



**Standard Terms and Conditions of Contract
for the Purchase of Computer Software Products**

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PART A - OPERATIVE PROVISIONS

A1 DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

'Agreement'	This Contract.
'Authorised Officer'	The person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time-to-time and in default of such notification the Council's head of procurement or similar responsible officer.
'Assigned Employees'	In respect of clause G4, an individual employed by the Contractor wholly or mainly in the performance of the Services.
'Business Day'	Any day other than a Saturday or Sunday or a public or bank holiday in England.
'Change In Law'	The coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
'Commencement Date'	The commencement date stated in the Contract Particulars.
'Commercially Sensitive Information'	The information listed in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss.
'Confidential Information'	Any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored). This includes information which relates to the Goods, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA) and commercial sensitive information.

'Contract'	The agreement in respect of the provision of the Goods consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority. <ol style="list-style-type: none"> 1. The Contract Particulars; 2. The Special Terms and Conditions; 3. The Standard Terms and Conditions, including any applicable attached schedules. 4. The Tender except to the extent that any element of the Tender has been included in the Contract Particulars.
'Contract Manager'	The person named in the Contract Particulars as the Contract Manager and any replacement from time-to-time in accordance with clause B3.2.
'Contractor'	The Contractor and where applicable this shall include the Contractor's Employees, sub-Contractors, agents, representatives and permitted assigns; and if the Contractor is a consortium or consortium leader, the consortium members.
'Contractor Personnel'	All directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.
'Contract Particulars'	The document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Commercially Sensitive Information, Contract Period and the Specification and relevant contract specific details of the Tender included in the document.
'Contract Period'	The period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1).
'Control'	Control as defined by section 416 of the Income and Corporation Taxes Act 1988.
'Controller'	Has the meaning given in the GDPR.

'Council'	The Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression 'control' shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
'Data Loss Event'	Any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
'Data Protection Impact Assessment'	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
'Data Protection Legislation'	(i) The GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) The DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) All applicable Law about the processing of personal data and privacy.
'Data Protection Officer'	Has the meaning given in the GDPR.
'Data Protection Schedule'	The schedule (where applicable) attached to, and forming part of this contract titled 'Schedule of Processing, personal Data and Data Subjects'.
'Data Sharing Agreement'	A formal agreement that documents what data is being shared and how the data can be used between the parties.
'Data Sharing Code of Practice'	The code of practice issued by the Information Commissioner in respect to the sharing of personal data.
'Data Subject'	Has the meaning given in the GDPR.
'Data Subject Request'	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
'DPA 2018'	The Data Protection Act 2018 as amended from time to time.
'Delivery Instructions'	The instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Goods.

'Employee'	Any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and sub-contractors and representatives or, in respect of clause G4 (TUPE and re-tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the services.
'EIR'	The Environmental Information Regulations 2004.
'FOIA'	The Freedom of Information Act 2000.
'Force Majeure'	Any cause materially affecting the performance by a party of its obligations under this contract arising from any act beyond its reasonable Control and affecting either party. This includes without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
'GDPR'	The General Data Protection Regulation (Regulation (EU) 2016/679)
'Good Industry Practice'	The exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Contractor engaged in the supply of Goods similar to the Goods under the same or similar circumstances as those applicable to the Contract.
'Goods'	The goods described in the Specification to be supplied by the Contractor in accordance with the contract and any associated services provided by the Contractor in relation to those Goods.
'HRA'	The Human Rights Act 1998.
'Information'	Has the meaning given under section 84 of the Freedom of Information Act 2000.
'Intellectual Property Rights'	Patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
'Invitation to Tender'	The Council's Invitation to Tender for the Contract.
'Joint Controllers'	Where two or more Controllers jointly determine the purposes and means of processing.
'Key Personnel'	Those persons named in the Contract Particulars as being key personnel.

'Law'	Any law, subordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice judgement of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
'LED'	Law Enforcement Directive (Directive (EU) 2016/680)
'Liabilities'	All costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, Orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
'Order'	An order for Goods to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
'Party'	A Party to this Contract/Agreement.
'Personal Data'	Has the meaning given in the GDPR.
'Personal Data Breach'	Has the meaning given in the GDPR.
'Price'	The price of the Goods as set out in the Contract Particulars. Unless otherwise stated, any reference to price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
'Pricing Schedule'	The schedule from the Tender detailing the pricing as detailed in the Contract Particulars
'Processor'	All directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor.
'Processor Personnel'	All directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor.
'Protective Measures'	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it, including those outlined in the Security Schedule.
'Replacement Contractor'	Any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this contract.

