



Dated:

**BROXTOWE BOROUGH COUNCIL
(THE COUNCIL)**

and

(THE CONTRACTOR)

CONTRACT

relating to the supply of Electoral Printed
Stationery

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A. GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:

“Administration” means a rescue mechanism under the Insolvency Act 1986 where a company may be rescued or reorganised or its assets realised under the protection of a statutory moratorium. The company is put into Administration and an Administrator is appointed.

“Activity Date” means the date from when activities start on the contract if this date is later than the Commencement Date.

Approval” means the written consent of the Council, including by email.

“Assignee” means a third party (“the Assignee”) with the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Council incurs under clause C2.8).

“Bribery Act” means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

“Commencement Date” start of the Contract date as described in the Contract Particulars.

“Commercially Sensitive Information” means the information

(a) notified to the Council in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information which is provided by the Contractor to the Council in confidence; or

(b) which constitutes a trade secret.

“Confidential Information” means:

(a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential; and

(b) the Commercially Sensitive Information and does not include any information:

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which 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.

“Contract” means this written Contract between the Council and the Contractor consisting of these clauses, the Contract Particulars and any attached Schedules and Tender documents.

“Contracting Authority” means any contracting Council as defined in Regulation 3 of the Public Contracts Regulations 2015 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

“Contractor” means the Contractor as detailed in the Contract Particulars and where applicable this shall include the Contractor's Staff, Sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members.

“Contract Particulars” means the document detailing the specific core terms agreed between the parties with regard to the Goods which may include but not be limited to the Pricing Schedule, delivery instructions, Commencement Date, authorised officer, contract manager, Key Personnel, Commercially Sensitive Information, Contract Period, and the Specification and relevant Contract specific details of the Tender included in the document.

“Contract Period” means the period from the Commencement Date the date of expiry as set out in the Contract Particulars subject to any extension period detailed in the Contract Particulars, or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Council under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period).

“Council” means Broxtowe Borough Council or any other partner as listed here: Ashfield District Council, Bassetlaw District Council, Broxtowe Borough Council, Gedling Borough Council, Mansfield District Council, Newark and Sherwood District Council, Nottingham City Council, and Rushcliffe Borough Council

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices local authorities and government agencies.

“Customer” means a third party receiving the Services on behalf of the Council, including but not limited to Council tenants.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such 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.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Fees Regulations” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

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

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

(a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or

(b) the failure by any sub-contractor to perform its obligations under any sub-contract.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

"General Change in Law" means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of Goods of the same or a similar nature to the supply of the Goods.

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

"Goods" means any such goods as are to be supplied by the Contractor (or by the Contractor's Sub-contractor) under the Contract as either

(a) specified in the Specification or an Order; or

(b) Goods required to meet the Contract requirements.

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

"Human Rights Act" means the Human Rights Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation.

"Information" has the meaning given under section 84 of the FOIA.

"Initial Contract Period" means the period from the Commencement Date to the date of expiry set out in clause in the Contract Particulars or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

"Installation Works" means, as the context so requires,

(a) collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or

(b) where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of installation works

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Law” means any applicable Act of Parliament, subordinate legislation, exercise of the royal prerogative, enforceable European Community right, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

“Loss” means direct losses, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such losses are reasonable, direct, proper and mitigated.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

(a) a substantial portion of the Contract; or

(b) any of the obligations set out in clauses B, D, E, F, H over any three (3) month period during the term of the Contract.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

“Month” means calendar month.

“Occasion of Tax Non-Compliance” (also occasion of non-compliance) means

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a

Relevant Tax Authority under the DOTAS or and equivalent or similar regime; and or

(iii) the Contractor's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the contract start date or to a penalty for civil fraud or evasion.

“Order” an order for Goods to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.

“Party” means a party to the Contract.

“Persistent Breach” means a Default which has occurred on three or more separate occasions within a continuous period of twelve (12) months.

“Premises” means the location where the Goods are to be supplied, as set out in the Specification or Order and is not restricted to Council Premises and includes Customer Premises.

“Pricing Schedule” means the Schedule containing details of the Contract Price.

“Property” means the property, other than real property, issued or made available to the Contractor by the Council in connection with the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

“Receipt” means the physical or electronic arrival of the invoice at the address of the Council detailed in the Contract Particulars or at any other address given by the Council to the Contractor for the submission of invoices.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party service provider appointed by the Council to supply any Goods which are substantially similar to any of the Goods and which the Council receives in substitution for any of the Goods following the Contractors failure to fulfil the requirements of the Contract or following the expiry, termination or partial termination of the Contract .

