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| --- |
| **Dated 202[ ]** |
| **MAYOR AND BURGESSES OF**  **THE LONDON BOROUGH OF WALTHAM FOREST**  AND  **[INSERT NAME OF SUPPLIER]** |
| STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF FOOD FOR WALTHAM FOREST FOOD DISTRIBUTION HUB |

|  |  |
| --- | --- |
| **CONTRACT DETAILS – Contract Reference no [ ]** | |
| **Supplier** |  |
| **Supplier's Address for Notices:** |  |
| **Representatives:** |  |
| **Commencement Date:** |  |
| **Initial Contract Period:** |  |
| **Expiry Date:** |  |
| **Extension Period:** |  |
| **Necessary Consents:** |  |
| **Special Conditions for the Goods:** |  |
| **Insurance:**  As per Clause 19 | Public liability insurance: £10 million.  Employer's liability insurance: £5 million.  Product liability insurance: £10 million. |

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AN AGREEMENT MADE BETWEEN:

1. THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM FOREST of the Town Hall, Forest Road, Walthamstow‟ London, E17 4JF (the “Council"); and
2. THE SUPPLIER whose identity and address for service is set out in the Contract Details ("the Supplier")

each a **Party** and together the **Parties**.

**BACKGROUND**

1. The Council sought proposals for the provision of food to Waltham Forest Food Distribution Hub by means of a public tender exercise.
2. The Council is a local authority and a best value authority with duties and powers to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness pursuant to Part I of the Local Government Act 1999.
3. Following a tender process the Council has selected the Supplier to provide of the Goods (as defined in Clause 1.1 (Definitions) below) to the Council.
4. The Agreement sets out the terms and conditions on and subject to which the Supplier will provide the Goods to the Council.

SECTION A: PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION
   1. In this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement.
2. Affected Party has the meaning given to the term in Clause 21.2 (Force Majeure).
3. Agreement means the agreement concluded between the Council and the Supplier for the provision of the Goods, comprising of the Agreement and Schedules and other documents as listed in the Contract Details.
4. **Approval**: means the prior written approval of the Council and Approve and Approved shall be construed accordingly.
5. Charges means the charges for the provision of the Goods set out in or otherwise calculated in accordance with the Supplier's Tender Response and as set out in Schedule 3 (Charges).
6. Codes shall have the meaning given to that term in Clause 17.2 (Freedom of Information).
7. Commencement Date means the date the Agreement starts as set out in the Contract Details.
8. Commercially Sensitive Information means any information of a commercially sensitive nature relating to the Supplier, its Intellectual Property Rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.
9. Confidential Information means:
   1. Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
      1. the Disclosing Party; or
      2. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party;
   2. other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent (whether or not it is so marked) or that ought reasonably to be considered to be confidential which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
   3. discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
   4. Information derived from any of the above,

but not including any Information which:

* + 1. was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
    2. the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
    3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
    4. was independently developed without access to the Confidential Information.

1. Contract Details means the front sheet to this Agreement which sets out the particulars of the Agreement.
2. Contract Term means the period commencing on the Commencement Date and ending on the Expiry Date or on earlier termination of this Agreement in accordance with Clause 23 (Termination for Breach).
3. Contract Year means a period of 12 months commencing on the Commencement Date and/or each anniversary of the Commencement Date.
4. Council Data means:
   1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are supplied to the Supplier by or on behalf of the Council pursuant to this Agreement; and
   2. any Personal Data for which the Council is the Data Controller (as defined by the Data Protection Legislation).
5. Council Representative means the person appointed by the Council and identified in the Contract Details, with authority to act on behalf of the Council in relation to all matters set out in, or in connection with this Agreement.
6. **Data Protection Legislation** means the Data Protection Act 2018, the United Kingdom General Data Protection Regulation (Retained Regulation (EU) 2016/679), Law Enforcement Directive (Directive (EU) 2016/680) (the ‘LED’), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
7. Data Processor take the meaning given in the United Kingdom General Data Protection Regulation (Retained Regulation (EU) 2016/69).

Default means any failure by the Supplier to perform its material obligations under this Agreement.

Delivery Date the date which the Goods are delivered to the Council by the Supplier in accordance with the terms and conditions of this Agreement.

Delivery Location the address which the Goods are delivered to the Council by the Supplier in accordance with the terms and conditions of this Agreement.

1. Disclosing Party has the meaning given to it in Clause 16.1 (Confidentiality).
2. Dispute means any dispute, issue, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, issue, difference or question of interpretation relating to the Goods or any matter where this Agreement directs the Parties to resolve a matter by reference to the Dispute Resolution Procedure.
3. Dispute Notice has the meaning given to it in the Dispute Resolution Procedure (Schedule 1).
4. Dispute Resolution Procedure means the dispute resolution procedure set out in Schedule 1.
5. EIR means the Environmental Information Regulations 2004 and any subordinate legislation 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 Regulations.
6. Expiry Date means the date the Agreement expires as set out in the Contract Details.
7. **Find a Tender** means the UK procurement e-notification service.
8. FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 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 the Freedom of Information Act 2000.
9. Force Majeure Event means war, natural flood, exceptionally adverse weather, pandemic, strike or lockout (other than a strike or lockout which is limited to the Supplier's Personnel), civil disorder, act of God, power cuts or delays or other wholly exceptional events outside the control of the Parties which could not have been reasonably foreseen or avoided, but excluding:
   1. any industrial action occurring within the Supplier or the Subcontractor's supply chain; or
   2. any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned; or
   3. any changes in economic conditions, including without limit, currency exchange and currency movement, increased costs for or scarcity of raw materials from usual sources of supply; or
   4. any consequences arising as a result of or in connection with the United Kingdom’s withdrawal from the European Union

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

**Goods** means the whole of the Goods or any of them to be provided by the Supplier as identified in the Goods Specification pursuant to this Agreement from time to time.

