

Dated _____ **20[18]**

(1) THE COUNCIL OF THE CITY OF STOKE-ON-TRENT
and

(2) [NAME OF SUPPLIER]

DEED OF AGREEMENT

for the supply and delivery of Cleaning Materials

Fiona M Ledden
Assistant Director - Governance
Stoke-on-Trent City Council
PO Box 631
Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

THIS AGREEMENT is made as a Deed on the day of 20[18]

BETWEEN

- (1) **THE COUNCIL OF THE CITY OF STOKE-ON-TRENT** of PO Box 631 Civic Centre Glebe Street Stoke-on-Trent ST4 1HH (hereinafter referred to as “the Council”); and
- (2) **[NAME OF SUPPLIER]** whose **[registered]** place of business is situated at **[address]** **[Company No.]** (hereinafter referred to as “the Supplier”)

each a “Party” and together the “Parties”

WHEREAS:

- (A) The Council has accepted the Supplier’s tender and wishes to enter into this Agreement with the Supplier for the supply and delivery of Goods in accordance with the terms and conditions set out in this Agreement and the attached Appendices
- (B) The following documents are annexed to and incorporated into this Agreement (“the Appendices”)

Appendix 1 – the Specification

Appendix 2 - the Supplier’s Tender Response Documentation

Appendix 3 – Price List Items

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement unless the context otherwise requires the following words and shall have the meanings given to them below:

“**Agreement**” means this agreement between the Council and the Supplier consisting of these clauses and any attached Appendices

“**Authorised Officer**” means the person nominated by the Council from time to time as being authorised to administer this Agreement on behalf of the Council or such person as may be nominated by the Authorised Officer to act on its behalf

“**Commencement Date**” means []

“**Completion Date**” means []

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential

(however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and commercially sensitive information

“Date of Order” means the date on which the Council places an Order with the Supplier

“Goods” means the Price List Items and the Non-Price List Items and, where the context requires, the Goods ordered by and supplied to the Council

“Non-Price List Items” means materials which are not listed in Appendix 3 but which are nevertheless included in the Supplier’s catalogue from time to time

“Operating Procedures” means the Operating Procedures in Appendix 1 together with any other procedures the Council requires the Supplier to adhere to which the Supplier will be notified of by the Council

“Order” means an order by the Council for Goods made on the web based system described in paragraph 3.2 of the Operating Procedures contained in the Specification a written order for Goods issued by the Council on the Council’s official order form given in accordance with clause 3.2 below

“Price” means the Price List Items the prices detailed in Appendix 3 and, [in respect of the Non-Price List Items, the prices listed in the Supplier’s catalogue]

“Price Review Dates” means the dates designated as such in the Specification

“Recipient” means an officer of the Council authorised to take delivery of the Goods

“Specification” means the contents of Appendix 3 (but excluding the Prices), together with all other provisions within this Agreement (including the Appendices prescribing the Council’s requirements in relation to the Goods

“Working Day” means Monday to Friday 9.00am to 5.00pm excluding Bank and Public holidays

- 1.2 References to numbered clauses or appendices are to the relevant numbered clauses or appendices in this Agreement;
- 1.3 The headings are included for ease of reference only and shall not affect the interpretation or construction of the Agreement;
- 1.4 References to the singular shall include the plural and references to the masculine shall include the feminine and the neuter and vice versa in each case;
- 1.5 References to a statute statutory instrument regulation order or quality standard shall be construed as a reference to such statute statutory instrument regulation order or quality standard as amended or re-enacted or updated or superseded from time to time;

- 1.6 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 assignees or transferees;
- 1.7 The words “include” “includes” and “including” shall be construed without limitation;
- 1.8 No terms and conditions of the Supplier whether stated on an invoice in a catalogue or other literature shall apply override or supersede any of the terms of this Agreement.
- 1.9 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
 - 1.9.1 the clauses of this Agreement numbered 1 to 24;
 - 1.9.2 the Specification at Appendix 1 to this Agreement.
 - 1.9.3 the Supplier’s Tender Response Documentation at Appendix 2 to this Agreement
 - 1.9.4 the Price List Items at Appendix 3 to this Agreement

2. Contract Period

- 2.1 The Agreement shall take effect on the Commencement Date and shall expire on the Completion Date unless it is otherwise terminated in accordance with this Agreement (“the Contract Period”)
- 2.2 The Council may extend the Contract Period for two additional period of one year’s duration
- 2.3 If the Contract Period is to be extended by one additional period the Council will give no less than one month’s notice in writing to the Supplier prior to the Completion Date.
- 2.4 If the Contract Period is to be extended by a second one year period the Council will give no less than one month’s notice in writing to the Supplier prior to [insert date]. For the avoidance of doubt this Agreement will not exceed four years’ duration.

