

DATED _____ 2018

BETWEEN

BRISTOL CITY COUNCIL

and

[INSERT NAME OF PROVIDER]

for

A DYNAMIC PURCHASING SYSTEM AGREEMENT FOR THE PROVISION OF

Ground Investigation

THIS AGREEMENT is made on

BETWEEN:-

- (1) Bristol City Council ("**the Council**") whose principal place of business is at City Hall College Green Bristol BS1 5TR and
- (2) [] whose registered address is at [] Company Registration Number: [] (the "**Provider**").

BACKGROUND

- (A) The Council placed a contract notice in the Official Journal of the European Union seeking Requests to Participate from Providers for the provision of Minor Building Works to the Council under a Dynamic Purchasing System ("DPS").
- (B) The Provider submitted its Request to Participate in response to the contract notice.
- (C) On the basis of the Provider's Request to Participate, the Council admitted the Provider onto the DPS to be able to provide minor building works to the Council in respect of – Ground Investigation
- (D) All Providers indicated in their Requests to Participate that they will comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of these minor building works.
- (E) This Agreement sets out the award and ordering procedure for minor building works which may be required by the Council, the main terms and conditions for any Call-Off Contract and the obligations of the Providers during and after the term of this Agreement.
- (F) It is the Parties' intention that there will be no obligation to award any orders under the DPS during its Term.
- (G) These terms and conditions shall apply in relation to the provision of minor building works. The Call-Off Contract terms and conditions shall apply to any works elements that may form the basis of any Call-Off Contract.

Articles of Agreement

1 Application of the Articles and General Term and Conditions

- 1.1 In consideration of the admission of the Provider to the DPS the Provider shall be permitted to participate in all call off competitions issued by the Council in accordance with the terms of this Agreement. All such call off competitions shall be subject to the key provisions and the general Terms and conditions of Agreement.

2 Term

- 2.1 The DPS for minor building Works is expected to run for a period of 4 years, from 1 March 2018 to 28 February 2022

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this DPS Agreement are:

3.1.1 for the Authority:

Name John Long

Position Planning and Commissioning Manager

3.1.2 for the Provider:

Name

Position

4 Names and addresses for notices

4.1 Notices served under this Agreement are to be delivered to:

4.1.1 for the Authority:

Name John Long

Position Planning and Commissioning Manager

4.1.2 for the Provider:

Name

Position

5 Management levels for dispute resolution

5.1 The management levels at which a dispute will be dealt with are as follows:

Level	Council representative	Provider representative
1	John Long	Planning & Commissioning Manager
2	Spencer Penny	Category Manager, Buildings and structures

6 Different levels and/or types of Insurance

6.1 The Provider shall put in place and maintain in force the following insurances with the following minimum cover per claim.

6.2 If this default position is not appropriate in relation to the nature and risks of an individual call –off contract, the Provider shall effect and maintain the different types and /or levels of insurance required in respect of a specific call –off contract.

Type of insurance required	Minimum cover
Employer's liability insurance	£10M each and every claim
Public Liability Insurance	£5M each and every claim The level of cover may be increased by the Council for individual call –off contracts when there are exceptional risks on the site of the works.
Professional Indemnity	£2M each and every claim

Signed by the authorised representative of THE COUNCIL

Name: Signature:

Position:

Signed by the authorised representative of THE PROVIDER

Name: Signature

Position:

GENERAL TERMS AND CONDITIONS

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IT IS AGREED as follows:-

1 INTERPRETATION

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

“Agreement”	Means this Agreement together with all schedules and appendices attached hereto
"Approval"	means the prior written approval of the Council
"Audit"	means an audit carried out pursuant to Clause 21
"Auditor"	means the Council's internal Auditor and/or the National Audit Office or an Auditor appointed under the Local Audit and Accountability Act 2014
“Call-Off”	Means the issue of an Invitation to Tender in relation to any contract to be awarded under the Dynamic Purchasing System to a Provider admitted to the Dynamic Purchasing System
"Call-Off Contract"	means the legally binding agreement for the provision of minor building works made between the Council and a Provider comprising of the Call-off Order Form and the Call-Off Terms and Conditions as may be amended
"Call-Off Terms and Conditions"	means the terms and conditions in Schedule 9, the JCT suite of contracts
"Commencement Date"	Means 1 March 2018
"Commercially Sensitive Information"	means any Confidential Information comprised of information which is provided in writing by the Provider to the Council in confidence and designated as Commercially Sensitive Information including the information contained in the Freedom of Information Exclusion Schedule returned with the Tender in Schedule 6
“Call-off Award Criteria”	means the award criteria to be applied to tenders received following a Call-Off as set out in Schedule 2

"Confidential Information"	<p>means:-</p> <ul style="list-style-type: none"> (a) 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 would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and (b) the Commercially Sensitive Information <p>and does not include any information:-</p> <ul style="list-style-type: none"> (i) which was public knowledge at the time of disclosure (otherwise than by breach of this Agreement) (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information
"Contracts Standard"	<p>Means the standard which complies with the relevant provision of the minor building works included in the Specification or where and to the extent that no criteria are stated in the Contract then with the reasonable requirements of the Council.</p>
"DPA"	<p>means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation</p>
"Dynamic Purchasing System ("DPS")"	<p>means a completely electronic system of limited duration which is (a) established by a contracting authority to purchase commonly used Services and/or Works (if applicable); and (b) open throughout its duration for the admission of economic operators which (i) satisfy the selection criteria specified by the contracting authority; and (ii) submit a Request to Participate to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.</p>
"Environmental Information Regulations"	<p>mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations</p>

"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Council.
Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and that require a degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or organisation engaged in providing Services and/or Works (if applicable) of similar type and nature to those required under the terms of this Agreement
"Guidance"	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations
"Improvement Notice"	Means a Notice issued on the Provider to improve minor breaches of the Agreement, the Contract or the Order Form instructing the Provider to improve or remedy any minor breaches in the provision of the Services and or Works
"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000
"Intellectual Property Rights"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Management Information"	means the management information specified in Schedule 5
"Material Default"	means any breach of clauses, 11 (Statutory Requirements), 17 (Provision of Management Information), 18 (Records and Audit Access), 20 (Data Protection and Freedom of Information), 28 (Transfer and Sub-contracting), 7 (Prevention of Bribery and Corruption), 8 (Conflicts of Interest), 19 (Confidentiality), 6 (Warranties and Representations)
"Minor Breach"	Means any breach of the Agreement, the Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default.
"Month"	means a calendar month
"OJEU Notice"	means the contract notice published in the Official Journal of the European Union number []
"Order"	means an order for Services and/or Works (if applicable) issued by the Council to the Provider in accordance with the Ordering Procedures

"Order Form"	means a document setting out details of an Order in the form described in Clause 12
"Parent Company"	means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto
"Party"	means the Council and/or the Provider
"Prohibited Act"	Means to directly or indirectly offer, promise or give 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
"Pricing Matrices"	means the prices submitted by the Provider attached at Schedule 3
"Provider"	means any employee, agent, servant, sub-contractor or representative of the Provider or person employed on behalf of the Provider to provide the Services and/or Works (if applicable)
"Regulations"	means the Public Contracts Regulations 2015
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council
"Requests for Information"	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
"Request to Participate"	Means a Pre-Qualification Questionnaire prepared by a Provider in response to the Request to Participate seeking admission onto the Dynamic Purchasing System
"Selection Criteria"	means the criteria set by the Council to evaluate Request to Participate submitted by Providers for their admission onto the Dynamic Purchasing System
"Services"	means the provision of any Services as specified in Schedule 1
"Tender"	means the tender submitted by the Provider to the Council following a Call for competition.
"Term"	means the period commencing on the Commencement Date and ending on or on earlier termination of this Agreement unless the Agreement is extended up to a maximum of 12 months
"Variation Procedure"	means the procedure set out in Schedule 6

"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales between 08:00 and 18:00
"Works"	means the provision of any Works as specified in Schedule 1
"Year"	means a calendar year

1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.7 references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Agreement so numbered;
- 1.2.8 references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered;
- 1.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.10 The Provider shall perform all Contracts entered into with the Council in accordance with:
 - (a) The requirements of this Agreement; and
 - (b) The terms and conditions of the Call-Off Contract.
 - (c) The relevant Legislation, Codes of Conduct and Regulations governing the delivery of Services and/or Works (if applicable).
- 1.2.11 In the event of, and only the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
 - (a) Legislation
 - (b) The terms of this Agreement;
 - (c) The Schedules to this Agreement (excluding the Providers Request to Participate and the Provider's Tender);

- (d) The Call-off Contract
- (e) The Order Form
- (f) Any other document referred to in the clauses of the Call-Off Contract; and
- (g) Schedule 1, (Specification), and the Provider's Tender.

2 TERM OF THIS AGREEMENT

- 2.1 This Agreement shall take effect on the Commencement Date and shall expire at the end of the term unless it is terminated earlier in accordance with the terms of this Agreement under Clause 22.
- 2.2 This Agreement may be extended at the Council's sole discretion for such period as may be notified to Providers.
- 2.3 The Terms of this Agreement may be reduced or extended as advertised via a Corrigendum issued through OJEU. This Agreement shall remain in effect for the validity of the DPS.

3 SCOPE OF THIS AGREEMENT

This Agreement governs the relationship between the Council and the Provider in respect of the provision of the Services and/or Works (if applicable) by the Provider to the Council.

4 PROVIDER'S APPOINTMENT

The Council admitted the Provider to the Dynamic Purchasing System as a potential Provider of Services and/or Works (if applicable) and the Provider shall be eligible to be considered for the award of Orders for such Services and/or Works (if applicable) by the Council during the Term.

5 NON-EXCLUSIVITY

The Provider acknowledges that, in entering into this Agreement, no form of exclusivity or volume guarantee has been granted by the Council for, Services and/or Works (if applicable) from the Provider and that the Council is at all times entitled to enter into other contracts and agreements with other Providers for the provision of any or all, Services and/or Works (if applicable), which are the same as or similar to the, Services and/or Works (if applicable) being provided under this Agreement.

6 WARRANTIES AND REPRESENTATIONS

- 6.1 The Provider warrants and represents to the Council that:-
 - 6.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;
 - 6.1.2 it acknowledges that it will not be able to bid for any further competitions under the DPS following the issue of any Invitation to Tender if it has not signed and returned this Agreement;
 - 6.1.3 all obligations of the Provider pursuant to this Agreement and under any Call-off Contract shall be performed by appropriately experienced, certified, qualified and trained Staff with all due skill, care and diligence;
 - 6.1.4 it will ensure that the Provider and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Provider in connection with the, Services and/or Works (if applicable) will comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of, Services and/or Works (if applicable).

