

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES TO THE EAST LONDON WASTE AUTHORITY

N B: Set out below are the Terms and Conditions which the East London Waste Authority shall deem applicable to any Order placed by the East London Waste Authority for the supply of services.

These Terms and Conditions shall apply to the supply to the East London Waste Authority of any goods as if the terms were expressly included in the Order and signed by all parties. As such, all suppliers on acceptance of an Order shall be deemed to have accepted all of these Terms and Conditions and the Terms and Conditions shall thereafter be enforceable by the East London Waste Authority. For the avoidance of doubt, in the event of any conflict between these Terms and Conditions and any Terms expressly included in an Order, the Terms of the Order shall prevail.

WHEREAS:

- a) The East London Waste Authority of 1st Floor, Harvey House, St Edward's Court, London Road, Romford, RM7 9QD (the Authority) requires the Supplier to provide certain Goods pursuant to an Order placed by the authority in accordance with the terms of this Contract;
- b) The Supplier agrees to undertake to supply the Goods detailed in the Order in accordance with the terms of this Contract in consideration of which the Authority shall pay the supplier in accordance with the terms of this Contract

NOW IT IS AGREED between the Authority and the Supplier as follows:

1. Definitions and Interpretation

1.1 In this Contract, except where the context otherwise requires, the following expressions shall have the meanings hereby ascribed to them:

- a) "Acceptance Criteria" means any criteria with which any Deliverables must comply as set out in the Purchase Order or the Specification or evidenced by written agreement between the parties;
- b) "Annex" means any of the following annexes (if used): Annex 1- Special Conditions of Contract; Annex 2 - Specification;
- c) "Applicable Law" means the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services from time to time;
- d) "Authority Materials" shall have the meaning given in Sub-Clause 4.1 (Supplier's General Undertakings);
- e) "Authority Representative" means any individual named as such in the Purchase Order or such person or persons as notified to the Supplier by the Authority in writing from time to time;
- f) "Best Value Duty" means the duty on local authorities to provide best value and to provide services efficiently, effectively and economically and to strive for constant improvement of all services as set out in the Local Government Act of 1999 and the Local Government Act of 2000 and any similar duty;
- g) "Charges" means the charges for the Services referred to in Clause 13 (Charges and Payment) and set out in the Purchase Order;

- h) "Codes of Practice" means the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records issued pursuant to sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to the Authority's FOIA obligations, as amended, updated and replaced from time to time;
- i) "Conditions" means these Terms and Conditions, including any Annexes, which form part of the Contract;
- j) "Confidential Information" means all information of a confidential nature (however recorded or preserved) disclosed or made available, directly or indirectly, by the Authority or its Representatives to the Supplier or its Representatives, including any information which is marked confidential or private and any information relating to the Authority's members, customers. Clients, suppliers, business, strategy, plans, intentions, market opportunities, operations, processes or Intellectual Property;
- k) "Contract" means the contract between the Authority and the Supplier for the provision of the Services comprising the Purchase Order and these Conditions (including any Annexes).
- l) "Data Protection Law" means the Data Protection Act 1998, all related and subordinate legislation and any guidance or codes of practice issued by the Information Commissioner;
- m) "Day" means any calendar day;
- n) "Deliverables" means all products of the Services (whether tangible or not), including Documents and data (and drafts of either) and the media on which they are recorded;
- o) "Delivery Location" means the address specified by the Authority in the Purchase Order where the Services are to be performed;
- p) "Document" means includes any document in hard or electronic copy.
- q) "EIR" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant government department in relation to such regulations;
- r) "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under the 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;
- s) "Information" has the meaning given under section 84 of FOIA;
- t) "Intellectual Property Rights" means all intellectual property rights, whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets);

- u) "Public Body" means any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities,
- v) government ministers and government departments and government agencies and any other body or organisation formally designated as a "public body";
- w) "Purchase Order" means the written order from the Authority for Services incorporating or attached to these Conditions;
- x) "Premises" means any premises owned, leased to, controlled or occupied by the Authority or its Representatives which are made available for use by the Supplier or its Representatives for the delivery or performance of the Services;
- y) "Representatives" means employees, officers, agents, advisors, sub-contractors, suppliers or other representatives;
- z) "Request for Information" means a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR.
- aa) "Services" means the services provided or to be provided by the Supplier under the Contract as set out in the Purchase Order and/or Specification including the Deliverables;
- bb) "Specification" means any description of the Services (including any Deliverables to be produced) set out in Annex 2 or as provided to the Supplier at any time during the Contract;
- cc) "Supplier" means the person, organisation, firm or company to whom the Purchase Order is addressed;
- dd) "Transfer Regulations" means Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and any successor legislation;
- ee) "Variation" means shall have the meaning given in Sub-Clause 5.1 (Variation of the Services);
- ff) "Working Day" means any day Monday to Friday, excluding Public Holidays, between the hours of 9:00 am and 5:30 pm save that these shall not necessarily be the hours during which the Services shall be provided and the Services shall be provide during such hours as stated in the Purchase Order or the Specification or as otherwise notified to the Supplier.

