

Strategic Commissioning

Kent County Council

County Hall

Sessions House

County Road

Maidstone

Kent

ME14 1XQ

Dear Sirs

**Request for Quote for - 1P19046 Adult Social Care & Health Portfolio and Project Management [PPM] Software Solution**

Kent County Council is inviting you to Bid for the above contract and accordingly has enclosed a Request for Quotation.

The attached document is in three parts plus appendices as follows:

Section 1 Scope and Context

Section 2 Requirement

Section 3 Mandatory Selection Criteria

Section 4 Evaluation Criteria

Section 5 Terms and Conditions

**Your RFQ response should be submitted via the Kent Business Portal no later than 17:00 on 3rd January 2020**

You are advised to read all sections carefully before Bidding. Should you have any difficulty with the RFQ, please get in contact via the Kent Business Portal.

Yours faithfully

Kent County Council

**Section One - Scope and Context**

Kent County Council (the Council) is the largest local authority in England by population, covering an area of 3,500 square kilometres. It has an annual expenditure of over £1bn on goods and services and a population of 1.5m. The Council provides a wide range of personal and strategic services on behalf of its residents, operating in partnership with 12 district councils and 289 parish/town councils.

The Portfolio and Project Management (PPM) team sits within the Adult Social Care and Health Business Delivery Unit (ASCH BDU), and consists of 30 qualified and experienced Project Management staff, including dedicated support staff, who deliver a diverse range of projects within a Portfolio of up to 40 projects.

The nature of the projects can vary from savings initiatives to service redesigns, and the team operates in a multi-disciplinary and cross-functional manner on a regular basis. Partnership working with the NHS Kent and Medway Sustainability and Transformation Partnership, Clinical Commissioning Group’s and other external groups is also a core part of the team’s function. The ability to monitor all projects at a Portfolio level within the organisation, but also to co-ordinate Project Management functions across different teams and different organisations, is therefore critical to the success of the team.

In 2015, the Portfolio Management Office (PMO) was set up to bridge the gap between strategy making and execution, by ensuring ASCH deliver the right projects that help achieve the strategic vision. The PMO prioritises projects based on their capacity to deliver, the potential opportunity (value) and the average length of delivery time. The PMO collate this information to help Directors make decisions on projects. Part of the PMO mandate is to work with Project Managers to ensure ASCH have the right level of information to make decisions, but also to support in the delivery of projects and to help manage any risks or dependencies that may threaten a project's success. Since the PMO’s inception, projects are now better monitored and managed.

There are still some inconsistencies when it comes to how projects are managed along with the quality and accuracy of project data being reported upon. Upon receiving requests for information from Senior Managers, it can take significant time to gather and collate the data into an ‘easy read’ report for decision makers, as not all project information is stored centrally in one place. When it comes to presenting the information to decision makers or key stakeholders, the information (data, graphs, financial figures etc.) may be out of date or inconsistent; which could negatively influence and delay the project’s progression. This is, in part, due to the fact that project information is kept across a variety of word documents, excel sheets and SharePoint sites and is not available in a single concise source.

The current structure and processes can only go so far to help to deliver projects. To achieve the next level of PPM maturity, and develop the BDU further into a professional service, the ASCH PPM team require a PPM tool to enable a leap forward in its ability to efficiently and accurately manage projects, portfolios and project data. ASCH has also been working with Growth Environment and Transport Directorate (GET) which has a similar requirement for PPM software and capabilities. The needs of GET have been included in this commission.

**Section Two - Requirement**

The table below seeks information regarding a number of technical requirements. Where the software offers additional functionality not listed below, information about that function is requested from the supplier, either in the form of a written description or brochure as appropriate.

**Where the software meets a requirement, but only through the inclusion of an ‘optional’ module, the supplier is asked to highlight this and provide details about the optional module, including associated costs.**

