

## SECTION 5 – TERMS & CONDITIONS

### DESIGN AND PRINT DYNAMIC PURCHASING SYSTEM THROUGH THE USE OF CLARITUM SOFTWARE ('the DPS')

#### TERMS AND CONDITIONS - GENERAL PRINT ('Terms')

1. Definitions and Interpretation:
  - 1.1 'the Council' means THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD of Silver Street, Enfield, EN1 3XA;
  - 1.2 'the Supplier' shall be the supplier of the Services requested under the request for quote and for which the supplier has submitted a quote and the Council has accepted that quote through the Claritum Software system and communicated such acceptance to the supplier;
  - 1.3 'Claritum Software' shall mean the software used to run the DPS as such software may be amended, updated and or replaced from time to time.
  - 1.4 'Brexit' shall mean the UK ceasing to be a member state of the European Union on 31 January 2020 and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union provided that the UK includes England at such date.
  - 1.5 'Change in Law' means a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, Law means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972 (as saved and modified by the European Union (Withdrawal) Act 2018), bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
  - 1.6 all references to clauses and schedules are references to the clauses of and the schedules to this Contract unless otherwise stated;
  - 1.7 the schedules form part of this Contract;
  - 1.8 all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision.
2. The DPS shall run for a period of 5 years commencing on [ ] and expiring on [ ] and shall be operated as a completely electronic process through the use of Claritum Software.
3. Any contracts awarded under the DPS are made on these Terms. Together the Purchase Order, the request for quote under the DPS, the Supplier's quotation submitted in response to a request for quote under the DPS, and these Terms shall constitute the entire contract

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between the Council and the Supplier (the 'Contract'). For the avoidance of doubt any conditions included with the Supplier's quotation or otherwise shall be disregarded.

4. These Terms shall prevail over the terms and conditions stated in or referred to in the Purchase Order issued to the Supplier.
5. All services supplied in accordance with the Contract must satisfy all appropriate British Standard Institute specification, Approved Codes of Practice or where applicable equivalent European Union Standard in terms of safety, quality and fit for purpose and in accordance with the Supply of Goods and Services Act 1982 and the Sale of Goods Act 1979 where applicable. In addition the Supplier shall comply with any of the Council's policies as provided to them from time to time.
6. The parties agree that following Brexit or otherwise the parties shall comply with any Change in Law that is made from time to time.

### 7. Goods

7.1 The Supplier shall deliver the Goods as set out in the Purchase Order (Goods) to such place and upon such date as specified in the Purchase Order at the Supplier's risk and expense. Delivery shall be deemed complete after being inspected and accepted by the Council.

7.2 Time is of the essence in respect of any delivery conditions set out in the Purchase Order.

7.3 The Council may reject the whole or part of the Goods up to 28 days after delivery if it considers that they are of an unsatisfactory quality or not in accordance with the Contract. Rejected Goods shall be returned at the Supplier's risk and expense.

7.4 Title to the Goods and risk shall pass to the Council upon completion of the delivery.

8. Where the Purchase Order specifies that maintenance and repair Services are provided with the Goods supplied, the maintenance and repair Services shall continue for a period of no less than 12 months unless otherwise stated herein and shall cease upon one month's written notice prior to the end of the 12 month period or thereafter upon one month's written notice.

9. The Supplier warrants to the Council that the Goods will on delivery, and thereafter for the longer of the period specified in the Purchase Order or the Supplier's standard warranty period for such Goods, be free from defects or failures in design, material and workmanship.

### 10. Services

10.1 The Supplier shall, from the date set out in the Purchase Order and for the duration of the Contract supply the services as set out in the Purchase Order ('the Services') to the Council in accordance with the terms of this Contract.

10.2 All Services must be carried out in accordance with this Contract and with due skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise in accordance with the appropriate industry best practice prevailing from time to time.

10.3 The Supplier shall meet any performance dates (i.e. deadlines) for the Services specified in the Purchase Order or that the Council notifies to the Supplier during the Contract and time is of the essence in relation to any of those performance dates.

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11. The prices for the Goods or Services shall remain fixed as set out in the Purchase Order unless otherwise agreed by the Parties, and shall be exclusive of Value Added Tax (“VAT”). VAT shall be due at the rate applicable at the tax point date of the Supplier’s invoice.

