

DATED \_\_\_\_\_ 2014

**WOKINGHAM TOWN COUNCIL**

and

**[NAME OF SUPPLIER]**

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**SUPPLIER'S CONTRACT**

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**THIS AGREEMENT** is dated [DATE]

## **PARTIES**

- (1) WOKINGHAM TOWN COUNCIL of Town Hall, Market Place, Wokingham Berkshire, RG40 1AS (**Council**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).

## **BACKGROUND**

The Council sought proposals for the provision of [INSERT OUTLINE OF SERVICES] by means of a public tender exercise. The Council has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

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

**Associated Company:** any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

**Authorised Representatives:** the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in Schedule 4.

**Change:** any change to this agreement including to any of the Services.

**Change Control Procedure:** the procedure for changing this agreement, as set out in Schedule 5.

**Charges:** the charges which shall become due and payable by the Council to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 3.

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

**Commercially Sensitive Information:** the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

**Contract Year:** a period of 12 months, commencing on the Commencement Date.

**Data Processor:** shall have the same meaning as set out in the Data Protection Act 1998.

**Data Protection Legislation:** the Data Protection Act 1998 (**DPA**), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Dispute Resolution Procedure:** the procedure set out in clause 10.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term:** the period commencing on the Commencement Date and ending on the [NUMBER] anniversary of the Commencement Date.

**Key Personnel:** those personnel identified in Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 8.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service [including without limitation all [INSERT DETAILS OF SPECIFIC CONSENTS REQUIRED (IF ANY)]]].

**Payment Plan:** the plan for payment of the Charges as set out in Schedule 3.

**Personal Data:** shall have the same meaning as set out in the Data Protection Act 1998.

**Premises:** the premises at which the Services are to be provided and which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Sub-Contract:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**Sub-Contractor:** the contractors or suppliers that enter into a Sub-Contract with the Supplier.

**Supplier Party:** the Supplier's agents and contractors, including each Sub-Contractor.

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Supplier's Tender:** the tender submitted by the Supplier and other associated documentation set out in Schedule 2.

**Services:** the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1.

**Term:** the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this agreement.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

- 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) and that person's legal and personal representatives, successors and permitted assigns.
- 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 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.

- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 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.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
  - (b) Schedule 1 to this agreement;
  - (c) the remaining schedules to this agreement other than Schedule 2;
  - (d) Schedule 2 to this agreement.

## **COMMENCEMENT AND DURATION**

### **2. TERM**

This agreement shall take effect on the Commencement Date and shall continue for the Term.

### **3. [EXTENDING THE INITIAL TERM]**

- 3.1 The Council may extend this agreement beyond the Initial Term by a further period or periods of up to [NUMBER] years (Extension Period). If the Council wishes to extend this agreement, it shall give the Supplier at least [NUMBER] months' written notice of such intention before the expiry of the Initial Term or Extension Period.

3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.

3.3 If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term.]

#### 4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

4.1 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the Council pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.1(b);
- (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Supplier:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
- (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services.

- 4.4 The Supplier shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

## **THE SERVICES**

### **5. SUPPLY OF SERVICES**

- 5.1 The Supplier shall provide the Services to the Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 The General Conditions of Contract apply to and are incorporated into this agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **6. COMPLIANCE**

- 6.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 6.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 6.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the



performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **7. PAYMENT**

- 7.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Supplier .
- 7.2 The Supplier shall invoice the Council for payment of the Charges and the Council shall pay the Charges which have become payable within 30 days of receipt of an undisputed invoice from the Supplier.
- 7.3 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 10. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.
- 7.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 7.5 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for [2] years from the end of the Contract Year to which the records relate.
- 7.6 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 7.7 The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this

agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Council.

- 7.8 The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

## **STAFF**

### **8. KEY PERSONNEL**

- 8.1 Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 8.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Council;
  - (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
  - (d) the person resigns from their employment with the Supplier; or
  - (e) the Supplier obtains the prior written consent of the Council.
- 8.3 The Supplier shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.
- 8.4 Each party shall ensure that the role of each of its Key Personnel is not vacant at any time during the Term.
- 8.5 The Council may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

- 8.6 If the Supplier replaces the Key Personnel as a consequence of this clause 8, the cost of effecting such replacement shall be borne by the Supplier.