'Request for Information'	A request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.
'Services'	The services described in the Specification to be supplied by the Contractor in accordance with the Contract, together with all equipment required and any associated goods provided by the Contractor in relation to those services.
'Special Terms and Conditions'	The additional terms and conditions attached which were set out in the Invitation to Tender.
'Specification'	The specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Goods.
'Standard Terms and Conditions'	The terms and conditions set out in this document.
'Sub-processor'	Any third Party appointed to process Personal Data on behalf of the Processor related to this Contract
'Tender'	The Contractor's tender for the Goods in response to the Council's Invitation to Tender.
'TUPE'	The Transfer of Undertakings (Protection of Employment) regulations 2006.

A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A2 HEADINGS

A2.1 The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

A3 NOTICES

A3.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

- A3.2 Any notice served will be deemed to have been served as follows.
- A3.2.1 Any notice served personally will be deemed to have been served on the day of delivery.
 - A3.2.2 Any notice sent by post will be deemed to have been served 48 hours after it was posted.
 - A3.2.3 Any notice sent by fax will be deemed to have been served 24 hours after it was despatched.
 - A3.2.4 Any notice sent by email before 5pm will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the next Business Day.

A4 ENTIRE AGREEMENT

- A4.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B - PROVISION OF GOODS

B1 CONTRACT PERIOD

- B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

B2 DELIVERY

- B2.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- B2.2 The time of the delivery of the Goods is of essence to the Contract.
- B2.3 Where the Goods are delivered by the Contractor, the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by the Council from the Contractor, the point of delivery shall be when they are loaded onto the Council's vehicle.
- B2.4 Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by the Contractor at such places the Council may direct in the contract.

- B2.5 The issue by the Council of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Council shall not be deemed to have accepted any Goods until it has had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the Goods has become apparent.
- B2.6 All Goods must be properly packaged to survive transit without damage, clearly and legibly labelled and addressed. The Council will not be liable to pay for any pallets, packages or containers in which Goods are supplied.
- B2.7 The Council shall not be obliged to accept delivery by instalments, unless expressly agreed to the contrary. If the Council does specify or agree to delivery by instalments, delivery of any one instalment not in accordance with the Delivery Instructions shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole of any unfulfilled part of the Contract without further liability to the Contractor.
- B2.8 Without prejudice to the Council's other remedies if the Goods or any portion of them are not delivered in accordance with the Delivery Instructions the Council shall be entitled to recover from the Contractor, as liquidated damages and not by way of penalty, the amount, if any, for the period during which such failure continues the amount, if any as set out in the Special Terms and Conditions.
- B2.9 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from supplying the Goods in accordance with the Contract, the Contractor shall inform the Council.
- B2.10 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- B2.11 The Council retains the Contractor for the supply of the Goods on a non-exclusive basis.

B3 CONTRACT MANAGER

- B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- B3.2 The Contractor shall give notice at once in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

B4 ORDERING PROCESS

- B4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
- B4.2 Except where specified Orders are required to call off the Goods, the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.

B4.3 The Orders shall state the type of or part of the Goods required including the Council's requirements with regard to timescale for delivery of those Goods.

B5 RISK IN AND TITLE TO GOODS

B5.1 Risk in the Goods shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.

B5.2 Title to the Goods shall pass to the Council upon delivery or earlier payment.

B6 WARRANTY

B6.1 The Contractor warrants to the Council that the Goods will be:

B6.1.1 of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as required by the Specification or held out by the Contractor;

B6.1.2 free from defects in design, material and workmanship;

B6.1.3 provided in accordance with the Contract, correspond with the Specification and any drawings, samples or descriptions provided by the Contractor; and

B6.1.4 so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

B6.2 The Contractor warrants to the Council that to the extent that associated services are performed, they will be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.

B6.3 Without prejudice to the Council's right to terminate under clause D (Termination), if any of the Goods supplied are not in accordance with the Contract, the Council shall be entitled to:

B6.3.1 require the Contractor to repair the Goods or to supply replacement Goods in accordance with the Contract as soon as reasonably practicable and in any event within 14 working days of a request to do so; or

B6.3.2 subject to clause E2 (Indemnity and liability), treat the Contract as discharged by the Contractor's breach and require the repayment of a proportion of the Price which has been paid together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Goods.

