriate references and a detailed breakdown of the Services provided and shall be supported by any other documentation reasonably required by the Company's Representative to substantiate the invoice.
- 10.6 Where the Supplier enters into a sub-contract with a contractor for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 10.7 Where a modification is issued pursuant to Condition 13 and there is no applicable rate in the Pricing Document then the Company's Representative shall calculate the amount due to the Supplier on a fair and reasonable basis.
- 10.8 No variation in the Contract Price nor any extra charges shall be accepted by the Company unless expressly agreed in writing by the Parties.

11. USE OF COMPANY PREMISES

The Supplier shall ensure that neither the Supplier nor its employees or agents shall do any act or thing at any premises owned or occupied or controlled by the Company that is not solely for the benefit of the Company and done in the course of the proper performance of the Services and as may be permitted by this Agreement.

12. EQUIPMENT AND MATERIALS

Except as otherwise specified in this Agreement, the Supplier shall provide all equipment and materials reasonably necessary for the provision of the Services. Any equipment used in the provision of the Services and belonging to the Company, which is damaged, lost or unduly worn due to negligence, misuse, or wilful action by the Supplier or its employees or other persons for whose action it is responsible, must be replaced at the Supplier's own expense.

13. MODIFICATIONS TO THE SERVICES

- 13.1 The Company's Representative shall have the power to issue to the Supplier instructions in writing:
 - 13.1.1 requiring the Supplier to vary the scope of the Services or any part thereof;
 - 13.1.2 requiring the Supplier to omit or postpone the performance of any part or the whole of the Services;
 - 13.1.3 requiring the Supplier to vary any instructions or any part thereof issued by the Company's Representative.
- 13.2 The valuation of modifications to Services requested pursuant to this Condition 13 shall be ascertained by the Company's Representatives in accordance with Condition 10.
- 13.3 Where the modification involves an omission, reduction or postponement the valuation shall not include and the Company shall not be liable to the Supplier in respect of, any loss or reduced contribution to overheads or profit whether in respect of this Agreement or any lost opportunity to earn overhead contribution or profit elsewhere.

14. VARIATION

- 14.1 Any variation to this Agreement including for clarification or modification in accordance with Condition 13 shall be effected by an agreement in writing signed by a duly authorised officer or representative of each of the Parties hereto.

15. CONFIDENTIALITY AND DATA PROTECTION

15.1 Confidentiality

15.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.

15.1.2 Subject to Clauses 15.1.3 and 15.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
- (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

15.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any dispute resolution under clause 26 (Dispute Resolution);
- (b) in connection with any litigation between the Parties;
- (c) to comply with the law;
- (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 15.1.2;
- (e) to comply with a regulatory bodies request.

15.1.4 The obligations in clause 15.1.1 and clause 15.1.2 will not apply to any Confidential Information which:

- (a) is in or comes into the public domain other than by breach of this Agreement;
- (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
- (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

15.1.5 The obligations in clause 15.1 and clause 15.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Company or is related to an executive decision of the Company and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Company shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests

of the Supplier and where reasonably practicable shall consider any representations made by the Supplier.

15.1.6 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause 15.

15.1.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause 15 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 15.

15.2 Data Protection

15.2.1 The Parties acknowledge their respective duties under the Data Protection Legislation and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

15.2.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Company is the Data Controller and the Supplier is the Data Processor (where Data Controller and Data Processor have the meaning as defined in the Data Protection Legislation).

15.2.3 To the extent that the Supplier is acting as a Data Processor on behalf of the Company, the Supplier shall, in relation to any Personal Data or Sensitive Personal Data it processes in connection with the performance of its obligations under this Agreement:

- (a) only process such Personal Data and/or Sensitive Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any written instruction given by the Company under this Agreement;
- (b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data and/or Sensitive Personal Data, and against the accidental loss or destruction of or damage to such Personal Data and/or Sensitive Personal Data having regard to the specific requirements in this Agreement, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data and/or Sensitive Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
- (c) take reasonable steps to ensure the reliability of staff who will have access to such Personal Data and/or Sensitive Personal Data, and ensure that such staff are properly trained in protecting Personal Data and Sensitive Data;
- (d) ensure that all personnel who have access to and/or process Personal Data and/or Sensitive Personal Data are obliged to keep the Personal Data and/or Sensitive Personal Data confidential;
- (e) provide the Company with such information as the Company may reasonably require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;

- (f) immediately notify the Company of any requests for disclosure of or access to the Personal Data and/or Sensitive Personal Data from a Data Subject;
- (g) assist the Company, at the Company's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (h) immediately notify the Company of any breach of the security measures required to be put in place pursuant to this clause 15.2.3
- (i) ensure it does not knowingly or negligently do or omit to do anything which places the Company in breach of its obligations under the Data Protection Legislation;
- (j) at the written direction of the Company, delete or return Personal Data and/or Sensitive Personal Data and any copies thereof to the Company on termination of the agreement;
- (k) not transfer any Personal Data outside of the European Economic Area; and

maintain complete and accurate records and information to demonstrate its compliance with this clause 15.