## **9. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT**

- 9.1 Any requirement for a Change shall be subject to the Change Control Procedure.

- 9.2 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's Authorised Representative in the first Contract Year and once every 12 months for the remainder of the Term on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Council.

- 9.3 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 9.2 shall be addressed by the parties using the Change Control Procedure.

## **10. DISPUTE RESOLUTION**

- 10.1 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 Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR

Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

- 10.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Condition 15.8 of the General Conditions of Contract which shall apply at all times.

## **INFORMATION**

### **11. FREEDOM OF INFORMATION**

- 11.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.

- 11.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **12. DATA PROTECTION**

- 12.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.
- 12.2 Notwithstanding the general obligation in clause 12.1, where the Supplier is processing Personal Data as a Data Processor for the Council, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - (b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 12.2; and
  - (c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- 12.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **13. TERMINATION ON NOTICE**

Without affecting any other right or remedy available to it, the Council may terminate this agreement at any time by giving [one] months' written notice to the Supplier.

## **GENERAL PROVISIONS**

### **14. [NON-SOLICITATION]**

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by

means of an open national advertising campaign and not specifically targeted at such staff of the other party.]

**15. RIGHTS AND REMEDIES**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**16. PUBLICITY**

Subject to obtaining the Council's prior written consent, the Supplier may:

- (a) make any press announcements or publicise this agreement or its contents; and
- (b) use the Council's name or logo in any promotion or marketing or announcement of orders.

**17. ENTIRE AGREEMENT**

17.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it 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.

17.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**18. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

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

Signed by [Name of signatory]  
for and on behalf of WOKINGHAM  
TOWN COUNCIL

.....

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF  
SUPPLIER]

.....

Director

## Schedule 1 Specification



## Schedule 2 Supplier's Tender

### Schedule 3 Charges and payment

#### 1. CALCULATION OF THE CHARGES

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

#### 2. CHARGES BASED ON A FIXED PRICE

Service	Monthly cost (£)
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
<b>TOTAL</b>	[INSERT FIGURE TO BE CHARGED TO COUNCIL]

#### 3. CHARGES BASED ON HOURLY RATES

Hours of service in invoice period	Hourly rate (£)
[Up to 100]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]
[101-200]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]
[201-300]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]

## **Schedule 4 Authorised Representatives and Key Personnel**

### **1. AUTHORISED REPRESENTATIVES**

1.1 The Council's initial Authorised Representative: Jan Nowecki being the Town Clerk for the time being of the Town of Wokingham.

1.2 The Supplier's initial Authorised Representative: [INSERT DETAILS]

### **2. KEY PERSONNEL**

[INSERT DETAILS]

## **Schedule 5 Change control**

### **1. GENERAL PRINCIPLES**

- 1.1 Where the Council or the Supplier sees a need to change this agreement, the Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 5.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 5, shall be undertaken entirely at the expense and liability of the Supplier.

### **2. PROCEDURE**

- 2.1 Discussion between the Council and the Supplier concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this agreement by the Council; or
  - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where the Council and the Supplier agree upon a change to this agreement a written record of the Change shall be drawn up and signed and dated by the Council and the Supplier and this written record shall constitute an amendment to this agreement.

## Schedule 6 Commercially sensitive information

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS  
COMMERCIALY SENSITIVE]

## Schedule 7 General Conditions of Contract

### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Acceptance of Tender:** the Council's order for the supply of Services, as set out in the written acceptance of the Supplier's Tender.

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

**Charges:** the charges payable by the Council for the supply of the Services in accordance with clause 6.

**Commencement Date:** has the meaning set out in clause 2.3.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.7.

**Contract:** the contract between the Council and the Supplier for the supply of Services in accordance with these Conditions.