12. The Supplier shall submit an invoice within 28 days of supplying any [Goods] or Services. The Purchase Order Number must be quoted on all invoices and delivery notes. Failure to do so will result in the Supplier’s invoice being returned unpaid. Save where an invoice is in dispute the Council shall pay the Supplier within 30 days and if not paid when due the Supplier may claim statutory interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended, extended or re-enacted from time to time). The Supplier shall ensure that the provisions set out in this clause are included in any subcontract.

13. The Council shall be entitled to deduct any monies due to the Council from sums payable to the Supplier under these Terms or any other contract between the Supplier and the Council.

14. The Supplier shall not assign, transfer or sub-contract this Contract or any parts thereof without the prior written consent of the Council.

15. The Supplier shall take out and maintain throughout the duration, with a reputable insurance underwriter or companies, a policy or policies of insurance which are adequate to cover its liability under this Contract and any other insurances required in order to comply with the law.

16. The Supplier shall indemnify the Council against all claims, liabilities, damage and loss suffered or incurred by the Council and arising from this Contract including for any actual or alleged infringement of a third party’s intellectual property rights.

17. Poor Performance and Exclusion from the DPS

17.1 The Council reserves the right to exclude the Supplier from the DPS in the event that the Supplier performs poorly under any contracts awarded to it through the DPS. In determining whether or not the Supplier’s performance is deemed to be poor under a contract awarded to it under the DPS, the Council shall assess the Supplier’s performance against the following criteria:

17.1.1 Failure to meet the delivery deadline date set out in the Contract;

17.1.2 Failure to deliver the correct quantities required;

17.1.3 Failure to follow any aspect of the specification as set out in the request for quote or Purchase Order issued to the Supplier, which shall include but not be limited to:

17.1.3.1 use of the correct weight of paper;

17.1.3.2 use of the correct type of paper, such as recycled, non-recycled, gloss or silk paper.

17.1.4 Failure to produce the required quality of print and finish, such as, but not limited to inconsistency in colour throughout or through part of the print job, incorrect pantone colours, the print job not being folded correctly, any numbering required to be set out on the documents produced to run in the correct order and whether the print job has been cut squarely;

17.1.5 Failure to deliver the print job properly packaged and free from damage or any defects, such defects to include but not be limited to any damage caused by inclement weather conditions such as rain, storm or tempest;

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17.1.6 Failure to deliver the print job to the correct destination as stated in the request for quote and or failure to label the package(s) correctly and clearly;

17.2 The Supplier agrees that any single criterion or combination of criterion set out in clauses 17.1.1 to 17.1.6 above shall be sufficient to amount to poor performance by the Supplier.

17.3 Supplier agrees that if the Supplier is assessed by the Council to have performed poorly on three separate occasions over a period of 12 months during the subsistence of the DPS the Council shall have the right to exclude the Supplier from the DPS for a period of two years by the service of a written notice on the Supplier ('the Notice of Exclusion'). Prior to the Council serving on the Supplier the Notice of Exclusion, the Supplier shall provide a written explanation to the Council as to why the Supplier performed poorly. The Notice of Exclusion shall state the start and end dates of the two-year exclusion period and shall set out the reasons as to why performance under the contracts was assessed as being poor on the three separate occasions. Prior to the Notice of Exclusion being served on the Supplier the Council shall follow the procedures set out in clause 17.5 below.

17.4 During the two-year exclusion period the Supplier shall not be entitled to tender for any contracts advertised under the DPS. After expiry of the two-year period the Supplier shall be eligible to re-apply to join the DPS provided that the Supplier fulfils the published criteria required to join the DPS and provided that the DPS continues to subsist.

17.5 Prior to exclusion from the DPS the Council shall follow the following procedures:

17.5.1 Where the Council has assessed the Supplier to have performed poorly under a contract awarded to the Supplier, the Council shall have the right to serve on the Supplier a first written warning notice ('the First Warning Notice') setting out the reasons as to why performance under the contract was assessed as being poor. Prior to the Council serving on the Supplier the First Warning Notice the Supplier shall provide a written explanation to the Council as to why the Supplier performed poorly;

17.5.2 Where the Council has assessed the Supplier to have performed poorly on a second occasion under a contract awarded to the Supplier and no more than 12 months has lapsed since the First Warning Notice was served, the Supplier shall be invited to attend a meeting with the Council to discuss the poor performance ('the Second Warning and Meeting Invite Notice') with a view to the Supplier setting out proposals to demonstrate how the Supplier will meet the required standards in any future award of a contract to the Supplier under the DPS. Prior to the Council serving on the Supplier the Second Warning and Meeting Invite Notice, the Supplier shall provide a written explanation to the Council as to why the Supplier performed poorly. The Second Warning and Meeting Invite Notice shall set out the reasons as to why performance under a contract was assessed as being poor on a second occasion within a 12 month period;

17.5.3 Where the Council has assessed the Supplier to have performed poorly on a third occasion under a contract awarded to the Supplier the Council shall be entitled to exclude the Supplier from the DPS in accordance with clause 17.3 above.