| **Ref** | **Technical Requirement** | **Does the software have this feature? Where relevant, provide details if functionality comes from an ‘optional’ module** |
| --- | --- | --- |
| 1 | **Project Management and Scheduling functionality** |  |
|  | Can the system create project plans / timelines / schedules?  We require these to be representable visually in the form of Gantt charts as a minimum. Where the system supports other views, please provide details.  We require that schedules can be included within reports generated by the system; please confirm how the system support this? |  |
|  | We require that schedules can be exported from the system into a variety of formats, with PDF/XML/CSV as a minimum. How does the system support this?  Are there other formats to which information from the system can be exported? If so, please list. |  |
|  | We require that schedules can be imported from various formats directly into the systems scheduling tool from the following formats as a minimum: CSV/XLS/MPP. How does the system support this?  If only specific formats are supported, please list these? |  |
|  | How does the system record and monitor Risks and Issues at project and portfolio level in the form of a Risk and Issue log?  We require a range of information to be stored against each Risk as follows: date raised, description, probability-impact assessment, action required, action details, residual risk rating, risk owner, update owner, status, date closed and a notes / comments section.  For Issues we require the following; date raised, raised by, issue type, impact and implication, severity, resolution actions and updates, target action date, issue owner, status, date closed, reason for closure, closed by and a notes / comments section. We would also require the ability to automatically turn a Risk into an Issue within the systems without having to re-enter the information.  These should be recorded individually in separate fields and be reportable on. In addition, we would require the option to add or remove fields as our requirements change over time.  Please confirm how Risks and Issues are stored and reported on in the system, and whether the system offers the functionality to increase or decrease the number of text fields? |  |
|  | How does the system record and monitor Dependencies between projects at project and portfolio level?  We require as a minimum that a range of information can be stored against each Dependency, such as the date raised, description, and the nature of the dependency, and more. These should be recorded individually in separate fields and be reportable on. In addition, we would require the option to add or remove fields as our requirements change over time.  Please confirm how Dependencies are stored and reported on in the system, and whether the system offers the functionality to increase or decrease the number of text fields?  We require that Dependencies between projects can be linked in the system, with automated system notifications or external notifications (e.g. automated email) if something occurs with a linked Dependency, e.g. a delay. Please confirm how the system links dependencies and has automated notification functionality? |  |
|  | Can the system set up any type of recording log(s) with our own title/fields? i.e. Communications Log, Decision Log, Stakeholder engagement log etc. How are these created?  Please confirm how these logs are stored and reported on in the system, and whether the system offers the functionality to increase or decrease the number of text fields? |  |
|  | How does the system record and list Lessons Learned at project and portfolio level?  We require as a minimum that a range of information can be stored against each Lesson Learned, such as the date raised, description, impact, and more. These should be recorded individually in separate fields and be reportable on. In addition, we would require the option to add or remove fields as our requirements change over time.  Please confirm how Lessons Learned are stored and reported on in the system, and whether the system offers the functionality to increase or decrease the number of text fields? |  |
|  | We require the ability to view Lessons Learned from the entire Portfolio in a single location (i.e. a central Lessons Learned log), with the ability to search/ filter by a range of options (e.g. Category, date, project type).  Please confirm with details whether the system has this functionality in-built, or how it might otherwise be achieved if not? |  |
|  | How does the system record and monitor Costs and Savings at project and portfolio level? For this we would like to manually record forecast and actual savings for each project and then view a summary of that across a number of projects (including a portfolio wide savings to date / potential savings figure, for example).  Please confirm how Costs and Savings are stored and reported on in the system, and whether the system offers the functionality to increase or decrease the number of text fields? |  |
|  | Can the system be tailored to replicate certain project documentation (such as the business case) in-system?   Where this functionality is possible, we would require the relevant information to be included through a series of free text fields, with the ability to add or remove text fields at will. Please provide details of how this would be achieved.  Where changes are made to elements that are included within a document, for example where costs are added, we would require these changes to be automatically transferred into any documentation it is linked to/referenced within.  Please confirm whether this level of control and automatic notification is available within the system? |  |
|  | Does the system have a visual workflow or checklist of project documents that are needed, and their stage of completion, at the project level?  Where this is present, we would require this information to be visible at a portfolio level – please confirm how this information is visible and reported on within the system? |  |
| 2 | **Resource Management** |  |
|  | Can the system hold a number of both named and generic project resources which can be assigned and re-allocated at the portfolio level?  We require that these resources should have an hourly cost attached to them, and that where a resource is assigned to a project within the system, these costs should automatically pull through to the Costs section of the project. Please confirm whether the system has this functionality?  We would also require the ability to record other resource costs such a room hire which would also pull through to the costs section of the project. Please demonstrate if this is possible? |  |
|  | Can resources be requested by a Project Manager within the system? Please provide details of this process. |  |
|  | How does the system visually represent current and future resource workload and capacity, and facilitates adjustments to resourcing at a Portfolio level (‘smoothing and levelling’)?  Does the system have scenario-based ‘what-if’ planning with regards to resourcing at both project and portfolio level? Please demonstrate if this is possible? |  |
|  | How does the system manage timesheet functionality?  Is the system able to automatically sync timesheet data with the actual project resource costs field?  We would prefer that timesheets automatically synchronize into the resource capacity function. Please confirm and provide details on whether the system has this functionality? |  |
| 3 | **Portfolio Management** |  |
|  | Does the system have a Portfolio bubble chart / pipeline / similar visual aid to represent all projects on a single diagram?  Please provide an example image of what this looks like in the system. |  |
|  | Does the system have a mechanism for prioritising projects in the portfolio, for example using factors such as cost, strategic value, benefit value, etc.? Please demonstrate how the system does this. |  |
|  | Does the system have a Gantt view of projects at the portfolio level, which could be filterable to only show certain projects, types of project, etc. over a customizable timeframe? Please demonstrate how this system can do this. |  |
|  | Does the system have high-level overviews (dashboards) of all projects’ status, showing basic information such as project phase, latest RAG, latest savings value, etc.? Please demonstrate how the system shows this information.  Does the system allow for the metrics that are reported to be selected by us, or are these pre-built into the system and fixed? |  |
|  | Does the system have high-level overview’s (dashboards) of portfolio performance, showing basic information such as number of projects, spread of RAG ratings, total savings value, number of projects delivering on time, etc.? Please demonstrate how the system shows this information.  Does the system allow for the metrics that are reported on / displayed to be selected by the user, or are these pre-built into the system and fixed? |  |
| 4 | **Dashboards and Reporting** |  |
|  | Does the system have informational dashboards at the Project level including actions, risks, issues and other project information? Please demonstrate how the system shows this information.  Can these dashboards be customised per user to show the information that they prefer to see? |  |
|  | Does the system have template reports built into system?  Can more templates be created by user admins, or do these need to be created by the supplier? Please provide details of how reports are made. |  |
|  | Can the system schedule auto-reporting, i.e. automatically generating status reports for each project at a set time/day each week/month?  Can the system auto-forward any reports generated in this manner to specific stakeholders? Please provide details of how the system does this. |  |
|  | Does the system allow for Project Managers to create their own reports quickly and intelligently? Where so, please provide details. |  |
|  | Can the system produce heat maps for risk profiling or stakeholder mapping Power-Influence Grid (PIG)? Where so, please provide details. |  |
| 5 | **System Functionality** |  |
|  | We would seek the ability to manage the majority of the system in-house, including day-to-day maintenance and the ability to write our own report templates.  Please confirm whether this is possible, providing details of what a user admin could and could not edit, or if not possible please provide details of how changes would be achieved? |  |
| 6 | **Additional Functionality** |  |
|  | Does the system have the ability to have approvals authorised within the system, for example for Stage Gate reviews and resource requests?  Please provide information on how this process works. |  |
|  | Does the system have the ability to show different reporting and documentation templates for a Project to complete, depending on the size/scope of the Project? Please provide details of how the system does this. |  |
| **The following sections will not be marked on quality and are for information only** | | |
| 7 | **Ongoing Support and Maintenance** |  |
|  | Please detail the ongoing support that will be made available to the Council during and following implementation, including any potential costs?  Please provide details of any escalation processes regarding system support. |  |
|  | Please provide details of your roadmap for development, improvements and upgrades. |  |
|  | Please provide details of when upgrades, improvements or maintenance which results in a period of downtime is conducted, i.e. at weekends or out of hours, and how much advanced notice is given? |  |
|  | If other areas of the Council would like to adopt the tool for their PPM teams, please provide details of how this would be possible and how additional licenses can be purchased. |  |
|  | Please provide details of how licenses discounts are calculated? i.e. at the end of the year or as each individual license is purchased. |  |
|  | Does the system have a mobile app or adaptive website to enable mobile use? |  |
| 8 | **Information, Security and Accessibility** |  |
|  | Please outline how information will be made available to the Council, and how data will then be deleted post contract, including any potential costs? |  |
|  | Is the software WCAG 2.1 AA compliant? |  |
|  | Please provide details of what support will be provided for User Acceptance Testing, and how UAT will be carried out? |  |
|  | Please provide details of what backup/recovery processes are in place? |  |
|  | Will KCC retain copyright over all images, content, data and formats (CSS stylesheets, XML schemas etc.) supplied by KCC? |  |
|  | The Council has a strong preference for the system to be hosted by the supplier on UK or EU Servers. Please confirm where this is the case or provide details of how the system is compliant with the UK and EU legal conditions irrespective of the place of storage of the stored data? |  |
|  | The new EU General Data Protection Regulation (GDPR) requires KCC to report a breach to the Information Commissioner’s Office (ICO) within 72 hours. The solution provider/supplier should be able to support this. What is the notification process for data breaches? |  |
|  | Does the company have regularly tested disaster recovery and business continuity plans for its data processing facilities? Where so, please provide details. |  |
|  | Is physical access to data processing equipment (servers and network equipment) restricted? Where so, please provide details. |  |
|  | Please provide details of how the system conforms to industry and government standards of software and hardware? (e.g. ISO27001)? |  |
|  | Does the organisation have formal written information and ICT security policies? |  |
|  | KCC has a duty of care to ensure that the personal data of our customers is held and used in a secure manner. What standards, in order to comply with the Data Protection Act, will the system use for data security and retention? |  |
|  | Will any data ever be shared with other organisations outside of KCC or the contracted supplier, without KCC direct approval? If so, please provide details. |  |
|  | Will any data ever be used for marketing or research purposes? Where so, please provide details. |  |
|  | What are the arrangements for independent audit and/or penetration tests to ensure that all the above are in place? |  |