B7 CONTRACTORS PERSONNEL

B7.1 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

B7.1.1 any member of the Contractor's Employees; or

B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

- B7.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.
- B7.3 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time-to-time for the conduct of personnel when at that establishment and when outside that establishment.
- B7.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
- B7.5 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

PART C - PRICE AND PAYMENT

C1 PRICE AND PAYMENT

- C1.1 The Council shall pay the Price for the Goods to the Contractor.
- C1.2 The Contractor shall submit a single VAT invoice to the Council no later than seven days after the end of each calendar month detailing the Goods provided during the calendar month and the amount payable.
- C1.3 Payment of any undisputed invoice will be made no later than 30 days following the date of receipt of the invoice by the Council. An undisputed invoice is a compliant invoice which has been received at the designated payment address (postal or email).
- C1.4 The Council reserves the right to withhold payment of the relevant part of the Price, without payment of interest, where the Contractor has either failed to deliver the Goods at all or has delivered Goods which, in the reasonable opinion of the Council, are unsatisfactory. Any invoice relating to such Goods will not be paid unless or until the Goods have been delivered to the Council's satisfaction.
- C1.5 Under the Late Payment of Commercial Debts (Interest) Act 1998, When valid and undisputed invoices are not paid within 30 days, interest becomes payable to the supplier. Any overdue sums will bear interest from the due date until payment is made at 8% per annum over the Bank of England base rate from time-to-time. The Contractor is not entitled to suspend deliveries of the Goods as a result of any overdue sums.

- C1.6 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case however arising and whether any such liability is present or future, liquidated or un-liquidated and irrespective of the currency). The Council may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
- C1.7 Further details of payment, if any, are set out in the Pricing Schedule.

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

D1 TERMINATION

- D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;
 - D1.1.2 the Contractor is convicted of a criminal offence;
 - D1.1.3 the Contractor ceases or threatens to cease to carry on its business;
 - D1.1.4 the Contractor has a change in its Control which the Council believes will have a substantial impact on the performance of the Contract; or
 - D1.1.5 there is a risk or a genuine belief that there is a risk that reputational damage to the Council will occur as a result of the Contract continuing;
 - D1.1.6 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied;
 - D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
 - D1.1.8 the Contractor commits persistent minor breaches of this Contract, whether remedied or not.
 - D1.1.9 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- D1.2 The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7, D1.1.8 and D1.1.9.
- D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.

D1.4 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

D2 CONSEQUENCES OF TERMINATION

D2.1 If this Contract is terminated in whole or in part the Council shall as follows.

D2.1.1 Be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination.

D2.1.2 Except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other Contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Goods or any parts of them.

D2.1.3 Where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E2.4.

D2.1.4 In the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

D3 DISPUTE RESOLUTION PROCEDURE

D3.1 If a dispute arises between the Council and the Contractor in connection with the contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

D3.2 If a dispute is not resolved within 14 days of referral under clause D3.1 then either party may refer it to the chief executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

- D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties. This will be within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

D4 SURVIVAL

- D4.1 The following clauses will survive termination or expiry of the Contract.
- D4.1.1 Clause B5 (Risk in and title to the Goods)
 - D4.1.2 Clause D2 (Consequences of termination)
 - D4.1.3 Clause E2 (Indemnity and liability)
 - D4.1.4 Clause F1 (Intellectual property)
 - D4.1.5 Clause F2 (Data Protection)
 - D4.1.6 Clause F3 (Freedom of Information)
 - D4.1.7 Clause F4 (Confidentiality)
 - D4.1.8 Clause F5 (Record keeping and monitoring)
 - D4.1.9 Clause G4 (TUPE and re-tendering)
 - D4.1.10 Clause H4 (Severance)
 - D4.1.11 Clause H10 (Non solicitation and offers of employment) and
 - D4.1.12 Clause H12 (Law and jurisdiction)

PART E - INSURANCES AND LIABILITIES

E1 INSURANCE

- E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
- E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- E1.3 If the Contractor does not maintain the necessary insurances under the Contract, the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

E2 INDENMITY AND LIABILITY

- E2.1 Neither party seeks to exclude or limit its liability for:
- E2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
 - E2.1.2 fraudulent misrepresentation; or
 - E2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
- E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
- E2.3 Subject to clauses E2.1, E2.2 and E2.5 the Contractor's liability to the Council under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.
- E2.4 Subject to clauses E2.1 and E2.2, the Council's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.
- E2.5 The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Goods or any act or omission of the Contractor in supplying, delivering and, where applicable installing the Goods

PART F - PROTECTION OF INFORMATION

F1 INTELLECTUAL PROPERTY

- F1.1 All Intellectual Property Rights in any Specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;
 - F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.