**Goods Specification** means the specification of the Goods as set out in Schedule 2 (Goods Specification) and in the Invitation to Tender.

1. Guidance means any applicable guidance or directions with which the Supplier is bound to comply.
2. Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).
3. Information Commissioner means the United Kingdom’s independent data protection authority established under Part 5 of the Data Protection Act 2018.
4. Intellectual Property means all intellectual property of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites.
5. Intellectual Property Rights means any and all rights relating to Intellectual Property.
6. Invitation to Tender means the invitation to tender for the provision of the Goods by which the Supplier was selected to provide the Goods to the Council.

###### Law means:

###### a) any law, statute, bye-law, regulation, directives, delegated or subordinate legislation in force from time to time and within the meaning of section 21(1) of the Interpretation Act 1978, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements of any regulatory body with which the Consultant Company is bound to comply; and

1. b) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“EU References”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after EU exit day as a reference to the EU References as modified by domestic law from time to time. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union**.**
2. LGA 1999 means the Local Government Act 1999.
3. Losses means all losses, liabilities, damages, demands, charges, costs, and expenses (including legal and other professional charges and expenses) litigation, settlement, judgement interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term Loss shall be construed accordingly.
4. Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the supply of the Goods (which shall include any listed in the Contract Details).
5. Personal Data means personal data (as defined in the Data Protection Legislation) which is Processed by the Supplier on behalf of the Council pursuant to or in connection with this Agreement.
6. Process and Processing take the meaning given in the United Kingdom General Data Protection Regulation (Retained Regulation (EU) 2016/679).
7. Prohibited Act means:
   1. to directly or indirectly offer, promise or give any person working for or engaged by the Council or its members, a financial or other advantage to:
      1. induce that person to perform improperly a relevant function or activity; or
      2. reward that person for improper performance of a relevant function or activity;
   2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
   3. an offence:
      1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
      2. under legislation or common law concerning fraudulent acts; or
      3. defrauding, attempting to defraud or conspiring to defraud the Council; or
   4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.
8. Protected Characteristics has the meaning set out in Clause 27.1 (Equal Opportunities).
9. Recipient has the meaning set out in Clause 16.1 (Confidentiality and Transparency).
10. Records shall have the meaning given to that term in Clause 11.2 (The Supplier's Records and Provision of Information).
11. Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom.
12. Relevant Requirements means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
13. Replacement Goods means any Goods which are the same as or substantially similar to any of the Goods and which the Council receives in substitution for any of the Goods following the expiry or termination of this Agreement, whether those Goods are provided by the Council internally and/or by any third party.
14. Representatives means the Council Representative and the Supplier Representative and Representative shall mean either one of them as the context so requires as identified in the Contract Details.
15. Request for Information shall have the meaning set out in the FOIA or the EIR as relevant.
16. Required Insurance means the insurances to be taken out by the Supplier in accordance with Clause 20.1 (Insurance).
17. Required Professional Standard means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional supplier of goods similar to the Goods to a customer like the Council, such provider seeking to comply at all times with their contractual and regulatory obligations and complying with applicable Laws.
18. Senior Representatives shall have the meaning given to it in the Dispute Resolution Procedure (Schedule 1).
19. Subcontract means any contract or agreement between the Supplier and any third party whereby that third party agrees to provide the Supplier all or any part of the Goods.
20. Subcontractors means any third party with whom the Supplier enters into a Subcontract.
21. Successor Body shall have the meaning given to that term in Clause 32.2 (Assignment and Other Dealings).
22. Supplier Personnel means all directors, servants, representatives, officers, agents, employees and Subcontractors of the Supplier engaged in the performance of the Supplier's obligations under this Agreement.
23. Supplier Representative means the person appointed by the Supplier and identified in the Contract Details, with authority to act on behalf of the Supplier in relation to all matters set out, or in connection with this Agreement.
24. Supplier's Tender Response means the Supplier's response to the Council's Invitation to Tender for the award of this Agreement to provide the Goods.
25. Transparency Code shall have the meaning given to that term in Clause 16.8 (Confidentiality and Transparency).
26. Value Added Tax or VAT means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed in place from time to time.
27. Working Day any day other than a Saturday, Sunday or public holiday in England.
28. UK GDPR means the United Kingdom General Data Protection Regulation (Retained Regulation (EU) 2016/679).
    1. In this Agreement, unless the context otherwise requires:
       1. words in the singular include the plural and vice versa and words importing a gender includes the other gender and the neuter;
       2. references to a person include an individual, Supplier, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
       3. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
       4. any phrase introduced by the terms "**including**", "**include**", "**in particular**", "**for** **example**" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding those terms;
       5. references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly unless expressly stated otherwise in this Agreement;
       6. references to Clauses and Schedules are, unless otherwise specified, references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs and Parts are, unless otherwise specified, references to the paragraphs and parts of the Schedule or the Part of the Schedule in which the references appear;
       7. the Schedules form part of this Agreement; and
       8. headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
    2. If there is any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
       1. the Clauses;
       2. the Goods Specification;
       3. any other Schedules;
       4. the Supplier's Tender Response;
       5. the Tender Clarifications; and
       6. Invitation to Tender.
29. CONTRACT TERM
    1. This Agreement shall take effect on the Commencement Date and shall continue in force for the Contract Term, unless it is otherwise terminated in accordance with the provisions of this Agreement, or extended under Clause 2.2 (Extension of Initial Contract Period).
    2. Subject to satisfactory performance of its obligations under the Agreement by the Supplier during the Initial Contract Period, the Council may, by giving written notice to the Supplier not less than three (3) months prior to the last day of the Initial Contract Period, extend the Agreement for any further period specified in the Contract Details (the “Extension Period”). The provisions of the Agreement will apply throughout any such Extension Period.
30. DUE DILIGENCE
    1. Subject to Clause 3.2, the Supplier acknowledges that it is the Supplier's responsibility to carry out such due diligence as it considers appropriate before entering into this Agreement and, in so doing, that it:
       1. has had an opportunity to carry out a thorough due diligence exercise in relation to the Goods and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Goods in accordance with the terms of this Agreement;
       2. has received all information requested by it from the Council pursuant to Clause 3.1.1 to enable it to determine whether it is able to provide the Goods in accordance with the terms of this Agreement;
       3. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to Clause 3.1.2;
       4. has raised all relevant due diligence questions with the Council before the Commencement Date; and
       5. has entered into this Agreement in reliance on its own due diligence alone.
    2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.
31. WARRANTIES
    1. Each Party represents and warrants that:
       1. it has full capacity and authority to enter into and to perform its obligations under this Agreement;
       2. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Agreement;
       3. it has not done, and in performing its obligations under this Agreement, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and
       4. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
    2. The Supplier represents and warrants that as at the Commencement Date:
       1. (as appropriate) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
       2. it has obtained all Necessary Consents;
       3. all information contained in the Supplier's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date and separately warrants to inform the Council in the event there are any changes to such information during the Contract Term; and
       4. shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to supply the Goods.
    3. Each of the representations and warranties set out in Clauses 4.1 to 4.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
    4. Save as expressly set out in this Agreement, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