**Relevant compatibility information**

Any potential systems solution will need to be compatible with all Microsoft Office applications, including Microsoft Project and Outlook. There are also several systems with which the potential solution may/will need to interact/integrate with:

* Power BI
* SharePoint
* Microsoft Teams
* Trace (time recording)

**System delivery**

The solution should be a cloud-based system and could also offer a mobile platform either through the use of a dedicated app or a responsive design. The Council’s preference is for the system to be hosted by the supplier, with a strong preference for UK or EU based servers.

**System administration**

The day to day administration of the system, for example creating new projects, closing projects, creating new user accounts, creating new reporting templates, and other such administrative activities, should be manageable by the ASCH PPM team.

There should be provision for staff to contact the supplier to seek technical help and advice where required, for example through the use of an online ticketing system, email or phone help desk.

**Location**

The ASCH PPM team is based in Invicta House, Maidstone, Kent, ME14 1XX. It is assumed that any face-to-face meetings/activities required will take place here. GET staff may be based in different locations but will, where required, travel to this location as necessary.

**Desired contract length**

A minimum contract term of 3 years is preferred, with the possibility of extension for a further two years in the form of 3+1+1 if the performance of the supplier is of an expected standard.

**Timeframes for deployment**

The PPM team are seeking to complete this procurement process swiftly and hope to be able to award the successful contract during January 2020. Once the contract is signed, the PPM team are looking to have a small group of users running projects through the system as early as possible, preferably within February 2020 when several new projects are scheduled to start. Full training for the rest of the team could be completed through February – March 2020, but some initial training would be required.

In order to accelerate the deployment we anticipate that the general ‘design’ activities, such as creation of a full suite of templates and editing the terminology used within the system (where possible) to the PPM team’s own, can be carried out over time and does not strictly need to be in place before the first user cohort begins running projects through the system. We would anticipate this work being completed between February-March 2020.

**How will training be delivered**

Training could be delivered in a number of ways dependant on how the supplier normally deploys for teams of this size. An initial training session for up to 12 staff identified as ‘early adopters’, including a few system administrators is anticipated as a minimum. This session should take place during February. Training could then be cascaded internally via this initial cohort if the supplier offers sufficient “Train the Trainer” training and supporting documentation.

**Supplier Tasks**

The following main tasks are anticipated, there may be additional packages of work identified during the tool’s implementation.