1.2 In these Conditions, the following rules of interpretation shall apply:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to a party includes its successors or permitted assigns;
- c) a reference to any gender includes reference to any other gender and reference to any word in the singular shall (where appropriate) include the plural and vice versa;
- d) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted;

- e) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- f) a reference to "writing" or "written" includes faxes and e-mails.

- 1.3 In the event of any inconsistency or conflict between any Purchase Order and these Conditions, the terms of the Purchase Order shall prevail.
- 1.4 In the event of any inconsistency or conflict between any Annex and these Conditions, the Annex shall prevail.
- 1.5 The headings contained in these Conditions are for convenience only and do not affect the construction or interpretation of the Conditions.

2. **Formation of Contract**

- 2.1 The Contract shall come into existence and take effect on the Authority's issue of a Purchase Order for the Services and shall remain in full force and effect until either:
 - a) the parties have discharged all their obligations under it (at which point it shall expire); or
 - b) it is terminated in accordance with these Conditions.
- 2.2 These Conditions apply to the supply of the Services to the exclusion of any other terms that the Supplier may seek to impose or incorporate (including any standard trading terms of the Supplier), or which are implied by trade, custom, practice or course of dealing.
- 2.3 No deletion from, addition to, or variation of these Conditions or any other part of the Contract shall be valid or of any effect unless agreed in writing and signed by the parties.

3. **Supplier's Warranties**

- 3.1 The Supplier shall provide the Services specified in the Purchaser Order and/or the Specification in accordance with these Conditions.
- 3.2 The Supplier warrants that:
 - a) it will meet any dates set out in the Purchase Order or Specification for the delivery of the Deliverables or the performance of the Services or (where no dates are so specified) then the Supplier shall perform the Services (and deliver any Deliverables) within a reasonable time;
 - b) the design, construction and quality of Deliverables and the method and quality of performance of the Services will comply in all respects with all relevant requirements of any law, statute, statutory rule or order, or other instrument of law which may be in force at the time when the same are provided;
 - c) it has and will maintain all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
 - d) it will not do or omit to do anything which may cause the Authority to lose any licence, consent or permission upon which it relies for the purposes of conducting its business or affairs;

- e) its Representatives will behave in a polite and courteous manner at all times when on the Premises;
- f) the Services will conform as to their quantity, quality and description with the Purchase Order or Specification, including with all Acceptance Criteria;
- g) the Services will be fit for any purpose and meet any standard or performance levels set out in the Purchase Order or Specification or which can reasonably be expected for Services of the type in question;
- h) the Services will conform to any literature or description supplied by the Supplier to the Authority prior to the issue of the Purchase Order;
- i) it will perform the Services with all reasonable care, skill and diligence and in accordance with best practice in the Supplier's industry, profession or trade;
- j) it will use personnel to provide the Services who are suitably skilled and experienced, and in sufficient numbers to ensure that it fulfils all of its obligations in accordance with the Contract;
- k) it will use the best quality goods, tools, materials, standards and techniques in performing the Services, including but not limited to in relation to any Deliverables;
- l) its Representatives will comply with all of the Authority's policies and procedures, signs, notices and other instructions either displayed at the Premises or notified to the Services will conform as to their quantity, quality and description with the Premises or any part of them or any equipment or facilities at the Premises;
- m) (without prejudice to the generality of the foregoing warranties) to the extent that Deliverables are in physical or tangible form, they will:
 - i. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for purpose;
 - ii. be of sound materials and workmanship;
 - iii. be free from defects in design, materials and workmanship; and
 - iv. be equal in all respects to the examples, samples, patterns or specifications provided or given by the Authority.

4. **Supplier's General Undertakings**

4.1 The Supplier undertakes to:

- a) provide at its expense and risk all equipment, tools, materials, machines and vehicles and such other items as are required to provide the Services';
- b) co-operate with the Authority and any Representative nominated by the Authority in all matters relating to the Contract;
- c) comply with all reasonable instructions of the Authority;
- d) hold all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier ("Authority Materials") in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose of or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation;

- e) promptly remove from the Premises any rubbish generated and any of its equipment, tools, materials, machines and vehicles and any other items used in connection with the performance of the Services and leave the Premises in a clean and tidy condition, failing which the Authority may dispose of them and make good the Premises at the expense of the Supplier;
- f) use all reasonable endeavours to transfer to the Authority the benefit of any warranty or guarantee given by the manufacturer of any goods contained in the Deliverables of which the Supplier is not the manufacturer;
- g) notify the Authority as soon as practicable of any health and safety or other hazards at the Premises of which it becomes aware; and
- h) it will comply with the International Financial Reporting Standard [for Small and Medium-sized Enterprises (SMEs)] and any other International Financial Reporting Standard that it is required to comply with by Applicable Law.