- F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing Goods to the Council, and shall be granted at no cost to the Council.
- F1.3 It is a condition of the Contract that the Goods will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
- F1.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Goods, including any back-up media.

F2 DATA PROTECTION

- F2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in the Data Protection Schedule (attached to this contract where applicable). The only processing that the Processor is authorised to do is listed in the Data Protection Schedule (attached to this contract where applicable) by the Controller and may not be determined by the Processor.
- F2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- F2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- F2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with the Data Protection Schedule (attached to this contract where applicable) unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Protection Schedule attached to this contract where applicable);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- F2.5 Subject to clause 2.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- F2.6 The Processor's obligation to notify under clause 2.5 shall include the provision of further information to the Controller in phases, as details become available.
- F2.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) Such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- F2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- F2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- F2.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- F2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- F2.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- F2.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- F2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- F2.15 Where the Parties include two or more Joint Controllers as identified in the Data Protection Schedule (attached to this contract where applicable) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the Schedule for Joint Controllers in replacement of Clauses F2.1- F2.14 for the Personal Data under Joint Control.

F3 FREEDOM OF INFORMATION

- F3.1 The Contractor acknowledges that the Council is subject to the requirement of the Code of Practice on Government Information, FOIA and the EIR and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- F3.2 The Contractor shall and shall procure that its sub-Contractors shall do all of the following where relevant;
- F3.2.1 Transfer to the Council all requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request For Information.
 - F3.2.2 Provide the Council with a copy of all Information relating to the subject of the request in its possession, or power in the form that the Council requires within five working days (or such other period as the Council may specify) of the Council's request.

- F3.2.3 Provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request For Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- F3.3 The Council shall be responsible for determining in its absolute discretion despite any other provision in this agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the EIR.
- F3.4 In no event shall the Contractor respond directly to a Request For Information unless expressly authorised to do so by the Council.
- F3.5 The Contractor acknowledges that (despite the provisions of clause F4) the Council may, be obliged under the FOIA, or the EIR to disclose Information concerning the Contractor or the services as follows:
- F3.5.1 In certain circumstances without consulting the Contractor:
- F3.5.2 Following consultation with the Contractor and having taken their views into account.
- F3.6 Provided always that where F3.5.1 applies the Council shall, in accordance with any recommendations of the code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- F3.7 The Contractor shall make sure that all information is retained for disclosure in accordance with any record keeping obligations of the Contractor under this Contract and shall permit the Council to inspect such records as requested from time-to-time.
- F3.8 The Contractor acknowledges that the Commercially Sensitive Information is indicative only and that the Council may be obliged to disclose it in accordance with clause F3.

F4 CONFIDENTIALITY

- F4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall do each of the following.
- F4.1.1 Treat the other party's Confidential Information as confidential and safeguard it accordingly.
- F4.1.2 Not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- F4.2 Paragraph F4.1 shall not apply to the extent that any one or more of the following applies to the relevant Information or disclosures.
- F4.2.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause F3 (Freedom of Information).

- F4.2.2 Such Information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the Information owner.
- F4.2.3 Such Information was obtained from a third party without obligation of confidentiality.
- F4.2.4 Such Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; and
- F4.2.5 It is independently developed without access to the other party's Confidential Information.
- F4.3 The Contractor may only disclose the Council's Confidential Information to the Contractor personnel who are directly involved in the provision of the Services and who need to know the Information, and shall make sure that such Contractor personnel are aware of and shall comply with these obligations as to confidentiality.
- F4.4 The Contractor shall not, and shall procure that the Contractor personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
- F4.5 At the written request of the Council and if reasonable in the circumstances to make that request, the Contractor shall procure that those members of the Contractor personnel identified in the Council's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- F4.6 Nothing in this agreement shall prevent the Council from disclosing the Contractor's Confidential Information in any one or more of the following circumstances;
 - F4.6.1 To any Crown body or any other contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Council. All crown bodies or such contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such 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 Crown body or other contracting authority;
 - F4.6.2 To any consultant, Contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
 - F4.6.3 For the purpose of the examination and certification of the Council's accounts; and/or
 - F4.6.4 For any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