* Create user accounts for the ASCH PPM team to the specified number (~30) and for the GET PPM team (~6).
* Provide assistance with accessing the tool where required, for example providing a list of ports that need to be open within the Council network to facilitate access or integration with other applications. Specific needs for this will be identified in conversations between the supplier and the ASCH PPM team following the formation of a contract.
* Deliver a series of training sessions in a manner agreed between the supplier and the ASCH PPM team. The team have ~30 members of staff who will require training, and the GET team have ~6 at this time, but whether this is wholly delivered by the supplier or whether the supplier teaches a small cohort who can then cascade, can be agreed following the formation of a contract.
* Train a small number of staff in the administration functions of the system, including creating new reporting templates.
* Carry out the transfer of our existing reporting templates into the system.
* Carry out the transfer of our existing project documentation templates (e.g. Business Case, Project Schedule) into the system.
* Provide assistance in the form of designing the tool to reflect the ASCH PPM’s project terminology where this functionality is offered.
* The ASCH PPM team do not intend to migrate existing project data in to the system at this time, instead running new projects through it as they arise – however where this is possible to achieve by the team within the administration functionality, a walkthrough of this process for a small number of projects may be requested to illustrate how easy or not the process is.

**Section Three - Evaluation Criteria**

A minimum quality level is required to pass the quality aspects of the evaluation. All bidders meeting this minimum quality threshold are then assessed on price, with the lowest price bidder being awarded the contract.

Quality will be ascertained by the ability of the supplier to demonstrate they meet the technical specification requirements, by completing Section 2 of the document.

For the technical requirements, scoring will be allocated at the following rate:

|  |  |  |
| --- | --- | --- |
| Score | Assessment | Interpretation |
| 4 | Excellent | Response is completely relevant and provides an excellent understanding of the issues. The response is comprehensive, unambiguous and provides above requirement details of how the requirement will be met. Offers significant beneficial added value. |
| 3\* | Good | Response is relevant and good. It demonstrates a good understanding of the requirement and provides additional details on how the requirements will be fulfilled. Offers additional beneficial added value. |
| 2 | Acceptable | Response is relevant and acceptable and meets the requirement. The response addresses a broad understanding of the requirements and addresses the need. |
| 1 | Poor | Response is partially relevant but lacks sufficient detail. The response addresses some elements of the requirement but contains insufficient or limited detail or explanation on how the requirement will be fulfilled. |
| 0 | Unacceptable | Nil or inadequate response. Fails to demonstrate an ability to meet any of the requirements. |

\* Minimum score threshold to pass

**Section Five - Contract Conditions**

**THE KENT COUNTY COUNCIL**

GENERAL TERMS AND CONDITIONS

**FOR THE PURCHASE OF GOODS AND SERVICES**

**WHERE CONTRACT VALUE IS BELOW OJEU THRESHOLD EX VAT**

# Definitions and interpretation

In this Contract:

1. “**Applicable Laws**” means all applicable laws, byelaws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.
2. **“Business Day(s)”** means days when the clearing banks are open for business in London.
3. **Charges** payable for the Goods and/or Services shall be the prices stated in the Order.
4. “**Confidential Information**” means all information of a confidential nature in the disclosing party’s possession or control, whether created before or after the date of the Contract, whatever its format, and whether or not marked “confidential”, including the terms of the Contract, and negotiations relating to them, but shall not include any information which is or comes into the public domain through no fault of the other party, was already lawfully in the other party’s possession or comes into the other party’s possession without breach of any third party’s confidentiality obligation to the disclosing party, or is independently developed by or on behalf of the other party.
5. “**Conditions**” means the terms and conditions set out in this document.
6. “**Contract**” means the agreement between the Council and Supplier for the purchase of Goods or Services by the Council in accordance with these Conditions and any Order.
7. **“Council**” means The Kent County Council of County Hall, Maidstone, Kent ME14 1XQ
8. “**Council Materials**” means any materials, patterns, templates, drawings, know-how, techniques and information provided by the Council to the Supplier in connection with a Contract.
9. “**Council Policies and Regulations**” as published on the [www.kent.gov](http://www.kent.gov).uk website from time to time means all relevant Council policies, rules, regulations, local and national byelaws, including, but not limited to the Council’s whistleblowing policy, drugs and alcohol policy, modern slavery and human trafficking policy, general data protection rules, conflicts of interest, transparency, extremism and radicalisation, whistleblowing, use of Council datasets, Caldicott Principles, safeguarding children and vulnerable people, and business continuity/disaster recovery policies/procedures applicable to or as part of this Contract.
10. “**Council Representative**” means any representative nominated in an Order or from time to time by the Council.
11. “**Data**” means all Personal Data and other data collected, generated or otherwise processed by one party as a result of, or in connection with, the Contract.
12. “**Data Protection Laws**” means any data protection laws and regulations applicable in the United Kingdom from time to time and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body.
13. **Employment Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any equivalent provisions in any other relevant jurisdiction.
14. “**Force Majeure Event**” means an event or circumstance beyond the reasonable control of a party which is not attributable to its fault or negligence, including acts of God, expropriation or confiscation of facilities, any form of government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, strikes and other industrial action (other than strikes and other industrial action of the Supplier Personnel), sabotage or riots, and floods, fires, explosions or other catastrophes which directly prevent performance of the Contract.
15. “**Good Industry Practice**” means the exercise of the degree of skill, care and diligence expected from an expert and experienced supplier of goods and/or services the same as or similar to the Goods and/or Services.
16. “**Goods**” means the goods (including any instalment of the goods or any parts for them) which are set out in the Order.
17. **“Intellectual Property Rights”** means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works,
18. utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing.
19. **“Know-how”** means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not).
20. “**Malpractice**” includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other Applicable Law.
21. **“Month/Monthly”** means a calendar month.
22. **“New Materials**” means any materials, patterns, templates, drawings, know-how, techniques and information that the Supplier or its Representatives create for the Council under a Contract.
23. “**Order**” is an order for Goods and/or Services placed with the Supplier by the Council.
24. “**Personal Data**” has the meaning given under the Data Protection Laws.
25. “**Premises**” means the premises at which any Services are carried out as specified in an Order.
26. “**Representatives**” means, as applicable, the Supplier or a member of the Supplier’s group or the Council or any of their directors, officers, employees, agents, professional advisors, suppliers or contractors.
27. “**Services**” means the services described in the Order including hardware and software services, where applicable.
28. **“Service Levels”** if set out in the Order means the required standards with which the Goods and Services are to be supplied.
29. “**Supplier**” means the supplier named in the Order.
30. **“Supplier Materials**” means any materials, patterns, templates, drawings, know-how, techniques and information of the Supplier that the Supplier or its Representatives do not create for the Council under the Contract.
31. “**Supplier Personnel**” means the employees, agents, subcontractors or invitees of the Supplier from time to time.
32. “**VAT**” means value added tax or any similar or substituted turnover or sales tax in the United Kingdom or elsewhere.