5. Variation of the Services

- 5.1 The Authority reserves the right on giving written notice to the Supplier from time to time to require changes to the Services (including but not limited to by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reason whatsoever providing that such changes to the Services do not result in the Services required being substantially different from those for which the Authority originally issued a Purchase Order. Such a change is hereinafter called a "Variation".
- 5.2 In the event of a Variation the Charges may also be varied. Such variation in the Charges shall be calculated by the Authority and agreed in writing with the Supplier and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.
- 5.3 The Supplier shall provide such information as may be reasonably required to enable such variation to the Charges applicable to the Variation to be calculated.

6. Supplier's Personnel

- 6.1 The Supplier shall ensure that it and any of its Representative engaged in the performance of the Services shall:
 - a) be trained in and shall observe all health and safety requirements as applicable to the tasks being performed in the provision of the Services;
 - b) complete all necessary risk assessments and observe the outcome of the same;
 - c) not act in a manner which places themselves, a third party or any property at risk of damage or harm.
- 6.2 The Supplier shall on request provide the Authority with evidence of compliance with the requirements of Sub-Clause 6.1 above.
- 6.3 The Supplier shall ensure that every person engaged in the performance of the Services works strictly in accordance with the EU's Working Time Directive (No.2003/88/EC), the Working Time Regulations 1998 and any subsequent Directives, Regulations, Statutes or Acts relating to working time.
- 6.4 The Supplier shall ensure that every person engaged in the performance of the Services is legally entitled to work and remain in the United Kingdom and shall not

permit any person not so entitled to continue to work and shall take such actions in respect of such person not legally entitled to remain or work in the United Kingdom as appropriate.

- 6.5 The Supplier shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other acts, regulations, orders or other statutory provisions relating to the health and safety of employees including any acts, regulations, orders or other statutory provisions which may come into force at any time in the future.
- 6.6 The Authority reserves the right:
- a) to refuse to admit to the Premises and to require the Supplier to replace with another suitably qualified person any Representative of the Supplier whose admission would in the reasonable opinion of the Authority be undesirable; and
 - b) to request the replacement of any Representative of the Supplier who in the Authority's reasonable opinion is not suitably qualified or experienced to perform the Services.
- 6.7 Where any Representative of the Supplier is named on the Purchase Order or in the Specification as fulfilling a specific role in connection with the performance of the Services, the Supplier shall use all reasonable endeavours to ensure that the named Representative continues to fulfil the specified role and will not replace him or her without the Authority's written consent, such consent not to be unreasonably withheld.
- 6.8 If reasonably so requested by the Authority and subject to compliance by both parties with Data Protection Law, the Supplier shall promptly provide a list of the names and addresses of all persons who may at any time require admission to the Premises in connection with the performance of the Services, specifying the role in which each such person is concerned with the Supplier and giving such other particulars as the Authority may require.
- 7. Testing and Acceptance of Deliverables**
- 7.1 All Deliverables shall meet any relevant Acceptance Criteria.
- 7.2 The Authority may test Deliverables at any time during the period of fifteen (15) Working Days following notification by the Supplier of completion of the Services (or relevant part of the Services) and production at the Premises of the Deliverables.
- 7.3 If any Deliverables fail to meet their Acceptance Criteria the Authority will notify the Supplier accordingly, specifying the non-conformity.
- 7.4 Where Deliverables fail to meet the Acceptance Criteria the Authority will request the Supplier to remedy the non-compliance at its own expense within fifteen (15) Working Days of the Authority's notification under Sub-Clause 7.3 above, following which the Authority shall have a further fifteen (15) Working Days in which to re-test the Deliverables for conformity with the Acceptance Criteria.
- 7.5 If any Deliverables fail to meet the Acceptance Criteria on re-testing under Sub-Clause 7.4 above, the Authority may reject them and exercise its rights under Clause 9 (The Authority's Remedies).
- 8. Risk and Title**
- 8.1 Risk in Deliverables shall pass to the Authority on acceptance under Clause 7 (Testing and Acceptance of Deliverables).

8.2 Title to Deliverables shall pass to the Authority on acceptance under Clause 7 (Testing and Acceptance of Deliverables).

9. The Authority's Remedies

9.1 If:

- a) the Supplier fails to perform the Services by the date required under these Conditions; or
- b) the Supplier fails to comply with its warranties set out in Clause 3 (Supplier's Warranties); or
- c) Sub-Clause 7.5 (Testing and Acceptance of Deliverables) applies;

9.2 the Authority may exercise any of the rights set out in Sub-Clause 9.2 below.

