

DATE:

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

BETWEEN

LANCASTER CITY COUNCIL

AND

[COMPANY]

FOR

[INSERT DESCRIPTION OF SERVICE]

LANCASTER CITY COUNCIL LEGAL REF:

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1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 6 (Charges and payment).

Commencement Date: has the meaning given in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

Contract: the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions, the Specification, the Invitation to Tender, the Supplier's Tender (including the Pricing Schedule and Method Statements therein), the letter of acceptance of the Tender, any Purchase Orders and any documents referred to or incorporated therein in any of the aforesaid documents set out at Schedule [1]

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

Customer: Lancaster City Council of Town Hall, Dalton Square Lancaster LA1 1PJ

Customer Materials: has the meaning set out in clause 3.4(j).

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Officer has the meaning given to it in the GDPR;

Data Subject has the meaning given to it in the GDPR;

Data Loss Event any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

Data Subject Access Request a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Environmental Information Regulations or EIRs: The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issues by the Information Commissioner or relevant Government department.

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

GDPR: means the General Data Protection Regulation (Regulation (EU) 2016/679)

Information: the same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Key Personnel: Individuals named by the Supplier as having major responsibility for delivering the Services.

LED: means Law Enforcement Directive (Directive (EU) 2016/680)

Order: the Customer's order for the supply of Services, as set out in the documents forming the Contract

Prohibited Act: the following constitute Prohibited Acts:

to directly or indirectly offer, promise or give any person working for or engaged by the Customer 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;
- c) 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;
- d) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Customer.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract, as set out in the Specification.

Specification: the description or specification for the Services as set out in the documents comprising the Contract including the Tender documents and the Method Statement and Pricing Schedule submitted by the Supplier in response to the Customer's Invitation to Tender or otherwise agreed in writing by the Customer and the Supplier annexed at Schedule [1].

Supplier: [xxx] registered in England and Wales under registered company number [xxx] whose registered office is at [xxx]

Supplier Materials: Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Supplier for the purposes of the Contract, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Customer Materials).

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- (c) A reference to **writing** or **written** does not include fax or email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

The Order shall be deemed to be accepted on the date set out in the Contract for the Supplier to begin to perform the Services at which point and on which date the Contract shall come into existence (**Commencement Date**).

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

3. Supply of Services

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

- 3.2 The Supplier shall make best endeavours to meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier.

- 3.3 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Customer all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the Customer pursuant to clause 3.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer pursuant to clause 3.3(b);
- (d) it has raised all relevant due diligence questions with the Customer before the Commencement Date; and
- (e) it has entered into this agreement in reliance on its own due diligence.

- 3.4 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, and with any Policies provided to it by the Customer to which it is expected to comply;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- (l) Collaborate and cooperate with any of the Customer's nominated consultants to the extent set out in the Invitation to Tender or as otherwise agreed between the parties.
- (m) comply with any additional obligations as set out in the Specification

4. Customer remedies

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

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
- (d) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

The above rights and remedies will not be available to the Customer in the event that the Supplier's ability to perform the Services by the applicable dates has been affected by events, circumstances or causes beyond its reasonable control.

4.2 If the Supplier has supplied Services that do not comply with the requirements of clause 3.4(d) then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 3.4(d).

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

4.4 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

5. Customer's obligations

The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services;
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request

6. Charges and payment

- 6.1 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.
- 6.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.
- 6.6 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7. Intellectual property rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Customer.
- 7.2 The Supplier hereby:
- (a) assigns to the Customer all of the Intellectual Property Rights other than copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such Intellectual Property Rights in the Supplier Materials; and
 - (b) assigns to the Crown all of the copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such copyright and database rights in the Supplier Materials.
- 7.3 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables for any purpose connected with the receiving and using the Services and the Deliverables including any future use or amendment of the same. For the avoidance of doubt,
- (a) The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
 - (b) All Customer Materials are the exclusive property of the Customer.
- 7.4 The Supplier hereby waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which it has or will have in any existing or future works

8. Indemnity

- 8.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
- (a) any claim brought against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding the Customer Materials); and

- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services;
- (c) any breach of the obligations of the Supplier (including but not limited to failing to provide any Deliverables by any date set out in the Contract or any other deadline agreed by the Parties in writing) or any other default, act, omission, negligence or statement of the Supplier, of its sub-contractors or any of its staff howsoever arising in connection with or in relation to the subject matter of this Contract and in respect of which the Supplier is liable to the Customer

8.2 Neither party shall limit or exclude its liability for:

- (a) fraud or fraudulent misrepresentation or
- (b) death or personal injury caused by its negligence.

8.3 This clause 8 shall survive termination of the Contract.

9. Data protection

The parties shall comply with their data protection obligations as set out in Schedule 3 (Data protection).