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Schedule” means a schedule attached to, and forming part of, the Contract.

Services” means any such Services as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Contract in order to fulfil the requirement to supply the Goods as

(a) specified in the Specification or an Order; or

(b) required to meet the Contract requirements

“Special Terms and Conditions” additional terms and conditions attached to, and forming part of the Contract.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Council, and which would not affect a comparable supply of Goods of the same or a similar nature to the supply of the Goods.

“Specification” means the description of the Goods to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the quantity of the Goods and any applicable Quality Standards; the location to which the Goods are to be delivered and, where relevant, installed; a description of any installation works to be carried out by the Contractor or any Staff; any equipment with which the Goods must be compatible; the date(s) and time(s) of delivery of the Goods and any necessary training or instruction to be given to the Council by the Contractor in connection with the use or maintenance of the Goods.

“Specification Schedule” means the Schedule containing details of the Specification.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers, sub-contractors, unpaid workers and representatives used in the performance of its obligations under the Contract.

“Staff Vetting Procedure” means the Council’s procedures for the vetting of personnel as advised to the Contractor by the Council.

“Tender” means the document(s) submitted by the Contractor to the Council in response to the Council’s invitation to suppliers for formal offers to supply it with the Goods.

“Termination Date” means end of the Contract date as described in the Contract Particulars.

“Variation” means a variation to the Contract provided that such variation does not amount to a material change to the Contract.

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means any day other than a Saturday, Sunday, or public holiday when banks in the United Kingdom are open for business.

A1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Council's Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.

A3 Initial Contract Period

A3.1 The Contract shall take effect on the Commencement Date as described in the Contract Particulars and terminate automatically on the Termination Date unless it is otherwise terminated in accordance with the provisions of the Contract.

A4 Contractor's Status

A4.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A5 Notices

A5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice, notification or other written communication which is to be given by either Party to the other shall be given by letter (sent by hand, first or second class post, recorded delivery or special delivery), or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in the Contract Particulars. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given five Working Days after the day on which the letter was posted, or 48 hours on a working day, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

A5.3 Either Party may change its address for service by serving a notice in accordance with clause A5.

A6 Inspection of Premises

A6.1 Save as the Council may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

A7 Mistakes in Information

A7.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor in connection with the supply of the Goods and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

A8 Volumes

A8.1 The Contractor acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Council in respect of levels or values of Goods referred to in the Schedules which are indicative only and shall not be binding on the Council.

A9 Transparency

A9.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the text of this Contract, and any Schedules to this Contract, is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract or its Schedules is exempt from disclosure in accordance with the provisions of the Act.

A9.2 Details of payment transactions with the Contractor shall be published by the Council.

A9.3 Notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Council to publish this Contract and its Schedules in its entirety, including from time to time agreed changes to the Contract including payments, as per clause A9, to the general public in whatever form the Council decides.

B. THE GOODS

B1 The Specification

B1.1 The Contractor shall supply the Goods during the Contract Period in accordance with the Council's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price.

B2 The Goods

B2.1 If requested by the Council, the Contractor shall provide the Council with samples of Goods for evaluation and approval, at the Contractor's cost and expense.

B2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

B2.3 The Contractor acknowledges that the Council relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

B3 Delivery

B3.1 The Contractor shall deliver the Goods at the time(s) and date(s) specified in the Specification.

B3.2 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Council, the point of delivery shall be when the Goods are loaded on the Council's vehicle.

B3.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's

suppliers or carriers at such place as the Council or duly authorised person shall reasonably direct.

B3.4 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time promised or specified in the Specification, the Council may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Council.

B3.5 The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Council elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to the Council any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Council.

B3.6 The Council shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

B3.7 Unless expressly agreed to the contrary, the Council shall not be obliged to accept delivery by instalments. If, however, the Council does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole of any unfulfilled part of the Contract without further liability to the Council.

B4 Risk and Ownership

B4.1 Subject to clause B3.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Council (including the Council's rights and remedies under clause B6 (Inspection, Rejection and Guarantee)), pass to the Council at the time of delivery.

B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Council (including the Council's rights and remedies under clause B6 (Inspection, Rejection and Guarantee)), pass to the Council at the time of delivery (or payment, if earlier).