9.3 The rights referred to in Sub-Clause 9.1 above are:

- a) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- b) to refuse to accept any delivery of Deliverables which the Supplier attempts to make;
- c) to reject any Deliverables (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- d) to recover from the Supplier any costs incurred by the Authority in having a third party provide substitute Services or in performing the Services itself;
- e) where the Authority has paid in advance for Services that have not been performed by the Supplier, to have such sums refunded by the Supplier immediately;
- f) to claim damages for any additional costs, loss or expenses incurred by the Authority (including but not limited to the time spent by the Authority or its Representatives in dealing with the issue) which are attributable to the Supplier's failures set out in Sub-Clause 9.1 above;
- g) to terminate the Contract with immediate effect by giving written notice to the Supplier.

9.4 The rights set out in Sub-Clause 9.2 above are cumulative and the exercise by the Authority of any one of them shall not preclude it from exercising any other.

9.5 The Authority's rights under this Clause 9 (The Authority's Remedies) are in addition to its rights and remedies implied by statute and at common law.

10. The Authority's Obligations

10.1 The Authority will:

- a) where appropriate, provide the Supplier with reasonable access to the Premises at reasonable times during Working Days for the purpose of providing the Services or delivering the Deliverables;
- b) where appropriate, provide reasonable access to facilities on the Premises; and

- c) provide such information as the Supplier may reasonably request in connection with the provision of the Services provided that the Authority (acting reasonably) considers such information necessary for the purpose of providing the Services.

11. Transfer Regulations

- 11.1 The parties do not intend that the Transfer Regulations will apply on commencement, during or on termination of the arrangements under the Contract.
- 11.2 To the extent that the Transfer Regulations apply, the parties shall comply with their respective obligations imposed by the Transfer Regulations and each shall indemnify the other from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses on an indemnity basis) that it may suffer in connection with or as a result of any claim, action or demand by any person or their representative arising out of any breach of its obligations under the Transfer Regulations.

12. Liability

- 12.1 In this Clause 12 (Liability), a reference to the Authority's liability for something is a reference to any liability whatsoever which the Authority might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from the Authority's negligence or from negligence for which the Authority would otherwise be liable.
- 12.2 The Authority is not in breach of the Contract, and does not have any liability for anything, to the extent that its apparent breach or liability is attributable to the Supplier's breach of the Contract.
- 12.3 Subject to Sub-Clause 12.5 below the Authority shall not have any liability for:
 - a) any indirect or consequential loss or damage;
 - b) any loss of business, rent, profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;
 - c) any damage to goodwill or reputation;
 - d) loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Premises by the Supplier or its Representatives; or
 - e) any loss, damage, costs or expenses suffered or incurred by any third party.
- 12.4 Subject to Sub-Clause 12.5 below, the Authority's total liability shall be limited to the Charges it has paid or is due to pay to the Supplier under the Contract.
- 12.5 Nothing in these Conditions restricts the Authority's liability for:
 - a) death or personal injury resulting from negligence for which it is responsible; or
 - b) its fraud (including fraudulent misrepresentation).

13. Charges and Payment

- 13.1 The Charges for the Services and the date or dates on which they are payable are set out in the Purchase Order or any Annex; and

- a) (in the case of Deliverables) shall be inclusive of any costs of packaging, insurance and carriage;
 - b) (in the case of Services) shall include all costs and expenses of the Supplier and its Representatives directly or indirectly incurred in connection with their performance; and
 - c) unless otherwise specified shall be inclusive of any amounts in respect of Value Added Tax ("VAT") chargeable from time to time.
- 13.2 Unless otherwise provided in the Purchase Order, the Supplier may invoice the Charges at any time on or after whichever is the later of acceptance of the Deliverables or completion of the Services.
- 13.3 Invoices shall include the Purchase Order number and sufficient supporting information to enable the Authority to identify the Deliverables and Services for which payment is claimed.
- 13.4 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Authority, the Supplier shall provide a valid VAT invoice.
- 13.5 Where Charges for the Services are based on the cost of time and materials at rates set out in the Purchase Order, the Supplier shall maintain and provide to the Authority complete and accurate records of the time spent and materials used in providing the Services and shall attach such records to the relevant invoice.
- 13.6 Subject to compliance by the Supplier with the foregoing provisions of this Clause 13 (Charges and Payment), the Authority shall pay the Charges as invoiced within thirty (30) Days of receipt of the invoice.
- 13.7 Should the Authority pay the Supplier the Charges as invoiced within fourteen (14) Days of receipt of the invoice the Authority shall be entitled to deduct 2.5% from the Charges stated in the invoice by way of an early payment discount ("the Discount").
- 13.8 The Authority shall not apply the Discount to any Charges due to the Supplier under a properly submitted invoice and not paid to the Supplier within fourteen (14) Days of receipt of the invoice by the Authority.
- 13.9 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any amount in whole or in part. The Authority may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Authority to the Supplier.
14. **Intellectual Property Rights**
- 14.1 The Supplier warrants that:
- a) the Supplier has all Intellectual Property Rights, permissions, licences and connection with the performance of the Services and leave the Premises in a clean carry out its obligations in breach of any Intellectual Property Right permission, licence or consent; and
 - b) in respect of the Deliverables, the Supplier has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Authority, it has full and unrestricted rights to transfer full title to all such items to the Authority.