- 6.1.5 the Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement and under any Call-off Contract.
- 6.1.6 the Provider shall discharge its obligations under this Agreement and under any Call-off Contract with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- 6.1.7 this Agreement is executed by a duly authorised representative of the Provider;
- 6.1.8 in entering into this Agreement or any Call-Off Contract it has not committed any Fraud;
- 6.1.9 as at the Commencement Date, all information, statements and representations contained in the Request to Participate/ completed Pre-Qualification Questionnaire (including statements made in relation to the categories referred to in regulation 57 of the Regulations) for the, Services and/or Works (if applicable) are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 6.1.10 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Agreement or any Call-off Contract;
- 6.1.11 it has not caused or induced any person to enter such agreement referred to in Clause 6.1.10 above;
- 6.1.12 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for, Services and/or Works (if applicable) under the Agreement;
- 6.1.13 it has not committed any offence under the Bribery Act 2010 in connection with this Agreement;
- 6.1.14 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement and any Call-Off Contract which may be entered into with the Council;
- 6.1.15 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Call-Off Contract which may be entered into with the Council;
- 6.1.16 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue; and
- 6.1.17 in the two(2) years prior to the date of this Agreement:-
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (b) it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.
- 6.1.18 The Provider shall perform the Services and/or Works (if applicable) in a conscientious and timely manner in accordance with the Contract Standard as described in this Agreement or as reasonably required by the Council.
- 6.1.19 The Provider shall notify the Council's Contracting Manager immediately of any circumstances relating to the Provider and/or the Council concerning the, Services and/or Works (if applicable) of which the Provider is aware or anticipates which may justify the Council taking action to protect its interests (including its reputation and standing).

7 PREVENTION OF BRIBERY AND CORRUPTION

7.1 The Provider:

- 7.1.1 has not, will not, and will procure that its staff (and any sub-contractor or self-employed staff) have not committed and will not commit a Prohibited Act in connection with this Agreement
- 7.1.2 has not given and will not give any fee or reward to any person which it is an offence under the Bribery Act 2010 or other related legislation;
- 7.1.3 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 securing or execution of this Agreement, or any other Agreement with the Council, excluding any arrangements of which full details have been disclosed in writing to the Council prior to the execution of this Agreement.

7.2 The Provider will upon request provide the Council with all reasonable assistance to enable the Council to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Council by any relevant government or agency in any relevant jurisdiction. Should the Council request such assistance the Council shall pay the reasonable expenses of the Provider arising as a result.

7.3 The Provider will provide to the Council certification, in writing and signed by an officer of the Provider, of the compliance with this Clause 7 by:

- 7.3.1 the Provider and
- 7.3.2 all persons associated with the Provider; and
- 7.3.3 any other persons who are supplying, Services and/or Works (if applicable) in connection with this Agreement.

7.4 Certification will be provided to the Council within 15 working days of the Commencement Date and annually thereafter for the Term. The Provider will provide any evidence of compliance as may reasonably be requested by the Council.

7.5 The Provider will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Council and enforced by the Provider where appropriate.

7.6 Should the Provider become aware of or suspect any breach of Clause 7.1 it will notify the Council immediately.

- 7.7 Following notification under Clause 7.6 the Provider will respond promptly and fully to the enquiries of the Council, cooperate with any investigation undertaken by the Council and allow it to audit any books, records and other relevant documentation. The Provider's obligations under this Clause 7.7 shall survive the expiry or termination of this Agreement for a further period of 6 years.
- 7.8 The Council may recover in full from the Provider and the Provider shall indemnify the Council in full from and against any other loss sustained by the Council in consequence of any breach of this Clause 7 "Prevention of Bribery and Corruption", whether or not this Agreement has been terminated.
- 7.9 The Council may terminate this Agreement and any Order immediately upon serving written notice if the Provider, its staff, any sub-contractor or self-employed staff whether or not acting with the Provider's knowledge, breaches Clause 7.1. Before exercising its right of termination under this Clause 7.9 the Council will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 7.9.1 the Provider or a senior officer of the Provider; or
 - 7.9.2 a member of Staff, Sub-Contractor or Agent who is not acting independently of the Provider. The expression 'not acting independently of' (when used in relation to the Provider, Sub-Contractor or Agent) means and shall be construed as acting;
 - (a) with the authority of; or
 - (b) with the actual knowledge; of any one or more of the Provider's or Sub-Contractors or Agent (as applicable) directors or Partners; or
 - (c) in circumstances where any one or more of the directors (or Partners) of the Provider or Sub-Provider (as applicable) ought reasonably to have had knowledge.
- 7.10 Any notice of termination by the Council under Clause 7.9 must specify:
- 7.10.1 the nature of the Prohibited Act;
 - 7.10.2 the identity of the person whom the Council believes has committed the Prohibited Act; and
 - 7.10.3 the date on which this Agreement will terminate.
- 7.11 In the event of any breach of Clause 7.1 the Council is entitled to recover from the Provider the value of any gift, consideration or commission.
- 7.12 Notwithstanding Clause 38 (Dispute Resolution) any dispute relating to:
- 7.12.1 the interpretation of this Clause 7 or
 - 7.12.2 the amount or value of any gift, consideration, commission or other financial advantage
- shall be determined by the Council and its decision shall be final and conclusive
- 7.13 Termination under Clause 7.9 will :
- 7.13.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council under this Agreement.
 - 7.13.2 prohibit the Provider from claiming any damages for early termination; and
 - 7.13.3 allow the Council to recover from the Provider the amount of any loss suffered by the Council resulting from the termination; or

- 7.13.4 entitle the Council to be indemnified by the Provider for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the, Services and/or Works (if applicable) from another party.

8 CONFLICTS OF INTEREST

- 8.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the Council's reasonable opinion) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council under the provisions of this Agreement or any Call-Off Contract.
- 8.2 The Provider shall promptly notify and provide full particulars to the Council if such conflict as referred to in Clause 8.1 above arises or is reasonably foreseeable to arise.
- 8.3 the Council reserves the right to terminate this Dynamic Purchasing System immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of this Agreement or any Call-Off Contract. The action of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the council.
- 8.4 This Clause shall apply during the Term.

9 TENDERING FROM THE DPS – CALLFOR COMPETITION PROCEDURE;

- 9.1 There are 4 steps in order to make a Call-Off from the DPS;
- 9.1.1 All admitted Providers shall be invited to submit a tender for each specific procurement under the DPS. Where the DPS has been divided into categories of works, products and services the Providers which have been admitted to the category corresponding to the specific procurement concerned to submit a Tender.
- 9.1.2 The Call for Competition document setting out the Council's requirements will be issued and will contain further information and also a deadline by which the Tender response must be submitted.
- 9.1.3 All submissions received within the deadline for the call for competition will be evaluated according to the total price in the response to the call for competition
- 9.1.4 Once the evaluation is complete the Provider(s) submitting the lowest price will be selected and all Providers will be notified of the award decision through an OJEU award notice and provided with feedback relating to their submission.

10 PRICES FOR SERVICES AND/OR WORKS (IF APPLICABLE)

- 10.1 The prices offered by the Provider for Call-Off Contracts for Services and/or Works (if applicable) shall be the prices listed in the Pricing Schedule submitted with the Provider's tender response for the Call-Off contract.
- 10.2 The prices offered by the Provider for all call off requirements will be fixed for the agreed time within the Invitation to Tender documentation
- 10.3 Under no circumstances are Providers to change any submitted pricing without first seeking approval of the Council.
- 10.4 Unless otherwise expressly stated in the Call-Off Contract the prices shall cover all the Provider's obligations under the Call-Off Contract and everything necessary for the provision of the, Services and/or Works (if applicable) under the Invitation to Tender documentation.

- 10.5 Unless otherwise expressly stated in the Call-Off Contract no claim by the Provider will be allowed for any addition to the prices on the grounds of any matter relating to any document forming part of the Call-Off Contract or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Council by any other appropriate means.

11 STATUTORY REQUIREMENTS

The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Call-Off Contract.

12 FORM OF ORDER

Subject to Clause 9 above the Council may place an Order with the Provider by serving an order in writing in a form as set out in Schedule 7 or such similar or analogous form agreed with the Provider including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 12 shall not constitute an Order under this Agreement.

13. ORDERING PROCEDURE

- 13.1 The Council shall select a Provider for Orders in accordance with the criteria outlined in the Invitation to Tender documents
- 13.2 The Council will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 13.3 The Council shall respond to any reasonable request for information from the Provider.
- 13.4 The Council shall ensure that all Orders are awarded in accordance with the Public Contracts Regulations 2015.

Accepting and Declining Orders

- 13.5 Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the Council and notified to the Provider in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days) acknowledge receipt of the Order and either:
- 13.5.1 notify the Council that it declines to accept the Order; or
- 13.5.2 notify the Council that it accepts the Order by signing and returning the Order Form.
- 13.6 If the Provider:
- 13.6.1 notifies the Council that it declines to accept an Order; or
- 13.6.2 the time-limit referred to in Clause 13.5 has expired;
- then the offer shall lapse and the Council may offer that Order to the Provider that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria.
- 13.7 The Provider in agreeing to accept such an Order pursuant to Clause 13.5 above shall enter a Call-Off Contract with the Council for the provision of, Services and/or Works (if applicable) referred to in that Order. A Call-Off Contract shall be formed on the Council's receipt of the signed Order Form provided by the Provider (or such similar or analogous form agreed with the Provider) pursuant to Clause 12.

14. SOCIAL RESPONSIBILITY

14.1 The Provider shall and shall ensure that any of its servants, employees, agents or sub-contractors employed in the execution of this Agreement:

14.1.1 Perform its obligations under this Agreement (including those in relation to the Services and/or Works (if applicable)) in accordance with:

- (a) All applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Council's equality and diversity policy as provided to the Provider from time to time; and
- (c) Any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under the applicable equality law; and

Take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court, tribunal, or Equality and Human Rights Commission or (any successor organisation).

14.2 The Provider shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, providing Services and/or Works (if applicable) from, the performance of the Agreement or any Call-Off Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.

14.3 The Provider must ensure that all employees of the Provider involved in the supply of the Services and/or Works (if applicable) are eligible to work in the UK.

14.4 The Council shall be entitled at its own expense to inspect such books, accounts and records belonging to the Provider as are necessary to demonstrate compliance with Clause 18.

14.5 The Provider shall support the Council's policies relating to the following:

14.5.1 working towards carbon neutrality in Bristol;

14.5.2 the use of the Bristol pound; and

14.5.3 the implementation of the National Living Wage for all workers in Bristol

14.6 The cost to the Provider of complying with this Clause 14 shall be included in the prices.

15. PROVIDERS STAFF

15.1 The Provider shall select, employ, train, furnish and deploy in and about the performance of the Agreement and each Call-Off Contract only such persons as are appropriately certified, skilled and experienced in the delivery of these type of Services and/or Works (if applicable).

15.2 The Provider and the Provider's sub-contractors, staff and agents shall comply with all reasonable requirements of the Council.

15.3 The Provider shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of Clauses 15.1 and 15.2.

15.4 The Provider, its agents, and sub-contractors shall employ sufficient staff to ensure that the Services and/or Works (if applicable) named in Schedule 1 of this Agreement are provided at all times and in

accordance with the Agreement and each Call-Off Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Provider to ensure that a sufficient reserve of staff is available to supply the Services and/or Works (if applicable) in accordance with this Agreement during staff holidays or absence through sickness or any other cause.