B5 Non-Delivery

B5.1 On dispatch of any consignment of the Goods the Contractor shall send the Council an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Council on the due date for delivery, the Council shall, (provided that the Council has been advised in writing of the dispatch of the Goods), within five (5) Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute

Goods within the timescales specified by the Council or terminate the Contract in accordance with clause B3.4 (Delivery).

B6 Inspection, Rejection and Guarantee

B6.1 The Council or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Council of any rights or remedies in respect of the Goods and the Council reserves the right to reject the Goods in accordance with clause B6.2.

B6.2 The Council may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Council of such Goods. If the Council rejects any of the Goods pursuant to this clause the Council may (without prejudice to other rights and remedies) either:

- (a) have such Goods promptly, and in any event within two (2) Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

- (b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Council in obtaining other goods in replacement provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

For the avoidance of doubt, the Council will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this clause B6.2.

B6.3 The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Council's acceptance of them.

B6.4 Any Goods rejected or returned by the Council as described in clause B6.2 shall be returned to the Contractor at the Contractor's risk and expense.

B7 Labelling and Packaging

B7.1 The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and

tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

B8 Training

B8.1 Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Council's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

B9 Contract Performance

B9.1 The Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in compliance with all applicable Laws and legislation requirements.

B9.2 The Contractor shall ensure that:

- (a) the Goods conform in all respects with the Specification and, where applicable, with any sample approved by the Council;
- (b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in the Contract;
- (c) the Goods conform in all respects with all applicable Laws; and
- (d) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Council.
- (e) no unauthorised changes are made to agreed proofs/art work provided by the Council.

B9.3 For any Services required as part of the delivery of the Contract, the Contractor :

- (a) shall have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Services;
- (b) shall not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

(c) shall provide all Services (or procure the provision of all Services) necessary for completion of the contract, unless otherwise directed by the Council.;

B10 Manner of Carrying out Installation Work – NOT USED

B11 Property

B11.1 Where the Council issues Property free of charge to the Contractor such Property shall be and remain the property of the Council and the Contractor irrevocably licences the Council and its agents to enter any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Council. The Contractor shall take all reasonable steps to ensure that the title of the Council to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Council's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Council.

B11.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within five (5) Working Days of receipt.

B11.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B11.4 The Contractor shall ensure the security of the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods, in accordance with the Council's reasonable security requirements as required from time to time.

B11.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Council's Default. The Contractor shall inform the Council within two (2) days. Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with clause C2 (Payment and VAT).

C1.1a The Contract Price shall remain fixed for twenty four (24) Months from (and including) the Commencement Date, following which it will then be subject to

annual reviews on each anniversary of the Commencement Date. Price reviews shall be based on the price indexes and dates as specified in the Pricing Schedule.

C1.2 The Council shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with the Contract.

C1.3 In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of an unforeseeable change of Law clause C6 (Change of Law) shall apply.

C2 Payment and VAT

C2.1 Where the Contractor submits an invoice to the Council, in accordance with clause C2.4 the Council will consider and verify that invoice in a timely fashion.

C2.2 The Council shall pay all sums due under such an invoice to the Contractor no later than 30 days from the date on which the Council has determined that the invoice is valid and undisputed

C2.3 Where the Council fails to comply with clause C2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause C2.2 after seven (7) days after receipt has passed.

C2.4 The Contractor shall ensure that each invoice contains all appropriate references (including the Council's Purchase Order Number) and a detailed breakdown of the Goods supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

C2.5 Where the Contractor enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under the Contract, the Contractor shall include in that Sub-Contract:

- (a) Provisions having the same effect as clauses C2.1 to C2.3 of this Contract; and

- (b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses C2.1 to C2.3 of this Contract

- (c) and for the purposes of this clause c2.6, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract.

C2.6 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

C2.7 The Contractor shall indemnify the Council on a continuing basis 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 Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.7 shall be paid by the Contractor to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council.

C2.8 The Contractor shall not suspend the supply of the Goods unless the Contractor is entitled to terminate the Contract under clause H2 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Council on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts Regulations 2013.

C2.9 Without prejudice to clause C2.8, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Contractor to:

- (a) assess the VAT rate(s) and tax liability arising out of or in connection with the Contract; and

- (b) account for or pay any VAT (and any other tax liability) relating to payments made to the Contractor under the Contract to HM Revenue & Customs ("HMRC").