- 14.2 Unless otherwise provided in the Specification, the Supplier grants to the Authority, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including all Deliverables.
- 14.3 The Supplier shall, promptly at the Authority's request, do (or procure to be done) all such further acts and things and execute (or procure the execution of) all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned or licensed to the Authority in accordance with the Contract.
- 14.4 The Authority reserves to itself or its licensors all the Authority Materials and any Intellectual Property Rights in them and the Contract shall not operate to vest in the Supplier any rights in the Authority Materials other than a licence, for the duration of the Contract, to use them to the extent necessary to enable the Supplier to carry out its obligations under the Contract.
15. **Indemnity**
- 15.1 The Supplier shall indemnify, and shall keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses, awarded against or incurred or paid by the Authority as a result of or in connection with:
- a) any claim made against the Authority for death, personal injury or damage to property arising out of, or in connection with, any non-compliance of the Deliverables or Services with the Contract;
 - b) any claim made against the Authority arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier;
 - c) any claim made against the Authority arising out of, or in connection with, the negligence of the Supplier or its Representatives whilst on, entering, or leaving the person,
 - d) any claim made against the Authority for infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Authority's use of the Services;
 - e) all damage to the Authority's property or the Premises caused by the Supplier or its Representatives (including any damage or destruction to, corruption of, or loss of data held by the Authority);
 - f) any breach of Data Protection Law by the Supplier or its Representatives; and
 - g) any claim made against the Authority by a third party resulting from, or arising out of any breach by the Supplier of its obligations under Clause 14 (Intellectual Property Rights) or Clause 17 (Confidentiality).
- 15.2 The Supplier shall not be liable to the Authority for any losses, damage or injury to the extent that they are caused by or arise directly out of an act or omission of, or negligence attributable to, the Authority in breach of its obligations under the Contract.

16. Insurance

- 16.1 For the duration of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable European based insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under the Contract, including death or personal injury, or loss of or damage to property.
- 16.2 The insurance required under Sub-Clause 16.1 above shall include, as a minimum:
- a) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim;
 - b) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim;
 - c) if applicable, professional indemnity insurance with a limit of not less than two million pounds (£2,000,000) per claim; and
 - d) product liability insurance with a limit of not less than two million pounds (£2,000,000) per claim.
- 16.3 The Supplier shall, at the request of the Authority, produce to the Authority a valid certificate of insurance and such other written documentation as is necessary to demonstrate that the Supplier has complied with its obligations under this Clause 16 (Insurance).
- 16.4 The Supplier shall ensure that every person engaged in the performance of the Services any insurance to be void.
- 16.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities incurred in connection with the Contract.
- 16.6 The Supplier shall inform the Authority in writing whenever there is any change to the insurance referred to in this Clause 16 (Insurance) (including any change in the scope or level of cover or the identity of the insurer).

17. Confidentiality

- 17.1 Subject to Sub-Clause 17.2 below, the Supplier shall not acquire any rights of ownership or use in any Confidential Information originating from or provided by the Authority.
- 17.2 The Supplier undertakes:
- a) to restrict disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Supplier's obligations under the Contract; and if the Supplier fails to perform the Services by the date required under these obligations of confidentiality corresponding to those set out in this Clause 17 (Confidentiality);
 - b) that the Supplier and its Representatives shall use Confidential Information only for the purposes of performing their respective obligations under the Contract;
 - c) that any person employed or engaged by the Supplier in connection with the Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Authority;

- d) to take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this Clause 17 (Confidentiality); and
- e) that, without prejudice to the generality of the foregoing, neither the Supplier nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.

17.3 The provisions of this Clause 17 (Confidentiality) shall not apply to any information which:

- a) is or becomes public other than by breach of this Clause 17 (Confidentiality); or
- b) is in the possession of the Supplier without restriction on disclosure before the date of receipt from the disclosing person; or
- c) is independently developed by the Supplier without access to the Confidential Information; or
- d) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or EIR.

18. Termination

18.1 Without limiting its other rights or remedies, the Authority may terminate this Contract with immediate effect by giving written notice to the Supplier if:

- a) the circumstances set out in Sub-Clause 9.3 (g) (The Authority's Remedies) or Sub-Clause 23.1 (Corruption) or Clause 32 (Severance) apply;
- b) the Supplier commit A material or persistent breach of the Contract and {if such a breach is remediable) fails to remedy that breach within ten (10) Working Days of receipt of written notice of the breach;
- c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- d) 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 company) 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;
- e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) 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;
- f) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- g) a creditor or encumbrance 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 fourteen (14) Days;

- h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- i) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- j) 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;
- k) the Supplier becomes the subject of administration or an administration order (in each case whether or not the out of court procedure is used);
- l) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Sub-Clause 18.1.3 to Sub-Clause 18.1.11 (inclusive) above;
- m) 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
- n) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

18.2 Without limiting its other rights or remedies, the Authority may at any time terminate the Contract in whole or in part by giving the Supplier thirty (30) Days written notice, in which case the Authority shall pay the Supplier for any Services performed up until the date of termination, but shall not be liable for any anticipated profits or any other loss in respect of the termination.

