

# **CORPORATE PROCUREMENT UNIT**

# TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

5

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# 1 PRELIMINARIES

- 1.1 In this document:
  - 1.1.1 the "Supplier" shall mean the body, person or persons tendering for or su

services;

**BACS System** 

means the Bankers' Automated Clearing Services System which is a UK scheme for the processing of financial transactions;

with Clause 3;

Contracting Authority

from time to time;

**Holding Company** 

shall have the meaning given in section 1159 of the Companies Act 2006;

Implementation Date

means the date by which the Services must be implemented;

Information

shall have the meaning given under section 84 of the Freedom of Information Act 2000 and/or Regulation 2 of the Environment Information Regulations;

Invitation to Tender

#### means:

- (a) In respect of any procurement conducted under the open or restricted procedure, the invitation to tender;
- (b) in the case of any procurement conducted under the negotiated or competitive dialogue procedures, respectively the invitation to submit final bids and the invitation to submit final tenders.

in each case issued by the Council for the provision of the Services;

Intellectual Property Rights

#### means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and

rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

Legislation

means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable guidance, direction or determination with which the Council and/or the Supplier is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Council; and
- (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales,

In each case in force or applicable in England and Wales, or in Wales;

Order

means an order for the Services placed by the Council in accordance with Clause 5 of this Agreement;

Order Number

means the official number allocated by the Council to an Order:

Parent Company

shall have the meaning given to it in section 1162 and Schedule 7 of the Companies Act 2006;

Price

means the price or prices specified in the

Order;

Programme of Work means any programme, timetable or key

milestones which regulates or specifies the period or periods for the completion of the

Services or any part thereon;

Relevant Authority means any court with relevant jurisdiction

and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Welsh Ministers, the government of the United Kingdom or of the European Union;

Requests for Information shall have the meaning set out in section 8

of the FOIA and/or Regulation 5 of the Environmental Regulations 2004 and includes any apparent request for such

Information;

Schedule means the schedule attached hereto;

Services means any and all of the services supplied

or to be supplied by the Supplier in accordance with this Agreement, including any goods supplied or works carried out as

part of such services;

Special Conditions means any special conditions either

referred to in the Invitation to Tender or set

out in the Schedule hereto;

Specification means the specification attached to the

Invitation to Tender:

Sub-contractor means any third party with whom the

Supplier enters into a sub-contract or its

servants or agents and any third party with whom that third party enters into a subcontract or its servants or agents for the performance of any part of the Supplier's obligations under this Agreement;

Supplier Personnel

means all officers, partners, employees, servants, agents, consultants and contractors of whatever nature of the Supplier and/or of any Sub-contractor;

Tender

means the documentation submitted by the Supplier and any other Tenderers in response to the Invitation to Tender; and

**Tenderers** 

means all individuals or organisations who submitted a Tender in response to the Invitation to Tender.

- 2.2 In this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 2.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended and as in force at the relevant time.
- 2.4 A reference to any document shall be construed as a reference to the document as at the date of execution of this Agreement.
- 2.5 Each Party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Agreement.
- 2.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2.7 Neither Party shall be liable for any default of its obligations under this Agreement to the extent that such default is caused by a failure or delay by the other Party in performing its obligations under this Agreement provided and to the extent, that the affected party notifies the other Party of such failure or delay within thirty (30) days of the affected Party becoming aware of its occurrence and of its likely impact.

# 3 COMMENCEMENT AND DURATION

3.1

8.2	Time shall be of the essence and if the Supplier fails to perform the Services

change could not have reasonably been foreseen by the Supplier at the date of the Agreement the Parties shall enter into negotiations in good faith to make such adjustments to the Price as may be necessary to compensate the Supplier for any additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Council may at its discretion terminate this Agreement in whole or in part.