10. Insurance

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance. The insurance policies to be maintained are as follows:

- (a) Employers Liability insurance – with minimum cover of £5,000,000
- (b) Public Liability insurance - with minimum cover of £10,000,000
- (c) Professional Indemnity insurance - with minimum cover of £2,000,000 Primary Layer with £3,000,000 Excess Layer

11. Termination

11.1 Without limiting or affecting any other right or remedy available to it, the Customer may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of control of the Supplier; or

- (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of clause 3.4(h),
 - (b) for convenience by giving the Supplier two months' written notice.
- 11.2 Without limiting or affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30days after being notified to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction]; or
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

12. Consequences of termination

- 12.1 On termination of the Contract for any reason or on expiry, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 12.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. Key Personnel

- 13.1 Each party shall appoint the persons named as such in Schedule [2] as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel.
- 13.2 At all times, the Supplier shall ensure that each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

14. VARIATIONS AND CANCELLATIONS

- 14.1 Either Party may request a change to this Contract. Any requested change must not amount to a material change of this Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".
- 14.2 A Party may request a Variation by completing, signing and sending a written request to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
- 14.3 The receiving Party must respond to the request within a reasonable time frame
- 14.4 If the Supplier requests a Variation, the Customer can ask the Supplier to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
- (a) the impact of the proposed Variation on the Services and Supplier's ability to meet its other obligations under this Contract;
 - (b) the initial cost of implementing the proposed Variation and any ongoing costs post-implementation;
 - (c) Any increase or decrease in the Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
 - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - (e) any other information the Customer reasonably asks for in response to the Variation request.

- 14.5 If the Parties agree the Variation, the Supplier will implement it, and be bound by it as if it was part of this Contract.
- 14.6 Until a Variation is agreed, the Supplier must continue to perform and be paid for the Services as originally agreed, unless otherwise notified by the Customer.

15. Freedom of information

- 15.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Customer all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request For Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Customer.
- 15.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

16. Audit

- 16.1 During the Term and for a period of six years after the Termination Date, the Customer may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services
 - (b) to review the integrity, confidentiality and security of any data relating to the Customer or any service users;
 - (c) to review the Supplier's compliance with the DPA, the FOIA and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Customer's accounts;
 - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 16.2 Except where an audit is imposed on the Customer by a regulatory body, the Customer may not conduct an audit under this clause 4 more than twice in any calendar year.
- 16.3 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 16.4 Subject to the Customer's obligations of confidentiality, the Supplier shall on demand provide the Customer and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier's Personnel.
- 16.5 The Customer shall provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 16.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies

a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Customer for all the Customer's reasonable costs incurred in the course of the audit.

16.7 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Customer about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Customer has overpaid any Charges, the Supplier shall pay to the Customer the amount overpaid within [20] days. The Customer may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Customer has underpaid any Charges, the Customer shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Customer if this was due to a default by the Supplier in relation to invoicing within 20 days.

17. Prevention of bribery

17.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

17.2 The Supplier shall not during the term of this agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

18. General

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

18.2 Assignment and other dealings.

- (a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

18.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time, and for a period of two years after termination or expiry of the Contract,] disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.3 (b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

18.4 Publicity and Branding The Supplier may not make any press announcements or publicise this Contract or use the Customer's name or brand in any promotion or marketing or announcement of orders without Approval from the Customer. The Supplier will seek the Customer's Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable

18.5 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

18.7 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.8 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity or enforceability of the rest of the Contract. If any provision or part-provision of this Contract is deemed deleted under this clause 18.8 , the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.

18.9 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting
- (c) This clause 18.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

18.10 TUPE. The provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 shall apply to the transfer of the Services if there is an organised grouping of employees with the principal purpose of carrying out activities on behalf of the Customer

18.11 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

18.12 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18.13 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Signed for and on behalf of

LANCASTER CITY COUNCIL

name: Maurice Brophy

Position: Service Manager, Planning and Housing Strategy

Signed for and on behalf of

[COMPANY]

name:

Position:

Schedule 1 Tender Documents

As submitted on the Chest

Schedule 2 Key Personnel

Schedule 3

Schedule 4 Data Protection

Data processing

If at any time during the term of the Contract the performance of the Services does or is likely to involve the processing of Personal Data by the Supplier, the following clauses shall apply:

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Schedule, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. If required by the Customer, the Supplier shall enter into a data sharing agreement in the form required by the Customer, setting out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
3. Without prejudice to the generality of clause 1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
4. Without prejudice to the generality of clause 1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - 4.1 process that Personal Data only on the documented written instructions of the **Customer** which are set out in any data sharing agreement (if required), unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the **Customer** of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - 4.2 ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the **Customer**, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include,

where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 4.3 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the **Customer** has been obtained and the following conditions are fulfilled:
- 4.4 the **Customer** or the Supplier has provided appropriate safeguards in relation to the transfer;
- 4.5 the Data Subject has enforceable rights and effective remedies;
- 4.6 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 4.7 the Supplier complies with the reasonable instructions notified to it in advance by the **Customer** with respect to the processing of the Personal Data;
- 4.8 notify the **Customer** immediately if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data;
 - (b) a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- 4.9 assist the **Customer** in responding to any request from a Data Subject and in ensuring compliance with the **Customer's** obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 4.10 notify the **Customer** without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- 4.11 at the written direction of the **Customer**, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;

- 4.12 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the **Customer** or the **Customer's** designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
5. The Supplier shall indemnify the Customer against any losses, damages, cost or expenses incurred by the Customer arising from, or in connection with, any breach of the Supplier's obligations under this clause.
6. Where the Supplier intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
 - 6.1 notify the **Customer** in writing of the intended processing by the Sub-Contractor;
 - 6.2 obtain prior written consent from the **Customer** to the processing;
7. enter into a written agreement incorporating terms which are substantially similar to those set out in this clause.
8. Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
9. The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.