19. Consequences of Termination

19.1 On expiry or termination of the Contract or any part of it for any reason the following shall apply:

- a) where the Services are terminated, the Supplier shall immediately deliver to the Authority all Deliverables, whether or not then complete, and return all the Authority Materials to the Authority. If the Supplier fails to do so, then the Authority may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of the Deliverables and/or the Authority Materials. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe-keeping and will not use them for any purpose: and
- b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

19.2 The following Clauses shall survive expiry or termination and shall continue in full force and effect: 1 (Interpretation), 2.2 (Formation of Contract), 3 (Supplier's Warranties), 4 (Supplier's General Undertakings), 7 (Testing and Acceptance of Deliverables), 9 (The Authority's Remedies), 11 (Transfer Regulations), 12 (Liability), 13 (Charges and Payment), 14 (Intellectual Property Rights), 15 (Indemnity), 16 (Insurance), 17 (Confidentiality), 19 (Consequences of Termination), 20 (Publicity), 21 (Dispute Resolution), 22 (Conflict of Interest), 23 (Corruption), 24 (Audit), 25

(Discrimination), 26 (Human Rights), 27 (Data Protection), 28 (Best Value), 29 (Freedom of Information), 30 (Transfer of Services), 31 (Notice), 32 (Severance), 33 (Waiver and Accumulation of Remedies), 36 (Law and Jurisdiction), Error! Reference source not found. (Exclusion of Third Party Rights), 38 (Whistleblowing Policy), 39 (The Local Involvement Networks (Duty of Service Providers to Allow Entry) Regulations 2008 and any other Clause which expressly or by implication has effect after expiry or termination shall continue in full force and effect.

20. **Publicity**

20.1 The Charges for the Services and the date or dates on which they are payable are set out of the Contract without the Authority's prior written consent and shall ensure the observance of the provisions of this Clause 20 (Publicity) by its Representatives.

20.2 The Authority shall be entitled to publicise the Contract or any Purchase Order (or any information concerning either) for any reason without any obligation to give notice to the Supplier.

21. **Dispute Resolution**

21.1 The Charges for the Services and the date or dates on which they are payable are set out which shall be conducted as follows:

a) the dispute shall first be referred, on the request of either party, to a senior manager within each of the parties; and

b) if the dispute cannot be resolved by the parties' senior managers within ten (10) Working Days after it has been referred to them, either party may give notice to the design, construction and quality of Deliverables and the method and quality accordance with Sub-Clause 21.2 below.

21.2 The following provisions shall apply to any such reference to mediation:

a) 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;

b) 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 an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

c) to the extent not provided for by such agreement 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. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

21.3 If the parties are able to resolve the dispute through mediation under this Clause 21 (Dispute Resolution), the parties' authorised Representatives will document the resolution and sign a memorandum evidencing its terms.

21.4 The commencement of mediation will not prevent the parties commencing or continuing court proceedings.

21.5 Nothing in this Clause 21 (Dispute Resolution) shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

21.6 The Supplier shall continue to provide the Services and to perform its obligations under the Contract notwithstanding any dispute or the implementation of the procedures set out in this Clause 21 (Dispute Resolution).

22. Conflict of Interest

22.1 The Supplier shall at all times comply with the requirements of the Health and Safety at Representatives is placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual, perceived or potential conflict between, on the one hand, the pecuniary or personal interests of the Supplier or its Representatives and, on the other hand, such persons' duties owed to the Authority under the provisions of the Contract.

22.2 The Supplier shall disclose to the Authority full details of any actual or potential conflict of interest in writing and shall comply with any reasonable instructions of the Authority In connection with their resolution.

23. Corruption

23.1 The Supplier undertakes to:

- a) comply with all applicable laws and regulations and codes relating to anti bribery and anti-corruption including. But not limited to. The Bribery Act 2010;
- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity, practice or conduct had been carried out in the United Kingdom;
- c) comply with the Authority's anti-corruption policies disclosed to the Supplier from time to time;
- d) ensure that any of its Representatives associated with the supply of the Services comply with this Clause 23 (Corruption); and
- e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier.