#### 12 DISRUPTION

- 12.1 The Supplier shall (and shall ensure that its Supplier Personnel shall) take all reasonable care at all times to ensure that in its execution of the Services it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 12.2 The Supplier shall co-ordinate its activities in the provision of the Services with the Supplier Personnel and other contractors engaged by the Council.

#### 13 PROGRESS REPORTS AND INSPECTION

- 13.1 Where a progress report, or other information pertaining to the progress of the performance of either Party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Agreement.
- 13.2 The Council may inspect and examine the work or Services being carried out on the Council's premises without notice at any time.
- 13.3 Where any part of the work or Services is being carried out on premises other than the Council's premises, seven (7) days notice of an intention to inspect shall be given to the Supplier.
- 13.4 The Supplier shall give all such assistance as the Council may require for such inspection and examination.

#### 14 REVIEW MEETINGS AND MANAGEMENT INFORMATION

14.1 The Supplier shall submit management information reports to the Council on a monthly basis unless otherwise agreed, covering the period since the date of the previous management information report.

- 16.2.1 furnished to or made available to the Supplier by the Council shall remain the property of the Council;
- 16.2.2 prepared by or for the Supplier for use, or intended use, in relation to the performance of this Agreement shall be the subject of a perpetual, irrevocable, royalty free licence for the Council to copy, adapt, distribute, communicate and make available those documents (and shall carry the right for the Council to grant sub-licences in respect of the same) for all purposes reasonably contemplated by, connected with or ancillary to this Agreement.
- 16.3 The Supplier shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material referred to in Clause 16.2.1 for its own commercial purposes except upon obtaining the prior written consent of the Council and then only upon such terms as may be imposed in connection therewith.
- 16.4 At the termination of the Agreement the Supplier shall immediately return to the Council all materials, work or records held in connection with this Agreement, including any back up media.
- 16.5 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its exonnectmaty tposhe cl adr6( des)he in and-0.002 T/2.6( a

# 19 SUPPLIER'S PERSONNEL

- 19.1 The Council reserves the right under this Agreement to refuse any Supplier Personnel admission to any premises occupied by or on behalf of the Council if in the opinion of the Council, such admission is undesirable.
- 19.2 If and when directed by the Council, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with this Agreement and such other particulars as the Council may reasonably require.
- 19.3 The Supplier and the Supplier's Personnel shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at any Council establishment and when in the vicinity thereof.
- 19.4 The decision of the Council as to whether any person is to be refused admission to any premises occupied by or on behalf of the Council and as to whether the Supplier has failed to comply with Clause 19.3 shall be final and conclusive.
- 19.5 If the Supplier shall fail to comply with Clause 19.3 or fails to do so within a reasonable time of written notice so to do, then the Council may terminate this Agreement in accordance with Clause

# 20 INDUSTRIAL ACTION

- 20.1 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action be by its own Supplier Personnel or others, which affects or might affect their ability at any time to deliver the Services in accordance with the requirements of this Agreement.
- 20.2 In the event of industrial action by the Supplier's Personnel, the Supplier shall seek the Council's prior written approval to any revised proposals to deliver the Services.
- 20.3 If the Supplier's proposals referred to in Clause 20.2 are considered insufficient or unacceptable by the Council, then the Council may terminate this Agreement in whole or in part.

### 21 NATIONAL MINIMUM WAGE

21.1 The Supplier shall ensure that, where appropriate, its Supplier Personnel are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998 or any other Legislation making similar provision.

#### 22 ACCESS TO PREMISES

- 22.1 Unless otherwise agreed use of any land or premises (including temporary buildings) made available to the Supplier by the Council in connection with this Agreement shall be made available to the Supplier free of charge (but without prejudice to the right of the Council to require reimbursement for any out goings arising from that occupation or expenditure incurred, including in respect of any fuel or telecommunications charges attributable to the Supplier) and shall be used by the Supplier solely for the purpose of performing this Agreement. The Supplier shall have the use of such land or premises as licensed and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the Council may determine. Access to the Council's premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Services concurrently with the execution of work by others.
- 22.2 The Parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Supplier or the Supplier's Personnel and that no such tenancy has or shall come into being and the Council retains the right at any time to use any premises owned or occupied by the Council.