3. Supply of Goods

- 3.1 Subject to the following the Supplier shall supply, and the Council shall purchase, such quantities of Goods as the Council may order under this clause 3 in accordance with the terms and conditions of this Agreement.
- 3.2 Every Order for Goods shall:
 - 3.2.1 specify by reference to the product number(s) the quantity and type of Goods which are to be supplied;
 - 3.2.2 specify the relevant delivery address;

- 3.2.3 specify the required delivery date (which shall be within 2 working days for orders placed before 5 pm Mondays to Fridays) except in the case of Goods urgently required;
- 3.2.4 specify the Price of the Goods which are to be supplied;
- 3.2.5 specify an order number; and
- 3.2.6 be signed by the Authorised Officer
- 3.3 The Supplier shall not make additional charges to the Council for placing Orders that are small in quantity or value and there shall be no minimum quantity or value Order requirements.
- 3.4 The Council shall not be bound or otherwise obliged to place Orders with the Supplier for all or any of the Goods during the Contract Period and provides no guarantee as to the future levels of business. The Supplier acknowledges that it is not appointed on an exclusive basis, and that nothing in this Agreement prevents the Council from purchasing goods of a kind similar to or the same as the Goods from a third party.
- 3.5 The Council shall not be bound to pay for any Goods not requested or delivered in accordance with this clause 3.
- 3.6 The Supplier shall use all reasonable endeavours to maintain sufficient stocks of the Goods to promptly fulfil all of the Orders placed by the Council during the Contract Period.
- 3.7 The Supplier shall notify the Council of any new or replacement items in relation to the Goods and shall immediately supply appropriate samples of the new or replacement item together with COSHH data sheets to the Council. The Council may in its discretion accept such new or replacement items, but acceptance would be subject to the Council providing written approval.
- 3.8 The Supplier shall perform all its obligations under this Agreement with all due diligence and in a good workmanlike manner and in accordance with the instructions of the Authorised Officer.

4. Delivery of the Goods

- 4.1 The Supplier shall deliver the Goods to the delivery address specified in the Order no later than the date specified on the Order.
- 4.2 Delivery of the Goods shall be made free of charge and in strict accordance with any instructions specified in the Order and any Operating Procedures. Each delivery of Goods must be accompanied by an official delivery note issued by or on behalf of the Supplier which shall specify the Order number date and details of the Goods.
- 4.3 The Goods shall not be deemed to be delivered until they have been unloaded at the location specified in the Order or collected by the Authorised Officer and the delivery note has been signed by the Authorised Officer or Recipient. A signed delivery note shall in no way prejudice the Council's rights including without limitation the right to reject the Goods

terminate this Agreement and/or sue for damages for breach of this Agreement by the Supplier.

4.4 Risk in the Goods shall not pass to the Council until a delivery note has been signed in accordance with clause 4.3 above. If at any time after delivery has been effected the Goods are rejected by the Council for any reason risk in the Goods shall revert to the Supplier immediately upon the Council notifying the Supplier of such rejection of the Goods.

4.5 Title to the Goods shall pass to the Council upon delivery of the Goods being effected in accordance with this clause 4.

5. Acceptance of the Goods

5.1 The Council shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

5.2 If any Goods delivered to the Council do not comply with clause 6, or are otherwise not in conformity with the terms of this Agreement, then, without limiting any other right or remedy that the Council may have, the Council may reject those Goods and

5.2.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense; or

5.2.2 require the Supplier to repay the price of the rejected Goods in full (whether or not the Council has previously required the Supplier to repair or replace the rejected Goods); and

5.2.3 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of this Agreement.

5.3 The Council's rights and remedies under clause 5.2 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Agreement by the Sale of Goods Act 1979.

5.4 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

5.5 If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 5.2.1, the Council may, without affecting its rights under clause 5.2.3, obtain substitute products from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Council for the costs it incurs in doing so.

5.6 For the avoidance of doubt, the Council will not be deemed to have accepted Goods if they are different to those specified in the Specification unless the changes have previously been agreed in writing by the Council and any such

changes will only be considered by the Council where the goods to be supplied would be either of equal or higher quality to those originally specified at no extra cost to the Council.