17.6 The 12 months period referred to in clause 17.3 above shall be a rolling period and in the event that the Supplier successfully re-joins the DPS in accordance with clause 17.4 above this clause 17 shall continue to apply to assess poor performance and govern exclusion from the DPS.

18 ISO Accreditation or equivalent

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18.1 The Supplier warrants that they hold the most up to date:

18.1.1 ISO quality management accreditations for quality and environment or equivalent; and

18.1.2 ISO 27001 Information Security Management or equivalent; and

18.1.3 Environmental Management Certification ISO 14001 or equivalent.

18.2 The ISO requirements set out in this clause 18 (or such other standards that are reasonably assessed by the Council to be equivalent) shall be a pre-requisite (together with all other published selection criteria) required to be in place before the Supplier shall be entitled to bid for any contracts under the DPS.

18.3 If at any time the Supplier does not maintain the ISO requirements under this clause 18 (or such other standards that are reasonably assessed by the Council to be equivalent) or the Supplier has failed to demonstrate to the Council that they hold the same, the Supplier shall not be entitled to bid for any contracts under the DPS until such time as the Supplier holds the ISO requirements or equivalent and evidences the same to the Council.

18.4 The Supplier shall upon request by the Council produce documentary evidence to demonstrate that they hold the ISO requirements or equivalent as set out in this clause 18.

### 19. Termination

19. The Council shall be entitled to terminate this Contract forthwith by written notice to the Supplier in the event of:

19.1 A breach of any term of the Contract or if the Supplier fails to provide satisfactory performance of the requirements of the Contract; or

19.2 If a receiver is appointed or if the Supplier becomes bankrupt or insolvent or goes into liquidation (either voluntarily or compulsorily); or

19.3 If the Supplier's interest becomes vested in another person or body without the Council's consent.

19.4 If the Supplier or any of its employees or agents shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under S.117(2) of the Local Government Act 1972.

20. Any information obtained by either Party as a result of this Contract shall be kept confidential and shall at no time be divulged to a third party without the prior written consent of the other Party, unless such information is already in the public domain.

21. The Supplier acknowledged that that Council is bound by the Freedom of Information Act 2000 and shall assist the Council's in its compliance with the same.

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

23. The Supplier shall comply with all laws, statutes, regulations and codes from time to time in force, including but not limited to; health and safety (including while on Council premises), environmental considerations (including packaging), the Equality Act 2010, the Human Rights Act 1998, the Data Protection Act 2018, the EU General Data Protection Regulation (Regulation EU 2016/679), each as amended, re-enacted, and or replaced from time to time.

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24. No delay or failure in performance by either Party shall constitute default or give rise to any claim for damages or loss of anticipated profits if such delay or failure is caused by force majeure. Notwithstanding the above the Supplier accepts and agrees that if the print goods produced by the Supplier are damaged in anyway whatsoever whether in transit or otherwise, due to inclement weather conditions or otherwise the Supplier shall be responsible for replacement of such print goods upon request by the Council. The Supplier shall, upon request by the Council, be required to resume provision of the Services and or supply of the Goods after the force majeure event or events cease to have effect.

25. The Parties shall use their best endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Contract. In addition, before resorting to litigation, the dispute should be referred to mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. The Supplier shall continue to provide the [Goods/]Services in accordance with this Contract and without delay or disruption while a dispute or disagreement is being resolved, unless the Council requests in writing that the Supplier does not do so.

26. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27. If any provision of the Contract is held invalid, illegal or unenforceable by any court of competent jurisdiction such provision shall be severed from the Terms and the remaining provisions shall continue in full force and effect as if the Terms had been executed without the invalid, illegal or unenforceable provision.

28. This Contract and all its provisions shall be construed in accordance with English law.