SECTION B: THE GOODS

1. THE gOODS
   1. The Supplier shall ensure that the Goods:
      1. correspond with their description and the Goods Specification;
      2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication, and in this respect the Council relies on the Supplier's skill and judgement;
      3. where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 (twelve) months after delivery; and
      4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
   2. The Supplier shall commence the supply of the Goods on the Commencement Date and shall thereafter continue to supply the Goods throughout the Contract Term in accordance with the terms of this Agreement.
   3. Time is of the essence for all times, dates and periods specified in this Agreement or substituted for them and if the Supplier fails to deliver the Goods within the time specified in the Agreement, the Council may release itself from any obligation to accept and pay for the Goods and/or terminate the Agreement, in either case without prejudice to any other rights and remedies of the Council.
   4. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.
   5. If the Council informs the Supplier in writing that the Council reasonably believes that any part of the Goods do not meet the requirements of the Agreement 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 Supplier shall at its own expense re-schedule and replace or credit the costs of the Goods in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council.
   6. The Supplier shall ensure that the Goods are fully compatible with any of the Council's equipment, to the extent specified in the Contract Details.
   7. The Council shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Council elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Council any expenses incurred by it as a result of such over-delivery (including the costs of moving and storing the Goods), failing which the Council may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Council in writing.
   8. The Supplier hereby guarantees the Goods for the period from the Delivery Date to the date of either:-
      1. twelve (12) Months thereafter;
      2. or such other guarantee period or warranty period notified by the Supplier in their response to the Invitation to Tender against faulty materials or workmanship;
   9. If the Council shall within such guarantee period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Council may have) promptly remedy such defects (whether by repair or replacement as the Council shall elect) free of charge.
2. DELIVERY AND INSPECTION
   1. The Council may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.
   2. If following such inspection or testing the Council considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 5.1, the Council shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
   3. The Council may conduct further inspections and tests after the Supplier has carried out its remedial actions.
   4. The Supplier shall ensure that:
      1. the Goods are properly packed and secured in such manner as to enable them to reach their Delivery Location in good condition;
      2. each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
      3. if the Supplier requires the Council to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
   5. The Supplier shall deliver the Goods:
      1. on the Delivery Date;
      2. at the Delivery Location; and
      3. during the Council's normal business hours or as instructed by the Council.
   6. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
   7. The Supplier shall not deliver the Goods in instalments without the Approval. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Council to the remedies set out in Clause 7 (Remedies).
   8. The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
3. remedies
   1. If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in Clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Council may exercise any one or more of the following remedies :
      1. to terminate this Agreement in accordance with Clause 23 (Termination for Breach);
      2. to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
      3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
      4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
      5. to recover from the Supplier any costs incurred by the Council in obtaining substitute goods from a third party; and
      6. to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to carry out its obligations under the Agreement.
   2. This Clause shall also apply to any repaired or Replacement Goods supplied by the Supplier.
   3. The Council's rights and remedies under the Agreement are in addition to its rights and remedies implied by statute and common law.
4. TITLE AND RISK
   1. Title and risk in the Goods shall pass to the Council on the Delivery Date.