F5 RECORD KEEPING AND MONITORING

- F5.1 The Council shall monitor the Services in order to establish whether Terms specified in this Contract are being fulfilled.
- F5.2 The Contractor shall at all times cooperate with the Council for the purposes of monitoring this Contract.
- F5.3 The Contractor will allow any officer nominated by the Council to enter the office or such other premises under the control of the Contractor at any reasonable time to monitor the Services in order to ascertain that the terms of this Contract have been and are being performed to the prescribed standard as outlined in the Contract.
- F5.4 The Council may require the Contractor to provide statistical or other information regarding the Services or anyone accessing the Services in such a format and at such intervals as may be determined by the Council and/or Government Departments. Advance notice of such requirements shall be given. All information received by the Council shall be treated in confidence.
- F5.5 The Contractor shall compile and maintain such information and data as the Council may reasonably require for the purposes of evaluating compliance with the terms of this Contract, performance indicators, outcomes monitoring data and other applicable indicators.
- F5.6 The Contractor must make available to the Council the information referred to in clause F5.5 at such times as the Council may reasonably require.
- F5.7 The Council has total accountability to Council Tax payers. In order to discharge this duty the Council may require access to financial information to establish the financial viability of the Contractor. All information received by the Council shall be treated in confidence and only for the purpose for which it was requested. The Council undertakes to inform the Contractor of any concerns which may subsequently arise.
- F5.8 The Contractor will inform the Authorised Officer immediately of any information it has which may have a detrimental effect on the Contractor and/or the continuation of this Contract.
- F5.9 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, Service User records, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
- F5.10 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Agreement.

PART G - STATUTORY OBLIGATIONS

G1 HEALTH AND SAFETY

- G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.
- G1.2 The Contractor shall provide, within 14 days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards of the Goods, received from any statutory body.
- G1.3 The Contractor shall make sure the Goods are labelled with details of any hazards they represent and shall, before delivery, provide to the Council a written list of harmful or potentially harmful properties or ingredients in the Goods supplied together with details of any specialist training required to enable the Goods to be used safely. The Council will rely on the supply of such Information from the Contractor in Order to satisfy its own obligations under all health and safety legislation.

G2 CORPORATE REQUIREMENTS

- G2.1 The Contractor shall comply with all obligations under the HRA.
- G2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:
 - G2.2.1 equality and diversity policies;
 - G2.2.2 sustainability;
 - G2.2.3 information security rules;
 - G2.2.4 whistleblowing and confidential reporting policies; and
 - G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations.
- G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, enactment, Order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in Law of the ability of the Employees to work in the United Kingdom.
- G2.5 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
 - G2.5.1 details of the finding; and
 - G2.5.2 the steps the Contractor has taken to remedy the situation.
- G2.6 The Contractor represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Contractor nor any of its officers, employees or other persons associated with it:
 - G2.6.1 has been convicted of any offence involving slavery and human trafficking;
 - G2.6.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

G2.7 The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

G3 LAW AND CHANGE IN LAW

G3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.

G3.2 On the occurrence of a Change In Law which has a direct effect upon the Price the parties shall meet within 14 days of the Contractor notifying the Council of the Change In Law. This will be to consult and seek to agree the effect of the Change In Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within 14 days of this meeting, have not agreed the occurrence or the impact of the Change In Law, either party may refer the matter to dispute resolution in accordance with clause D3.

G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

G4 TUPE AND RE-TENDERING

G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing Employee liability information as required under Regulation 11 of TUPE.

G4.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.

G4.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

G5 COUNTER-TERRORISM AND SECURITY

G5.1 The Contractor recognises the duty of the Council under the Counter-Terrorism and Security Act 2015; to have due regard to the need to prevent people from being drawn into terrorism and shall assist the Council in the discharge of that duty through the performance of this Agreement.

- G5.2 The Contractor shall therefore ensure that its employees, agents and subcontractors are familiar with and have an understanding of the Prevent Strategy and are suitably trained to recognise vulnerability of persons who could be drawn into terrorism and will engage in programmes to conform with this duty.

PART H - GENERAL PROVISIONS

H1 CONTRACT VARIATION

- H1.1 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.
- H1.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of delivery of any Goods and/or the provision of emergency Goods in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and Prices used to calculate the Price in the Tender.

H2 THIRD PARTY RIGHTS

- H2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

H3 NO WAIVER

- H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

H4 SEVERANCE

H4.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H5 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

H5.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Goods.

H5.2 The Council shall be entitled to:

H5.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or

H5.2.2 transfer, assign or novate its rights and obligations where required by Law.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and employees as though they were its own.