C2.10 The Council shall not be liable to the Contractor in any way whatsoever for any error or failure made by the Contractor (or the Council) in relation to VAT, including without limit:

- (a) where the Contractor is subject to a VAT ruling(s) by HMRC (or such other relevant Council) in connection with the Contract;

- (b) where the Contractor has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant Council) to be incorrect or invalid; and/or

- (c) where the Contractor's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant Council) for whatever reason to be incorrect or invalid;

- (d) where the Contractor has specified a rate of VAT, or a VAT classification, to the Council (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Contractor subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in this scenario clause 2.10(d), the Contractor shall be obliged to repay any overpayment by the Council on demand.

C2.11 Where the Contractor does not include VAT on an invoice, the Council will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.

C2.12 The Contractor acknowledges that the Council has advised the Contractor that the Contractor should seek specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the Contract's VAT status with HMRC.

C2.13 No payment will be made by the Council to the Contractor without an official Purchase Order number identified on the valid invoice.

C3 Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Council.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period – NOT USED

C5 Euro – NOT USED

C6 Change of Law

C6.1 The Contractor shall neither be relieved of its obligations to supply the Goods in accordance with the provisions of the Contract nor be entitled to an increase in the Contract price as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is known at the Commencement Date.

C6.2 If a Specific Change in Law occurs during the Contract Period (other than those referred to in clause C.6.1), the Contractor shall notify the Council of the likely effects of that change, including:

- (a) whether any modification is required to the Goods, the Contract Price or the Contract; and
- (b) whether any relief from compliance with the Contractor's obligations is required, including any obligations to achieve any milestones or to meet any service level requirements at any time.

C6.3 As soon as practicable after any notification in accordance with clause C6.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

C6.4 Any increase in the Contract Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause C6 shall be implemented in accordance with clause F3 (Variation).]

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

D1.1 The Contractor shall not, and shall procure that any Staff shall not, commit any of the prohibited acts listed in this clause D1 in relation to the prevention of bribery. For the purposes of this clause D1, a prohibited act is committed when the Contractor or any Staff:

- (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;

(b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

(c) commits any offence:

(i) under the Bribery Act 2010;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Council; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Council

D1.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the

Council, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of the Contract.

D1.3 The Contractor shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

D1.4 The Contractor shall have an anti-bribery policy which prevents any Staff from committing any prohibited acts as in clause D1.1 a copy of this shall be provided to the Council upon request.

D1.5 If any breach of clauses D1.1 or D1.2 is suspected or known, the Contractor must notify the Council immediately.

D1.6 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clauses D1.1 or D1.2, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

D1.7 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by clauses D1.1 or D1.2, the Council may;

(a) terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements

for the supply of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

(b) recover in full from the Contractor any other Loss sustained by the Council in consequence of any breach of those clauses.

D1.8 Despite clause I (Disputes and Law), any dispute relating to:

(a) the interpretation of clause D1; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

D1.9 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

D1.10 In exercising its rights or remedies under clause D1.7, the Council shall:

(a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses D1.1 or D1.2;

(b) give all due consideration, where appropriate, to action other than termination of the contract.

D2 Prevention of Fraud

D2.1 The Council places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. Contractors and sub-contractors are required to:

(a) Have an established system that enables Contractor and sub-contractor staff to report inappropriate behaviour by colleagues in respect of contract performance claims;

(b) Ensure that Contractor or sub-contractors performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;

(c) Ensure a segregation of duties within the Contractor's or sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of contract performance to the Council;

(d) Ensure that an audit system is implemented to provide periodic checks, as a minimum at six] (6) monthly intervals, to ensure effective and accurate recording and reporting of contract performance.

D2.2 The Contractor shall use its best endeavours to safeguard the Council's funding of the Contract against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or sub-contractors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Council immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

D2.3 If the Contractor, its Staff or its sub-contractors commits Fraud in relation to this or any other contract with the Crown (including the Council) the Council may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

(b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause.

D2.4 Any act of fraud committed by the Contractor or its sub-contractors (whether under this Contract or any other contract with any other Contracting Authority) shall entitle the Council to terminate this Contract, and any other contract the Council has with the Contractor, by serving written notice on the Contractor.