SECTION C: PAYMENT, TAXATION AND BEST VALUE PROVISIONS

1. CHARGES AND INVOICING
   1. In consideration of the provision of the Goods by the Supplier in accordance with this Agreement, the Council shall pay the Charges in the form of the invoiced amounts within thirty (30) days of receipt of an undisputed invoice from the Supplier of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
   2. The Supplier shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable as set out in the Goods Specification orat any time after completion of the delivery of the Goods. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant purchase order number. All invoices must include reference to a valid Council purchase order number. The Supplier shall submit all invoices electronically in PDF format to a pre-defined Council invoice email address.
   3. The invoicing provisions set out in Clauses 9.2 shall be included in any Subcontract.
   4. If the Council fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
   5. The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier.
   6. The Council shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. The Council shall notify the Supplier of its discretion in writing and any adjustments shall apply to this Agreement with effect from the following anniversary of the Commencement Date. Both Parties agree to act reasonably and in good faith with respect to the operation of this Clause.
   7. The Supplier shall not suspend the supply of the Goods unless the Supplier is entitled to terminate the Agreement under Clause 23 (Termination) for failure to pay undisputed sums of money.

9.8 For the avoidance of doubt, the Supplier shall neither be relieved of its obligations to supply the Goods (or any part of the goods) in accordance with this Agreement nor be entitled to an increase in the Charges as a result of:

(a) a general change in Law; or

(b) a specific change in any Law where the effect of that specific change in that Law on the Goods is reasonably foreseeable at the Commencement Date; or

(c) an EU status change.

1. RECOVERY OF SUMS DUE
   1. Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of this Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with the Council.
   2. Any overpayment by either Party, whether of the Charges 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.
   3. The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.
2. VALUE ADDED TAX AND PROMOTING TAX COMPLIANCE
   1. Charges are stated exclusive of VAT. Where VAT is chargeable in respect of any of the Goods, the Supplier shall calculate the amount of VAT to be paid by the Council at the applicable prevailing rate, which shall be added to the Charges and paid by the Council following the submission of a VAT invoice by the Supplier in respect of the same.
   2. All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law).
   3. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement.

SECTION D: CONTRACT GOVERNANCE

1. The Supplier'S RECORDS AND PROVISION OF INFORMATION
   1. During the Contract Term the Supplier shall retain and maintain at its own expense all Records within the United Kingdom in accordance with Required Professional Standard in a form that is capable of audit and such Records shall be retained by the Supplier for a period of at least six (6) years from the end of the Contract Term or for such longer period as may be required by any applicable Law.
   2. The records that shall be retained and maintained by the Supplier pursuant to Clause 11.1 are:
      1. this Agreement, its Schedules and all amendments to such documents;
      2. invoices (including any VAT invoices) prepared by the Supplier and submitted to the Council in respect of claims for the Charges under this Agreement;
      3. records required to be retained by the Supplier by Law, including records of incidents relating to health and safety;
      4. personnel records on the Supplier Personnel; and
      5. all documents relating to the Required Insurances and any claims in respect of them,

together the "**Records**".

* 1. All information and Records referred to in this Clause 12 are subject to the provisions of Clauses 15 (Confidentiality and Transparency) and 16 (Freedom of Information).
  2. Subject always to Clause 15 (Confidentiality and Transparency) of this Agreement, the Supplier shall at all reasonable times during the Contract Term and during normal business hours, afford to the Council and its agents access to and permission to copy and remove any copies of any books records information and data in the possession or control of the Supplier which relate to or are of have been used in connection with the delivery of the Goods.
  3. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods by the Supplier or adversely affect the performance by the Supplier of its obligations under this Agreement.
  4. The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 12.

1. DISPUTES
   1. The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
   2. The Parties shall continue to perform their obligations under this Agreement in accordance with its terms until any Dispute has been resolved.

SECTION E: INTELLECTUAL PROPERTY AND CONFIDENTIALITY

1. INTELLECTUAL PROPERTY RIGHTS
   1. All Intellectual Property Rights in any materials provided by the Council to the Supplier for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
   2. In the absence of the prior Approval to the contrary, all Intellectual Property created by the Supplier or Supplier Personnel:
      1. in the course of supplying the Goods; or
      2. exclusively for the purpose of supplying the Goods,

shall vest in the Council on creation.

* 1. The Supplier shall indemnify the Council against all claims, actions and Losses arising from or incurred by reason of any infringement) of any Intellectual Property Right by the availability of the Goods, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

1. CONFIDENTIALITY AND TRANSPARENCY

**Confidentiality**

* 1. For the purposes of this Clause 15, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
  2. Except to the extent set out in this Clause 15 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
     1. treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
     2. not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
     3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
     4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
  3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
     1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 16 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
     2. the need for such disclosure arises out of or in connection with:
        1. any legal challenge or potential legal challenge against a Party arising out of or in connection with this Agreement; or
        2. the purpose of the examination and certification of the either Party's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council is making use of any Goods provided under this Agreement.
  4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or the Relevant Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.
  5. Subject to this Clause 15, either Party may only disclose the Confidential Information of the other Party on a confidential basis to:
     1. its personnel who are directly involved in the provision or receipt of the Goods (as the case may be) and need to know the Confidential Information to enable performance by the respective Party of its obligations under this Agreement;
     2. its professional advisers for the purposes of obtaining advice in relation to this Agreement; and

Where the a Party discloses the Confidential Information of the other Party pursuant to this Clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

* 1. The Council may disclose the Confidential Information of the Supplier:
     1. strictly on a confidential basis for the purpose of Clause 12; or
     2. to a proposed Successor Body.
  2. Nothing in this Clause 15 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.