6. Warranties and obligations of the Supplier

6.1 The Supplier hereby represents and warrants to the Council that:

6.1.1 the Supplier sells the Goods with full title guarantee and free from all encumbrances;

6.1.2 on delivery to the Council the Goods will conform in all respects with the Specification;

6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for the purposes for which they are required by the Council;

6.1.4 the Supplier has the absolute and unfettered right to supply the Goods to the Council and no consent licence or permission is necessary from any third party for the supply of the Goods to the Council;

6.1.5 the Goods do not infringe any intellectual property right of any third party; and

6.1.6 the Goods comply with all applicable statutory and regulatory requirements.

6.2 The Supplier shall carry out its obligations under this Agreement (including but not limited to the packing, supply and delivery of the Goods) in accordance with and to the standards of Good Industry Practice. "Good Industry Practice" means generally accepted good industry standards and practices as well as 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 to the Supplier under the same or similar circumstances.

6.3 Each of the representations and warranties contained in Clause 6.1 above ("the Warranties") shall be construed as a separate representation or warranty and shall not be limited by the terms of any of the other Warranties or by any other term of this Agreement.

6.4 The Supplier acknowledges that the Council has entered into this Agreement in reliance on the Warranties.

6.5 The Warranties shall continue in full force and effect notwithstanding delivery and payment for the Goods and notwithstanding termination of this Agreement for any reason.

7. Price and Payment

7.1 The Price of the Goods shall be the Price detailed in the Appendix 3 and shall include any discounts referred to in this Agreement and all packing insurance carriage assembly and installation of the Goods to the Council. The Price is exclusive of Value Added Tax (VAT)

which shall be due and payable by the Council to the Supplier at the rate then prevailing on the production of a valid VAT invoice.

- 7.2 Subject as hereinafter provided payment of the Price and VAT shall be made only on receipt by the director of the department who ordered the Goods of an invoice showing the order number date delivery number net value of Goods VAT payable details of any discounts and settlement terms.
- 7.3 The Council will pay the invoice within 30 days of receipt of the Supplier's invoice unless an early settlement discount has been agreed between the Parties in which case the Price and VAT shall be due within the period agreed between the Parties for early payment of the invoice.
- 7.4 Wherever under this Agreement or any other contract between the Council and the Supplier any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier 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 time may become due to the Supplier under this Agreement.
- 7.5 If the Council disputes the amount claimed by the Supplier it shall notify the Supplier in writing of the amount which the Council reasonably believes to be properly due and payable to the Supplier ("the Undisputed Sum") within 14 days of receipt of the invoice. Unless the Supplier notifies the Council in writing within 5 Working Days of receipt of the Council's notice that it disagrees with the Undisputed Sum the Council shall pay to the Supplier and the Supplier shall accept the Undisputed Sum in full and final settlement of the invoice.
- 7.6 The Prices shall remain fixed for a period of twelve months from the Commencement Date but may be subject to annual review on the Price Review Dates if so requested by the Supplier in accordance with the following:-
 - 7.6.1 The Supplier must provide the Council with a list of Prices they wish to be amended 12 weeks before the Price Review Dates
 - 7.6.2 The Supplier must provide documentary evidence to support their request to have the Prices amended
 - 7.6.3 The Council may approve the price amendments requested by the Supplier in full or in part or in relation to certain Goods only and the Council shall provide written approval accordingly
 - 7.6.4 The Council reserves the right to refuse any request by the Supplier for the Prices to be amended and shall provide reasons for the refusal if so requested by the Supplier
 - 7.6.5 Should the Council exercise their right under clause 7.6.4 and the Supplier is not satisfied with the Council's reasons then the Supplier may refer the matter in accordance with the dispute resolution procedure as detailed in clause 21.

- 7.7 The Supplier shall pass on to the Council any decrease in the Price of any of the Goods during the Contract Period.
- 7.8 The Supplier shall not be entitled to any payments under or in connection with this Agreement other than the Price and any VAT thereon.