- 23.1.4 not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;
- 23.1.5 notify the Council of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of this Agreement;
- 23.1.6 during the execution of the Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment;
- 23.1.7 ensure that its staff, whilst on the Council's premises comply with all relevant provisions of the Health and Safety Regime and with the Council's own policies and procedures;
- 23.1.8 ensure that in performing the Services it adopts safe methods of work in order to protect the health and safety of:
  - 23.1.8.1 the employees of the Supplier;
  - 23.1.8.2 the employees of the Council;
  - 23.1.8.3 the employees of the Supplier Personnel; and
  - 23.1.8.4 any other persons including but without limitation, members of the public.
- 23.1.9 produce to the Council if requested its detailed safe working system for carrying out duties under this Agreement.
- 23.2 The Council shall notify the Supplier of any health and safety hazards which may exist or arise at any Council premises and which may affect the Supplier.

- 26.2 The Council may disclose such TUPE information to any third party who may potentially become an employer of any employees of the Supplier who are potentially affected by TUPE.
- 26.3 Where TUPE information has been provided, the Supplier shall:
  - 26.3.1 inform the Council of any change to the information provided or provide any new TUPE information not previously provided;
  - 26.3.2 use its best endeavours to clarify any matter upon which clarification is requested by the Council; and
  - 26.3.3 use its best endeavours to co-operate with any other reasonable request made by the Council regarding TUPE information or the Supplier's employees within fourteen (14) days of any such change, discovery of new information, or receipt of such request.
- 26.4 For the purposes of this clause "TUPE information" shall mean written details of:
  - 26.4.1 the total number of employees employed by the Supplier whose work or any part thereof is undertaken for the purposes of this Agreement;
  - 26.4.2 the employees' age and gender;
  - 26.4.3 the employees' salary, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the Supplier and any redundancy entitlement;
  - 26.4.4 those particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996:
  - 26.4.5 entitlement to pensions, paid holidays and any other benefits;
  - 26.4.6 terms incorporated from any collective agreement; and
  - 26.4.7 any outstanding or potential liability for past breaches of such contracts;
  - 26.4.8 information regarding any:

- 26.4.8.1 disciplinary procedure taken against an employee within the previous two (2) years;
- 26.4.8.2 grievance procedure taken by an employee, within the previous two (2) years;,
- 26.4.8.3 any Court or Tribunal case, claim or action brought by an employee against the Supplier, within the previous two (2) years; and
- 26.4.8.4 any potential claim the Supplier has reasonable grounds to believe that an employee may bring against the Supplier, arising out of the employee's employment with the Supplier.
- 26.5 The Supplier shall indemnify the Council fully and hold it harmless at all times from and against all actions proceedings claims expenses awards costs and all other liabilities howsoever in any way connected with or arising from claims by its employees (or former employees) affected by, or claiming to be affected by, TUPE.
- 26.6 The provisions of this condition shall apply during the continuance of this Agreement and indefinitely after its termination.

#### 27 CONFLICTS OF INTEREST

- 27.1 The Supplier shall take appropriate steps to ensure that neither itself nor the Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of such persons and the duties owed to the Council under the provisions of this Agreement. The Supplier will disclose to the Council full particulars of any such conflict of interest which may arise.
- 27.2 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after termination. Failure to disclose this information will be considered a material breach incapable of remedy and this Agreement may be terminated in accordance with Clause 44..

# 28 DISCRIMINATION AND EQUALITY

28.1 The Supplier shall ensure that it complies (and shall take all reasonable steps to ensure that all Supplier Personnel comply) with all relevant requirements of all current Equalities legislation, regulations and duties including but not limited to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006 and all other similar Legislation ("equality legislation") in force from time to time together with any guidance or Codes of Practice issued by the Equality

- 29.3 The Supplier shall at its own expense co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 29.4 The Council may require the Supplier to alter or update any security systems at any time during the Contract Period.