H5.4 Where the Contractor enters into a sub-contract they must ensure that a provision is included which:

H5.4.1 requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Council has made payment to the Contractor in respect of the Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;

H5.4.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Council and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Council; and

H5.4.3 in the same terms as that set out in this clause H5.4 (including for the avoidance of doubt this clause H5.4.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

H5.4.4 allows the Contractor to terminate that sub-contract if

- a. the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and
- b. a requirement that the sub-contractor includes a provision having the same effect as (a) above in any sub-contract which it awards.

- H5.4.5 Where the Council considers whether there are grounds for the exclusion of a sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- a. if the Council finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the sub-contractor;
 - b. if the Council finds there are non-compulsory grounds for exclusion, the Council may require the Contractor to replace or not to appoint the sub-contractor and the Contractor shall comply with such a requirement.

H6 FORCE MAJEURE

- H6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
- H6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Goods until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.
- H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or sub-contractors, failure or delay by any of the Contractor's suppliers to supply Goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.
- H6.4 If the event of Force Majeure continues for more than two months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
- H6.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and Liabilities which accrued prior to termination will continue to exist.
- H6.6 Subject to the provisions of this Force Majeure clause, the Council may terminate this contract with immediate effect by notice in writing to the Contractor at any time if the Contractor or any subsidiary company of the Contractor is convicted of any offence under the Employment Relations Act 1999 (Blacklists) Regulations 2010

H7 INDUCEMENTS

- H7.1 The Contractor shall not offer or give, or agree to give, to any Employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other Contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such Contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- H7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor's behalf.

- H7.3 Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other Contract with the Council, the Council has the right to:
- H7.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
 - H7.3.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

H8 COSTS AND EXPENSES

- H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

H9 NO AGENCY OR PARTNERSHIP

- H9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and Employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H10 NON SOLICITATION AND OFFERS OF EMPLOYMENT

- H10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this contract:
- H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council any person directly related to provision of the Goods employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or
 - H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

H11 INSPECTION OF CONTRACTOR'S PREMISES

- H11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

H12 LAW AND JURISDICTION

H12.1 This Contract shall be governed by the Laws of England and shall be subject to the exclusive jurisdiction of the English courts.

SPECIAL TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE AND USE OF COMPUTER SOFTWARE PRODUCTS

(To be used in conjunction with HBC Standard Terms and Conditions of Contract for the Purchase of Goods)

IMPORTANT NOTE:

In the event of any conflict between these Special Terms and Conditions and the Council's Standard Terms and Conditions of Contract for the Purchase of Goods, the former shall prevail.

1 DEFINITIONS

The terms and expressions used in these Special Standard Terms and Conditions for the purchase and use of Computer Software products shall have the meaning set out below:

'Documentation'	'Documentation" shall mean the manual or manuals and other documents associated with the Program supplied by the Licensor to the Licensee.
'Equipment'	shall mean the computer or computers described in Appendix 1 and situated at the location or locations identified in Appendix 1.
'Euro Compliant'	means in relation to the Program that it will be able to:- (a) process currency data inputs in the Euro currency; and (b) convert currencies of participating Member States (which adopt the new Euro) from and into Euros at the conversion rates set by the European Council and in accordance with any relevant mandatory requirements which are passed by the European Council from time to time.
'Licence'	shall mean this document with its appendices.
'Licensee'	shall be as defined in Appendix 1.
'Licensor'	shall be as defined in Appendix 1 and shall include the Licensor's legal personal representatives, successors and assigns.
'Program'	shall mean the computer program or programs specified in Appendix 1 in object code form only and shall include any replacements, modifications or additions supplied under this Licence.

'Virus'

means any code which is designed to harm, disrupt or otherwise impede the operation of the Program, or any other associated hardware, software, firmware, computer system or network, or would disable the Program or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral, or that would permit the Licensor or any other person to access the Program to cause such impairment, or which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations, including without limitation, computer programs known as worms or Trojan horses.

2 LICENCE

2.1 This Contract shall be governed by the Laws of England and shall be subject to the exclusive jurisdiction of the English courts.

3 CHARGES

3.1 The Licensee shall pay the licence and maintenance charges to the Licensor which are set out in the Appendices. The Licensor shall have the right to vary periodic licence charges or maintenance charges if any, by giving to the Licensee not less than 3 months' written notice in advance of such variation effective at the end of the initial period specified in the Appendices or at any time thereafter. Such variation shall not result in the charges exceeding the Licensor's then current standard scale of charges, or in the absence of a standard scale, such charges as are reasonable in the circumstances.

4 ACCEPTANCE

4.1 Where no acceptance tests are specified in Appendix 1, acceptance of the Program shall be deemed to take place on delivery or delivery and installation of the Program and Documentation in accordance with Clause 5.