**Transparency**

* 1. The Supplier acknowledges that the Council is required to comply with the Code of Recommended Practice on Data Transparency for Local Authorities published by the Department for Communities and Local Government under section 2 of the Local Government Planning and Land Act 1980 (the **"Transparency Code"**).
  2. The Supplier acknowledges that the Council may be required to publish this Agreement (with the exception of any Commercially Sensitive Information), including from time to time agreed changes to this Agreement, to the general public in accordance with the Transparency Code provided that whenever possible, in doing so:
     1. the Council shall consult with the Supplier prior to publishing the Agreement in order to discuss in good faith and agree any redactions (such agreement not to be unreasonably withheld or delayed); and
     2. the Supplier shall provide reasonable assistance to the Council to enable the Council to publish this Agreement.

1. FREEDOM OF INFORMATION
   1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
      2. transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
      3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council reasonably requires within ten (10) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
   2. The Supplier acknowledges that the Council may in certain circumstances be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Council shall take all reasonable steps to notify and consult the Supplier about all Requests for Information (in accordance with the Secretary of State for Constitutional Affairs' section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (together the "**Codes**")) to the extent that it is permissible and reasonably practical for it to do so and shall take the Supplier's views into account regarding the relevant Request for Information.
   3. Subject to Clauses 16.4 and 16.5, where the Council receives a Request for Information in relation to Information that the Supplier is holding on its behalf, and which the Council does not hold itself, the Council shall transfer to the Supplier such Request for Information that it receives as soon as practicable and in any event within five (5) Working Days of receiving a Request for Information and the Supplier shall:
      1. provide the Council with a copy of all such Information in the form that the Council reasonably requires as soon as reasonably practicable and in any event within ten (10) Working Days (or such other period as the Council may specify, acting reasonably) of the Council’s request; and
      2. provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Section 5 of the EIR as applicable.
   4. Subject to Clause 16.2, following notification under Clause 16.3 and up until such time as the Supplier has provided the Council with all the Information specified in Clause 16.3.1, the Supplier may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, and the Council shall take such representations into account provided always that the Council shall be responsible for determining at its absolute discretion:
      1. whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and
      2. whether the Information is to be disclosed in response to a Request for Information.
   5. Without prejudice to Clause 16.4, if the Council receives a Request for Information (whether via the Supplier or otherwise) which relates to or requires the disclosure of Commercially Sensitive Information, the Council shall, in good faith, consider any objections and/or representations made by the Supplier regarding the disclosure of such Commercially Sensitive Information prior to responding to the Request for Information. The Supplier acknowledges that the Council is responsible for determining in its absolute discretion whether the Commercially Sensitive Information is exempt from disclosure in accordance with the provisions of the Codes, FOIA or the EIR.
   6. If, in response to a Request for Information, the Council concludes that it is obliged to disclose some or all of the Commercially Sensitive Information it shall (in accordance with any recommendations of the Codes) take all reasonable steps to give the Supplier notice in writing of its decision prior to the disclosure of the Commercially Sensitive Information.
   7. Notwithstanding the provisions of this Clause 16, in the event that the Supplier is considered and/or treated as a "public authority" (as defined in FOIA and the EIR, as applicable) for the purposes of FOIA and the EIR, nothing in this Agreement shall prevent and/or hinder the Supplier from performing its statutory duties pursuant to FOIA and the EIR in its capacity as a "public authority" and the Supplier shall have no liability to the Council under this Agreement in respect of the performance of such statutory duties by the Supplier.
   8. For the purpose of this Clause 16, "Information" has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in section 2 of the EIR as appropriate.
2. PRESS STATEMENTS AND PUBLICation of the AGREEMENT
   1. The Supplier, including but not limited to all Supplier Personnel and Subcontractors, shall not:
      1. communicate with representatives of the press, television or radio or other media; or
      2. issue any press release or public statement; or
      3. engage in any marketing activity; or
      4. make any other announcements or publications, including via social media or otherwise,

relating to, in connection with, or arising out of the delivery of the Goods without obtaining the Approval as to the contents thereof and the manner of its presentation and publication.

* 1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
  2. The Council may consult with the Supplier to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.
  3. The Supplier shall assist and cooperate with Council to enable the Council to publish this Agreement.