15.2.4 The Supplier and the Company shall ensure that Personal Data and/or Sensitive Personal Data is safeguarded at all times in accordance with all applicable laws.

16. FREEDOM OF INFORMATION AND TRANSPARENCY

- 16.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 16.2 If the Supplier is not a public authority, the Supplier acknowledges that the Company is subject to the requirements of the FOIA and will assist and co-operate with the Company to enable CDC to comply with its disclosure obligations under the FOIA. Accordingly the Supplier agrees:
 - (a) that this Agreement and any other recorded information held by the Supplier on the Company's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Company under the FOIA;
 - (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Company;
 - (c) that if the Supplier receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Company) and will promptly (and in any event within 2 working days) transfer the request to CDC;
 - (d) that the Company, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Supplier and this Agreement either without consulting with the

Supplier, or following consultation with the Supplier and having taken its views into account; and

(e) to assist the Company in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

- 16.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.
- 16.4 Notwithstanding any other provision of this Agreement, the Supplier hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 16.5 In preparing a copy of this Agreement for publication pursuant to clause 16 CDC may consult with the Supplier to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Company's absolute discretion.
- 16.6 The Supplier shall assist and co-operate with the Company to enable the Company to publish this Agreement.

This clause 16 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

- 16.7 The Supplier shall be responsible for any costs associated with compliance with the provisions of this clause 16.
- 16.8 The Supplier shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) detailed in the Specification and/or the Schedules in relation to its security policies, procedures and control of Confidential Information, Personal Data and Sensitive Personal Data.
- 16.9 the Company reserves the right to monitor the Supplier's compliance with this clause 16 and shall notify the Supplier of how it intends to do this where appropriate.

17. STATUTORY OBLIGATIONS

- 17.1 The Supplier shall at all times comply with the requirements of:
 - 17.1.1 the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 and all other statutory and regulatory requirements and the Company's policies and procedures relating to health and safety copies of which are available on request.
 - 17.1.2 the Equality Act 2010 and all other relevant related statutory and regulatory requirements and the Company's policies and procedures, copies of which are available on request, relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, gender reassignment, age, disability, nationality, marital status or sexual orientation; and
 - 17.1.3 The Supplier shall comply with all European and domestic statutory and regulatory requirements in particular procurement and publicity requirements where relevant to the provision by the Supplier of the Services and to be

observed and performed in connection with this Agreement including any obligations binding upon the Company

and shall indemnify CDC against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach by the Supplier of this Condition 17.

- 17.2 The Supplier shall take all reasonable steps to prevent fraud by employees and the Supplier (including its shareholders, members, directors) in connection with the receipt of monies from the Company. The Supplier shall notify the Company immediately if it has reason to suspect that any fraud has occurred or is likely to occur.

18. GRATUITIES

The Supplier shall not, whether itself, or by any person employed by it to provide the Services, solicit or accept any gratuity or any other reward, tip or any other form of money taking, collection or charge for any part of the Services other than charges properly approved by the Company in accordance with the provisions of this Agreement.

19. PREVENTION OF BRIBERY

- 19.1 The Supplier warrants and undertakes to the Company that:

- 19.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 19.1.2 it will comply with the Company's anti-bribery policy as may be amended from time to time, a copy of which will be provided to the Supplier on written request;
- 19.1.3 it will procure that any person who performs or has performed services for or on its behalf ("Associated Person") in connection with this Agreement complies with this Condition 19;
- 19.1.4 it will not enter into any agreement with any Associated Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this Condition 19;
- 19.1.5 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;
- 19.1.6 from time to time, at the reasonable request of the Company, it will confirm in writing that it has complied with its undertakings under clauses 19.1.1 – 19.1.5 and will provide any information reasonably requested by the Company in support of such compliance;
- 19.1.7 it shall notify the Company as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

20. AGENCY

- 20.1 Neither the Supplier nor the Supplier's personnel shall in any circumstances hold themselves out:
- 20.1.1 as being the servant or agent of the Company otherwise than in circumstances expressly permitted by this Agreement;
 - 20.1.2 as being authorised to enter into any Agreement on behalf of the Company or in any other way to bind the Company to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or implicitly permitted by this Agreement.
 - 20.1.3 as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.