4.2 Where acceptance tests are specified in Appendix 1, acceptance of the Program shall be deemed to take place when the Program has passed such tests on the Equipment or other equipment as provided under Sub-Clauses 5.2 and 5.3.

- 4.3 In the event that acceptance tests are delayed due to the acts or omissions of the Licensee, then the Licensor shall give 14 days' notice of its requirement that the tests shall be carried out. If such tests are not then carried out within a further period of 14 days due to the continuing acts or omissions of the Licensee, the Program shall then be deemed to have been accepted on the expiry of such further period.
- 4.4 If the Licensee uses the Program before acceptance under this Clause, except for testing purposes, then the Program shall be deemed to have been accepted on the date of first use.
- 4.5 Where the Program fails the acceptance tests, it shall be retested within 30 days and where it fails again the Licensee shall be entitled to reject the Program, whereupon the Licensor shall refund all charges paid under this Agreement at such date, without prejudice to the Licensee's other rights and remedies under this Agreement.

5 USE

- 5.1 The Program may only be used as specified in this Agreement and in Appendix 1.
- 5.2 The Licensee may use the Program only on the Equipment. If the Program cannot be used because the Equipment or any part thereof is temporarily inoperable, then the Licence will be deemed to apply, without any additional payment to the Licensor but at the Licensee's risk and expense, to the use of the Program on any other compatible equipment until the Equipment becomes operable.
- 5.3 The Licensee may not transfer the Program permanently to another location or to other equipment without the consent in writing of the Licensor which shall not be unreasonably withheld.
- 5.4 The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of the Program. The Licensee shall permit the Licensor, at all reasonable times, and at the Licensor's expense, to verify that the use of the Program is within the terms of the Licence.

6 DOCUMENTATION

- 6.1 The Licensor shall supply to the Licensee those items of the Documentation specified in Appendix 1.
- 6.2 The Licensee may not make copies of the Documentation without the Licensor's prior written agreement. At the request of the Licensee the Licensor shall provide such additional copies of the Documentation as the Licensee may reasonably require for the normal operation of its business, at the Licensor's then current standard scale of charges.

7 PERFORMANCE

7.1 The Licensor warrants that:-

- (a) provided it is operated in accordance with the Licensor's instructions, the Program will perform in accordance with the Licensor's published specification and the Documentation existing at the date of delivery
- (b) it has the right to enter into this Licence and to grant the licensee the licence to use the Program and Documentation as provided in this Licence
- (c) the Program is Euro Compliant
- (d) the Program does not contain any Viruses
- (e) the media on which the Program is provided will be free from defects in workmanship and materials during normal use
- (f) the Documentation will describe in detail and in a completely self-contained manner how the Licensee may access and use the Program such that any reader of the Documentation can access, use and maintain all of the functionality of the Program without the need for further instruction be warranted as provided in Appendix 1.

8 MAINTENANCE AND SUPPORT

8.1 A maintenance service, if required, shall be provided as specified in Appendix 2 from the date of acceptance.

8.2 Where the provision of error correction is included in the maintenance service and charge specified in Appendix 2, it shall be conditional upon the Licensee having

- (i) provided adequate information in respect of any malfunction in the Program
- (ii) incorporated all amendments issued by the Licensor, and
- (iii) not otherwise changed the Program.

8.3 Where a new issue or update of the Program and/or Documentation or part thereof is released by the Licensor it shall be installed (if applicable) by the Licensor under the maintenance service and accepted and used by the Licensee except where the Licensee elects to retain and use the superseded issue of the Program, in which case the Licensor shall use its best endeavours to provide a maintenance service on terms to be agreed.

9 OWNERSHIP

- 9.1 Title, copyright and all other proprietary rights in the Program and the Documentation and all parts and copies thereof shall remain vested in the Licensor. The Licensee shall have copyright and other intellectual property rights in any modifications or additions made to the Program, if any of the foregoing are produced by the Licensee or written on a bespoke basis for the Licensee hereunder by the Licensor, which shall vest in the Licensee on their creation. The Licensor shall execute all documents necessary to effect such ownership.
- 9.2 The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of trademarks owned by the Licensor and other indications of the property and rights of the Licensor.