SECTION F: LIABILITIES AND INSURANCE

1. Liability
   1. Nothing in this Agreement shall limit or exclude the Supplier's liability for:
      1. death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
      2. fraud or fraudulent misrepresentation; and
      3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or section 12 of the Sale of Goods Act 1979 or any other liability which cannot be limited or excluded by applicable Law.
   2. Subject to Clause 19.1, the Supplier shall not be liable to the Council, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
      1. loss of profits;
      2. loss of sales or business;
      3. loss of anticipated savings;
      4. loss of or damage to goodwill; and
      5. any indirect or consequential loss.
   3. Subject to Clauses 18.1 and 18.2, the Supplier shall indemnify and keep fully indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of Supplier Personnel save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or applicable Law by the Council or its Representatives.
   4. The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by Law, excluded from this Agreement.
   5. The Council may, amongst other things, recover as a direct loss:
      1. any additional operational and/or administrative expenses arising from the Supplier's default;
      2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Supplier's default; and
      3. the additional cost of procuring replacement Goods for the remainder of the Contract Term following termination of the Agreement as a result of a default by the Supplier.
   6. Subject to Clause 18.1, the Councils maximum aggregate liability to the Supplier for all claims arising in any 2023 (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable) shall not in any circumstances exceed 2.5% of the Charges payable by the Council to the Supplier in the Contract Year in which the liability arises.
2. INSURANCE
   1. Without prejudice to Clause 18 (Liability), the Supplier shall at its own cost effect and maintain in force with reputable insurance companies such policies of insurance as set out in the Contract Details (the "Required Insurances").
   2. Each Party shall, during the term of this Agreement do nothing to invalidate any insurance policy and use its reasonable endeavours to procure that the terms of such policies are not altered in such a way as to have a material adverse effect on the benefit of such policies as they were at the Commencement Date.
   3. Following a written request of the Council (acting reasonably) for the same, the Supplier shall provide the Council with:
      1. copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and the Council shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and
      2. evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.
   4. Without prejudice to the Council's other rights under this Agreement, if, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Supplier.
   5. The Council shall immediately notify the Supplier of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Supplier is responsible and shall provide the Supplier with all information and assistance it may reasonably require in order for the Supplier to effectively manage such claim.

SECTION G: REMEDIES AND RELIEF

1. FORCE MAJEURE
   1. Subject to the remaining provisions of this Clause 20, neither Party shall in any circumstances be liable to the other Party for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
   2. In the event that either Party (the "**Affected Party**") is delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall:
      1. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
      2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
      3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   3. The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   4. As soon as practicable following the Affected Party's notification pursuant to Clause 20.2, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
   5. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.
   6. In the event that the Supplier is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period in excess of six (6) months, either Party may terminate the Agreement with immediate effect by notice in writing giving fourteen (14) days' notice. Where this Agreement is terminated pursuant to this Clause 20.6 the Council shall not be liable to the Supplier for any Losses arising out of the termination.
2. CONTINUED PERFORMANCE
   1. Save as may be required to give effect to the granting of relief from obligations under Clause 20 (Force Majeure), the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of termination, or natural expiry, of this Agreement until the termination or expiry of this Agreement becomes effective in accordance with the relevant provision.

SECTION H: SUSPENSION, TERMINATION AND EXIT MANAGEMENT

1. SUSPENSION
   1. Without prejudice to the Council’s right to terminate the Agreement in Clause 23 below, the Council may suspend the Supplier’s appointment to supply Goods Services by giving notice in writing to the Supplier. If the Council provides notice to the Supplier in accordance with this Clause 22, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Council in writing from time to time. Any orders already placed during this period shall be put on hold pending removal of suspension.
   2. A Supplier’s appointment may be suspended to allow the Council the opportunity to investigate any incidents or complaints that may have arisen relating to the provision of Goods under this Agreement.
   3. Following suspension of a Supplier’s appointment under this Clause 22 the Supplier will be informed of the outcome as soon as possible and be advised whether or not they the Agreement has been terminated with immediate effect.
2. TERMINATION
   1. This Agreement shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of this Clause or as set out elsewhere in this Agreement. For the avoidance of doubt the Supplier shall not be entitled to any compensation on expiry. Without limiting its other rights or remedies, the Council may terminate the Agreement with immediate effect by giving written notice to the Supplier if:
      1. the Supplier commits a material breach of the Agreement which is not capable of remedy;
      2. the Supplier commits a Default provided that if the Default is capable of remedy, the Council may only terminate this Agreement under this Clause 23 if the Supplier has failed to remedy such Default within twenty-eight (28) days of receipt of notice from the Council;
      3. subject to Clause 29 the Supplier commits a Prohibited Act;
      4. a representation and warranty given by the Supplier pursuant to Clause 4 (Warranties) being materially untrue or misleading;
      5. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
      6. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a Supplier) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
      7. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a Supplier) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
      8. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
      9. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a Supplier);
      10. a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
      11. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
      12. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
      13. makes an assignment of this Agreement in breach of Clause 32 (Assignment and other dealings);
      14. breaches any of its obligations under Clause 19 (Insurance);
      15. where any Goods have been tested by an independent testing organisation/engineer and certifies/states that the Goods and installation services do not meet the minimum required standards/Goods Specification or where requested the Supplier fails to provide a certificate of conformity in relation to any of the Goods supplied under the Agreement evidencing that the Goods supplied are certified to the minimum agreed Goods Specification;
      16. the Supplier has been suspended in accordance with Clause 22 and the outcome following such suspension shows the Supplier to be at fault, to have provided Goods not to the required Goods Specification or that the Supplier has acted in breach of this Agreement;
      17. if any of the provisions of Regulation 73(1) of the Public Contract Regulations apply.
   2. If this Agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies against any such loss or costs which the Council may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement services.
   3. The Council may terminate the Agreement by giving the Supplier at least 90 days prior written notice and such termination shall not affect the Council’s obligation to pay for any Goods to be delivered up to the date of termination.
   4. Where the Council terminates the Agreement under Clause 23.1 and then makes other arrangements for the supply of Goods, the Council may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Contract Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under Clause 23.1, no further payments shall be payable by the Council to the Supplier until the Council has established the final cost of making those other arrangements.
   5. Where the Council terminates the Agreement under Clause 23.3, the Council shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Supplier by reason of the termination of the Agreement, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and valuated list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 23.3.
   6. The Council shall not be liable under Clause 23.5 to pay any sum which:
      1. was claimable under insurance held by the Supplier, and the Supplier 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
      2. when added to any sums paid or due to the Supplier under the Agreement, exceeds the total sum that would have been payable to the Supplier if the Agreement had not been terminated prior to the expiry of the Contract Term.
3. CONSEQUENCES OF EXPIRY OR TERMINATION
   1. The termination or expiry of this Agreement shall not affect:
      1. the continuing rights and obligations of the Parties pursuant to Clauses 12, 14, 15, 16, 18, 19, 23, this Clause 24 and any other provision of this Agreement that expressly or by implication is intended to come into or continue in force after the termination or expiry of this Agreement; and
      2. any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry of this Agreement.
   2. Four weeks prior to the end of the Contract Term (or earlier upon the Council's request) irrespective of whether the Agreement is re-tendered or not, the Supplier shall submit to the Council all relevant data held by the Supplier in respect of the Agreement which the Council may reasonably need for future reference or to maintain performance of the contract internally or through another Supplier. Such data shall be supplied electronically in the relevant microsoft product (which is the Council's standard software currently) or in such other electronic product as may be Council's standard at the time, and in e-gif compliant format (if applicable).