8. Termination

- 8.1 The Council may terminate this Agreement or any part of this Agreement at any time during the Contract Period subject to giving the Supplier not less than one month's notice in writing.
- 8.2 The Council may terminate this Agreement in whole or in part by written notice to the Supplier with immediate effect if:
- 8.2.1 the Supplier having breached this Agreement has not remedied the breach to the satisfaction of the Council within 10 Working Days after issue by the Council of a written notice specifying the breach and requesting it to be remedied;
 - 8.2.2 the Supplier breaches this Agreement and in the opinion of the Council the breach is not capable of remedy;
 - 8.2.3 the Supplier commits a material breach of this Agreement (and for the avoidance of doubt it is understood that a series of persistent minor breaches may, when taken together, amount to a material breach);
 - 8.2.4 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
 - 8.2.5 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (otherwise than for the purpose of solvent amalgamation or reconstruction);
 - 8.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) (otherwise than for the purpose of solvent amalgamation or reconstruction);
 - 8.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);

- 8.2.8 the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 8.2.9 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
 - 8.2.10 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
 - 8.2.11 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
 - 8.2.12 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 8.2.13 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to 8.2.12 above;
 - 8.2.14 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
 - 8.2.15 if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the Council reasonably objects.
- 8.3 If this Agreement is terminated by the Council for cause (including under any of the provisions of clause 8.2) such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
 - 8.4 The Council may terminate this Agreement by notice in writing with immediate effect where an award for ineffectiveness of this Agreement is made under the Public Contracts Regulations 2015 or if legal proceedings seeking such an award are brought against the Council and the Council considers that such an award will be made.
 - 8.5 If the Council does not make payment of undisputed sums due under this Agreement within 60 days of the due date, the Supplier may serve notice on the Council requiring the Council to make payment, and if the Council fails to make payment within 30 days of such notice, the Supplier may terminate this Agreement with immediate effect on written notice to the Council.

9. Consequences of Termination

- 9.1 Termination of this Agreement shall be without prejudice to any rights remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in

the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

- 9.2 The provisions of the following clauses shall survive termination or expiry of this Agreement (in addition to those provisions which are, elsewhere in this Agreement, stated to continue following termination): clause 16 (Freedom of Information), clause 11 (Indemnity and Insurance), clause 12 (Limitation of Liability), clause 8 (Termination), and this clause 9 (Consequences of Termination).

10. Bribery

- 10.1 The following constitute “Prohibited Acts” under this clause 10:

10.1.1 to directly offer, promise or give to any person working for or engaged by the Council a financial or other advantage to:

- a) induce that person to perform improperly a relevant function or activity; or
- b) reward that person for improper performance of a relevant function or activity.

10.1.2 to directly or indirectly request, agree to receive, or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement.

10.1.3 committing any offence:

- a) under the Bribery Act 2010;
- b) under legislation creating offences concerning fraudulent acts;
- c) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- d) defrauding attempting to defraud or conspiring to defraud the Council.

- 10.2 The Supplier:

10.2.1 shall not and shall procure that its employees and agents in connection with this Agreement shall not commit a Prohibited Act; and

10.2.2 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 this Agreement.

- 10.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Employee from committing a Prohibited Act and shall enforce it where appropriate.

- 10.4 If any breach of clause 10.2 is suspected or known the Supplier must notify the Council immediately.
- 10.5 If the Supplier provides notice to the Council in accordance with clause 10.4 the Supplier shall respond promptly to any enquiries made and cooperate with any investigation carried out by the Council and allow the Council access to audit books, records and any other relevant documentation. This obligation shall continue for a reasonable time after expiry or termination of this Agreement.
- 10.6 The Council may terminate this Agreement by written notice with immediate effect if the Supplier or its employees/agents (whether or not acting with the Supplier's knowledge) breaches clause 10.2.
- 10.7 If this Agreement is terminated under clause 10.6 the Council may recover from the Supplier 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 purchase of the Goods and any other loss sustained by the Council in consequence of any breach of this clause 10 whether or not this Agreement has been terminated.

11. Indemnity and Insurance

- 11.1 Subject to clause 12, the Supplier 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 of the Goods, or the late or purported supply of the Goods, or the performance or non-performance by the Supplier of its obligations under this Agreement or the presence of the Supplier or any employees or agents of the Supplier on Council 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 Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 11.2 The Supplier 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 this Agreement.
- 11.3 Without prejudice to the foregoing the Supplier shall maintain insurance with a well-established insurance provider or underwriter of good repute with the following limits of indemnity for any one occurrence or series of occurrences arising out of any one event :-
- 11.3.1 Employers' Liability Insurance in respect of the Supplier's employees in compliance with the Employers' Liability (Compulsory Insurance) Act 1969 and any Order thereunder or amendment thereto to a limit of not less than five million pounds; and
- 11.3.2 Public and Product Liability Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person (including any employee of the Council or the Supplier) or injury or damage to any property arising out of or in connection with the performance of its obligations under this Agreement for a limit of indemnity of not less than ten million pounds

12. Limitation of Liability

12.1 Subject to clause 12.5, neither the Council nor the Supplier shall be liable to the other for:

12.1.1 loss of profits, business, revenue or goodwill;

12.1.2 loss of savings (whether anticipated or otherwise); or

12.1.3 indirect or consequential loss or damage.