16 CALL-OFF CONTRACT PERFORMANCE

16.1 The Provider shall perform all Call-Off Contracts entered into with the Council in accordance with:-

16.1.1 the requirements of this Agreement; and

16.1.2 the terms and conditions of the Call-Off Contract.

16.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Agreement and the terms and conditions of a Call-Off Contract, the precedence list in Clause 1.2.11 will be applicable.

17. PROVISION OF MANAGEMENT INFORMATION

17.1 The Provider shall submit Management Information to the Council in the form set out in Schedule 5 throughout the Term on the 15th day of every third Month and thereafter in respect of any Call-Off Contract.

17.2 The Council may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) month's written notice of any changes.

18. RECORDS AND AUDIT ACCESS

18.1 The Provider shall keep and maintain full and accurate records and accounts of the operation of this Agreement including the Services and/or Works (if applicable) provided under it and the Call-off Contracts entered into under it for the following periods:

18.1.1 the expiry of a period of three (3) years following termination or expiry of this Agreement; or

18.1.2 the expiry of a period of three (3) years following the date on which the Provider ceases to provide Services and/or Works (if applicable) under any Call-off Contract.

18.1.3 the expiry of the period three (3) years following the date provided in any Order Form or Special Terms and Conditions

18.2 The Provider shall afford the Council and/or the Auditor access to such records and accounts as may be required from time to time.

18.3 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six (6) years after expiry of the Term to the Council and the Auditor.

18.4 the Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services and/or Works (if applicable) pursuant to the Call-Off Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.

18.5 Subject to the Council's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-

18.5.1 all information requested by the Auditor within the scope of the Audit;

18.5.2 reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services and/or Works (if applicable); and

18.5.3 access to the Staff.

18.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 21, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Council for reasonable costs incurred in relation to the Audit.

19. CONFIDENTIALITY

19.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

19.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

19.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

19.2 Clause 19 shall not apply to the extent that:

19.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

19.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

19.2.3 such information was obtained from a third party without obligation of confidentiality;

19.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

19.2.5 it is independently developed without access to the other party's Confidential Information.

19.3 The Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and/or Works (if applicable) and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

19.4 The Provider shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.

19.5 Nothing in this Agreement shall prevent the Council from disclosing the Provider's Confidential Information:

19.5.1 to any Government Department. All Government Departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Government Departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Government Department;

19.5.2 to any consultant, Provider or any person conducting a gateway review;

19.5.3 for the purpose of the examination and certification of the Council's accounts;

19.6 Nothing in this Clause 19 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 use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights

- 19.7 The Provider shall not without the prior written consent of the Council divulge the existence of this Agreement, any Call-Off Contract or any Order or disclose any information relating to or contained in this Agreement to any person who is not engaged in the performance of this Agreement.
- 19.8 In the event that the Provider fails to comply with this Clause 19, the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 19.9 The provisions of this Clause 19 shall apply notwithstanding termination of the Agreement..

20 DATA PROTECTION ACT, FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS

- 20.1 The Provider shall (and shall procure that all of its Staff and Sub-Contractors and/or Agents) comply with any notification requirements and timelines for response in relation to the Data Protection Act, the Freedom of Information Act and the Environmental Information Regulations and all Parties will duly observe all of their obligations under this legislation in connection with this Agreement.
- 20.2 The Provider guarantees that it will maintain strict security over the information and will preserve the integrity and confidentiality of the information at all times.
- 20.3 The Provider confirms that adequate security measures and precautions are in place to protect the information at all times in accordance with current UK data protection legislation, and any relevant European Union Data Protection regulation or directive from time to time.

21 PUBLICITY

- 21.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise this Agreement in any way without the Council's prior written consent.
- 21.2 the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Auditor.

22. TERMINATION

Termination on Default

- 22.1 The Council may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice where:-
- 22.1.1 the Provider are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Services and/or Works (if applicable);
- 22.1.2 the Provider and its Staff, agents, sub-contractors, or personnel employed by the Provider in connection with the Services and/or Works (if applicable) have failed to comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Services and/or Works (if applicable).

Termination on Default – Minor Breaches

- 22.2 Where the Provider commits a Minor Breach of the Contract, the Council shall be entitled to issue the Provider with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Breach and give the Provider a minimum of ten (10) working days to remedy the Minor Breach.
- 22.3 If the Provider commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 22.4.3.

Termination on Default – Material Default

- 22.4 where the Provider commits a Material Default and:-

- 22.4.1 the Provider has not remedied the Material Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
- 22.4.2 the Material Default is not, in the reasonable opinion of the Council, capable of remedy; or
- 22.4.3 if the Provider has committed three (3) or more Minor Breaches within a twelve (12) month rolling period.
- 22.4.4 where a Call-Off Contract awarded to the Provider under this Agreement as a consequence of default by the Provider.

Termination on Financial Standing

- 22.5 the Council may terminate this Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is or seems likely to occur a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider's ability to supply Services and/or Works (if applicable) under this Agreement. This may be checked throughout the life of the Dynamic Purchasing System.
- 22.6 Providers, if requested by the Council, must provide latest financial accounts.
- 22.7 the Council in order to ascertain or track any material detrimental change of the financial standing of the Provider may use an external credit rating agency. This will then be clarified with the Provider before any reasonable decision is made.

Termination on Insolvency and Change Of Control

- 22.8 the Council may terminate this Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider if any event listed in Regulation 57 of the Public Contracts Regulations 2015 occurs or seems likely to occur
- 22.9 The Provider shall notify the Council immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). the Council may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-
 - 26.9.1 being notified that a Change of Control has occurred; or
 - 26.9.2 where no notification has been made, the date that the Council becomes aware of the Change of Control,

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

Termination by the Council

- 22.10 the Council shall have the right to terminate this Agreement and/or the Dynamic Purchasing System, or to terminate the provision of any part of this Agreement at any time by giving three months' written notice to the Provider. The Parties acknowledge that if the Council exercises its rights under this Clause, it shall exercise its equivalent rights under all agreements with Providers admitted to the Dynamic Purchasing System.

23 SUSPENSION OF PROVIDER'S APPOINTMENT

- 23.1 Without prejudice to the Council's rights to terminate the Agreement in Clause 22 above, if a right to terminate this Agreement arises in accordance with these terms and conditions, the Council may suspend the Provider's appointment to supply Services and/or Works (if applicable). If the Council provides notice to the Provider in accordance with this Clause 23, the Provider's appointment shall be

suspended for the period set out in the notice or such other period notified to the Provider by the Council in writing from time to time.

- 23.2 Should the Council request product or installation testing for any reason whatsoever the Provider will be suspended from the Framework (at no cost to the Council) whilst this testing takes place and will not be allowed to tender until completion of the testing. Any Orders already placed during this period shall be put on hold pending the outcome of the testing.

24 CONSEQUENCES OF TERMINATION AND EXPIRY

- 24.1 Notwithstanding the service of a notice to terminate this Agreement, the Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 24.
- 24.2 Termination or expiry of this Agreement and/or the Dynamic Purchasing System shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 24.3 Within thirty (30) Working Days of the date of termination or expiry of this Agreement and/or the Dynamic Purchasing System, the Provider shall return to the Council any data and Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Agreement, or such period as is necessary for such compliance.
- 24.4 the Council shall be entitled to require access to data or information arising from the provision of the Services and/or Works (if applicable) from the Provider until the latest of:-
- 24.4.1 the expiry of a period of twelve (12) Months following termination or expiry of this Agreement; or
 - 24.4.2 the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Services and/or Works (if applicable) under any Call-Off Contract
- 24.5 Termination or expiry of this Agreement and/or the Dynamic Purchasing System shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement prior to termination or expiry.
- 24.6 The provisions of Clauses 6, 7, 8, 14, 15, 16, 18, 19, 20 and 21 shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

25 LIABILITY

- 25.1 Neither Party excludes or limits its liability for:-
- 25.1.1 death or personal injury caused by its negligence, or that of its Staff;
 - 25.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
 - 25.1.3 breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982.
- 25.2 Subject to Clause 25.1 the Providers total aggregate liability in connection with this Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be unlimited and that of the Council shall be limited to 125% of the annual contract price paid by the Council under the Call-Off Contract for provision of the Services and/or Works (if applicable). For the avoidance of doubt, the Parties acknowledge and agree

that this Clause 25.2 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

- 25.3 Subject to Clause 25.2 above, the Provider shall indemnify the Council and keep it indemnified in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Agreement 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 Provider, financial loss arising from provision and the quality or installation of any Services and/or Works (if applicable) or any other loss which is caused directly or indirectly by any act or omission of the Provider. This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff, or by any circumstances within its or their control.

26. INSURANCE

- 26.1 The Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Agreement including death or personal injury, or loss of or damage to property.
- 26.2 The Provider shall effect and maintain the following insurances for the duration of the Agreement in relation to the performance of the Agreement:-
- 26.2.1 public liability insurance adequate to cover all risks in the performance of this Agreement from time to time;
 - 26.2.2 employer's liability insurance with a minimum limit of indemnity as required by law from time to time; and
- 26.3 Any excess or deductibles under such insurance (referred to in Clause 26.1 and Clause 26.2 above) shall be the sole and exclusive responsibility of the Provider.
- 26.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under this Agreement.
- 26.5 The Provider shall produce to the Council, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 26.6 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Agreement then the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 26.7 The Provider shall maintain the insurances referred to in Clauses 26.1 and Clause 26.2 above for a minimum of six (6) years following the expiration or earlier termination of this Agreement

27. NOT USED

28 TRANSFER AND SUB-CONTRACTING

- 28.1 This Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council. The Provider shall not be entitled to sub-contract any of its rights or obligations under this Agreement without the express prior written consent of the Council (such consent not to be reasonably withheld or delayed).
- 28.2 the Council shall be entitled to:-
- 28.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Other Contracting Authority; or

28.2.2 novate this Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council;

provided that such assignment, novation or disposals shall not increase the burden of the Provider's obligations under this Agreement.

29 VARIATIONS TO THIS AGREEMENT

Any variations to this Agreement must be made only in accordance with the Variation Procedure set out in Schedule 6.

30 DYNAMIC PURCHASING SYSTEM REVIEW

The Dynamic Purchasing System and this Agreement shall be reviewed annually.

31 RIGHTS OF THIRD PARTIES

A person who is not party to this Agreement ("**Third Party**") has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Agreement or vary any of its terms in accordance with the relevant provisions of this Agreement, such rescission or variation will not require the consent of any Third Party.

32 SEVERABILITY

- 32.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated.
- 32.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

33 CUMULATIVE REMEDIES

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

34 WAIVER

- 34.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.
- 34.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 36 (Notices).
- 34.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

35 ENTIRE AGREEMENT

- 35.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

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

35.3 Nothing in this Clause 35 shall operate to exclude Fraud or fraudulent misrepresentation.

36 NOTICES

36.1 Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.

36.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 36. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

For the purposes of Clause 36 the address of each Party shall be:

For the Council :-

Address: City Hall, College Green, Bristol, BS1 5TR

For the attention of: Legal Services

For the Provider:-

[REDACTED]

Address: [REDACTED]

For the attention of: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

Either Party may change its address for service by serving a notice in accordance with this Clause.