SECTION I: COMPLIANCE WITH LAWS

1. Health and Safety
   1. The Supplier shall perform its obligations under this Agreement (including those in relation to the Goods) in accordance with all applicable Law regarding health and safety.
   2. The Supplier shall notify the Council as soon as practicable of any health and safety incidents or material health and safety hazards on any premises where the Goods are being supplied of which it becomes aware and which relate to or arise in connection with the performance of this Agreement.
2. Environmental
   1. The Supplier shall:
      1. perform this Agreement in accordance with its environmental policy, which is committed to the prevention of pollution, reduction of our CO2 emissions, minimise the environmental impacts associated with all activities, products and Goods;
      2. follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Goods are procured, and delivered in ways that are appropriate from an environmental protection perspective; and
      3. comply with all applicable environmental legislation and other requirements as appropriate to the Goods, which may apply in the performance of this Agreement.
3. Equal OPPORTUNITIES
   1. The Supplier shall not and shall procure that Supplier Personnel shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the "Protected Characteristics") and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
   2. The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Agreement.
4. PREVENTION OF FRAUD AND BRIBERY
   1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any of the Supplier Personnel have at any time prior to the Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
   2. The Supplier shall not during the Contract Term of this Agreement:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Council to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Supplier shall during the Contract Term of this Agreement:
      1. establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
      2. keep appropriate records of its compliance with its obligations under Clause 28.3.1 and make such records available to the Council on request.
   4. The Supplier shall as soon as reasonably practicable notify the Council in writing if it becomes aware of any breach of Clause 28.2.1 and/or 28.2.2, or has reason to believe that it has:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly connected with this Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Supplier makes a notification to the Council pursuant to Clause 28.4, the Supplier shall respond promptly to the Council's reasonable enquiries and cooperate with any investigation carried out by the Council (acting reasonably) in respect of such notification.
   6. If the Supplier is in breach of Clauses 28.1 and/or 28.2 the Council may by notice require the Supplier to remove from performance of this Agreement any Supplier Personnel or Subcontractor whose acts or omissions have caused the breach.
   7. Any notice served by the Council under Clause 28.6 shall specify the nature of the Prohibited Act, the identity of the person who the Council reasonably believes has committed the Prohibited Act and the action that the Council requires the Supplier to take as a result.
5. DATA PROTECTION
   1. The Supplier shall (and shall procure that any of its Supplier Personnel involved in the provision of the Services shall) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.
   2. Notwithstanding the general obligation in Clause 29.1, where the Supplier is Processing Personal Data as a Data Processor for the Council, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to the Personal Data) and

### provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;

### promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 29.2; and

### ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council’s obligations under the Data Protection Legislation.

### 

* 1. The Data Processor shall indemnify and keep fully indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Supplier of this Clause 29 (Data Protection) or any more general breach by the Data Processor of its obligations under the Data Protection Legislation.