10 COPYRIGHT INDEMNITY

- 10.1 The Licensor shall fully indemnify the Licensee against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, design or registered design or other intellectual property right or right of confidence, in consequence of the authorised use or possession of the Program or Documentation supplied by the Licensor under the Licence, subject to the following:-
- (i) the Licensee shall promptly notify the Licensor in writing of any alleged infringement of which it has notice
 - (ii) the Licensee must make no admissions without the Licensor's prior written consent
 - (iii) the Licensee, at the Licensor's request and expense shall allow the Licensor to conduct any negotiations or litigation and/or settle any claim. The Licensee shall give the Licensor all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Licensor's account.
- 10.2 If at any time an allegation of infringement of rights is made in respect of the Program, or if in the Licensor's reasonable opinion such an allegation is likely to be made, the Licensor may at its own expense modify or replace the Program so as to avoid the infringement, without detracting from overall performance, the Licensor making good to the Licensee any loss of use during modification or replacement.

11 TERMINATION

- 11.1 The Licensee may terminate the Licence by giving three months' prior written notice to the Licensor to take effect at the end of the initial period specified in Appendix 1 or such extension of this period as may be agreed or, if no initial period is stated, by three months' prior written notice to the Licensor.
- 11.2 The Licensor may not terminate the Licence except in the circumstances described in Sub-Clauses 11.3 and 11.4.
- 11.3 The Licence may be terminated forthwith by either party on written notice if the other party is in material breach of the terms of the Licence and, in the event of a breach capable of being remedied, fails to remedy the breach within 14 days of receipt of notice thereof in writing.
- 11.4 Either party may terminate the Licence forthwith on written notice if the other party shall become insolvent or bankrupt or make an arrangement with its creditors or go into liquidation.
- 11.5 Termination of the Licence shall not prejudice any rights of either party which have arisen on or before the date of termination.
- 11.6 Within seven days following the date of termination the Licensee shall at the option of the Licensor return or destroy all copies, forms and parts of the Program and Documentation and shall certify to the Licensor in writing that this has been done.
- 11.7 The maintenance service specified in Appendix 2 may be terminated by the Licensee if the Licensor is in significant breach of its obligations under Clause 8 and fails to remedy the breach within 14 days of receipt of notice in writing thereof or such longer period as may be reasonable in the circumstances. The Licence will continue. In the event that the Licensee can demonstrate that such breach has involved it in additional costs then it shall have the right to recover such costs from the Licensor.

12 TRAINING

- 12.1 The Licensor shall provide instruction in the use of the Program for the Licensee's personnel as specified in Appendix 1. Unless otherwise specified no charge shall be made for such instruction but the Licensee shall be responsible for paying any travel or living expenses.

APPENDIX 1

Licence Information (excluding Maintenance Service)

1. Licensee (Clause 1. v)

2. Licensor (Clause 1.vi)

3. Title or Description of Program(s) (Clause 1.vii)

4. Make, Type and Serial Number of Equipment (Clause 1.ii)

5. Address of Locations(s) (Clauses 1.ii and 5.3)

6. Documentation (Clause 6.1)

Title	Number of Copies
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7. Period of Licence (Clause 2)

*a) In perpetuity

*b) A fixed period of

*c) An initial period of and thereafter for successive periods of..... unless terminated by either party in accordance with Clause 11.

8. Licence Charge (Clause 3)

*a) Once only payment £ (FIXED) due on acceptance in accordance with Clause 4.

*b) Periodic payments £ per (subject to variation in accordance with Clause 3) the first payment due on acceptance in accordance with Clause 4 and thereafter at intervals of

*c) Other charges (if applicable) £

9. Training (Clause 12)

The Licence charges shall include the provision of days training at (location)

..... Additional training will be charged at the Licensor's charges current at the time.

10. Details of, Procedures for and Commencement Date of Acceptance Tests (Clause 4)

11. Special Use - if applicable (Clause 5.1)

12. Special Warranties - if applicable (Clause 7)

* Delete which does not apply

NB All blanks in this Appendix must be filled in and any appropriate deletions made before the Licence is signed.

APPENDIX 2

Maintenance Service

1. Description of Maintenance Services to be Provided
(Clause 8) (Delete any items not applicable)

- a) Error Correction
- b) Updates and New Releases
- c) Documentation Amendments
- d) Enhancements
- e) Other Services (if applicable)

2. Maintenance Period (Clause 8)

An initial period of commencing from the date of acceptance of the Program and thereafter for successive periods of

unless terminated by either party in accordance with Clause 11.

3. Maintenance Charges (Clause 3)

- a) Initial period: £ (FIXED) due on acceptance in accordance with Clause 4.
- b) subsequent periods: £ (subject to variation in accordance with Clause 3) due