21. ASSIGNMENT AND SUBCONTRACTING

- 21.1 The Company shall be entitled to assign the benefit of this Agreement or any part thereof and shall give written notice of any assignment to the Supplier.
- 21.2 The Supplier shall not:
 - 21.2.1 assign this Agreement or any part thereof or the benefit or advantage of this Agreement of any part thereof
 - 21.2.2 sub-contract the provision of the Services or any part thereof to any person outside the scope of the tender documentation without the previous written consent of the Company, which consent shall be at the absolute discretion of the Company and if given shall not relieve the Supplier from any liability or obligation under this Agreement and the Supplier shall be responsible for the acts, defaults or negligence of any sub-contractor or sub-contractor's agents or employees in all respects as if they were the acts, defaults or negligence of the Supplier or the Supplier's agents, or employees.

22. TERMINATION

- 22.1 The Company at its sole discretion may terminate this Agreement at any time by giving 30 days prior written notice to the Supplier.
- 22.2 The Supplier acknowledges that the Company has relied on the information provided by the Supplier as contained in the Tender Documents and representations (including, but not limited to, any self-declarations) submitted to the Company prior to its acceptance and prior to the Company entering into this Agreement and if any material misrepresentation is contained therein such act or omission shall constitute a breach of condition which entitles the Company to treat itself as discharged from further liability under this Agreement and able to recover from the Supplier the amount of any loss resulting therefrom.
- 22.3 If the Supplier is found to have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of this Agreement, or any other contract with the Company, or for showing or forbearing to show favour, or disfavour, to any person in relation to this Agreement, or any other contract with the Company, or if the like acts shall have been done by any person employed by the Supplier, or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier), or if in relation to this Agreement, or any other contract with the Company, the Supplier or any other person employed by the Supplier, or acting on the Supplier's behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any member or officer of the Company, the receipt of which is an offence under section 117 (2) Local Government Act, 1972, then any such act shall constitute a breach of condition which entitles the Company to treat itself as discharged from further liability under this Agreement and to recover from the Supplier the full amount of any loss resulting thereto.
- 22.4 If the Supplier or (as appropriate) the Supplier's partners, directors, or members of a limited liability partnership;
 - 22.4.1 commits a breach of any of its obligations under this Agreement;
 - 22.4.2 changes its composition or staffing in a way which in the reasonable opinion of the Company seriously affects the ability of the Supplier to discharge its obligations under this Agreement to the Contract Standard;
 - 22.4.3 is convicted of an offence involving dishonesty;
 - 22.4.4 is deemed by the Company's Representative, whose opinion shall be final and binding, to have made any false representations;

- 22.4.5 experiences, in the opinion of the Company's Representative, an irreconcilable conflict of interest between the interests of the Company and any other client of the Supplier;
- 22.4.6 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal, in respect of its company for a voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- 22.4.7 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
- 22.4.8 has a winding-up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 22.4.9 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 22.4.10 has an administrator or administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 22.4.11 ceases or threatens to cease to carry on business;

then any such event shall constitute a breach of this Agreement which entitles CDC to treat itself discharged from further liability under this Agreement and to recover from the Supplier the amount of loss resulting therefrom.

- 22.5 If the Company elects to terminate this Agreement pursuant to Conditions 22.2, 22.3 or 22.4 the Company shall:
 - 22.5.1 cease to be under any obligation to make further payment;
 - 22.5.2 be entitled to require the Supplier forthwith to return files, documents or other items belonging to the Company and any other resources licensed, loaned, or hired, to the Supplier and should the Supplier fail to return these, to enter onto any site of the Supplier and repossess all such files, documents, or other items. The Company shall have full and unfettered licence over all drawings, details, descriptive schedules and other documents for use in connection with the provision of the Services.
 - 22.5.3 be entitled to deduct from any sum or sums which would but for Condition 21.5.1 have been due from the Company to the Supplier under this Agreement or any other contract or be entitled to recover the same from the Supplier as a debt, any loss or damage to the Company resulting from or arising out of the termination of this Agreement. Such loss or damage shall include the reasonable cost to the Company of the time spent by its officers in terminating this Agreement and in making alternative arrangements for the provision of the Services or any part thereof;
 - 22.5.4 be entitled to employ and pay other persons to provide and complete the provision of the Services or part thereof and to use the Supplier's files, documents, materials, equipment, vehicles or other goods for the purposes thereof;
 - 22.5.5 when the total costs, loss and/or damage suffered by the Company resulting from or arising out of the termination of this Agreement have been calculated and after taking into account any deduction made or to be made by the Company from any sum or sums which would have been due to the Supplier, be entitled to any balance shown as due to the Company which shall be recoverable as a debt.