**Council:** Wokingham Town Council of Town Hall, Market Place, Wokingham, Berkshire, RG40 1AS.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

**Specification:** the description or specification for the Services agreed in writing by the Council and the Supplier.

**Supplier:** the person or firm from whom the Council purchases the Services.

**Supplier's Tender:** the tender submitted by the Supplier to the Council containing the Supplier's quotation for the Services and other associated documentation.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. **BASIS OF CONTRACT**

2.1 The Supplier's Tender constitutes an offer by the Supplier to supply Services in accordance with these Conditions.

2.2 The contract award is subject to the formal approval process of the Council. Until all necessary approvals are obtained, no contract will be entered into.

2.3 Once the Council has reached a decision in respect of a contract award, it will notify the Supplier of acceptance of the Supplier's Tender at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3. **SUPPLY OF SERVICES**

3.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Council in accordance with the terms of the Contract.

3.2 The Supplier shall meet any performance dates for the Services specified in the Acceptance of Tender or as otherwise notified to the Supplier by the Council.

3.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises or at such premises or sites where the Services are to be provided;
- (i) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of carrying out its public duties, obligations and responsibilities, conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services; and
- (j) procure that they are provided in all respects in accordance with the Council's policies and its Standing Orders and Financial Regulations.

#### **4. COUNCIL REMEDIES**

4.1 If the Supplier fails to perform the Services by the applicable dates, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:



- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Council in obtaining substitute services from a third party;
- (d) where the Council has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
- (e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.

4.2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

4.3 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **5. COUNCIL'S OBLIGATIONS**

The Council shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Council's premises or other premises or sites for the purpose of providing the Services;
- (b) provide such information to the Supplier as the Supplier may reasonably request and the Council considers reasonably necessary for the purpose of providing the Services; and
- (c) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Council's premises or other premises or sites where the Services are to be provided.

## **6. CHARGES AND PAYMENT**

6.1 The Charges for the Services shall be set out in the Acceptance of Tender, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 6.2 The Supplier shall invoice the Council on completion of the Services. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 6.3 In consideration of the supply of the Services by the Supplier, the Council shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 6.4 All amounts payable by the Council under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.5 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 6.6 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 In respect of any goods that are transferred to the Council under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it will have full and unrestricted rights to transfer all such items to the Council.
- 7.2 The Supplier assigns to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

- 7.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 7.4 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Council in accordance with clause 7.2.

## **8. INDEMNITY**

- 8.1 The Supplier shall keep the Council indemnified 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council as a result of or in connection with:
- (a) any claim brought against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
  - (b) any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 8.2 This clause 8 shall survive termination of the Contract.

## **9. INSURANCE**

For the duration of the Contract and for a period of seven years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## 10. CONFIDENTIALITY

- 10.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 10.2 This clause 10 shall survive termination of the Contract.

## 11. TERMINATION

- 11.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of receipt of notice in writing to do so;
  - (b) the Supplier repeatedly breaches any of the terms of the Contract 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 the Contract;
  - (c) the Supplier 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - (d) the Supplier 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 its creditors other than (where a company) for the sole purpose of a

scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (g) a creditor or encumbrancer of the Supplier 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;
- (h) 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 Supplier (being a company);
- (i) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(c) to clause 11.1(j) (inclusive);
- (l) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

11.3 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 12. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Council all Deliverables whether or not then complete. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

## 13. ANTI-BRIBERY

13.1 The Supplier shall:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and will enforce them where appropriate;
- (c) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement.

13.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 13 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

## 14. FORCE MAJEURE

14.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

14.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 20 Business Days, the Council may terminate this Contract immediately by giving written notice to the Supplier.

## **15. GENERAL**

### **15.1 Assignment and other dealings.**

- (a) The Council may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Council.
- (c) The Supplier may subcontract any of its rights or obligations under the Contract but only if the particulars of the sub-contractor are set out in the Supplier's Tender. The Supplier shall be liable to the Council for the performance of its obligations under the Contract notwithstanding the appointment of the subcontractor and shall be responsible to the Council for any actions, omissions, and neglects of the subcontractor.

### **15.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax [or e-mail], one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 15.3 **Severance.** If any provision or part-provision of the Contract 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 the Contract.
- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Council.
- 15.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 15.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).