#### 30 PROTECTION OF PERSONAL DATA

- 30.1 In this Clause, the terms "Personal Data", "Data Subject", "Process", "Data Controller" and "Data Processor" have the meanings given in the Data Protection Act 1998 ("1998 Act") and the term "Data" means Personal Data of the Council that is subject to Processing by the Supplier.
- 30.2 The Parties agree that with respect to their rights and obligations under this Agreement the Council is Data Controller and the Supplier is the Data Processor in respect of any Data processed by the Supplier.
- 30.3 The Supplier must:
  - 30.3.1 Process Data only to the extent necessary to perform its obligations under this Agreement and strictly in accordance with the instructions of the Council (from time to time);
  - 30.3.2 maintain appropriate technical and organisational measures against unauthorised or unlawful Processing of Data (including against unaihor4sed or unlawiul Pr1.2( o)10.5(f)-6.6( D)6.6(a)10.5(t)4.3(3-2.1(es)-2(ss)-

# 32 ENVIRONMENTAL REQUIREMENTS

- 32.1 The Supplier shall;
  - 32.1.1 have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Legislation including The Producer Responsibility (Packaging Waste) Regulations 1997 2007 together

be, at twelve (12) month intervals or longer from the commencement of this Agreement provided that no addition to or deduction from the Price shall alter the amount of profit of the Supplier included in the Price. Orders placed before the effective date of any proposed price increase must be supplied at the pre-increased price(s).

- 33.10 Proposals for the revision of prices must be submitted in writing to Blaenau Gwent County Borough Council, Head of Procurement at least sixty (60) days prior to the effective date of the variation. The Supplier must furnish such evidence as may be reasonably required to satisfy the Council that the amount of any increase in cost is justified and/or any decrease in cost is adequate.
- 33.11 Revised Prices will only be paid after the Supplier has received written confirmation of the new prices from the Head of Procurement at Blaenau Gwent County Borough Council.
- 33.12 In the event of failure to reach an agreement on the revision of Prices, either Party shall be at liberty to give the other two months' notice in writing to terminate this Agreement, with the price or prices in dispute remaining unaltered.

#### 34 CHANGE CONTROL

- 34.1 The Council has the right to propose any variation(s) to the Services (including a request for the Supplier to cease any one or more or any part of the Services) in accordance with this Clause 34. If the Council wishes to propose a variation to the Services, the Council shall serve a Change Control Request on the Supplier. No change shall be deemed to occur, and the Supplier shall not be entitled to any additional payment, unless the procedures in this Clause 34 are complied with.
- 34.2 The Supplier shall accommodate any variation(s) required by the Council provided that it shall only be entitled to payment for any agreed additional costs it incurs as a result on the basis set out in this Clause 34.
- 34.3 The Change Control Request shall set out the variation to the Services required by the Council in detail and request a cost estimate ("the Estimate") of the costs arising as a direct result of the variation.

- 34.4 The Supplier shall provide the Council with the Estimate within ten (10) working days of the receipt of the Change Control Request or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of:
  - 34.4.1 the impact of the proposed variation on the provision of the Services;
  - 34.4.2 any amendment required to this Agreement to accommodate the proposed variation;
  - 34.4.3 the overall (having regard to the Supplier's general duty of cost efficiency under this Agreement) part year and/or full year cost of, or savings from, implementing the proposed variation; and
  - 34.4.4 any other information reasonably requested by the Council or appearing to the Supplier to be relevant.

Clause 34.6 then the Change Control Request shall be deemed to be withdrawn by the Council.