**In these Conditions and any Contract:**

#### the interpretation of general words shall not be restricted by words indicating a particular class or particular examples;

#### any reference to a statute or statutory provision includes a reference to any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time; and

#### unless otherwise stated, time shall not be of the essence for the performance of any obligation.

# Formation of a Contract

An Order is an offer by the Council to purchase the Goods and/or Services subject to these Conditions. Acceptance of an Order by the Supplier constitutes unconditional acceptance of these Conditions.

These Conditions shall apply to every Contract.

If there is any conflict between the terms of an Order and these Conditions, these Conditions shall prevail.

The Supplier’s performance of any Order will amount to its acceptance of these Conditions, regardless of whether or not it has given a formal acceptance of an Order.

These Conditions replace all previous agreements and any course of dealing between the Council and the Supplier and is the entire agreement between the Council and the Supplier in relation to the Goods and/or Services.

These Conditions shall apply to the Contract to the exclusion of any other terms and conditions contained in or referred to in any documentation submitted by the Supplier, or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing.

# Cancellation

The Council may cancel any Order without liability, in whole or in part, by giving written notice to the Supplier at any time prior to delivery of the Goods or the commencement of the provision of the Services.

# Charges and payment

Unless otherwise stated:

#### the Charges (together with any applicable VAT) are the only amounts payable by the Council under a Contract;

#### the Charges shall be exclusive of any applicable VAT (which shall be payable by the Council subject to receipt of a VAT invoice);

#### the Charges shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods or services to the delivery address specified by the Council and any duties, custom or levies, other than VAT; and

#### all other costs, charges and expenses which relate to the performance of the Supplier’s obligations and the supply of the Goods and/or the Services shall be borne by the Supplier. The fact that a particular provision in an Order does not state that the Supplier must perform the obligations “at no additional charge” may not be taken as implying that the Supplier may charge extra for complying with the obligation.

No increase in the Charges for the Goods and/or Services may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Council and signed by a properly authorised representative of the Council.

The Supplier shall invoice the Council in pounds sterling (GBP/£) in arrears on or after delivery of the Goods and/or completion of the Services unless otherwise is stated in the Order.

The Council shall only be obliged to make payments which:

#### are supported by accurate and properly prepared invoices which are VAT invoices where required;

#### include details of the Supplier, Goods and/or Services;

#### Include purchase order references;

#### Include all those details the Council states it requires for it to process the invoice; and

#### where the Council is satisfied that the Goods are of satisfactory quality and fit for purpose and/or the Services have been carried out to the standard required by the Council in the Order and in accordance with the Contract and these Conditions.

Subject to Clause 4.4, the Council shall pay the undisputed and properly due Charges 30 days from the end of the Month in which an accurate and valid invoice is received, unless otherwise is specified in the Order.

The Council may set off, deduct or withhold from any liability owed to the Supplier under or in connection with any Contract any current liability of the Supplier to the Council in connection with any Contract whether liquidated or unliquidated and whether owed jointly or severally or in any other capacity.

The Council reserves the right to recover from the Supplier any payments made and/or costs incurred in the event of the Supplier not meeting its Service Levels in accordance with Clause 8.3.

**Clauses 5 to 7 additionally apply to Contracts in respect of the supply of Goods only.**

# Delivery

The Supplier shall deliver the Goods, properly packed and secured at its own risk, on the date or between the dates (as the case may be) specified in the Order. Delivery of the Goods shall take place at such location as the Council may specify in the Order.

Time of delivery is of the essence. If the Supplier fails to deliver the Goods or make them available for collection at the time specified in the Order, the Council may:

#### refuse to accept any subsequent attempts to deliver the Goods and terminate this Contract immediately and at no cost to the Council by serving notice in writing on the Supplier;

#### procure similar goods from an alternative supplier; and

#### recover from the Supplier all losses, damages, costs and expenses incurred by the Council arising from the Supplier’s default.

If the Council fails to take delivery of any one or more instalments of Goods delivered in accordance with a Contract, the Supplier shall store the Goods at its own premises or at another suitable location at its own expense for a reasonable period and arrange with the Council an alternative delivery time.

The Supplier shall notify the Council immediately after receipt of an Order if the delivery dates for the Goods cannot be met.

A packing note quoting the Order number must accompany each delivery or consignment of the Goods and must be displayed prominently.

If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and is not severable.