D2.5 If the Council finds that the Contractor has deliberately submitted false claims for Contract payments with the knowledge of its senior officers the Council will be entitled to terminate this Contract, or any other contract the Council has with the Contractor, with immediate effect.

D3 Discrimination

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition D3.1.

D3.3 The Contractor shall comply with the provisions of the Human Rights Act 1998.

D3.4 If the Contractor has a finding against it relating to its obligations under clauses D3 it will provide the Council with:

(a) details of the finding; and

(b) the steps the Contractor has taken to remedy the situation

D4 The Contracts (Rights of Third Parties) Act 1999

D4.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Right of Third Parties) Act 1999 and does not apply to the Crown.

D5 Environmental Requirements

D5.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D6 Health and Safety

D6.1 The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Council's Premises or any other health and safety hazard which may affect the Contractor in the performance of its obligations under the Contract.

D6.2 While on the Council's Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.

D6.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on request.

D7 Tax Compliance

D7.1 The Contractor represents and warrants that as at the contract start date, it has notified the Council in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance

D7.2 If at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (a) notify the Council in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly provide to the Council:
 - (i) details of the steps taken which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Council may require

D8 Termination Rights due to any Occasion of Tax Non-Compliance

D8.1 The Council shall be entitled to terminate the contract in the event that:

- (a) the warranty given by the Contractor pursuant to Clause D7.1 is materially untrue; or
- (b) the Contractor commits a material breach of its obligations to notify the Council of any Occasion of Tax Non-Compliance as required by Clause D7.2; or
- (c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Council, are acceptable the Council shall be entitled to terminate this agreement by giving a Termination Notice to the Contractor].

D9 Staff Legislation

D9.1 The Contractor shall comply with all relevant legislation relating to its Staff however employed including (but not limited to) the compliance in law of the ability of staff to work in the United Kingdom, and compliance to any national minimum wage legislation.

D9.2 If the Contractor has a finding against it relating to its obligations under clauses D6 it will provide the Council with:

- (a) details of the finding; and
- (b) the steps the Contractor has taken to remedy the situation.

D6.3 The Council may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 The Contractor shall comply with the requirements of the Data Processing Agreement as detailed in the related Data Processing Agreement.

E2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

E2.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor or its Staff fail to comply with this clause, the Council reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E3 Confidential Information

E3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E3.2 Clause E3 shall not apply to the extent that;

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E4 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E3.3 The Contractor may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Goods and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E3.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.

E3.5 At the written request of the Council, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Council give a confidentiality undertaking before commencing any work in accordance with this Contract.

E3.6 Nothing in this Contract shall prevent the Council from disclosing the Contractor's Confidential Information:

- (a) to any government department, any part of the Crown, or any other Contracting Authority. All government departments, any part of the Crown or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Authority;

- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- (d) to any consultant, professional adviser, contractor, supplier or other person engaged by the Council;

- (e) on a confidential basis for the purpose of the exercise of its rights under the agreement, including (but not limited to) for auditing purposes (clause E9), to a body to novate, assign or dispose of its rights under the Agreement (clause F1.8), to a replacement Contractor (Clause H6.2) and for the purpose of the examination and certification of the Council's accounts; or

- (f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

E3.7 The Council shall use all reasonable endeavours to ensure that any government department, part of the Crown, Contracting Body, Staff, third party or

Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4 is made aware of the Council's obligations of confidentiality.

E3.8 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

E3.9 Any breach by the Contractor of clauses E3.1 to E3.3 shall be a material breach for the purposes of clause H2 (Termination on Default) and shall entitle the Council (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

E3.10 Clauses E3.1 to E3.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E3.11 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 Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E3.12 Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

E4 Freedom of Information

E4.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

E4.2 The Contractor shall and shall procure that any sub-contractors shall

- (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

- (b) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and

- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E4.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

E4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

E4.5 The Contractor acknowledges that (notwithstanding the provisions of clause E3) the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of FOIA, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services;

(a) in certain circumstances without consulting the Contractor; or

(b) following consultation with the Contractor and having taken their views into account;

E4.6 Where E4.5 (a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E4.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

E4.8 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Council may be obliged to disclose it in accordance with clause E4.5.

E5 Publicity, Media and Official Enquiries

E5.1 The Contractor shall not:

(a) make any press announcements or publicise this Contract or its contents in any way; or

(b) use the Council's name or brand in any promotion or marketing or announcement of orders;

without the written consent of the Council, which shall not be unreasonably withheld or delayed.