37 FORCE MAJEURE

Neither party shall be in breach of the Contract for any delay in or failure to perform its obligations under the Contract resulting from strike, lockout (other than strike or lockout which is limited to the Providers personnel), war, civil commotion, cessation or serious interruption of communication or power supplies, exceptional adverse weather conditions, fire. The parties shall immediately notify each other stating the likely length of disruption and the steps being taken to minimise the disruption. the Council will notify the Provider within 30 days whether it requires the provision of the , Services and/or Works (if applicable) to be recommenced, varied or cancelled (without further liability on either party).

38 DISPUTE RESOLUTION

- 38.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 5 of the Articles of Agreement above.
- 38.2 If the dispute cannot be resolved by the Parties pursuant to Clause 38.1 it shall be referred to the Service Director of the Council and the Managing Director of the Provider for resolution.
- 38.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 38.4 If the dispute cannot be resolved by the Parties pursuant to Clause 38.2 the Parties shall refer it to mediation pursuant to the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure unless:
- 38.4.1 the Council considers that the dispute is not suitable for resolution by mediation; or
 - 38.4.2 the Provider does not agree to mediation.
- 38.5 The obligations of the Parties under this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its employees, personnel and associates shall comply fully with the requirements of this Agreement at all times.

39 LAW AND JURISDICTION

Subject to the provisions of Clause 38 the Parties accept the exclusive jurisdiction of the English courts and agree that this Agreement be governed by and construed according to English Law.

SCHEDULE 1

THE SERVICES AND/OR WORKS SPECIFICATION

AS SPECIFIED IN ANY CALL FOR FURTHER COMPETITION IN RESPECT OF THE CATAGORIES FOR WHICH THE PROVIDER IS ADMITTED TO THE DPS.

SCHEDULE 2

AWARD CRITERIA

As per document

, Services and/or Works (if applicable) - Establishment on the DPS Criteria (Quality only)

Criterion Number	Criterion	Percentage Weightings (or rank order of importance where applicable)
1	Financial Information	PASS/FAIL
2	Business and professional standing	PASS/FAIL
3	Health and Safety Policy and Capability	PASS/FAIL

Where the Council issues a Call for Competition to participating providers this will be awarded on the basis of the lowest price only.

SCHEDULE 3

PRICING MATRICES

NOT REQUIRED UNTIL CALL FOR FURTHER COMPETITION STAGE

SCHEDULE 4

MANAGEMENT INFORMATION REQUIREMENTS

The performance of this DPS Agreement shall be managed by the Council and the Provider and regular appropriate review meetings held. During the first six months of the Agreement a meeting in alternate months may be required and the Provider will be expected to keep in contact with the Council by telephone and / or email as required by Council.

The information supplied at the point of further competition shall form the Key Performance Indicators (KPI's) of this contract.

These KPI's shall apply to the full contract period unless modifications and appropriate timescales are agreed between both parties at the contract reviews.

If any variations to the performance levels are agreed then these shall be documented, signed by both parties and a copy held by both parties.

SCHEDULE 5

FREEDOM OF INFORMATION EXCLUSIONS SCHEDULE (IF APPLICABLE)

SCHEDULE 6

DYNAMIC PURCHASING SYSTEM VARIATION PROCEDURE

1. Introduction

- 1.1 Schedule 6 details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Agreement.
- 1.2 The Council may propose a variation to the Agreement under Schedule 6 only where the variation does not amount to a material change in the Agreement.

2. Procedure for proposing a Variation

- 2.1 Except where paragraph 5 applies, the Council may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Council shall serve each Provider on the Dynamic Purchasing System with written notice of the proposal to vary the Agreement ("Notice of Variation").
 - 2.2.1 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each Provider to assess the variation.
- 2.3 Upon receipt of the Notice of Variation, each Provider has 10 days to respond in writing with any objections to the variation.
- 2.4 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve each Provider with a written agreement detailing the variation to be signed and returned by each Provider within 10 days of receipt.
- 2.5 Upon receipt of a signed agreement from each Provider, the Council shall notify all Providers in writing of the commencement date of the variation.

3. Objections to a Variation

- 3.1 In the event that the Council receives one or more written objections to a variation, then it may:-
 - 3.1.1 withdraw the proposed variation; or
 - 3.1.2 propose an amendment to the variation.

4. Variations which are not permitted

- 4.1 In addition to the provisions contained in paragraph 1.2, no variation may be proposed which:-
 - 4.1.1 may prevent one or more of the Providers from performing its obligations under the Agreement; or
 - 4.1.2 is in contravention of any law.

**SCHEDULE 7
CALL-OFF TERMS AND CONDITIONS**

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CALL-OFF TERMS AND CONDITIONS

1. INTERPRETATION

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

"Agreement"	means the Agreement for the provision of Minor Building Works between the Council and the Provider
"Approval" and "Approved"	means the written consent of the Council
"Auditor"	means an auditor appointed by the Council
"Call-Off"	Means the issue of an Invitation to Tender in relation to any contract to be awarded under the Dynamic Purchasing System
"Commencement Date"	means the date set out in the Order Form
"Commercially Sensitive Information"	<p>means the Confidential Information listed in the Order Form comprised of information:-</p> <p>(a) which is provided by the Provider and designated as commercially sensitive information by the Council for the period set out in that Order Form</p>
"Confidential Information"	<p>means:-</p> <p>(a) 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and</p> <p>(b) the Commercially Sensitive Information,</p> <p>and does not include any information:-</p> <p>(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 33 (Confidential Information));</p> <p>(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p> <p>(iii) which is received from a third party (who</p>

	lawfully acquired it) without restriction as to its disclosure; or
	(iv) is independently developed without access to the Confidential Information
"Contract"	means the written agreement between the Council and the Provider consisting of the Order Form and these clauses save that for the purposes of Clause 6.1 only, reference to Contract shall not include the Order Form
"Contract Period"	means the period from the Commencement Date to:- <ul style="list-style-type: none"> (a) the date of expiry set out in Clause 2; or (b) following an extension pursuant to Clause 3 the date of expiry of the extended period; or (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract
"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Provider by the Council under the Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Contract
"Crown"	means 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, commissions or agencies from time to time carrying out functions on its behalf
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other
"Deliverables"	means those deliverables listed in the Order Form
"DPA"	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department

	in relation to such legislation
"Dynamic Purchasing System"	means a completely electronic system of limited duration which is (a) established by a contracting authority to purchase commonly used Goods, Services and/or Works (if applicable); and (b) open throughout its duration for the admission of economic operators which (i) satisfy the selection criteria specified by the contracting authority; and (ii) submit an Request to Participate to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
"Equipment"	means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
"Force Majeure"	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <ul style="list-style-type: none"> (a) any industrial action occurring within the Provider's or any sub-contractor's organisation; or (b) the failure by any sub-contractor to perform its obligations under any sub-contract (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring

	to defraud the Council
"Good Industry Practice"	means standards, codes, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
"Improvement Notice"	Means a Notice issued on the Provider to improve minor breaches of the Agreement, the Contract or the Order Form instructing the Provider to improve or remedy any minor breaches in the provision of the Goods, Services and or Works
"Information"	has the meaning given under section 84 of the FOIA
"Initial Contract Period"	means the period from the Commencement Date to the date of expiry set out in Clause 2 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Key Personnel"	means any individual identified in the Order Form as being key personnel
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply
"Material Default"	means any breach of clauses 11 (Prevention of Fraud), 25 (Statutory Obligations and Regulations), 26 (Discrimination), 5 (Provision of Management Information), 36 (Records and Audit Access), 30 (Data Protection), 31 (Freedom of Information), 37 (Transfer and Sub-contracting), 10 (Conflicts of Interest), 16 (Retrospective Payments), 33 (Confidential Information), 32 (Official Secrets), 48 (Warranties and Representations)]
"Minor Breach"	Means any breach of the Agreement, the Contract or the Order Form which may be either a partial breach or a breach not so severe to warrant a

	Material Default.
"Month"	means calendar month
"Order"	means the order submitted by the Council to the Provider in accordance with the Call-Off
"Order Form"	means the order submitted to the Provider by the Council in accordance with the Contract which sets out the description of the Services and/or Works (if applicable) to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards
"Parent Company"	means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
"Premises"	means the location where the Services and/or Works (if applicable) are to be provided, as set out in the Order Form
"Project Specific IPRs"	means:- <ul style="list-style-type: none"> (a) IPRs in Services and/or Works (if applicable) and/or Deliverables provided by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of the Contract including, any Deliverables, and all updates and amendments of these items and/or (b) IPRs arising as a result of the provision of the Goods, Services and/or Works (if applicable) and/or Deliverables by the Providers under the Contract
"Property"	means the property, other than real property, issued or made available to the Provider by the Council in connection with the Contract
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation

	for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council
"Replacement Provider"	means any third party Provider appointed by the Council, to provide any Services and/or Works (if applicable) which are substantially similar to any of the Services and/or Works (if applicable), and which the Council receives in substitution for any of the Services and/or Works (if applicable) following the expiry, termination or partial termination of the Contract
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)
" Services and/or Works"	means the Services and/or Works to be supplied as specified in the Order Form
"Staff"	means all persons employed by the Provider to perform its obligations under the Contract together with the Provider's servants, agents and sub-contractors used in the performance of its obligations under the Contract
Staff Vetting Procedures	means the Council's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including but not limited to, the provisions of the Official Secrets Act 1911 to 1989.
"Provider"	means the person, firm or company with whom the Council enters into the Contract as identified in the Order Form
"Tender"	means the document(s) submitted by the Provider to the Council in response to the Council's Invitation to Tender to provide the Council with the Services and/or Works (if applicable)
"Variation"	has the meaning given to it in Clause 39 (Variation)
"VAT"	means value added tax in accordance with the

provisions of the Value Added Tax Act 1994

"Working Day"

means any day other than a Saturday or Sunday or public holiday in England and Wales between 08:00 and 18:00

The interpretation and construction of the Contract shall be subject to the following provisions:-

- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.4 References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.8 Reference to any employees of the Provider shall not be deemed to include the Provider's agents and sub-Providers unless expressly stated.
- 1.9 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

2. INITIAL CONTRACT PERIOD

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

3. EXTENSION OF INITIAL CONTRACT PERIOD

Subject to satisfactory performance of its obligations under the Contract by the Provider during the Initial Contract Period, the Council may, by giving written notice to the Provider not less than one month prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period

4. PROVIDERS STATUS

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

5. PROVISION OF MANAGEMENT INFORMATION

- 5.1 The Provider shall submit Management Information to the Council in the form set out in Schedule 5 throughout the Term on the last day of every third Month and thereafter in respect of any Call-Off Contract entered into with the Council.
- 5.2 The Council may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) month's written notice of any changes.