- 38.2 Failure to comply will constitute a material breach of this Agreement and the Council may exercise the rights and provisions conferred by Clause 44.
- 38.3 The Supplier shall furnish to the Council the name, and if applicable, the VAT registration number of any Supplier Personnel prior to the commencement of any work under this Agreement by such Supplier Personnel.
- 38.4 Upon a request by the Council, the Supplier shall not employ or will cease to employ any Supplier Personnel which the Council believes is not complying with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

#### 39 EURO

39.1 If, following the introduction of the Euro, Sterling is substituted by the Euro as the currency of the United Kingdom, then all references in this Agreement and any Order to "Sterling" or "£" shall be construed as references to "Euro" or "€" (as the case may be) and the agreed Sterling-Euro conversion rate on the date of that substitution shall apply provided that the provisions of this Clause 39 shall not apply during any transitional period when Sterling is a sub-unit of the Euro, unless the Parties otherwise agree.

# 40 WARRANTIES AND REPRESENTATIONS

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Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

- 41.2 Subject always to Clause 41.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the period of the Agreement.
- 41.3 Without prejudice to the Council's obligation to pay the charges as they fall due, the Council's liability under this Agreement shall be limited to 50% of total Price payable for the Services pursuant to this Agreement.
- 41.4 Subject always to Clause 41.2, in no event shall either Party be liable to the other for:
  - 41.4.1 indirect or consequential loss or damage; and/or
  - 41.4.2 loss of profits; and/or
  - 41.4.3 loss of business; and/or
  - 41.4.4 loss of revenue; and/ or
  - 41.4.5 loss of goodwill,

save as expressly provided for under the terms of this Agreement.

- 41.5 The provisions of Clause 41.4 shall not be taken as limiting the right of the Council to claim from the Supplier for any:
  - 41.5.1 additional operational and administrative costs and expenses; and/or
  - 41.5.2 any costs or expenses rendered worthless; and/or
  - 41.5.3 loss or damage resulting directly from the default of the Supplier.
- 41.6 The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.

41.7 The Parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

#### 42 INSURANCE

- 42.1 The Supplier shall hold and shall ensure that all Sub-contractors involved in the provision of the Services shall maintain the following insurance cover with a reputable insurance company:
  - 42.1.1 Professional Indemnity (if required);
  - 42.1.2 Public Liability including Products Liability; and
  - 42.1.3 Employer's Liability;

in each case with the minimum level of indemnity set out in the Invitation to Tender or any part of this Agreement, and if no level is specified, then a minimum level of indemnity set at five million pounds (£5,000,000) or such higher level as is consistent with Good Industry Practice and any applicable Legislation.

- 42.2 Such insurance to be held by the Supplier or by any Sub-contractor may be limited in respect of any one claim (but shall not be limited in any other respect) PROVIDED THAT any such limit shall in any event be at least one million pounds (£1,000,000). This Clause shall not be construed as imposing any limit of liability on the Supplier.
- 42.3 Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Agreement.

# 43 FORCE MAJEURE

- 43.1 Subject to the remaining provisions of this Clause 43 either Party to this Agreement may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.
- 43.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

# 44 TERMINATION

## Supplier Default

- 44.1 The Council may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:
  - 44.1.1 any of the circumstances detailed in Clause 8.2 (Time of Delivery), Clause 19.5 (Supplier Personnel), Clause 20.3 (Industrial Action), Clause 38.2 (Compliance with Value Added Tax and Other Tax Requirements), Clause 46.2 (Corrupt Gifts and Payments of Commission) and/or Clause 47.11 (Confidentiality); or
  - 44.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause 44.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
  - 44.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or
  - 44.1.4 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and

- 44.4 the Council may by notice in writing terminate this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 11.1 (Legislative Change), Clauses 43.5 and 43.8 (Force Majeure) and/or Clause 57.1 (Severability) arise; and
- 44.5 the Supplier may by notice in writing served in accordance with Clause 56.3 terminate this Agreement as from the date of service of such notice if any of the circumstances in Clause 57.1 (Severability) arise.