The Goods shall:

#### be free from defects in materials and workmanship, be of satisfactory quality and conform to and in all respects with the specifications set out in the Order and any other specifications, standards, procedures and requirements agreed in writing between the parties from time to time;

#### comply with all Applicable Laws; and

#### not be the subject of any security interest, lien, encumbrance, charge or adverse title.

The Council may reject any Goods which do not comply with Clause 5.7.

The Council shall not be deemed to have accepted the Goods (in whole or in part) until the Council has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Any inspection or testing of the Goods by the Council shall not prejudice the Council’s right to reject defective Goods at a later date and make a claim in respect of them.

# Title and risk

Risk in the Goods shall pass to the Council once they are delivered to the Council. Title in the Goods shall pass to the Council on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Council once payment has been made and received by Supplier.

The Supplier shall at its own cost collect any Goods rejected under Clause 5 or Clause 15. Risk and title in the rejected Goods shall pass back to Supplier at the point at which the Goods are collected or, if earlier, ten days from the date on which the Council notifies the Supplier of the rejection.

Should the Goods have already been paid for by the Council at the time they are rejected title in the rejected Goods shall pass back to the Supplier when the Council has received a refund of all payment made to the Supplier for the rejected Goods.

# Installation and commissioning

If required in the Order, the Supplier will install and commission the Goods at no additional cost unless such cost is stated in the Order, by the date in the Order and such installation and commissioning will be regarded as Services.

Without prejudice to Clause 5.9, the Council will receipt the Order when it is satisfied the successful installation and commissioning of the Goods has taken place and when the Supplier has provided the Council all documents needed to operate and maintain the Goods.

If Goods are not installed by the Supplier, the Supplier will (on or before delivery) provide the Council with all documents needed to install, operate and maintain the Goods.

Where reasonably practicable (or required in an Order) the Supplier will on the later of delivery of the Goods or technical handover transfer any manufacturer's warranty in relation to the Goods to the Council.

**Clauses 8 to 10 additionally apply to Contracts in respect of the provision of Services only.**

# Performance of the Services

The Supplier shall carry out the Services within the time period specified in the Order. The time that the Services are to be carried out or delivered shall be agreed by the Council Representative in advance.

The Supplier shall notify the Council Representative when the Services are completed or fully delivered.

The Supplier shall:

#### provide any Services in line with Good Industry Practice;

#### at its own expense, promptly supply everything necessary for the performance of its obligations under the Contract and leave the Council Premises, if used, as clean, tidy and safe as they were when it entered them.

#### participate in regular reviews of its performance if specified in the Order;

#### provide the Goods and Services in line with any Service Levels set out in the Order;

#### incur poor performance liabilities (calculated as set out in the Order) where it fails to meet the applicable Service Levels;

#### provide the Council with such reporting as is specified in the Order and/or as are reasonably required; and

#### where any report indicates a persistent failure by it to meet any Service Levels, participate as required by the Council in reviews to correct defective Service delivery.

Any materials used or supplied by Supplier in the performance of the Services shall be in accordance with the highest requirement of any European Union and/or British Standard specifications and or regulations.

When working on the Council Premises or representing the Council at the site/s defined within the contract, the Supplier shall ensure that all equipment, working conditions and methods are safe and without risks to health for all employees, staff, visitors, users of the Premises, supplier personnel and others. The Supplier shall also ensure that the Supplier Personnel shall comply with any and all applicable the Council Policies and Regulations as well as those applicable third-party policies, procedures and regulations.

The Supplier shall:

#### ensure that any Services are carried out in such a way as to prevent so far as reasonably possible damage or pollution to the environment;

#### keep any waste, surplus, condemned (or otherwise unusable) and recyclable materials and rubbish arising from the Services securely and safely on the Premises until cleared away in accordance with Applicable Laws and/or the Council’s reasonable instructions;

#### ensure that any removal of waste is only carried by registered, authorised and licensed carriers

#### keep a record of the carrier’s waste transfer notices, registration, authorisation or licence and of the carrier’s written confirmation of the disposal site used.

# supplier equipment

The Supplier shall provide all the equipment necessary for the provision of the Services.

The Supplier shall maintain all items of its equipment within the Premises in a safe, serviceable and clean condition.

All equipment provided by the Supplier shall be at the risk of the Supplier and the Council shall have no liability for any loss of or damage to such equipment unless the Supplier is able to demonstrate that such loss or damage was caused by the negligence or wilful default of the Council.

# SUpplier’s employees

1. “The Supplier will indemnify the Council on demand against all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses) incurred by the Council on its own behalf and on behalf of any successor service provider relating to:

#### the employment and termination of employment of any person who transfers from the Supplier or its Representatives to the Council or any successor service provider under the Employment Regulations or otherwise (“Relevant Employees”) provided that (in the case of termination), such termination is carried out within 60 days of the Council becoming aware of the transfer;

#### any act or omission by the Supplier or its Representatives in respect of any Relevant Employee up to and including the date of transfer; and

#### any failure by the Supplier or its Representatives to comply with the Employment Regulations save to the extent caused by the Council or any successor service provider.

At any time on request, the Supplier will provide (as relevant) the Council or any successor service provider with the information specified in regulation 11 of the Employment Regulations in respect of any potential Relevant Employees.

**The following Clauses apply to all Contracts.**

# VARIATIONS

No changes to the Conditions or Contract shall be valid unless a new or revised Order has been issued by the Council.

# INTELLECTUAL PROPERTY

The Council will own the Intellectual Property Rights in any New Materials and the Supplier assigns to the Council by present and future assignment, with full title guarantee, all legal and beneficial rights, title and interest in the New Materials.