23.2 For the purposes of Sub-Clause 23.1 above, the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.

23.3 The Authority shall be entitled to terminate the Contract forthwith and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Representative:

- a) offers or agrees to give any person working for or engaged by the Authority or any other Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and the Authority or any Public Body, including its award to the Supplier and any of the rights and obligations contained within it;
- b) has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority or any other Public Body by or for the Supplier, or that an agreement

has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before the Contract Is entered into;

- c) breaches the undertaking set out in Sub-Clause 23.1 above; or
- d) gives any fee or reward the receipt of which is an offence under :Section 117(2) of the Local Government Act 1972.

23.4 For the purposes of Sub-Clause 23.1 above, "loss" shall include, but shall not be limited to:

- a) the Authority's costs in finding a replacement Supplier;
- b) direct, indirect and consequential losses;
- c) any loss suffered by the Authority as a result of a delay in its receipt of the Deliverables and I or Services.

24. **Audit**

24.1 The Supplier shall keep and maintain until six (6) years after the Contract has come to an end, or for such longer period as may be specified by the Authority in writing from time to time:

- a) all Information relating to the Contract;
- b) full and accurate records of the following:
 - i. the Services provided under the Contract;
 - ii. all Charges paid by the Authority; and
 - iii. such other information as the Authority specifies in writing from time to time.

24.2 The Supplier shall on request afford the Authority, the Authority's Representatives or the Authority's auditors such access to such information or records (including the information referred to in Sub-Clauses 24.1 (b) and 24.2 (b) above) as may (in the reasonable opinion of the Authority) be required by the Authority in order to comply with its legal obligations (including its obligations under FOIA and/ or EIR and its obligations in connection with the Best Value Duty).

25. **Equality**

25.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in gender, gender reassignment, religion, race, disability, age, sexual orientation, pregnancy and maternity or otherwise) in the provision of the Services.

25.2 The Supplier shall take all reasonable steps to secure the observance of Sub-Clause 25.1 above by all of its Representatives engaged in the performance of the Contract.

25.3 The Supplier shall:

- a) have appropriately trained staff available to deal with discrimination issues or complaints and monitor the same and the manner of dealing therewith. Such information shall be passed to the Authority on a regular basis as agreed with the Authority; and
- b) actively endeavour to achieve a workforce representative of the ethnic diversity of the area.

- c) The Supplier shall ensure that for all matters relating to the Contract the Supplier complies with the public sector equality duty contained in Section 149 of the Equality Act 2010 and shall ensure that it does not by any act or omission place the Authority in breach of its obligations under the Equality Act 2010.

26. Human Rights

- 26.1 The Supplier shall (and shall use its reasonable endeavours to procure that its Representatives shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 26.2 The Supplier shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

27. Data Protection

- 27.1 The Supplier shall comply at all times with Data Protection Law and shall not do anything or perform its obligations under or in connection with the Contract in such a way as to cause the Authority to breach any of its obligations under Data Protection Law.
- 27.2 If the Supplier, pursuant to its obligations under the Contract, processes Personal Data (as defined in the Data Protection Act 1998) on behalf of the Authority, the Supplier shall:
- a) process the Personal Data only in accordance with instructions from the Authority;
 - b) process the Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under the Contract;
 - c) implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, such measures to be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - d) notify the Authority promptly if it becomes aware of any breach of any of its measures put in place under Sub-Clause 27.2 above;
 - e) take reasonable steps to ensure the reliability of any personnel who have access to the Personal Data;
 - f) obtain prior written consent from the Authority in order to transfer the Personal Data to any third party for the provision of the Services;
 - g) ensure that any personnel required to access the Personal Data are informed of the Contract as set out in the Purchase Order and/or Specification including the out in this Clause 27 (Data Protection Law);
 - h) ensure that none of those personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the other party;
 - i) notify the Authority immediately if it receives:
 - i. a request from a Data Subject (as defined in the Data Protection Act 1998) to have access to that Data Subject's Personal Data; or

- ii. a complaint or request relating to the other party's obligations under Data Protection Law;
- j) provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by providing the other party with full details of the complaint or request; and
- k) not transmit or process Personal Data outside the European Economic Area without the prior written consent of the other party and, where the other party so consents to a transfer, to comply with:
 - i. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998; and
 - ii. any reasonable instructions notified to it by the other party.

28. **Best Value**

28.1 The Supplier shall:

- a) not do anything which would cause the Authority to be in breach of the Best Value Duty;
- b) act at all times in a manner which is compatible with and corresponds with the Authority's Best Value Duty;
- c) in relation to its obligations in the Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

29. **Freedom of Information**

29.1 The Supplier acknowledges that the Authority is subject to the requirements of FOIA and EIR and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with its obligations under FOIA and EIR. The Supplier shall act in accordance with the FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance from time to time.