E5.2 Both Parties shall take reasonable steps to ensure that their Staff, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E5.1.

E5.3 Where applicable, each Party shall give the other advance notice of proposed visits to the Contractor's premises or any premises of its Sub-contractors to observe the delivery of the Good(s) by the Contractor or its Sub-contractors.

E5.4 If so requested by the Council the notepaper and other written material of the Contractor and Sub-contractors relating to the delivery of the Good(s) shall carry only logos and markings approved by the Council. This may include, but shall not be limited to, such banner or logo as the Council shall use to identify the Good(s) from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractors) in relation to this Contract shall be submitted to the Council for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

E6 Security

E6.1 The Council shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Council while on the Premises, and shall ensure that all Staff comply with such requirements.

E7 Contractor's Staff

E7.1 The Council may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

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

E7.2 At the Council's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request.

E7.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

E7.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Goods. The Contractor confirms that all persons employed or engaged by Contractor were vetted and

recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures prior to commencing the installation of the Goods and accessing the Premises.

E7.5 If the Contractor fails to comply with clause E7.2 within one (1) Month of the date of the request and in the reasonable opinion of the Council such failure may be prejudicial to the interests of the Crown then the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

E7.6 The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause E7.2 shall be final and conclusive.

E8 Intellectual Property Rights

E8.1 Subject to E8.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

- (a) furnished to or made available to the Contractor by or on behalf of the Council shall remain the property of the Council; and

- (b) prepared by or for the Contractor on behalf of the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Council;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E8.2 The Contractor hereby assigns to the Council, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1 (b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E8.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor in the performance of the Contract.

E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Council a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall

include the right for the Council to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Council.

E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Goods and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Council; or
- (b) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Contract.

E8.6 The Council shall notify the Contractor in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Council; and
- (c) shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

E8.8 The Council shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Council for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Council in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E8.5 (a) or (b).

E8.9 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged

infringement of any Intellectual Property Rights by the Council or the Contractor in connection with the performance of its obligations under the Contract.

E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Goods or to the substitute Goods; or

(b) procure a licence to use and supply the Goods, which are the subject of the alleged infringement, on terms which are acceptable to the Council, and in the event that the Contractor is unable to comply with clauses E8.10 (a) or (b) within [ValSug 20] Working Days of receipt of the Contractor's notification the Council may terminate the Contract with immediate effect by notice in writing.

E8.11 The Contractor grants to the Council a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Council reasonably requires in order to use the Goods and exercise its rights and take the benefit of this Contract.

E9 Audit

E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and F1.5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council as soon as reasonably practicable.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a Assignee the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Council incurs under clause C2.8). Any assignment under this clause F1.4 shall be subject to:

- (a) reduction of any sums in respect of which the Council exercises its right of recovery under clause C3 (Recovery of Sums Due);

- (b) all related rights of the Council under the contract in relation to the recovery of sums due but unpaid; and

- (c) the Council receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Council of the Assignee's contact information and bank account details to which the Council shall make payment.

F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.

F1.8 Subject to clause F1.10, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Council; or

- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

- (c) any private sector body which substantially performs the functions of the Council,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

F1.9 Any change in the legal status of the Council such that it ceases to be a Contracting Council shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):

(a) the rights of termination of the Contractor in clauses H1 (Termination on insolvency and change of control) and H2 (Termination on Default) shall be available to the Council in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Council may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Variation

F3.1 The Council may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Council shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time

limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

F3.2 Following such notice, the Council and the Contractor shall enter into good faith negotiations to agree the Variation and any variation in the Contract Price. Any variation in the contract price shall, in all the circumstances, properly and fairly reflect the nature and extent of the proposed Variation. The Parties shall negotiate for:

(a) Not more than thirty (30) Working Days from the date of the written notice to the Contractor; or

(b) Such shorter period as the Council directs where, in the reasonable opinion of the Council, the Variation is necessary as a matter of urgency.

F3.3 If the Parties are unable to agree such matters within the relevant period set out in clause F3.2, the Council shall by written notice to the Contractor:

(a) agree that the Parties shall continue to perform their obligations under the Contract without the Variation; or

(b) if the Parties, acting reasonably, are unable to agree the Variation in the Contract Price referred to in clause F3.3, the matter shall be referred to dispute resolution under clause I.2. Pending resolution of the matter the Contractor shall nonetheless implement and comply with the Variation.