6. COUNCIL'S OBLIGATIONS

- 6.1 Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Provider.
- 6.2 The Council shall select a Provider for Orders in accordance with the Award Criteria outlined in the Invitation to Tender.
- 6.3 The Council will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 6.4 The Council shall respond to any reasonable request for information from the Provider.
- 6.5 The Council will assign an Authorised Representative who will liaise with the Provider's Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 6.6 The Council shall ensure that all Orders are awarded in accordance with the provisions of this Contract and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).

7. ENTIRE AGREEMENT

- 7.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
- (a) legislation and/or code of practice
 - (b) the Order Form;
 - (c) the clauses of the Contract; and
 - (d) any other document referred to in the clauses of the Contract.

7.5 For the avoidance of doubt any terms that the Provider may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order

7.6 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts together shall constitute the one agreement.

8. NOTICES

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

8.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

8.3 For the purposes of Clause 8.2, the address of each Party shall be:-

(a) For the Customer: the address set out in the Order Form.

(b) For the Provider: the address set out in the Order Form.

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

9. MISTAKES IN INFORMATION

The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Provider in connection with the provision of the Services and/or Works (if applicable) and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

10. CONFLICTS OF INTEREST

10.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council under the provisions of the Contract.

10.2 The Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.

10.3 The Council reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Contract. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

10.4 This Clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

11. PREVENTION OF FRAUD

- 11.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Council.
- 11.2 The Provider shall notify the Council immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur.
- 11.3 If the Provider or its Staff commits any Fraud in relation to this or any other contract with the Council, then the Customer may:-
- (a) terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider 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 provision of the Services and/or Works (if applicable) and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
 - (b) recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this clause.

12. PROVISION OF THE SERVICES AND/OR WORKS

- 12.1 The Provider shall provide the Services and/or Works (if applicable) during the Contract Period in accordance with the Council's requirements as set out in the Contract and the Order Form. The Council may inspect and examine the manner in which the Provider supplies the Services and/or Works (if applicable) at the Premises during normal business hours on reasonable notice.
- 12.2 If the Council informs the Provider in writing that the Council reasonably believes that any part of the Services and/or Works (if applicable) do not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Council, the Provider shall at its own expense re-schedule and provide or carry out the Services and/or Works (if applicable) in accordance with the requirements of the Contract within such reasonable time as may be specified by the Council.
- 12.3 The Provider acknowledges that in entering into this contract no form of exclusivity has been granted by the Council and that the Council is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all Services and/or Works which are the same as or similar to the Services and/or Works provided under the terms of the Contract.

13. MANNER OF PROVIDING SERVICES AND/OR WORKS

- 13.1 The Provider shall at all times comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Services and/or Works
- 13.2 Where applicable the Provider shall maintain and shall ensure that any agents, staff or sub-contractors utilised in the provision of the Services and/or Works maintain accreditation and certification with the relevant authorisation body. To the extent that the standard of Services and/or Works has not been specified in the Contract the Provider shall agree the relevant standard of the Services and/or Works with the Council prior to the provision of the Services and/or Works, and in any event the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice
- 13.3 The Provider shall ensure that all Staff providing the Services and/or Works shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper supply of the Goods, and provision of the Services and/or Works

14. KEY PERSONNEL

- 14.1 The Parties have agreed to the appointment of the Key Personnel. The Provider shall and shall procure that any sub-contractor shall obtain the prior Approval of the Council before removing or

replacing any Key Personnel during the Contract Period, and, where possible, at least one month's written notice must be provided by the Provider of its intention to replace Key Personnel

- 14.2 The Council shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Provider, their agents or sub-contractor. The Council may interview the candidates for Key Personnel positions before they are appointed
- 14.3 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services and/or Works (if applicable) to the Council. The Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced
- 14.4 The Council may also require the Provider to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall in no circumstances be liable to the Provider or to their employee in respect of any liability, loss or damage occasioned by such removal and the Provider shall provide an indemnity for any claim made by such employee. The Customer will also not be liable for the cost of replacing any Key Personnel

15. PROVIDER'S STAFF

- 15.1 The Council may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:-
- 15.1.1 any member of Staff; or
- 15.1.2 any person employed or engaged by any member of the Staff;
- whose admission or continued presence would, in the reasonable opinion of the Council be undesirable.
- 15.2 At the Council's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably request
- 15.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 15.4 If the Provider fails to comply with Clause 15.2 within two (2) Months of the date of the request, the Council may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council
- 15.5 The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Provider has failed to comply with Clause 15 shall be final and conclusive.
- 15.6 The Provider shall comply with the Staff Vetting Procedures in respect of all Provider Staff employed or engaged by the Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

16. OFFERS OF EMPLOYMENT

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Goods, Services and/or Works (if applicable) without that other Party's prior written consent.

17. CONTRACT PERFORMANCE

- 17.1 In supplying the Services and/or Works (if applicable) the Provider shall perform its obligations under the Contract:
- 17.1.1 with appropriately experienced, accredited, certified, qualified and trained Staff;
 - 17.1.2 in a timely manner; and in compliance with applicable Laws, including but not limited to Section 2 of the Supply of Goods and Services Act 1982.
- 17.2 The Provider shall ensure that:
- 17.2.1 the Services and/or Works (if applicable) conform in all respects with the specifications set out, in the Invitation to Tender, the Order Form and where applicable the Contract or any sample approved by the Council;
 - 17.2.2 the Services and/or Works (if applicable) operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;
 - 17.2.3 the Services and/or Works (if applicable) conform in all respects with all applicable Laws; and
 - 17.2.4 the Services and/or Works (if applicable) comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Goods, Services and/or Works (if applicable)
- 17.3 The Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause 17.3) in accordance with its own established internal procedures.

18. PAYMENT AND CONTRACT PRICE

CONTRACT PRICE

- 18.1 In consideration of the Provider's performance of its obligations under the Contract, the Council shall pay the Contract Price in accordance with Clause 18 (Payment and VAT).
- 18.2 The Council shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services and/or Works (if applicable) supplied in accordance with the Contract.
- 18.3 Unless otherwise expressly stated in the Agreement, the Contract or the Order Form, no claim by the Provider will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Agreement, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Customer or any other appropriate means.

PAYMENT AND VAT

- 18.4 The Council shall pay all sums due to the Provider if properly due and applicable in cleared funds within thirty (30) days of receipt of a valid invoice submitted in accordance with the payment profile set out in the Order Form.
- 18.5 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services and/or Works (if applicable) provided and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 18.6 Where the Provider enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due by the Provider to the sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

- 18.7 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable
- 18.8 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council and/or the Customer at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 21.8 shall be paid by the Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable.
- 18.9 The Provider shall not suspend the provision of the Services and/or Works (if applicable) unless the Provider is entitled to terminate the Contract under Clause 49 (Termination) for failure to pay undisputed sums of money.

19. SET OFF

- 19.1 The Provider shall not be entitled to retain or set-off any amount due to the Council by it but the Council may retain or set-off any amount owed to it by the Provider under this Contract which has fallen due and payable against any amount due to the Provider under this Contract.
- 19.2 If the payment or deduction of any amount referred to in Clause **Error! Reference source not found.** is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

20. RECOVERY OF SUMS DUE

- 20.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of the Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Council.
- 20.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 20.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 20.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

21. EURO

- 21.1 Any requirement of Law to account for the Services and/or Works (if applicable) in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Provider free of charge to the Council.
- 21.2 The Council shall provide all reasonable assistance to facilitate compliance with Clause 21.1 by the Provider.

22. STATUTORY OBLIGATIONS AND REGULATIONS

PREVENTION OF BRIBERY AND CORRUPTION

- 22.1 The Provider:
- 22.1.1 has not, will not, and will procure that its staff (and any agents or sub-contractors) have not committed and will not commit a Prohibited Act in connection with this Contract;

- 22.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010 to receive
- 22.1.3 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 a contract has been reached to that effect in connection with the securing or execution of this contract, or any other contract with the Council, excluding any arrangements of which full details have been disclosed in writing to the Council prior to the execution of this contract
- 22.2 The Provider will upon request provide the Council with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Council request such assistance the Council shall pay the reasonable expenses of the Provider arising as a result.
- 22.3 The Provider will provide to the Customer certification, in writing and signed by an officer of the Provider, of the compliance with this Clause 22 by:
 - 22.3.1 the Provider and
 - 22.3.2 all persons associated with the Provider; and
 - 22.3.3 any other persons who are supplying Services and/or Works (if applicable) in connection with this contract.
- 22.4 Certification will be provided to the Council within 15 working days of the Commencement Date and annually thereafter for the Term. The Provider will provide any evidence of compliance as may reasonably be requested by the Council.
- 22.5 The Provider will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Council and enforced by the Provider where appropriate.
- 22.6 Should the Provider become aware of or suspect any breach of Clause 22 it will notify the Council immediately.
- 22.7 Following notification under Clause 22.6 the Provider will respond promptly and fully to the enquiries of the Council, cooperate with any investigation undertaken by the Council and allow the Council to audit any books, records and other relevant documentation. The Provider's obligations under this Clause 22.7 shall survive the expiry or termination of this Contract for a further period of 6 years.
- 22.8 The Council may recover in full from the Provider and the Provider shall indemnify the Council in full from and against any other loss sustained by the Council in consequence of any breach of this Clause 22 (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.

The Customer may terminate this Contract and any Order immediately upon serving written notice if the Provider, its staff or any sub-contractor's staff whether or not acting with the Provider's knowledge, breaches Clause 22.1. Before exercising its right of termination under this Clause 22.9 the Council will give all due consideration to other action beside termination unless the Prohibited Act is committed by:

 - 22.8.1 the Provider or a senior officer of the Provider; or
 - 22.8.2 a member of Staff, agents or sub-contractors who are not acting independently of the Provider. The expression 'not acting independently of' (when used in relation to the Provider or sub-contractor) means and shall be construed as acting;
 - 22.8.2.1 with the authority of; or

22.8.2.2 with the actual knowledge; of any one or more of the Provider's, agents or sub-contractor's (as applicable) directors or Partners or

22.8.2.3 in circumstances where any one or more of the directors (or Partners) of the Provider, their agent or sub-contractor (as applicable) ought reasonably to have had knowledge.

22.9 Any notice of termination by the Council under Clause 22.9 must specify:

22.9.1 the nature of the Prohibited Act;

22.9.2 the identity of the person whom the Council believes has committed the prohibited act

22.9.3 the date on which this Contract will terminate.

22.10 In the event of any breach of Clause 22.1 the Council is entitled to recover from the Provider the value of any gift, consideration or commission.

22.11 Notwithstanding Clause 53 (Dispute Resolution) any dispute relating to:

22.11.1 the interpretation of this Clause 22 or

22.11.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Council and its decision shall be final and conclusive

22.12 Termination under Clause 22 will

22.12.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council under this Contract.

22.12.2 prohibit the Provider from claiming any damages for early termination; and

22.12.3 allow the Council to recover from the Provider the amount of any loss suffered by the Council resulting from the termination; or

22.12.4 entitle the Council to be indemnified by the Provider for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Services and/or Works (if applicable) from another party.