29.2 The Supplier shall and shall procure that its Representatives shall:

- a) transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

29.3 The Authority shall be responsible for determining (in its absolute discretion) whether any Information:

- a) is exempt from disclosure in accordance with the provisions of FOIA or EIR;
- b) is to be disclosed in response to a Request for Information,

- 29.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by the Authority.
- 29.5 The Supplier acknowledges that the Authority may be obliged under the FOIA or EIR to disclose Information:
- a) without consulting with the Supplier; or
 - b) following consultation with the Supplier and having taken its views into account.
- 29.6 Where Sub-Clause 29.5 (b) above applies the Authority shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.
- 30. Transfer of Services**
- 30.1 Where the Authority intends to continue to procure services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement supplier, the Supplier shall use all reasonable endeavours to ensure the seamless transition of the Services to the Authority or a replacement supplier and to ensure that the transition is effected with the minimum of disruption to the Authority.
- 30.2 The Supplier shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, report and any information, whether held in electronic or written form, which the Authority (acting reasonably) considers necessary.
- 31. Notice**
- 31.1 Any demand, notice, or other communication required to be given under the Contract shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post to the Authority for the attention of and at the address property arising out of, or in connection with, any non-office address if the Supplier is a company and in all other circumstances to the Supplier's address as stated in the Quotation unless either party notifies the other in writing, of any alternative address for the service of notices and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting.
- 32. Severance**
- 32.1 If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or, at the discretion of the Authority, it may be severed from the rest of the Contract which shall remain in full force and effect unless the Authority in its reasonable discretion decides that the effect of such a declaration is to defeat the original intention of the parties, in which event the Authority shall be entitled to terminate the Contract by ten (10) Working Days' written notice to the Supplier.
- 33. Waiver and Accumulation of Remedies**
- 33.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is

intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

33.2 Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's rights and remedies in equity (including, without limitation, specific performance or injunctive relief), law or under or in connection with the Contract. Any failure to exercise, or any delay in exercising, a right or remedy by either party shall not constitute a waiver of that right or remedy, or of any other rights or remedies.

33.3 The Authority's rights and remedies under the Contract are cumulative and may be exercisable at any time and, unless otherwise specified in these Conditions, are not exclusive of any right or remedies provided at law, in equity or otherwise.

34. **Variations**

34.1 Subject to Clause 5 (Variation of the Services), neither the Authority nor the Supplier shall be bound by any variation, waiver of, or addition to the Contract (including the Specification) unless evidenced in writing and signed by an authorised Representative on their behalf.

35. **Assignment or sub-contracting**

35.1 The Supplier shall not assign or transfer its rights or obligations under the Contract or any part thereof to any third party without the Authority's prior written consent.

35.2 The Supplier shall not sub-contract the performance of the Services or any part of them without the Authority's prior written consent and any such consent shall not relieve the Supplier of any of its obligations under the Contract.

35.3 If the Supplier is given written consent by the Authority to sub-contract the performance of the Services or any part of them, the Supplier shall ensure that such sub-contracting arrangement provides that the Supplier shall pay the sub-contractor all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) Days from receipt by the Supplier of a valid invoice.

35.4 The Authority may assign, novate, outsource or otherwise dispose of any or all of its rights and obligations under the Contract at any time to any person having the legal capacity, power and authority to become a party to and to perform its obligations, being:

- a) a Minister of the Crown pursuant to any order under the Ministers of the Crown Act 1975;
- b) any other local authority which has sufficient financial standing or financial resources to perform the obligations; or
- c) any other public authority;

35.5 provided that such an assignment, novation, outsourcing or disposal does not increase the burden of the Supplier's obligations under the Contract.

35.6 Nothing in these Conditions shall restrict the rights of the Secretary of State to effect a statutory transfer.

36. **Law and Jurisdiction**

36.1 The Supplier shall provide such information as may be reasonably required to enable jurisdiction of the English Courts.

37. Exclusion of Third Party Rights

37.1 No person who is not a party to this Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right to enforce any term of this Contract which expressly or by implication confers a benefit on that person and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

38. Whistleblowing Policy

39. The Supplier shall comply with the Authority's Whistleblowing Policy, which ensures that employees of the Supplier are able to bring to the attention of the Authority malpractice, fraud and breach of laws on the part of the Supplier without fear of disciplinary and other retribution or discriminatory action. The Authority's Whistleblowing Policy can be found on the following link: http://www.recycleforyourcommunity.com/includes/documents/cm_docs/2015/f/fraud_whistleblowing_policyguidance_approved_june_2006.pdf

40. Sustainability

40.1 The Supplier shall ensure that the Supplier adheres to the Authority's Statement of Sustainability Principles as far as possible in connection with the provision of the Services.

41. The Local involvement Networks (Duty of Service Providers to allow entry) Regulations 2008

41.1 The Supplier shall comply in all respects and at all times with The Local Involvement Networks (Duty of Services Providers to Allow Entry) Regulations 2008 in the provision of the Services under the Contract.

ANNEX 1- SPECIAL CONDITIONS OF CONTRACT

To be inserted if Applicable

ANNEX 2 – SPECIFICATION

To be inserted if Applicable