(c) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Goods or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at clause I2

F3.4 If the Parties agree the Variation and any variation in the Contract Price within the relevant period set out in clause F3.2, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

F3.5 Any such Variation shall be communicated in writing by the Council to the Contractor in accordance with clause A5 (Notices). All Variations shall form an addendum to the Contract.

F4 Severability

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Liquidated Damages

F5.1 If the Contractor fails to deliver the Goods by the date(s) agreed, specified in the Specification or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "Agreed Delivery Date") the Contractor shall pay the Council a sum by way of liquidated damages any difference between the Contract Price and a price charged by a Replacement Contractor for the Goods that were not delivered by the Contractor.

F5.2 The Contractor shall not be obliged to pay any sums pursuant to clause F5.1 if and to the extent the failure by the Contractor to deliver the Goods by the Agreed Delivery Date directly results from the Council's Default provided that the Contractor notifies the Council immediately of such circumstances in sufficient detail to enable the Council to remedy the situation

F5.3 Notwithstanding clause F5.1, the Contractor does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Council, whether or not such performance or re-performance gives rise to additional costs for the Contractor and the cost of re-performance shall be borne solely by the Contractor and shall not be re-charged to the Council whether by way of costs, reimbursement or otherwise.

F5.4 The Council will endeavour to obtain a competitive price from the Replacement Contractor.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Extension of Initial Contract Period – NOT USED**F8 Entire Agreement**

F8.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F8.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

F8.3 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Contract Particulars
- (b) the clauses of the Contract;
- (c) the Schedules;
- (d) any other document referred to in the clauses of the Contract.
- (e) the Council's Original Tender documents; and
- (f) the Contractor's tender submission.

F9 Counterparts

F9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

F10 Financial Assurance

F10.1 The Contractor is required to disclose immediately to the Council any material changes to the organisation that impacts on its on-going financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F10.2 The Contractor is required to notify the Council immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.

F10.3 Only where requested by the Council, the Contractor is required to provide any financial information which could include but is not limited to a copy of the Annual Accounts and Annual Returns.

F10.4 If requested by the Council, where a Parent Company Guarantee has been provided, the Contractor is required to provide the documents detailed in clause F10.3 for the Parent Company, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into GBP, stating the conversion rate used.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or

- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, installation and/or commissioning of the Goods, or the late or purported supply, installation and/or commissioning of the Goods, or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

Subject always to clause G1.1 and without prejudice to clause H2, the liability of either Party for Defaults shall be subject to the following financial limit:

- (a) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of five million GBP (£5,000,000)

G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; and/or
- (b) loss of savings (whether anticipated or otherwise); and
- (c) indirect or consequential loss or damage.

G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or

personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G1.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.9 The Contractor shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Warranties and Representations

G2.1 The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the 3 years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

G3 Parent Company Guarantee

For use only where the Department requires a Parent Company Guarantee to be in place

- (a) On or about the effective date (and in any event no later than the first Commencement Date), the Contractor shall procure that the Guarantor shall:
 - (i) execute and deliver to the Council the Guarantee; and
 - (ii) deliver to the Council a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.
- (b) In the event that the Contractor fails to comply with its obligations under this clause G3, the Council reserves the right to terminate the Contract with immediate effect by notice in writing.]

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Council may terminate the Contract with immediate effect by notice in writing where the **Contractor is a company** and in respect of the Contractor:

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

(b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

(c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

(g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Contractor shall notify the Council immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("Change of Control"). The Council may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Council becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

H1.3 The Council may terminate the Contract with immediate effect by notice in writing where the **Contractor is an individual** and:

(a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;

(b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy;

(c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver or similar officer over the whole or any part of his assets;

(d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, seizure or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the business.

H1.4 The Council may terminate the Contract with immediate effect by notice in writing where the **Contractor is a partnership** and:

(a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

(b) it is for any reason dissolved;

(c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;

(d) a receiver, or similar officer is appointed over the whole or any part of its assets;

(e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

(f) any of the following occurs in relation to any of its partners:

(i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

(ii) a petition is presented for his bankruptcy; or

(iii) a receiver, or similar officer is appointed over the whole or any part of his assets.