23. DISCRIMINATION

23.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

23.2 The Provider shall take all reasonable steps to secure the observance of Clause 26.1 by all servants, employees or agents of the Provider and all Providers and sub-contractors employed in the execution of the Contract.

24. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

25. ENVIRONMENTAL REQUIREMENTS

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

26. HEALTH AND SAFETY

- 26.1 The Provider shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Council shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Contract.
- 26.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 26.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 26.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the provision of the Goods, Services and/or Works (if applicable) under the Contract.
- 26.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

PROTECTION OF INFORMATION

27. DATA PROTECTION

- 27.1 For the purposes of this Clause 27, the terms "Data Controller", "Data Processor", "Data Subject" "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA
- 27.2 The Provider shall (and shall procure that all of its Staff and Sub-Contractors and/or Agents) comply with any notification requirements under the DPA and all Parties will duly observe all of their obligations under the DPA which arise in connection with this Contract.
- 27.3 The Provider shall not disclose Personal Data to any third parties other than:
 - 27.3.1 to staff, Sub-Contractors and agents to whom such disclosure is reasonably necessary in order to perform the Agreement; or
 - 27.3.2 to the extent required under a court order
- 27.4 Notwithstanding the general obligation in Clause 27.1, where the Provider is processing Personal Data as a Data Processor for the Council the Provider shall:-
 - 27.4.1 Process the Personal Data only in accordance with instructions from the Council as set out in this Contract or as otherwise notified by the Customer;
 - 27.4.2 comply with all applicable laws;
 - 27.4.3 Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Provider's obligations under the Agreement;
 - 27.4.4 implement appropriate technical and organisational measures to ensure the security of the Authorised Personal Data (and to guard against unauthorised or unlawful processing of the personal data) as required under the "Seventh Data Protection Principle" and

protect the Personal Data against accidental loss, destruction, damage, alteration or disclosure;

27.4.5 take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;

27.4.6 The Provider shall not cause or permit to be processed, stored, accessed and/or otherwise transferred outside the European Economic Area any Personal Data or other Personal Data supplied to it by the Council, as the case may be, and, where the Council consents to such processing, storage, access and/or transfer outside the European Economic Area, shall comply with the obligations of a Data Controller under the Eighth Data Protection Principle by providing an adequate level of protection.

27.4.7 not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council; and

27.4.8 co-operate with the Council to enable the Council to comply with any request under Section 7 of the DPA.

27.4.9 notify the Council within five Working Days if it receives

27.4.9.1 a request from a Data Subject to have access to that person's Personal Data; or

27.4.9.2 a complaint or request relating to the Council's obligations under the DPA.

27.5 The Provider shall indemnify and keep indemnified the Council and any end user against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause by the Provider and/or any act or omission of any staff, sub-contractor or agent.

27.6 The provisions of this Clause shall apply during the Term and indefinitely after its expiry.

28. FREEDOM OF INFORMATION

28.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable them to comply with its Information disclosure obligations

28.2 The Provider shall and shall procure that its employees, agents and sub-contractors shall:

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

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

28.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations

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

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

- 28.5 The Provider acknowledges that (notwithstanding the provisions of Clause 28.2) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider of the Services and/or Works (if applicable):
- 28.5.1 in certain circumstances without consulting the Provider; or
 - 28.5.2 following consultation with the Provider and having taken their views into account;
 - 28.5.3 provided always that where Clause 28.2 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 28.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 28.7 The Provider acknowledges that the Commercially Sensitive Information listed in Schedule 6 is of indicative value only and that the Council may be obliged to disclose it in accordance with Clause 28.5.

29. CONFIDENTIAL INFORMATION

- 29.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 29.2 Clause 29.1 shall not apply to the extent that:
- 29.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 28 (Freedom of Information);
 - 29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 29.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 29.2.5 it is independently developed without access to the other party's Confidential Information.
- 29.3 The Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the provision of the Services and/or Works (if applicable) and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 29.4 The Provider shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- 29.5 Nothing in this Agreement shall prevent the Council from disclosing the Provider's Confidential Information:

- 29.5.1 to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
- 29.5.2 to any consultant, Provider or other person engaged by the Council or any person conducting a gateway review;
- 29.5.3 for the purpose of the examination and certification of the Council's accounts;
- 29.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or any relevant Law making similar provision with regard to the Council of the economy, efficiency and effectiveness with which the Council has used its resources.
- 29.6 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 29 is made aware of the Council's obligations of confidentiality.
- 29.7 Nothing in this Clause 29 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 29.8 The Provider shall not without the prior written consent of the Council divulge the existence of the Agreement, the Contract or any Order or disclose any information relating to or contained in the Agreement, the Contract or any Order to any person who is not engaged in the provision of the Services and/or Works (if applicable).
- 29.9 In the event that the Provider fails to comply with this Clause 29 the Council reserves the right to terminate the Contract by notice in writing with immediate effect.
- 29.10 The provisions of this Clause shall apply notwithstanding termination of the Contract.

30. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 30.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Council's prior Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this Clause 30.1.
- 30.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 30.3 The Providers shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

31. INTELLECTUAL PROPERTY RIGHTS

- 31.1 Save as granted elsewhere under the Contract, neither the Council nor the Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 31.2 The Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Council's Pre-Existing IPR or the Project Specific IPRs to any third party.
- 31.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Council. The Provider hereby assigns to the Council, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.

- 31.4 The assignment under Clause 31.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 31.5 The Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Council under the Contract.
- 31.6 If requested to do so by the Council, the Provider shall without charge to the Council execute all documents and do all such further acts as the Council may require perfecting the assignment under Clause 31.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 31.7 The Council hereby grants to the Provider a non-exclusive, revocable, non-assignable licence to use the Council's Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Provider to supply the Services and/or Works (if applicable) and/or supply the Deliverables.
- 31.8 Prior to using any third party Intellectual Property Rights, the Provider shall obtain the Approval of the Council. The Provider shall provide the Council with details of any third party licence required by the Provider and/or the Council in order for the Provider to carry out its obligations under the Contract using the third party Intellectual Property Rights. The Council reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 31.9 Where the Provider is granted Approval by the Council to use the third party rights, the Provider shall procure that the owner of third party rights grants to the Council a licence upon the terms notified to the Council when seeking the Approval.
- 31.10 The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of any claim that the performance by the Provider of the Services and/or Works (if applicable) and/or supply of the Deliverables and/or the possession or use by the Council of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- 31.10.1 items or materials based upon designs supplied by the Council; or
- 31.10.2 the use of data supplied by the Council which is not required to be verified by the Provider under any provision of the Contract.
- 31.11 The Council shall notify the Provider in writing of the Claim and the Council shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:
- 31.11.1 shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
- 31.11.2 shall take due and proper account of the interests of the Council; and
- 31.11.3 shall not settle or compromise the Claim without the Council's prior Approval (not to be unreasonably withheld or delayed).
- 31.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Council and, at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:-
- 31.12.1 modify the relevant part of the Services and/or Works (if applicable) or the Deliverables without reducing the performance or functionality of the same, or substitute alternative

Goods, Services and/or Works (if applicable) or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Goods, Services and/or Works (if applicable) or deliverables or to the substitute Goods, Services and/or Works (if applicable); or

- 31.12.2 procure a licence to use and provide the Services and/or Works (if applicable) or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Council

and in the event that the Provider is unable to comply with Clause 31.12 within 20 Working Days of receipt of the Provider's notification the Council may terminate the Contract with immediate effect by notice in writing and the Provider shall, upon demand, refund the Council with all monies paid in respect of the Services and/or Works (if applicable) or Deliverable that is subject to the Claim.

- 31.13 In the event that a modification or substitution in accordance with Clause 31.12.1 is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with Clause 31.12.2 the Council shall be entitled to delete the relevant Service from the Contract.

- 31.14 This Clause 31 sets out the entire financial liability of the Provider with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or Works (if applicable) and/or the provision of the Deliverables hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.

32. RECORDS AND AUDIT ACCESS

- 32.1 The Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including: the Services and/or Works (if applicable) provided under the Agreement and the Call-Off Contracts entered into with the Council and the amounts paid by the Council.

- 32.2 The Provider shall keep the records and accounts referred to in Clause 32.1 above in accordance with good accountancy practice.

- 32.3 The Provider shall on request afford the Council, the Council's representatives and/or the Auditor such access to such records and accounts as may be required by the Council from time to time.

- 32.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Council and the Auditor.

- 32.5 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services and/or Works (if applicable) save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Council.

- 32.6 Subject to the Council's rights of Confidential Information, the Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:-

32.6.1 all information requested by the Council within the scope of the audit;

32.6.2 reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services and/or Works (if applicable); and

32.6.3 access to the Staff.

- 32.7 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 reveals a material Default by

the Provider in which case the Provider shall reimburse the Council for the Customer's reasonable costs incurred in relation to the audit.

CONTROL OF THE CONTRACT

33. TRANSFER AND SUB CONTRACTING

- 33.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.
- 33.2 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own. All sub-contractors must be appropriately managed and responsibility for the quality of workmanship, warranties and guarantees will remain the responsibility of the Provider.
- 33.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.
- 33.4 Subject to Clause 33.6, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- 33.4.1 any Contracting Authority; or
 - 33.4.2 any other body established under statute in order to substantially to perform any of the functions that had previously been performed by the Council; or
 - 33.4.3 any private sector body which substantially performs the functions of the Customer, provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.
- 33.5 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause 33.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.
- 33.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 33.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**"):-
- 33.6.1 the rights of termination of the Council in Clause 49 (Termination) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - 33.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider
- 33.7 The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 33.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

34. WAIVER

- 34.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 34.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 8 (Notices).
- 34.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

35. VARIATION

- 35.1 Subject to the provisions of this Clause 35.1, the Council may request a variation to the Services and/or Works (if applicable) ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 35.2 The Council may request a Variation by completing and sending the Variation form attached at Appendix 2 ("**the Variation Form**") to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 35.3 In the event that the Provider is unable to provide the Variation to the Services and/or Works (if applicable) or where the Parties are unable to agree a change to the Contract Price, the Council may:
- 35.3.1 agree to allow the Provider to continue to perform their obligations under the Contract without the Variation; or
 - 35.3.2 terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 53.
- 35.4 If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

36. SEVERABILITY

- 36.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 36.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

37. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES AND/OR WORKS

- 37.1 Where a complaint is received about the standard of Services and/or Works (if applicable) or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the

Provider's obligations under the Contract, then the Council shall take all reasonable steps to investigate the complaint.

37.2 The Council may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 49 (Termination) of the Contract.

37.3 In the event that the Council is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Council may, without prejudice to its rights under Clause 49 (Termination), do any of the following:

37.3.1 without terminating the Contract, itself provide or procure the provision of all or part of the Services and/or Works (if applicable) until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to provide all or such part of the Services and/or Works (if applicable) in accordance with the Contract;

37.3.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services and/or Works only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services and/or Works (as applicable);

37.3.3 terminate, in accordance with Clause 4 (Termination), the whole of the Contract; and/or

37.3.4 charge the Provider for and the Provider shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the provision of any part of the Services and/or Works by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and/or Works and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services and/or Works (as applicable).