## Council Default

- 44.6 The Supplier may at any time by notice in writing terminate this Agreement from the date of service of such notice if:
  - 44.6.1 the Council has failed to pay any sum which is properly due and owing to the Supplier (such sum not being in dispute) by the due date under Clause 33.8 (Charges and Payments); and
  - 44.6.2 which sum amounts to at least fifteen percent (15%) of the total Price; and
  - 44.6.3 the Supplier has given to the Council at least thirty (30) days' written notice that such sum is overdue for payment and clearly stated in that notice the Supplier's intention to terminate the Agreement if such sum is not paid; and
  - 44.6.4 the Council has not paid within the time specified in the Supplier's notice under Clause 44.6.3 above.

## 45 CONSEQUENCES OF TERMINATION

- 45.1 The termination or expiry of this Agreement or any Order shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 45.2 In the event of any termination of this Agreement (and/or of any Order), any Orders which at the date of termination have yet to be discharged shall be terminated and the Council shall, in respect of any non-discharged Orders, be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any payments made by the Council in respect of any Services which have not been performed by the Supplier in accordance with the terms of the non-discharged Order.

such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council and provided always that the Council may recover from the Supplier the amount or value of any such gift, consideration or commission together with all costs to the Council of terminating and re-letting.

- 46.3 The decision of the Council shall be final and conclusive in any dispute, difference or question arising in respect of:
  - 46.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Supplier under Clause 46.2 in respect of any loss resulting from such termination of this Agreement); or
  - 46.3.2 the right of the Council under this Clause 46 to terminate this Agreement; or
  - 46.3.3 the amount or value of any such gift, consideration or commission.

## 47 CONFIDENTIALITY

- 47.1 The Supplier acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents is the property of the Council.
- 47.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall;

47.2.1

- 47.3.3 such information was obtained from a third party without obligation of confidentiality;
- 47.3.4 such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Agreement; or
- 47.3.5 it is independently developed without access to other Party's Confidential Information.
- 47.4 The Supplier may only disclose the Council's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.
- 47.5 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.
- 47.6 The Supplier undertakes (except as may be required by law or in order to instruct professional advisers in connection with this Agreement) not to:
  - 47.6.1 disclose or permit disclosure of any details of this Agreement to the news media or any third party other than Supplier Personnel;
  - 47.6.2 disclose that the Council is a customer or client of the Supplier; or
  - 47.6.3 use the Council's name and or brand in any promotion of marketing or announcement of orders, without the prior written consent of the Council.
- 47.7 At the written request of the Council, the Supplier shall procure that those members of the Supplier Personnel identified in the Council's notice signs a Confidentiality Undertaking prior to commencement of any work in accordance with this Agreement.
- 47.8 Nothing in this Agreement shall prevent the Council from disclosing the Supplier's Confidential Information:
  - 47.8.1 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the

Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;

- 47.8.2 to any consultant, contractor or other person engaged by the Council or any person conducting a Gateway Review;
- 47.8.3 for the purpose of the examination and certification of the Council's accounts; or
- 47.8.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 47.9 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Subcontractor to whom the Supplier's Confidential Information is disclosed pursuant to this Clause 47 is made aware of the Council's obligations of confidentiality.
- 47.10 Nothing in this Clause 47 shall prevent either Party from using techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 47.11 In the event that the Supplier fails to comply with this Clause 47 the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

## 48 PUBLICITY

- 48.1 Except with the written consent of the other Party, such consent not to be unreasonably withheld or delayed, neither Party shall make any press announcements or publicise this Agreement in any way.
- 48.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 48.1 by all their servants, employees, agents and consultants and the Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause 48.1by its Supplier Personnel.