H1.5 The Council may terminate the Contract with immediate effect by notice in writing where the **Contractor is a limited liability partnership** and:

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

(b) it is for any reason dissolved;

(c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

(d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

(e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

(f) a receiver, or similar officer is appointed over the whole of any part of its assets;

(g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

H1.6 References to the Insolvency Act 1986 in clause H1.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

H2.1 The Council may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Council within 10 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not in the opinion of the Council, capable of remedy; or
- (c) the Default is a Material Breach of the Contract.

H2.2 Without prejudice to any other rights or remedies that the Council has under the Contract (including without limitation clause H1 or H2.1, where the Council considers that the Contractor has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Goods), the Council shall be entitled to serve a written notice (a "Formal Warning Notice") on the Contractor:

- (a) specifying that it is a Formal Warning Notice;
- (b) giving details of the Persistent Breach; and
- (c) stating that if the Persistent Breach recurs two or more times within a twelve (12) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Goods affected by such Persistent Breach.

H2.3 If twenty (20) Working Days after service of a Formal Warning Notice, the Contractor has failed to demonstrate to the Council's satisfaction that the Persistent Breach specified has not continued and that the Contractor has put in place measures to ensure that such Persistent Breach does not recur; then the Council may deem such failure shall be a Default which is a Material Breach of the Contract not capable of remedy for the purposes of clause H2.1 (b).

H2.4 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data. The Contractor shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.5 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause (C3 Recovery of Sums Due).

H3 Break

H3.1 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

H4 Consequences of Expiry or Termination

H4.1 Where the Council terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Goods, the Council may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Council to the Contractor (for Goods supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.

H4.2 Subject to clause G1, where the Council terminates the Contract under clause H3 (Break), the Council shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Council shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Council, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (Break).

H4.3 The Council shall not be liable under clause H4.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H4.4 Save as otherwise expressly provided in the Contract:

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under clauses B6 (Inspection, Rejection and Guarantee), C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F5 (Liquidated Damages, F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

H5.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Contract may be terminated with immediate effect by the Council by notice in writing.

H6 Recovery upon Termination

H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Council or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or Sub-contractors. In the event the Contractor fails to do so, the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-contractors where any such items may be held.

H6.2 At the expiry or early termination of the Contract Period (howsoever arising) or after the Contract Period the Contractor shall provide assistance to the Council and the Replacement Contractor in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the

Contractor's Default, the Contractor shall provide such assistance at nil charge. Where the contract ends for other reasons the Council shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2, the Council and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 Dispute Resolution

I2.1 If a dispute arises between the Council and the Contractor in connection with the Contract, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

I2.2 If a dispute is not resolved within 14 days of referral under clause I2.1 then either Party may refer it to the chief executive or appropriate nominated officer of each Party for resolution who shall meet for discussion within 14 days or longer period as the Parties may agree.

I2.3 Provided that both Parties consent, a dispute not resolved in accordance with clauses I2.1 and I2.2, shall next be referred at the request of either Party to a mediator appointed by agreement between the Parties. This must be within 14

days of one party requesting mediation with the costs of mediation determined by the mediator.

12.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

IN WITNESS of which this Contract has been duly executed by the Parties.

SIGNED for and on behalf
of the Council

Printed Name:

Date:

In the presence of:

Signature

Printed Name:

Address:

SIGNED for and on behalf
of the Contractor

Printed Name:

Date:

In the presence of:

Signature

Printed Name:

Address:

CONTRACT PARTICULARS

Contract title	Electoral Printed Stationery
Council	Broxtowe Borough Council
Contractor	
Commencement Date	1 st June 2017
Option to Extend	None
Termination Date (without extension).	31 st May 2021
To be called off by order – please delete as appropriate	Yes
Services, Goods or Works	Goods
Specification	see Specification Schedule
Contract Price	see Pricing Schedule
Key Personnel	Contractor Contract Manager
Delivery Instructions	As per order
Council Address for Notices	Name: Address: Phone: Email:
Contractor Address for Notices	Name: Address: Phone: Email:
Insurance	
Insurance type	Minimum level
Employer's liability insurance	£5 million

Public liability insurance	£5 million
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SPECIFICATION SCHEDULE

- insert description of the Services to be supplied
- the Key Personnel,
- the Premises and
- the Quality Standards

PRICING SCHEDULE

[insert pricing provisions as appropriate]

DATA PROCESSING AGREEMENT SCHEDULE

SPECIAL TERMS AND CONDITIONS SCHEDULE