- 22.6 The rights of the Company under this Condition are in addition to and without prejudice to any other rights the Company may have whether against the Supplier directly or pursuant to any guarantee, indemnity or bond.

23. INDEMNITY AND INSURANCE

- 23.1 The Supplier shall indemnify and keep indemnified the Company against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of, or in any way arising out of, the provision of the Services, in relation to the injury to, or death of, any person, and the loss of, or damage to, any property including property belonging to the Company except and to the extent that it may arise out of the act, default or negligence of the Company, its employees or agents not being the Supplier or its personnel.
- 23.2 The Supplier's liability under this Agreement shall be limited to the amount of Professional Indemnity Insurance specified in clause 23.3.1 for each and every claim.
- 23.3 Without prejudice to its obligations under this Condition, the Supplier shall, subject to such insurances being available from reputable insurers, effect and maintain such policy or policies of insurance as may be necessary to cover the Suppliers obligations and liabilities under this Condition, including but not limited to
- 23.3.1 professional indemnity insurance with a limit of liability of not less than £XX million for independent advice; and
 - 23.3.2 public liability insurance with a limit of liability of not less than £XX million; and
 - 23.3.3 employers liability insurance with a limit if liability of not less than £XX million for any one occurrence or series of occurrences arising out of any one event.
- 23.4 The Supplier shall supply to the Company on request any relevant policy or a certificate from its insurers or brokers confirming that the Supplier's insurance policies comply with Condition 23.3.
- 23.5 If the Supplier fails to take out and maintain the insurance required under Conditions 23.1 and 23.2 then the Company itself may insure against any risk in respect of which the failure shall have occurred and a sum or sums equivalent to the amount paid or payable by the Company in respect of premiums therefore may be deducted by the Company from any monies due or to become due to the Supplier under this Agreement or such amount may be recoverable by the Company from the Supplier as a debt.
- 23.6 The Supplier shall procure that any sub-contractors of the Supplier maintain like insurance cover to that required to be maintained by the Supplier under this Agreement and any such other insurance cover as may from time to time be reasonably required by the Company.

24. RECOVERY OF SUMS DUE TO THE COMPANY

Whenever under this Agreement any sum of money shall be recoverable from or payable by the Supplier to the Company the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any other contract between the Parties.

25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Any rights of any person who is not a party to this Agreement to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

26. DISPUTE RESOLUTION

- 26.1 Any disputes or differences arising between the Parties in respect of the construction or effect of this Agreement, or the rights, duties and liabilities of the Parties herein

under, or any matter or event connected with or arising out of this Agreement shall be resolved by the Parties negotiating in good faith.

- 26.2 In the absence of resolution in accordance with Condition 26.1 above the dispute may be referred by this Agreement of both Parties to a single mediator to be appointed in accordance with the mediation procedures of the Centre for Effective Dispute Resolution (CEDR) Model Mediation procedure 2001 or such later edition as may be in force from time to time or such other organisation which provides mediation services. The mediator shall be agreed upon by the Parties.
- 26.3 All costs of mediation shall be borne equally by the Parties unless otherwise directed by the mediator.
- 26.4 The submission of either Party to Condition 26.2 above shall not limit their right to commence any proceedings in any court of competent jurisdiction in England and Wales.

27. FORCE MAJEURE

- 27.1 Either Party reserves the right to defer the date of delivery or payment or cancel the Agreement or reduce the provision of the Services if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials.
- 27.2 If the performance of a Party's obligations under this Agreement is in the opinion of that Party likely to be hindered, delayed or affected by a reason falling within Condition 27.1 the Party so affected shall promptly notify the other Party in writing of that fact. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