12.2 For the purposes of clause 12.1, the following shall not be treated as indirect losses or as consequential losses:-

12.2.1 any additional operational and/or administrative expenses;

12.2.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council;

12.2.3 the additional cost of procuring replacement goods for the remainder of the Contract Period following termination of this Agreement; and

12.2.4 liabilities, costs and/or expenses (including legal expenses) incurred by the Council in connection with a claim from a third party.

12.3 Subject to clause 12.5 below, the Council's total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement (other than in respect of a failure to pay the Price where it is properly due and payable, for which the Council shall remain fully liable), shall in no event exceed ten million pounds.

12.4 Subject to clause 12.5 below, the Supplier's total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, shall in no event exceed £10 million ("the Financial Cap"). Provided that if the Supplier is required by this Agreement to maintain an insurance policy in respect of the liability in question and the proceeds of the policy in respect of the liability would have exceeded the Financial Cap, the Financial Cap shall be increased to reflect the value of the proceeds that would be payable under the insurance policy (and for these purposes it shall be assumed that the insurance policy has been properly maintained and complied with by the Supplier and a claim properly made under it).

12.5 Notwithstanding any other provision of this Agreement:

12.5.1 neither Party limits or excludes its liability for (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence; (c) breach of any obligation as to title implied by statute; or (d) any other act or omission for which that Party is not, under applicable law, permitted to limit or exclude its liability; and

12.5.2 the Supplier's liability in connection with a breach of the warranty given in clause 6.1.5 (intellectual property rights indemnity) is unlimited.

13. Discrimination

13.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of equal opportunities legislation, which includes but is not limited to the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, any statutory modification or re-enactment thereof.

14. Compliance with Legislation/Council Policies

14.1 The Supplier shall at all times when visiting any Council site comply with:

10.1.1 all relevant health and safety legislation including but not limited to the Construction (Design and Management) Regulations 2007, the Management of Health and Safety at Work Regulations 1999, the Environmental Protection Act 1990, the Control of Substances Hazardous to Health Regulations 2002, the Health and Safety at Work, etc Act 1974 and the Factories Act 1961;

10.1.2 the Council's Health and Safety Policy; and

10.1.3 the instructions of the Authorised Officer

15. Confidentiality

15.1 Each Party:-

- a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

15.2 Clause 15.1 shall not apply to any disclosure of information:

- a) made by the Council under clause 16 below in response to requests subject to the Freedom of Information Act 2000 (FOIA) and/or Environmental Information Regulations 2004 (EIR);
- b) required by any applicable law;
- c) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Agreement;

- d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 15.1;
 - e) which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
 - f) by the Council to any other department, office or agency of the Government; or
 - g) by the Council relating to this Agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 15.3 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

16. Freedom of Information

- 16.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council to enable the Council to comply with these information disclosure requirements at no cost to the Council.
- 16.2 The Council shall be responsible for determining at its absolute discretion whether information is exempt from disclosure in accordance with the provisions of the FOIA or EIR.
- 16.3 The Supplier acknowledges that the Council may be obliged under the FOIA or the EIR to disclose information:
- (a) without consulting with the Supplier; or
 - (b) following consultation with the Supplier and having taken its views into account,
- provided always that where clause 16.3 (a) applies the Council shall take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

17. Force Majeure

- 17.1 In the event that the performance of any obligation under this Agreement is prevented restricted or interfered with by reason of a circumstances including but not limited to act of god, fire, flood, civil disobedience, governmental acts or regulation beyond the control of the Party obliged to perform it ("Force Majeure Event") the Party so affected (upon giving prompt notice in writing to the other Party) shall be excused from the performance to the extent of the prevention restriction or interference but the Party so affected shall use all reasonable endeavours to avoid or remove the cause of non-performance and shall continue performance under this Agreement with the utmost dispatch whenever such cause is removed or diminished. Provided always that industrial action by the Supplier's own employees or supply chain or failure by a sub-contractor of the Supplier to perform

its obligations under any subcontract shall under no circumstances constitute a Force Majeure Event.