37.4 If the Provider fails to provide any of the Services and/or Works in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Council's instructions or such other period of time as the may direct.

37.5 In the event that the Provider

37.5.1 fails to comply with Clause 41.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or

37.5.2 persistently fails to comply with Clause 37.4 above;

the Council may terminate the Contract with immediate effect by giving the Provider notice in writing.

38. LIQUIDATED DAMAGES

38.1 If the Provider fails to perform the Services and/or Works (if applicable) by the date(s) agreed, or specified in the Order Form or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "Agreed Delivery Date");-

38.1.1 the Provider shall pay the Council a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered or Services and/or Works are provided to the Customer, equal to the amount shown in the Order in respect of the relevant Services and/or Works, up to the maximum amount shown in the Order ("Liquidated Damages Threshold"). Subject to Clause 38.3, during the period in which liquidated damages are payable under this Clause 38.1.1 ("Liquidated Damages Period") the liquidated damages payable in accordance with this Clause 38.1.1 shall be the Council's only remedy for any loss or damage suffered or incurred by the

Council in relation to the failure by the Provider to provide the Services and/or Works by the Agreed Delivery Date; and

38.1.2 if the sums payable by the Provider pursuant to Clause 38.1.1 meet or exceed the Liquidated Damages Threshold, the Council shall be entitled to:

- i claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered over and above the Liquidated Damages Threshold; and
- ii without prejudice to Clause 38.1.2 (i), the Council shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Provider.

38.2 The Provider shall not be obliged to pay any sums pursuant to Clause 38.1.1 if and to the extent the failure by the Provider to provide the Services and/or Works by the Agreed Delivery Date directly results from the Council's Default provided that the Provider notifies the Council immediately of such circumstances in sufficient detail to enable the Council to remedy the situation. Except as set out in this Clause 38.2, no payment or concession to the Provider by the Council or other act or commission of the Council shall in any way affect its rights to liquidated damages pursuant to Clause 38.1 or be deemed to be a waiver of the right of the Council to recover any damages unless such waiver has been expressly made in writing by the Council.

38.3 Notwithstanding Clause 38.1.1 the Provider does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Council, whether or not such performance or re-performance gives rise to additional costs for the Provider and the cost of re-performance shall be borne solely by the Provider and shall not be re-charged to the Council whether by way of costs, reimbursement or otherwise.

38.4 Having given careful consideration to this matter, all monies payable by the Provider under Clause 38.1.1 are considered by the Parties to be a genuine pre-estimate of the losses which the Council will incur in relation to the Provider's failure to perform the Services and/or Works by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Council in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Council might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Provider waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 38.4. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

38.5 Each Party confirms that:-

a it has taken specific legal advice on the effect of this clause; and

b based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this Clause will be unenforceable for any reason.

39. CUMULATIVE REMEDIES

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

40. MONITORING OF CONTRACT PERFORMANCE

The Provider shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

LIABILITIES

41. LIABILITY, INDEMNITY AND INSURANCE

41.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-

- a. death or personal injury caused by its negligence or that of its Staff;
- b. Fraud or fraudulent misrepresentation by it or that of its Staff;
- c. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982;
- d. any claim under Clause 41.3; or
- e. any claim under the indemnity in Clause 41.2

41.2 Subject to Clause 41.2 and Clause 41.4 the Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the provision, or late or purported provision, of the Services and/or Works or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

41.3 Subject always to Clause 41.3 and Clause 41.4, the liability of either Party for Defaults shall be subject to the following financial limits:-

41.3.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed []; and

41.3.2 the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of [] or [] per cent of the Contract Price payable by the Customer to the Provider in the year in which the liability arises.

41.4 Subject to Clause 54 (Recovery Upon Termination), in no event shall either Party be liable to the other for any:

41.4.1 loss of profits;

41.4.2 loss of business;

41.4.3 loss of revenue;

41.4.4 loss of or damage to goodwill;

41.4.5 loss of savings (whether anticipated or otherwise); and/or

41.4.6 any indirect or consequential loss or damage.

41.5 The Council may, amongst other things, recover as a direct loss:-

- 41.5.1 any additional operational and/or administrative expenses arising from the Provider's Default;
 - 41.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's Default; and
 - 41.5.3 the additional cost of procuring replacement Services and/or Works (if applicable) for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Provider.
- 41.6 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Customer's employees, servants or agents.
- 41.7 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 41.8 The Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 41.9 The Provider shall hold public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 41.10 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 41.11 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider
- 41.12 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 41.

42. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and/or Works (if applicable) and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue and Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract

43. WARRANTIES AND REPRESENTATIONS

- 43.1 The Provider warrants and represents that:-
- 43.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

- 43.1.2 the Contract is executed by a duly authorised representative of the Provider;
- 43.1.3 in entering the Contract it has not committed any Fraud;
- 43.1.4 as at the Commencement Date, all information, statements and representations contained in their submission to both the Request to Participate and the Invitation to Tender for the Services and/or Works (if applicable) are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 43.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 43.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 43.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 43.1.8 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 43.1.9 the Services and/or Works (if applicable) shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 43.1.10 in the three (3) years prior to the date of the Contract:-
 - 43.1.10.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - 43.1.10.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 43.1.11 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- 43.1.12 all obligations of the Provider pursuant to this Contract shall be performed by appropriately experienced, certified, qualified and trained Staff with all due skill, care and diligence;
- 43.1.13 it will ensure that the Provider and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Provider in connection with the Goods, Services and/or Works (if applicable) will comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Services and/or Works (if applicable).

DEFAULT, DISRUPTION AND TERMINATION

44 TERMINATION

Termination - Insolvency and Change of Control

- 44.1 The Council may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:-
- 44.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 44.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 44.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - 44.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 44.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 44.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 44.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 44.1.8 any event similar to those listed in Clause 45.1 occurs under the law of any other jurisdiction.
- 44.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:
- 44.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
 - 44.2.2 a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
 - 44.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 44.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
 - 44.2.5 a creditor or encumbrance 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 Provider's assets and such attachment or process is not discharged within 14 days; or
 - 44.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
 - 44.2.7 the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

44.3 The Provider shall notify the Customer immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

44.3.1 being notified that a Change of Control has occurred; or

44.3.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control;

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

44.4 The Customer may terminate the Contract with immediate effect by notice in writing where:

44.4.1 the Provider are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Goods, Services and/or Works (if applicable);

44.4.2 the Provider and its Staff, agents, sub-contractors, or personnel employed by the Provider in connection with the Goods, Services and/or Works have failed to comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods, Services and/or Works (if applicable).

Termination on Default – Minor Breaches

44.5 Where the Provider commits a Minor Breach of the Contract, the Council shall be entitled to issue the Provider with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Breach and give the Provider a minimum of ten (10) working days to remedy the Minor Breach.

44.6 If the Provider commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 49.7.3.

Termination on Default – Material Default

44.7 Where the Provider commits a Material Default and:-

44.7.1 the Provider has not remedied the Material Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

44.7.2 the Material Default is not, in the reasonable opinion of the Council, capable of remedy; or

44.7.3 if the Provider has committed three (3) or more Minor Breaches within a twelve (12) month rolling period.

44.8 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Customer fails to pay such undisputed sums within [ninety (90)] Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 23 (Recovery of Sums Due).

45 BREAK

The Council shall have the right to terminate the Contract at any time by giving 30 days written notice to the Provider.

46 TERMINATION OF THE DYNAMIC PURCHASING SYSTEM

The Customer may terminate the Contract by giving written notice to the Provider with immediate effect if the Dynamic Purchasing System is terminated for any reason whatsoever.

47 CONSEQUENCES OF EXPIRY OR TERMINATION

- 47.1 Where the Council terminates the Contract under Clause 45 (Termination) and then makes other arrangements for the provision of Services and/or Works, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 45 (Termination), no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.
- 47.2 Where the Council terminates the Contract under Clause 46 (Break), the Council shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Clause 46 (Break).
- 47.3 The Council shall not be liable under Clause 48.2 to pay any sum which:-
- 47.3.1 was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- 47.3.2 when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.
- 47.4 Save as otherwise expressly provided in the Contract:-
- 47.4.1 Termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 47.4.2 Termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Provider under Clauses 18 (Payment and Contract Price), 20 (Recovery of Sums Due), 27 (Data Protection Act), 29 (Confidential Information), 28 (Freedom of Information), 31 (Intellectual Property Rights), 32 (Records and Audit Access), 39 (Cumulative Remedies), 41 (Liability, Indemnity and Insurance), 78 (Consequences of Expiry or Termination), 49 (Recovery upon Termination) and 51 (Governing Law and Jurisdiction)

48 DISRUPTION

- 48.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other Provider engaged by the Council.
- 48.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 48.3 In the event of industrial action by the Staff, the Provider shall seek the Council's Approval to its proposals for the continuance of the provision of the Goods, Services and/or Works in accordance with its obligations under the Contract.

- 48.4 If the Provider's proposals referred to in Clause 49.3 are considered insufficient or unacceptable by the Council acting reasonably then the Contract may be terminated with immediate effect by the Council by notice in writing.
- 48.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

49 RECOVERY UPON TERMINATION

- 49.1 On the termination of the Contract for any reason, the Provider shall:
- 49.1.1 immediately return to the Council all Confidential Information, Personal Data and Customer's Pre-Existing IPR's and the Project Specific IPR's in its possession or in the possession or under the control of any permitted Providers or sub-contractors, which was obtained or produced in the course of providing the Goods, Services and/or Works;
 - 49.1.2 immediately deliver to the Council all Property (including materials, documents, information and access keys) provided to the Provider. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 49.1.3 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services and/or Works to the Replacement Provider and/or the completion of any work in progress.
 - 49.1.4 promptly provide all information concerning the provision of the Services and/or Works which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services and/or Works have been provided or for the purpose of allowing the Council or the Replacement Provider to conduct due diligence.
- 49.2 If the Provider fails to comply with Clause 50.1.1 or 50.1.2, the Council may recover possession thereof and the Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or sub-contractors where any such items may be held.
- 49.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause 5.1.3 and 50.1.4 free of charge. Otherwise, the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.
- 49.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 31.7 shall automatically terminate without the need to serve notice.

50 FORCE MAJEURE

- 50.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 50.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Provider shall be regarded as due to Force Majeure only if that agent, sub-contractor or Provider is itself impeded by Force Majeure from complying with an obligation to the Provider.

- 50.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 51.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 50.4 It is expressly agreed that any failure by the Provider to perform or any delay by the Provider in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Provider shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure
- 50.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

DISPUTES AND LAW

51 GOVERNING LAW

- 51.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts or and agree that the Contract is to be governed exclusively by and construed under English law.
- 51.2 This Agreement is binding on the Council and its successors and assignees and the Provider and the Provider's successors and permitted assignees.