28. TUPE

- 28.1 The Supplier acknowledges that the Company has made no assurance about the effect of TUPE and has formed its own view on whether TUPE applies before submitting its Tender Submission for the Services. The Supplier agrees that the Contract Price shall not be varied on the grounds that TUPE does or does not apply, irrespective of the belief of the Company or the Supplier prior to the execution of this Agreement.
- 28.2 The Supplier shall provide pension rights to Transferring Employees that are the same as or are broadly comparable to or better than those the Transferring Employees had prior to any transfer affected by the award of this Agreement. The Supplier, if applicable, shall consider seeking admitted body status with the Local Government Pension Scheme for those Transferring Employees that are members of such a scheme. Where applicable, the Supplier shall also comply with the Statement of Practice on Staff Transfers in the Public Sector (2000) and the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

29. INTELLECTUAL PROPERTY RIGHTS

- 29.1 Pursuant to and for the consideration set out in this Agreement the Supplier hereby assigns with full title guarantee (or shall use all reasonable endeavours to procure that any person, firm or company who is in a position to assign the same with full title guarantee shall assign to the Company) with effect from the Commencement Date or in the case of Intellectual Property Rights not yet in existence with effect from the creation thereof, to the Company, the Intellectual Property Rights created by the Supplier in the performance of the Services. The Supplier shall not be liable for the use of any such Intellectual Property Rights other than for which the same was originally prepared or provided by or on behalf of the Supplier.

- 29.2 The Supplier warrants to the Company that the Intellectual Property Rights referred to in Condition 29.1 are, save to the extent that duly authorised sub-contractors have been used, the Supplier's own original work and that in performance of the Services it has not infringed and will not infringe any intellectual property right of any third party. The Supplier further warrants that where duly authorised sub-contractors are used their work will be original.
- 29.3 The Supplier shall indemnify and keep indemnified the Company against all reasonably foreseeable and legally enforceable actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this Condition 29.

30. LEGAL PROCEEDINGS

- 30.1 The Supplier shall notify the Company's Representative immediately upon becoming aware of any accident, damage, or breach of any statutory provision relating in any way to the provision of or connected with the Services.
- 30.2 If requested to do so by the Company's Representative and at its own expense, the Supplier shall provide the Company's Representative with any relevant information in connection with any litigation, arbitration or other dispute in which the Company may become involved or any relevant disciplinary hearing internal to the Company and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Services.
- 30.3 The Supplier shall at its own expense fully assist the Local Government Ombudsman, the Audit Commission, the District Auditor, the Company's Internal Auditor, the Company's Monitoring Officer and any other body or person as may be specified by the Company's Representative with any investigations, enquiries or complaints relating to allegations of maladministration or other irregularities or improprieties in connection either directly or indirectly with the Agreement such assistance to include the prompt disclosure to such body or person as aforesaid of all relevant information and documentation.
- 30.4 Should any part of the Services involve the Supplier in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other contract forthwith notify the Company's Representative of any such matter together with such particulars as are available.

31. ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties and supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire agreement between the Parties. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

32. NOTICES

Any demand, notice, or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post or facsimile transmission to the registered office or last known address of the Party to be served therewith and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission, as the case may be.

33. SEVERANCE

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without

modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

34. WAIVER

Failure by either Party at any time to enforce the provisions of this Agreement or to require performance by the other Party of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of either Party to enforce any provision in accordance with its terms.

35. GOVERNING LAW & JURISDICTION

This Agreement shall in all respects be construed and interpreted in accordance with the laws of England and Wales and the English courts shall have exclusive jurisdiction to settle any disputes which may arise between the Parties out of or in connection with this Agreement.

IN WITNESS whereof this Agreement has been signed by the Parties hereto and is intended to be and is hereby delivered on the day and year first above written.

<p>SIGNED on behalf of CORNWALL DEVELOPMENT COMPANY LTD</p> <p>By (Authorised Officer)</p> <p>Name:</p> <p>Position:</p>	<p>Witnessed by</p> <p>Name:</p> <p>Address:</p> <p>Occupation:</p>
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<p>SIGNED on behalf of</p> <p>By Director</p> <p>Name:</p>	<p>Witnessed by</p> <p>Name:</p> <p>Address:</p> <p>Occupation:</p>
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SCHEDULE 1

CDC/Supplier Representatives

CDC:

Name:

Address:

Cornwall Development Company Limited

Bickford House, South Wheal Crofty, Station Road, Pool, Redruth, Cornwall,
TR15 3QG

Email:

Telephone:

Supplier:

Name:

Address:

Email:

Telephone:

APPENDIX 1

SPECIFICATION

APPENDIX 2
PRICING DOCUMENT

APPENDIX 3
SUPPLIER'S TENDER SUBMISSION