The Supplier will continue to own the pre-existing Intellectual Property Rights in any Supplier Materials and where any Supplier Materials are included in any Goods or used in any Services then the Supplier grants the Council a perpetual, irrevocable, worldwide, sub-licensable, assignable, royalty-free, non-exclusive licence to use Supplier Materials to the extent necessary to take the full benefit of the Contract.

The Council will continue to own the Intellectual Property Rights in any Council Materials together with any new Intellectual Property Rights and Know-How howsoever developed.

Where the Council provides the Supplier with Council Materials then it grants the Supplier a limited, revocable, non-assignable, worldwide, royalty-free, non-exclusive licence to use the Council Materials to the extent necessary in accordance with any guidelines the Council notifies it from time to time, solely to the extent needed to fulfil its obligations under the Contract.

# Data protection AND FREEDOM OF INFORMATION

If, during the term, either party processes Data on behalf of the other party, the provisions of this Clause 13 shall apply.

Each party shall comply with the requirements of the Data Protection Laws in respect of the activities which are the subject of the Contract and shall not knowingly do anything or permit anything to be done which might lead to a breach by the other of the Data Protection Laws.

Each party shall only process the Data to the extent necessary to perform its obligations under the Contract and shall have in place, and shall maintain, appropriate technical and organisational measures against unauthorised or unlawful processing of the Data and against accidental loss or destruction of, or damage to, the Data.

Any Data processed by Supplier under the Contract shall comply with applicable Council Policies and Regulations in place from time to time and, where applicable, third party policies and procedures.

The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the EI Regs 2004 and shall promptly and fully assist and cooperate with the Council to enable the Council to comply with its obligations in respect of those requirements.

While the Council may, if practicable and appropriate, consult with Supplier in relation to whether any information relating to Supplier or this Contract should be disclosed as part of a request for information, the Council shall ultimately be responsible for determining in its absolute discretion whether any Information will be disclosed and whether any exemptions apply to the disclosure of the Information.

# Confidentiality

Each party shall safeguard the other party’s Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Contract.

Nothing in the Contract shall be construed so as to prevent one party from disclosing the other’s Confidential Information where required to do so by a court or other competent authority, provided that, unless prevented by law, the first party promptly notifies the other party in advance and discloses only that part of the other party’s Confidential Information that it is compelled to disclose.

Each party shall tell the other immediately if it discovers that this Clause 14 has been breached and shall, on request, return to the other all of the other party’s Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

The obligations in this Clause 14 shall continue without limit in time.

# Warranties

**Each party represents and warrants that:**

#### it has the power and authority to enter into and perform the Contract, which constitute valid and binding obligations on it in accordance with their terms; and

#### in performing its obligations under the Contract it shall comply with all Applicable Laws

The Supplier warrants and represents that the Goods and Services delivered by the Supplier shall:

#### conform to the Specification and to any descriptions given in quotations, estimates and sales material;

#### be free from defects in design, materials and workmanship;

#### comply with all applicable laws, standards and good industry practice (including in relation to their manufacture, packaging and delivery);

#### be, in the case of Goods, of satisfactory quality within the meaning of the Sale of Goods Act 1979;

#### be fit for any purpose specified in the Order;

#### in the case of Services, be carried out the with all due skill and diligence and in a good and workmanlike manner, and in accordance with Good Industry Practice;

#### in the case of Services, the Supplier’s employees and agents will have the necessary skills, professional qualifications and experience to provide the Services in accordance with the Order, including any specifications and Good Industry Practice (with the Supplier being responsible for all costs, fees, expenses and charges for training necessary or required for the Supplier’s employees and agents to provide the Services;

#### that neither the Goods nor any Services shall infringe any third party Intellectual Property Rights;

Without limiting any other remedies to which it may be entitled, the Council may at any time after Delivery and at no cost to itself, reject any Goods or Services that do not comply with Clause 15.2 by providing notification to the Supplier. As soon as reasonably practicable but in any event within ten Business Days after receiving the notification, the Supplier shall, at the Council’s option:

#### repair or replace the Goods; or

#### provide the Council with a full refund of the Charges paid by the Council.

The provisions of this Contract shall apply to any Goods that are repaired or replaced.

# Indemnities

The Supplier shall indemnify the Council from and against all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses) incurred by the Council, its employees, officers, agents and contractors as a result of or in connection with:

#### any damage to property or injury to persons resulting from the supply of Goods or provisions of Services;

#### any claim by the Council or any third party resulting from the negligence of or breach by or fraud on behalf of the Supplier; or

#### any claim, demand or action alleging that the provision and/or use of the Goods or Services has infringed any Intellectual Property Rights of a third party.

# Caps on liability

Subject to Clauses 17.2 and 17.4, the liability of the Supplier under or in connection with the Contract is limited to:

#### for liability arising from loss of or damage to property, £10,000,000 per occurrence; and

#### for all other liabilities, the higher of:

£50,000; or

100% of the total amounts paid and which would be payable under the Contract.

Other than in respect of death or personal injury to the extent caused by the Council or such other matters for which liability is precluded by the operation of law, the maximum extent of the Council’s liability to Supplier in respect of any and all liabilities shall be limited to the lower of:

#### The outstanding properly due invoiced amount; or

#### £10,000.

Neither party will be liable for any indirect or consequential loss.