- 17.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement if such delay or failure results from a Force Majeure Event. If any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of three months from the first day of the Force Majeure Event either Party may terminate the Agreement by notice in writing with immediate effect.

18. Notices

- 18.1 Any notice required or authorised to be given by either Party under this Agreement to the other Party shall be in writing and shall either be delivered personally or sent by pre-paid post or by electronic mail or facsimile transmission to the other Party at the address stated in this Agreement or such other address as may be specified by the Parties by notice to the other from time to time and shall be deemed duly served:

18.1.1 in the case of a notice delivered personally at the time of delivery; or

18.1.2 in the case of a notice sent by either first or second class pre-paid post three clear Working Days after being posted; or

18.1.3 in the case of an electronic mail or facsimile transmission if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Working Day provided (in each case) that a confirmatory copy is sent by pre-paid post or by hand by the end of the next Working Day

- 18.2 Both Parties shall promptly notify the other upon any change of address or facsimile number occasioned during the Contract Period.

19. Assignment and Third Parties

- 19.1 The rights and obligations under this Agreement are personal to the Parties and the Supplier shall not assign or transfer or sub-contract the whole or any part of this Agreement without the previous written consent of the Council.

- 19.2 Where the Supplier enters into a sub-contract for the purposes of this Agreement it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due to the Supplier within a specified period not exceeding 30 days from the receipt of a valid invoice.

- 19.3 The Council may assign the benefit of this Agreement subject to notification to the Supplier.

- 19.4 Nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

20. Severance

In the event that any clause or sub-clause hereunder shall be deemed to be invalid unlawful or unenforceable to any extent by any competent authority such clause or sub-clause shall to that extent be severed from the remainder of this Agreement which shall continue to prevail to the full extent permitted by law

21. Dispute Resolution

- 21.1 In the event of any dispute between the Parties arising out of or in connection with the Agreement, either Party may call a meeting of the Parties by service of not less than 5 days' written notice, and each Party agrees to procure that its representative shall attend any such meeting. The members of the meeting shall use their reasonable endeavours to resolve the dispute.
- 21.2 If any dispute referred to a meeting pursuant to clause 21.1 is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to director-level for resolution, and the Parties' respective directors bearing managerial responsibility for this Agreement shall co-operate in good faith to resolve the dispute as amicably as possible within 28 days of service of such notice (and, for these purposes, an assistant director of the Council shall be treated as a director).
- 21.3 If the directors fail to resolve the dispute in the allotted time, then the Dispute Resolution Procedure shall be deemed exhausted and either Party may commence or continue court proceedings in respect of such unresolved dispute or issue.
- 21.4 Nothing in this clause 21 shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

22. Waiver

The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise 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 Agreement

23. Remedies Cumulative

Except as otherwise expressly provided by the Agreement all remedies available to either Party for breach of the Agreement 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

24. Miscellaneous

- 24.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations

representations and undertakings whether written or oral except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

- 24.2 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England
- 24.3 The Supplier shall not be relieved of its obligations under this Agreement as the result of a change of law which comes into effect after the Commencement Date
- 24.4 Nothing in this Agreement shall be construed as constituting a partnership or contract of employment between the Council and the Supplier. Nothing in this Agreement shall be construed as constituting either Party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.
- 24.5 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties or their authorised representatives. For the avoidance of doubt, if the Supplier purports to apply any of its terms and conditions under any invoice or other document submitted to the Council during this Agreement, such terms and conditions shall be of no force and effect.
- 24.6 This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each Party had signed the same document.

The Parties have executed and delivered this Agreement as a Deed on the date stated at the beginning of it.

THE CORPORATE SEAL of the)

COUNCIL OF THE CITY OF)
STOKE-ON-TRENT was hereunto)
affixed in the presence of:-)

Authorised Signatory)

Authorised Signatory)

Executed by [INSERT NAME OF)
SUPPLIER] acting by a Director and)
the Company Secretary / two Directors Signature of Director
of the company** Name of Director

Signature of Director/Company Secretary**
Name of Director/Company Secretary**

Drafting Notes
** delete options which are not applicable

Executed as a Deed for and on)
Behalf of [INSERT NAME OF)
SUPPLIER] acting by a Director Signature of Director
Name of Director

Signature of witness
Name of witness
Witness' address
Witness' occupation

Appendix 1

The Specification

Appendix 2

Supplier's Tender Response Documentation

Appendix 3

The Price List Items