## SECTION J: MISCELLANEOUS AND GOVERNING LAW

1. Complaints/LOCAL GOVERNMENT OMBUDSMAN
   1. The Supplier shall keep a record of any complaints received (whether received orally or in writing, and whether from members of the Council, members of the public or otherwise) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Council's Representative at all reasonable times during normal working hours.
   2. The Supplier shall provide the Council with all reasonable cooperation and assistance in relation to any investigation by the Local Government Ombudsman in connection with the performance by the Supplier of the Goods under this Agreement.
2. VARIATION
   1. No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties (acting through their Representatives) and is expressed to be for the purpose of such amendment or variation.
3. ASSIGNMENT AND OTHER DEALINGS
   1. Neither Party shall assign, transfer, mortgage, novate, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
   2. The Council may at its discretion assign, novate, or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement to a body other than the Council which performs any of the functions that previously had been performed by the Council (a “Successor Body").
   3. In the event that the Supplier enters into a Subcontract, the Subcontract must include terms:
      1. requiring the Subcontractor to pay any undisputed sums due to the supplier within 30 days of receipt of a valid invoice;
      2. requiring the counterparty to that Subcontract to include in any subcontract it awards a provision having the same effect as Clause 32.3.1; and
      3. refrain from acting, or act, in any way which would cause the Supplier to be in breach of this Agreement.
   4. The Supplier may not subcontract any part of this Agreement without the prior written consent of the Council. The Supplier shall ensure that any Subcontractor that performs any part of the Goods pursuant to this Clause 32 shall be fully supplied with all relevant information about the Supplier's obligations under this Agreement.
   5. The Supplier shall notify the Council of any change to the details of a Subcontractor as soon as reasonably practicable, in accordance with Regulation 71(4)(a) of the Public Contract Regulations 2015.
   6. Notwithstanding any subcontracting permitted under this Clause 32, the Supplier shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.
4. ENTIRE AGREEMENT
   1. This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
   2. Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
   3. Nothing in this Clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.
5. WAIVER AND CUMULATIVE REMEDIES
   1. A waiver of any right or remedy under this Agreement or by Law is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.
   2. A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
   3. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.
6. SEVERANCE
   1. If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
   2. In the event that any deemed deletion under Clause 35.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original intentions.
   3. If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 39 (Notices) the matter shall be dealt with in accordance with Clause 13 (Disputes) and Schedule 1 (Dispute Resolution Procedure).
7. FURTHER ASSURANCES
   1. At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
8. RELATIONSHIP OF THE PARTIES
   1. Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
9. THIRD PARTY RIGHTS
   1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
   2. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
10. NOTICES
    1. Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the Party's Representative and shall be delivered by hand or by pre-paid first-class post or by email or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
    2. Any notice or communication shall be deemed to have been received:
       1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
       2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service;
       3. if sent by email at the time the email enters the information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender.
    3. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
11. GOVERNING LAW AND JURISDICTION
    1. This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
    2. Subject to Clause 13 (Disputes) and Schedule 1 (Dispute Resolution Procedure), the Parties agree that the courts of England shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
12. MISTAKES IN INFORMATION
    1. The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Supplier in connection with the supply of the Goods and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

**BY SIGNING AND RETURNING THIS AGREEMENT THE SUPPLIER AGREES** to comply with all the terms of this legally binding contract. The Parties hereby acknowledge and agree that they have read this Agreement and its Schedules and by signing below agree to be bound by the terms of this Agreement.

This Agreement has been executed [as a deed] and is delivered and takes effect on the date stated at the beginning of it.

|  |  |
| --- | --- |
| [The Common Seal of/][Signed on behalf of] **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM FOREST** [was hereunto affixed in the presence of]:  .......................................  Authorised Signatory |  |
|  |  |
| Executed [as a deed]/[as a contract] by [NAME OF SUPPLIER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary] | .......................................  [SIGNATURE OF FIRST DIRECTOR]  Director  .......................................  [SIGNATURE OF SECOND DIRECTOR OR SECRETARY]  [Director **OR** Secretary] |
| **OR** |  |
| Executed [as a deed]/[as a contract] by [NAME OF SUPPLIER] acting by [NAME OF DIRECTOR], a director, in the presence of:  .......................................  [SIGNATURE OF WITNESS]  [NAME, ADDRESS [AND OCCUPATION] OF WITNESS] |  |

1. – Dispute Resolution Procedure
   * + 1. The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
          1. the Dispute shall be referred, by either Party, to the Representatives for resolution;
          2. if the Dispute cannot be resolved by the Representatives within 14 days after the Dispute has been referred to them, either Party may give notice to the other Party in writing (a **“Dispute Notice**”) that a Dispute has arisen; and
          3. within seven days of the date of the Dispute Notice, each Party shall refer the Dispute to the Chief Executives of the Parties ("**Senior Representatives**") for resolution.
       2. If the Senior Representatives are unable, or fail, to resolve the Dispute within 14 days of the reference to the Senior Representatives pursuant to paragraph 1.1, the Parties may attempt to resolve the Dispute by mediation in accordance with paragraph 3.
       3. If, within 30 days of the Dispute Notice, the Parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this paragraph 3;
          1. the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
          2. both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including a contract in, or substantially in, the form of CEDR’s model mediation contract for the time being in force; and
          3. to the extent not provided for by such contract of the MMP:

the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator.

unless otherwise agreed or determined, the Parties will share equally the costs of mediation; and

the mediation shall be conducted by a sole mediator agreed between the Parties or, in default of agreement, appointed by CEDR.

* + - 1. If and to the extent that the Parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.
      2. Nothing in this Schedule shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
      3. Without prejudice to the Council’s right to seek redress in court, the Supplier shall continue to provide the Goods and to perform its obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Schedule.
      4. Where a Dispute has been referred to mediation under this Agreement and the Supplier is in a related dispute with a sub-contractor which is substantially the same as the matter referred to mediation hereunder, the Parties consent to the joinder of such sub-contractor as a party to the mediation (subject to such sub-contractor having agreed to be subject to the same or substantially the same obligations as those imposed on the Parties by paragraphs 1 to 6 and to the reference of such related dispute to the mediator appointed hereunder and further agree that the mediator shall have power to order the consolidation of such mediation proceedings and/or to order the holding of concurrent mediation sessions.

## Schedule 2 - GOODS specification

## [INSERT HERE GOODS SPECIFICATION INCLUDING DELIVERY TIMETABLE]

## Schedule 3 - cHARGES

## [INSERT HERE CHARGES APPLICABLE TO THE GOODS BEING DELIVERED]