The exclusions and limitation of liability set out in Clauses 17.1 and 17.2 do not apply to:

#### liability arising from death or injury to persons;

#### any breach of Clause 13 or Clause 14;

#### any indemnity; or

#### anything else which cannot be excluded or limited at law,

#### to which no limit applies.

# insurance

Without prejudice to Clause 16 the Supplier shall maintain in force at its own expense with reputable insurance companies:

#### employer’s liability insurance for the minimum amount of £5 million;

#### public and product liability insurance for the minimum amount of £5 million per occurrence and in the annual aggregate;

#### professional indemnity, errors or omissions or equivalent insurance for the minimum amount of £1 million per event and in the annual aggregate; and

#### any other insurances reasonably required by Applicable Law or by the Council.

Within 14 days of a request by the Council, the Supplier shall provide evidence of the policies referred to in Clause 18.1.

The Supplier will provide all facilities, assistance and information reasonably required by the Council or its insurers for the purpose of bringing an action or claim arising out of the performance of these Conditions.

# Term and Termination

The Contract commences on the date of the acceptance of the Order and continues until the Goods have been delivered or the Services have been completed in accordance with the Contract, on which date the Contract will terminate.

A Contract may be terminated immediately by notice in writing:

#### by either party if the other party is in material or continuing breach of any of its obligations under the Contract and fails to remedy the breach (if capable of remedy) for a period of ten working days after written notice by the other party;

#### by either party with immediate effect from the date of service on the other party of written notice if:

such other party becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended);

such other party ceases or threatens to cease to carry on the whole or a substantial part of its business;

any distress or execution shall be levied upon such other party’s property or assets, or any of its property is subject to the exercise of commercial rent arrears recovery;

such other party shall make or offer to make any voluntary arrangement or composition with its creditors;

any resolution to wind up such other party (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) shall be passed, any petition to wind up such other party shall be presented or an order is made for the winding up of such other party;

such other party is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order, or has an administrator appointed over it;

a receiver or administrative receiver is appointed over all or any of such other party’s undertaking property or assets;

any bankruptcy petition is presented or a bankruptcy order is made against such other party; an application is made for a debt relief order, or a debt relief order is made in relation to the Council; or

such other party is dissolved or otherwise ceases to exist.

Termination shall not affect either of the parties’ accrued rights or liabilities, or the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

# Force majeure and excluded events

Neither party shall be liable for any breach of the Contract, and the Council shall not be liable for any failure or delay in providing the Services, arising directly or indirectly as a result of a Force Majeure Event.

# Fraud, bribery and corruption

Each party shall notify the other immediately if it becomes aware of or has

grounds for suspecting any fraud or Malpractice relating to the supply of Goods or Services.

Without prejudice to any other remedy it may have, if either party has reasonable grounds for believing that any of the other party’s personnel has committed a fraud or Malpractice relating to the supply of Goods or Service, that party may, in its absolute discretion:

#### suspend the supply of the Goods or Services; and/or

#### withhold payment of any Charges falling due.

Payment of the Charges and supply of the Goods or Services shall be resumed if it is established that the other party’s personnel were not responsible for any fraud or Malpractice.

# WHISTLEBLOWING POLICY

The Supplier shall have, and keep operational, a suitable and effective Public Interest Disclosure Act 1998 (Whistleblowing) Policy which will include procedures under which Supplier Personnel can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These will include but will not be limited to situations listed below when Supplier Personnel believe that:

a criminal offence has been committed, and/or

someone has failed to comply with a legal obligation, and/or

a miscarriage of justice has occurred, and/or

the health and safety of an individual is being endangered, and/or

there are or may be financial irregularities, and/or

there may be a Safeguarding concern.

The Supplier will make its Whistleblowing Policy available to the Council for inspection upon request.

# General

The Supplier shall not, without the prior written consent of the Council assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under these Conditions or under the Contract or any interest in them.

The Supplier may not subcontract any of its rights or obligations (or both) under these Conditions or under the Contract without the prior written consent of the Council. The Supplier shall remain responsible for all obligations that are performed by the Supplier Personnel as if they were acts or omissions of the Supplier.

Nothing in these Conditions or the Contract is intended to or shall operate to create a partnership or joint venture or other business arrangement of any kind between the parties. No party shall have the authority to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.

Council Materials shall not be used by the Supplier or Supplier Personnel for any purpose whatsoever other than for the performance of the Contract and are to be returned carriage paid, carefully packed. All Council Materials whilst in the Supplier’s possession are at Supplier’s risk and must be insured by it against loss or damage.

Any waiver by the Council of any breach by the Supplier shall not constitute a waiver of any subsequent breach.

Any failure of delay by the Council in either enforcing or partially enforcing any provision of this Contract is not a waiver of any of its rights under this Contract.

The parties do not intend any third party to have the right to enforce any provision of these Conditions or of any Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

If any provision of this Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Contract shall not be affected

The rights and remedies expressly conferred by these Conditions or by any Contract are cumulative and additional to any other rights or remedies a party may have.

Communications under the Contract shall be in writing and delivered by hand, sent by recorded delivery post or by email to the relevant party at its address or email address (as applicable). Without evidence of earlier receipt, communications are deemed received: if delivered by hand, at the time of delivery; if sent by recorded delivery, at 9.00 am on the second Business Day after posting; if sent by email, at the earlier of (i) the time the recipient acknowledges receipt and (ii) 24 hours after transmission, unless the sender receives notification that the email has not been successfully delivered, and provided that a copy is also sent by pre-paid post. In the case of post it shall be sufficient to prove that the communication was properly addressed and posted or transmitted.

If any dispute arises under or in connection with this Contract, the parties agree to enter into mediation to endeavour to settle such a dispute. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings in the English courts, in accordance with Clause 23.12 below.

The Contract and any non-contractual obligations arising in connection with it is governed by and construed in accordance with English law, and the English courts have exclusive jurisdiction to determine any dispute arising in connection with them, including disputes relating to any non-contractual obligations.