52 TUPE

- 52.1 During the period of six months preceding the expiry of this Contract or after the Council has given notice to terminate the Contract or the Provider stops trading, and within 20 working days of being so requested by the Council, the Provider shall fully and accurately disclose to the Council, for the purposes of TUPE, all information relating to its Staff engaged in providing Services and/or Works under the Contract, in particular but not necessarily restricted to, the following:
- 52.1.1 the total number of Staff whose employment with the Provider is liable to be terminated at the expiry of the Contract but for any operation of law; and
 - 52.1.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and
 - 52.1.3 full information about the other terms and conditions on which the affected staff or about where that information can be found; and
 - 52.1.4 details of pensions entitlements, if any; and
 - 52.1.5 job titles of the members of Staff affected and the qualifications required for each position.
- 52.2 The Provider shall permit the Council to use the information for the purposes of TUPE and of re-tendering. The Provider will co-operate with the re-tendering of the Services and/or Works by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.
- 52.3 The Provider agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 53.2.

52.4 In the event that the information provided by the Provider in accordance with Clause 53.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Council of the inaccuracies and provide the amended information.

52.5 The provisions of this Clause 53 shall apply during the continuance of the Contract and indefinitely after its termination.

53 DISPUTE RESOLUTION

53.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the relevant Service Director of the Council and the finance director Provider.

53.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

53.3 If the dispute cannot be resolved by the Parties pursuant to Clause 54.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 54.5 unless:-

53.3.1 the Council considers that the dispute is not suitable for resolution by mediation; or

53.3.2 the Provider does not agree to mediation.

53.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.

53.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

53.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a Mediator;

53.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

53.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

53.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

53.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

- 53.5.6 Where the Works or Services to be carried out by the Provider include Construction Operations within Part II of the Housing Grants Construction and Regeneration Act 1996 then the Parties shall have the right to refer the matter to Adjudication in accordance with that Act.
- 53.5.7 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

APPENDIX 1

ORDER FORM

Dynamic Purchasing System

Date of Order		Order Reference Number	
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FROM

/Customer	BRISTOL CITY COUNCIL
Address	PO BOX 3176, Bristol, BS3 9FS
Invoice Address	As above
Contract Manager	Name Address: Phone: e-mail:

TO

Provider:	
Address:	
Contract Manager	Name Address: Phone: e-mail:

TERM
1.1 Effective Date 1.1.1 This Contract shall commence on (Please insert date).....
1.2 Expiry Date 1.2.1 This Contract shall expire on: 1.2.1.1 (date) unless extended at the Council's sole discretion for(insert time period) 1.2.1.2 Completion in accordance with the terms of the Contract, of the Contract Services specified in this Appendix 1 whichever is the earlier, unless terminated earlier pursuant to this Contract.

SERVICES AND/OR WORKS REQUIREMENTS
2.1 Contract Services or Works Required The Contract Services or Works required are as set out in the Specification attached at Appendix 1

PERFORMANCE OF THE CONTRACT SERVICES AND DELIVERABLES
3.1 Implementation Plan and Milestones (including dates for completion) The Council requires an implementation plan to be either (a) submitted with the Providers bid submission; or (b) submitted within 14 days of the commencement of the contract. Such milestones/key performance indicators below shall be applicable in addition to any milestones/key performance indicators mutually agreed between the parties and set out in the implementation plan. Once agreed the Implementation Plan will form part of the contractual documents and failure to meet the milestones/key performance indicators by the stipulated dates may be enforced as a breach of contract. TIME IS OF THE ESSENCE FOR DELIVERY OF THE MILESTONES/KEY PERFORMANCE INDICATORS. (i) The Implementation Plan as at the Effective Date is set out below:

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)
*Provide an Implementation Plan	Parties to agree a mutually acceptable Implementation Plan that must include:- *Particular milestones * deadlines for completing the milestones	*14	*If not submitted with bid within 14 days of contract commencement	To mutually agree the Implementation Plan with the Supplier
*Various	<i>Any other milestones or Key Performance indicators as set out in the Implementation Plan extra lines as required</i>		As indicated in the Implementation Plan	
Liquidated Damages	These shall be at a rate of £.....per week/month* from the Expiry Date shown above until the actual date of completion of the works unless an amended Expiry Date is agreed in which case such liquidated damages shall be due from that date. The maximum amount of Liquidated damages shall be £.....			

- (ii) If so required by the Customer, the Provider shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Provider shall ensure that each version of the Implementation Plan is subject to approval. The Provider shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.
- (iii) The Customer shall have the right to require the Provider to include any reasonable changes or provisions in each version of the Implementation Plan.
- (iv) The Provider shall perform its obligations so as to achieve each Milestone by the Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Provider shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Provider's ability to achieve a Milestone by the relevant Milestone Date).

3.2 Performance Monitoring

Performance will be monitored by the milestones/key performance indicators set out in

(a) The Specification*

(b) the Implementation Plan*; or

(c) Point 3.1 above or any combination of the above*.

[Insert any additional details of how the Customer will monitor the Provider's performance].

**Delete if not appropriate*

CALL-OFF TERMS AND CONDITIONS
4.1 The Terms and Conditions that apply to this order are set out in Schedule 7 of the Dynamic Purchasing System agreement between the Council and the Provider.
SPECIAL TERMS AND CONDITIONS
5.1 DEADLINES: Please insert the date when the Goods, Services and/or Works should be provided
5.2 KEY PERFORMANCE INDICATORS: (Please indicate all KPI's linked to compliance of funding terms and conditions (Delete if not applicable)
5.3 PROVISION OF MANAGEMENT, MONITORING AND REPORTING INFORMATION (Please indicate the documentation required from the Provider including invoicing provisions to enable compliance with grant funding terms and conditions) (Delete if not applicable)
<div> <div>.</div> <div>]</div> </div>

<p>CONFIDENTIAL INFORMATION</p>
<p>6.1 The following information shall be deemed Commercially Sensitive Information or Confidential Information:</p>
<p>6.2 Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information</p>

Appendix 2:

CHARGES FOR GOODS

AS DETAILED IN THE ATTACHED PRICING SCHEDULE

CHARGES FOR SERVICES

Contract Charges / Daily Rates / Fees

I

Charging mechanism, price and Day Rates	As detailed in the Pricing Schedule submitted by the Provider in support of their bid.
Invoicing arrangements	
Performance-related payment	
Travel and Subsistence	

CHARGES IN RESPECT OF WORKS

AS DETAILED IN THE ATTACHED ACTIVITY SCHEDULE/BILL OF QUANTITIES

Appendix 3: (Variations and/or supplements to the Call-Off Terms)

THIS WILL HAVE TO BE CONSIDERED WITH YOUR LEGAL DEPARTMENT AS TO WHETHER OR NOT ANY OF THE CALL-OFF TERMS AND CONDITIONS NEED TO BE AMENDED.

CUSTOMERS WILL NEED TO TAKE THEIR OWN INDEPENDENT LEGAL ADVICE IN RELATION TO COMPLETION OF THIS SCHEDULE

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Goods, Services and/or Works specified in this Order Form (together with where completed and applicable, the Call-Off order (additional requirements) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Agreement entered into by the Provider and LPP on [] 201[].

For and on behalf of the Provider:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

**APPENDIX 2
CUSTOMER VARIATION FORM**

CALL-OFF TERMS AND CONDITIONS FOR GOODS, SERVICES AND/OR WORKS (IF APPLICABLE)

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

Bristol City Council ("**the Council**")

and

[] ("**the Provider**")

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Council

Signature

Date

Name in Capitals

Address

Authorised to sign for and on behalf of the Provider

Signature

Date

Name in Capitals

Address

.....

Guidance Notes

The Customer should read the Guidance Notes and consider the information contained within them and insert details as appropriate to the requirement within this Order Form.

Before signing, the Customer should ensure that all Guidance Notes have been deleted before issuing the Contract to the Provider.

Guidance Note 1.1: The Council should insert the date on which the Contract is to take effect.

Guidance Note 1.2.1: The Council should insert in sub-paragraph 1.2.1.1 the date on which the Contract is to expire or choose sub-paragraph 1.2.1.2; or insert a date in sub-paragraph 1.2.1.1 and retain both sub-paragraphs on a “whichever is the earlier” basis.

If the Council makes reference to an “Initial Period” this should be reflected above, but care should be taken to check the termination clause as termination is not normally permitted within an “Initial Period”

Guidance Note 2.1: The Council should include a description of the Contract Services and/or Works required, to include any Milestones and associated Deliverables. Consider how requirements specified in this section fit with milestones, key performance indicators and associated Deliverable which should be detailed in Section 3.1 below.

The Council should also consider if there is a need to include any requirement for the following or whether this is something they wish to include in the Specification at Appendix 1:

- compliance with internal policies and procedures and/or Government code and practices (e.g. relating to, but not limited to, staff vetting, security, equality and diversity, confidentiality undertakings and sustainability etc.
- training / skills transfer that the Customer requires the Supplier to provide to the Customer's personnel;
- Accreditation of either the Services being delivered/ the Supplier or accredited outcome following training
- disclosure of Relevant Convictions (e.g. where the Contract Services are being provided -for example at hospitals- it may be necessary to bar certain staff of the Provider who have particular convictions and include details of such convictions in this section. If Relevant Convictions are not required
- adherence to relevant quality / technical standards that apply to the Contract Services to be delivered.
- The need to name any specific Key Personnel for delivery of the Contract Services
- Timescales for delivery
- Do you need an exit strategy? Disaster Recovery Plan? Any information for compensation events as may be included in the NEC 3 Suite of Contracts?

Guidance Note 3.1: The Council should consider which Milestones/KPI's should be inserted into the table below, together with associated Deliverables. The fields for liquidated damages should be completed even if the applicable figure is nil.

Guidance Note 3.2: The Council should include details of how the Customer intends to monitor the Provider's performance, e.g. reporting, review meetings etc. including frequency of meetings. If a Post Contract Review is required by the Customer this should be stated here

Guidance Note – Charges for Services: The Council should consider if it is sufficient to incorporate the pricing elements in the format presented within the Provider's tender proposal. If not, the Council should include information obtained from the Provider's proposal in tabular or similar format.]

Guidance Note – Charging Mechanism, price and day rates: This may be:

Day Rates

fixed price

Day Rates, capped

other mechanism, as agreed

Where this is a fixed or capped price, state the price. Where this is Day Rates, include a table of agreed rates by grade – or by named individual if relevant.

Guidance Note – Invoicing Arrangements: This may include monthly invoicing; invoicing on Milestones etc. If Milestone payments, these should be specified, including sign-off arrangements for satisfactory completion]. The Provider is to invoice the Customer on a monthly basis providing an invoice that contains a breakdown of:

- *Dates worked
- *Hours worked per day
- *Name of individual
- *Charging Rate
- *Purchase Order Number
- *Timesheets

On a receipt of a valid Invoice payment will be made to the Supplier within 30 days of the date of the invoice.

If an invoice is disputed it will be returned to the Provider with details on why the invoice cannot be processed for payment.

Any changes to this standard requirement will need to be set out in the Specification

Guidance Note – Performance related payments: Detail any performance-related payment arrangements which may have been agreed.

Guidance Note - final: Please insert variations and / or supplements to the Call-Off Terms as required by the Customer (for example, a variation to the standard aggregate limit of liability)