- 48.3 Neither Party shall use business logos or publicise the logos of the other Party either in print or electronically without the express written consent of the other Party such consent shall not be unreasonable withheld or delayed.
- 48.4 Notwithstanding the provisions of Clause 48.1, the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Audit Commission and the Council's external Auditors and the provisions of the FOIA.
- 48.5 The Parties acknowledge that the Audit Commission has the right to publish

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- 55.2 The Council shall also appoint an authorised representative ("the Authorised Representative") to act should the Council Representative not be available.
- 55.3 The Supplier shall nominate a supplier's representative ("the Supplier's Representative") at the commencement of this Agreement who shall be empowered to act on behalf of the Supplier for all purposes connected with the Agreement which will include but not be limited to:
  - 55.3.1 managing the provision of the Services;
  - 55.3.2 attending meetings with the Council Representative to review the provision of the Services;
  - 55.3.3 providing all information and documentation reasonably required by the Council in respect of the Services for the performance of its duties.
- 55.4 The Council reserves the right to reject the appointment of any person as the Supplier's Representative who does not in the opinion of the Council have appropriate experience in the management of services similar to the Services or who is otherwise unsuitable for such appointment.

## **56 COMMUNICATIONS**

- 56.1 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing.
- 56.2 The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Clause 56.1.
- Any notice whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile transmission confirmed by post, or e-mail addressed to the other Party in the manner referred to in the Order and if that letter is not returned as being undelivered that notice shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post or four hours for a facsimile transmission or e-mail.
- 56.4 For the purposes of Clause 56.3 above the address and contact details of the Supplier shall be set out in the contact form in the Invitation to Tender and the councils details shall be referred to in the Award Letter.

56.5 Either Party may change its address for service by notice as provided in this Clause 56.

## 57 SEVERABILITY

57.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Supplier shall immediately commence good faith negotiations to remedy such invalidity and if no agreement has been reached within twenty (20) working days of commencement, either Party may by notice to the other terminate the Agreement and neither Party shall bear any liability to the other in respect of such termination (but without prejudice to any other provisions of this Agreement).

## 58 WAIVER

- 58.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 58.2 Waiver of any default shall not constitute a waiver of any subsequent default.
- 58.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 56.

# 59 REMEDIES CUMULATIVE

59.1 Except as otherwise expressly provided by the Agreement, all remedies

Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the matters in dispute.

- 62.5 Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.
- 62.6 If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts in accordance with Clause 63 below.
- 62.7 In the event that the process of mediation does not succeed in finding a resolution to the dispute within a period of fifty-six (56) days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Agreement or at Law.
- 62.8 Nothing in this Agreement shall be taken to prevent or constrain either Party from seeking an injunction or other urc 14.011 0j11(P)2(a6(o 4(i)2.6(t.5(or)-5.)10.5()-11.

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on request afford the Council such access to those records as may be required by the Council. The records shall be submitted to the Council with the Supplier's invoices for payment for the services provided during the emergency or disaster.

- 66.3 The Supplier shall if requested by the Council prior to the commencement of the Agreement provide the Council with the names, address and telephone numbers of up to three (3) of its employees who may be contacted at anytime (approved by the Council) and who will be able to initiate an immediate response to the tasks identified by the Council in the event of an emergency or disaster. The Supplier shall further notify the Council of any changes in the information provided as soon as reasonably practicable.
- 66.4 The Supplier shall have no liability for any failure to perform the Services and/or Works or provide Supplies as a result of the Council exercising its powers under this clause, subject to the Supplier using all reasonable endeavours to continue to perform its obligations under this Agreement during such emergency or disaster situations.
- 66.5 In the event that the Supplier's performance is affected by an emergency or disaster the Council shall not be liable to pay for any element of the Services which it does not receive or to the extent that any aspect of the Supplier's performance is adversely affected by the situation.

## 67 WHISTLEBLOWING

67.1 The Supplier shall comply with the Council's whistle blowing procedure which ensures that employees of the Supplier are able to bring to the attention of a Relevant Authority malpractice, fraud and breach of Legislation on the part of the Supplier or any Supplier Personnel without fear of disciplinary and other retribution or discriminatory action.